

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**HUNT:** Welcome, everybody. Let's get started. Good afternoon and welcome to the Urban Affairs Committee. My name is Senator Megan Hunt, I represent the 8th District in Omaha, which includes the Dundee and Benson neighborhoods in midtown. And I serve as the vice chair of this Urban Affairs Committee. Unfortunately, our chair, Justin Wayne, is testifying in another committee right now. So I'll be chairing this afternoon's hearing to begin. We'll start off with the members of this committee and staff doing self-introductions, starting on my right with Senator Hansen.

**M. HANSEN:** Hi. Senator Matt Hansen, District 26, in northeast Lincoln.

**TREVOR FITZGERALD:** Trevor Fitzgerald, committee legal counsel.

**CRAWFORD:** Good afternoon. Sue Crawford, District 45, eastern Sarpy County.

**LOWE:** John Lowe, District 37.

**CONNER KOZISEK:** Conner Kozisek, committee clerk.

**HUNT:** Also assisting this committee is our committee page, Angie Pierre-Louis from Pembroke Pines, Florida, who is a social work major at Union College. This afternoon we will be hearing six bills, and we'll be taking them up in the order listed outside the room. On each of the tables in the back of the room, you'll find blue testifier sheets. If you're planning to testify today, please fill one out and hand it to Conner when you come up. This will help us keep an accurate record of the hearing. Please note that if you would like to have your position listed on the committee statement for a particular bill, you must testify in that position during the bill's hearing. If you do not wish to testify but would like to record your position on a bill, please fill out one of the gold sheets in the back of the room. Also, I will note the Legislature's policy that all letters for the record must be received by the committee by 5:00 p.m. the day prior to the hearing. Any handout submitted by testifiers will be included as part of the record as exhibits. We would ask that if you do have any handouts, you bring 10 copies and give them to the page. If you don't have 10 copies, so you need additional copies, the page 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 proponents of the bill and then from those in opposition, followed by anybody here speaking in the neutral capacity. The introducer of the

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Urban Affairs Committee February 4, 2020

bill will then have the opportunity to make closing statements if he or she chooses to do so. We ask that you all begin your testimony by stating your first and last name and spelling them for the record. That helps our transcribers upstairs. We'll also be using a four-minute light system for today. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when you see the red light, that means it's time to wrap up. I would remind everybody here, including senators, to please turn off your cell phones. Silence anything you have that's gonna make noise. And with that, we will begin today's hearing with LB1155 with Senator Vargas. Welcome to your Urban Affairs Committee.

**VARGAS:** Thank you very much. Good afternoon, Vice Chairwoman Hunt and members of the Urban Affairs Committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s, and I represent District 7 in the communities of downtown and south Omaha in the Nebraska Legislature. LB1155, or the Middle Income Workforce Housing Investment Act, that just rolls off the tongue, directs funds to low-income neighborhoods defined as qualified census tracts for the construction of new or rehabilitation of existing middle-income owner-occupied housing. Now, there are a few reasons that I introduced this bill. First, there is a shortage of this type of housing in my district and in the districts of many senators in Douglas, Lancaster, and Sarpy County. In my district specifically, there has been a lot of new construction of higher-end condos and higher-priced rental units. While the investment in the neighborhoods have been positive in many ways, it has also resulted in longtime residents being pushed out or unable to afford to continue living in their homes. In many of the neighborhoods that I represent, there are older homes that need to be remodeled or rehabbed next to higher and new construction. And there is a big gap in moderately-priced homes that would be suitable or attractive to first-time homebuyers or middle-income working families. Additionally, LB1155 falls within the priority areas and recommendations of the Legislature's Planning Committee, which I chair. Over the last decade, the committee has worked with the university to establish what our state should do to prepare for the future, given the projected changes in demographics and population. Now, one of the priority areas of the Planning Committee, housing, is one of the areas, but one of the main areas is to retain and attract 18 to 35-year-olds. Now, housing is a big part of that goal. LB1155 targets urban areas for owner-occupied middle-income housing, which will help first-time homebuyers find homes that are affordable and in vibrant, diverse areas of the city.

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Urban Affairs Committee February 4, 2020

LB1155 is very similar to the Rural Workforce Housing Act that was passed within just the last few years. Senator Williams passed that bill, and for a very good reason. While the Legislature has recognized that it is important to build workforce housing in rural areas, we should also recognize that there is a gap that exists in middle-income workforce housing and prioritizing addressing that issue as well. Now, as introduced, LB1155 will direct a one-time \$10 million appropriation for this purpose. My thought is that we can see how far we get and how well it works before we find a dedicated funding stream or choose to extend the fund's use. Finally, I'd like to note that I've met with several different groups to discuss how this bill might work for them in reality. I think we'll have a few questions to still answer, but overall, both for the for-profit and nonprofit developers, we hear they're very excited about this concept and see it as meeting a very critical need for our urban communities. You will hear in a second a committee amendment, AM2223, which does three things which I want to put on the record. One, it's going to further define qualified census tract, makes sure it ties it to the federal statutory definition. It's going to define producer price index, ties the definition published by the U.S. Department of Labor. And it also clarifies consolidated plan, which is referred to, and actually refers to the statutory definition found within HUD regulations. There are other topics of discussion coming out of here which we will hopefully take up post this hearing that came out of the group conversation with developers and nonprofit entities as well that are going to further clarify what we look for in matching funds, different maximums potentially for rehab costs, and making sure that this actually works in a, in the right way that we intend. With that, I'm happy to answer any questions.

**HUNT:** Thank you, Senator Vargas. Are there any questions from the committee? Seeing none, thank you for your opening.

**VARGAS:** Thank you very much.

**HUNT:** I would invite the first proponent for LB1155 to come on up. Welcome.

**MATTHEW CAVANAUGH:** Good afternoon, Vice Chairwoman Hunt, members of the Urban Affairs Committee. My name is Matthew Cavanaugh, I'm the executive director of the Nebraska Housing Developers Association. That's M-a-t-t-h-e-w C-a-v-a-n-a-u-g-h. We're a membership organization with over 80 members across the state of Nebraska. Our mission is to champion affordable housing. We do this by supporting

statewide renter and homebuyer education programs, offering technical and direct financial assistance to affordable housing developers, and by advocating for policies that will make Nebraska the most hospitable state in the nation for the creation and maintenance of affordable housing. It's our goal that every Nebraskan of every income have the cornerstone foundation of a healthy and affordable home. I'm speaking to you today in support of L-- LB1155 and the creation of the Middle Income Workforce Housing Investment Program. There is nearly no segment of the housing market in Nebraska where the supply is adequate to the demand. And further down the income scale you go, the more insufficient the supply becomes. This observation is supported by the recent Blueprint Nebraska study, which called for the creation of an additional 30,000 to 50,000 units of achievable, livable housing units over the next few years. The Blueprint study laid out several approaches to increasing housing development, such as providing regulatory reform, increasing housing intelligence across the state, and strengthening housing incentives. LB1155 utilizes the third approach, strengthening housing incentives, by investing more funding into housing development. The Middle Income Workforce Housing Investment Program is tailored nay-- narrowly enough to impact areas where the housing need is not being addressed by the private market, but still flexible enough that it will be highly competitive and sought after. The areas targeted by this program rarely see the development of new market rate housing for own-- for ownership. These communities in the older parts of our cities lack readily developable land, they lack regular home sales that are necessary for lenders to see the real estate comps on which they base their lending, and they have much lower rates of owner-occupied housing. However, these communities also have valuable assets. The residents have deep roots and strong community supports, despite the high rates of housing instability. These neighborhoods are adjacent to city centers. They have moderate, moderate public transit options and greater, greater access to the supportive services than their suburban alternatives. Given the challenges as well as their assets, assisting these communities in the development of modestly-priced but high-quality housing will be-- will pay tremendous dividends. LB1155 will provide an efficient incentive to encourage the creation of high-quality, moderate-cost housing in our state's largest communities with a specific focus on owner-occupied housing. The Middle Income Workforce Housing Investment Program designed by the Legislature and administered by the State Department of Economic Development will award funds to nonprofit community development organizations that can

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

then work with either nonprofit or private developers to create and update housing. The civic, philanthropic, and community businesses will have significant input-- significant opportunity for input through their contributions to the loan fund. Cumulatively, this program will be a model for public, private and nonprofit partnership. The state funding provided in this program will be matched by private funding. It will evolve into multiple projects years down the line, and it has potential to spur additional economic investment in the oldest urban areas of our state. That is a three-time multiplier without even considering the positive impact on the families who will occupy these homes or the tradespeople who will build them. I ask that you support this program and vote to advance LB1155 out of committee. And I'm happy to answer any questions.

**HUNT:** Thank you, Mr. Cavanaugh. Any questions from the committee?

**MATTHEW CAVANAUGH:** OK. Thanks.

**HUNT:** Thank you. Next, proponent for LB1155. Welcome to your Urban Affairs Committee.

**MIKE GAWLEY:** Well, thank you. Mike Gawley, G-a-w-l-e-y, executive director of Holy Name Housing, a nonprofit housing developer for almost 40 years in Omaha. We have remodeled over 140 homes and built 500 homes in north Omaha mainly. And I'm here to propose supporting this legislation. It's badly needed in Omaha, just like in rural areas. New homes or remodels of existing homes are almost impossible to finance in north Omaha, due to appraisals not meeting those levels of costs of new homes or the cost of remodeling homes. The consequence is we concentrate areas of poverty. We have a hard time attracting services like grocery stores, convenience stores, let alone maintaining the existing stock of grocery stores. So for these reasons, I please ask you to support this bill.

**HUNT:** Thank you, Mr. Gawley.

**MIKE GAWLEY:** Thank you.

**HUNT:** Thanks for explaining the need for the housing options in Omaha. Are there any questions from the committee? Is there anything else you wanted to add about that need that you've seen in north Omaha?

**MIKE GAWLEY:** There is just plain need. I mean, we-- I've got probably 30 lots I could build on today that I just don't have the funds to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

build with them. And it's just a huge need for affordable housing in north Omaha.

**HUNT:** Thank you, sir.

**MIKE GAWLEY:** Thank you.

**HUNT:** Next proponent for LB1155.

**WARD HOPPE:** My name is Fred Hoppe, I'm here representing the Metro Omaha Builders Association, the Home Builders Association of Lincoln, their coalition, and the Nebraska Realtors Association. All of these associations and their members are in support of this bill. What this bill does is opens a door for a group that has a difficult time getting housing, particularly homeownership, and that is persons median income and below. Obviously, it's for persons that are over 60 percent median income, because 60 percent and below are qualified as Low-Income Housing Tax Credit areas or true affordable housing, LIHTC. Right now, it's doggone difficult to build a house that's appropriate for 200,000 bucks, 250,000 is stretching it. This bill would create funds so that-- to put things in context, it takes between 90 and 100 percent median income in Lancaster County to buy a home worth 250,000 bucks. So what this does is it targets the incomes between 60 and 100 percent median income. Well, that's the sweet spot. That's workforce housing. That, that is housing that's needed, yet we can hardly produce it. This will give a fund to support that production. And from that standpoint, homeownership is the name of the game. It is in-- it's what retains your employees in town, it stabilizes your employees. It's vastly needed. So all of those associations are in support of it. We'll do what we can to produce the housing that this program is targeted for. But because of the cost of construction, it needs help at those price ranges. So I'd answer any questions.

**HUNT:** Thank you, Mr. Hoppe. Before we continue, can you spell your name for the record for me?

**WARD HOPPE:** My name is spelled H-o-p-p-e, Hoppe.

**HUNT:** And your first name, sorry. Your first name too.

**WARD HOPPE:** My first name is Ward, W-a-r-d.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**HUNT:** Ward, sorry. Thank you very much. Any questions from the committee? Seeing none, thank you for coming in, Mr. Hoppe.

**WARD HOPPE:** You bet.

**HUNT:** Welcome.

**CHRISTY ABRAHAM:** Hi, Senator Hunt and members of the Urban Affairs Committee. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m, I'm here representing the League of Nebraska Municipalities. And we first just want to thank Senator Vargas for introducing this bill. We're always happy to see bills that are providing more tools for workforce housing and affordable housing. I think you've heard the League say over the last couple of years in front of this committee that affordable and workforce housing is one of the, if not the most important issue to so many communities across this state. And in the past couple of years, you have seen the League come and testify for you for land banks, which is certainly would be a great tool for communities, for workforce housing, but also your expansion of TIF and LB840 programs, to allow those programs to be used for workforce and affordable housing. So, again, we're just very supportive of this program that will, we think, provide additional funds to the communities to be able to build these homes. So I'm happy to answer any questions you might have.

**HUNT:** Thank you, Miss Abraham. Any questions from the committee? Seeing none, easy day.

**CHRISTY ABRAHAM:** Thank you.

**HUNT:** Thanks for coming.

**JERRY STILMOCK:** Madam Vice Chair, members of the committee my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska Bankers Association, in support of LB1155. In 2015, the Nebraska Bankers Association created a task force to look at the issues of particularly workforce and housing available that resulted in the bill that you've heard reference to already, that many of you were involved with as senators at the time, LB518, Rural Workforce Housing Investment Act. We've seen that in action. It's been very successful. And now with this item, LB1155, it takes it and moves it from a rural setting to an urban setting. We think based upon the pattern that LB518 created, it follows it, LB1155 follows in that same

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

framework. We're supportive of the measure and ask you to advance the bill to General File. Thank you.

**HUNT:** Thank you, Mr. Stilmock.

**JERRY STILMOCK:** Yes.

**HUNT:** Any questions from the committee? Seeing none, thanks for your testimony today.

**JERRY STILMOCK:** Very well. Thanks, Senator, members.

**HUNT:** Welcome, Ms. Creager.

**JENNIFER CREAGER:** Thank you. Senator Hunt, members of the committee, for the record, my name is Jennifer Creager, J-e-n-n-i-f-e-r C-r-e-a-g-e-r, appearing today on the head of the Greater Omaha Chamber, the Nebraska Chamber of Commerce and Industry, and the Lincoln Chamber of Commerce in support of LB1155. I thought you might just want to be aware of some of the large 50,000 foot chamber views on housing. I would say that especially at the Omaha Chamber we've heard more about housing in the last six months than we've probably heard in the six years that I've-- almost six years that I've been there. I wanted to point out that Blueprint Nebraska highlighted the need to build or increase housing stock by tens of thousands in order for Nebraska to grow its economy. Obviously, the state chamber has been very involved with the rural workforce housing bill that Mr. Stilmock talked about. We think that this can be extended to urban Nebraska as well. We know from economic developers around the state how critical the issue is. Many have actually undertaken de facto residential housing management or broker roles to accommodate the need that they have in smaller communities. After getting a job, housing is one of the next pieces of the talent attraction and retention puzzle we hear from employers. And then just two last things I wanted to highlight. The Omaha Chamber has an urban core committee focused on development in the core of the city. We are currently undertaking a study on market, a market-based study, and it's focused on types of housing and current demands. And then we are also working with the Sherwood Foundation, they are undertaking a house, a regional housing study focused on affordability right now. So those two things are going on. So just wanted to make the committee aware of some of the involvement of the chambers in the housing issue. And we appreciate Senator Vargas introducing this bill. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**HUNT:** Thank you so much, Ms. Creager. Any questions from the committee?

**JENNIFER CREAGER:** Thank you.

**HUNT:** Seeing none, thanks for coming today. Next proponent for LB1155. Seeing none, are there any opponents here for LB1155? Seeing none, anybody here to testify in the neutral capacity? Seeing none, Senator Vargas? He waives closing. So I have three letters of support on LB1155 from the South of Downtown Community Development Organization, the Nebraska Realtors Association, and NeighborWorks Lincoln. And with that, I'll close the hearing on LB1155 and move on to LB973 with Senator Kolowski. He's making his way here. Welcome, Senator Kolowski, to your Urban Affairs Committee. You're invited to open on LB973 whenever you're ready.

**KOLOWSKI:** Thank you. Well, thank you to the members of the Urban Affairs Committee. My name is Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, and District 31. Last summer you held an interim study hearing, a study hearing on LR140 to explore issues around homeowner associations and their regulation of solar energy systems. At that hearing, we heard from a number of homeowners with horror stories about how their homeowner association cares for property, fills their duties as a board, and communicates with homeowners. I want to retell part of one story from Lacy Smith. Miss Smith felt the HOA board was not enforcing the covenants. There were problems with drainage on the property, and she was frustrated that the city-- pardon me, the city of Lincoln wouldn't step in because they considered it private property. She said, she said there was an effort to organize by some of the homeowners in 2018, but they have since given up. Flora Baker [PHONETIC], who wanted to install solar energy, tried to get approval by their HOA for months with no response, and then a denial, even though their covenants were silent on solar energy. She finally sought the advice of an attorney and they did install the solar energy system. Afterward, the HOA tried to change the covenants. These homeowners want their voice heard, their issues resolved. They want clearer guidelines on solar energy and these other issues. Today, I offer LB973 to set out the basic structure for homeowners associations, their board, and their processes, like meeting notice requirements, budget, voting, and others, et cetera. After the-- hearing the homeowners' story, stories and discovering that 33 other states have HOA laws, I feel it is necessary to set up the basic structure of a homeowner association. This bill is a reasonable and

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

basic structure to homeowner associations. Yes, LB973 also addresses solar energy systems. It prevents an outright ban but allows reasonable restrictions. Other pieces of this bill include the restriction of yard signs, political and other types, and conflict resolution options-- pardon me, for homeowners and boards. This bill is a minimum standard, a basic structure for the association and a consumer protection piece for the individual homeowner. Homeowner associations in Nebraska currently register as a nonprofit corporation with the Secretary of State. A recent search of their database shows around 950 nonprofit corporations with homeowner in the name. That number is up 20 from when we first search result-- from the first search result of 930 just a few months ago. The Community Associations Institute estimates over 1,000 common ownership associations and over 100,000 people living in the jurisdiction of the homeowner association. Homeowner associations are expected to continue to increase in numbers in the near future. Already in Nebraska statute, several, several pieces of statute deal with various pieces of homeowner associations, including how a homeowner association can place a lien on a homeowner's property for nonpayment of HOA dues. However, there is no corresponding statute stating the right of the homeowner in that association. Examples are Nebraska Revised Statute 18-3105, and the Corporation Act gives the procedures for a dissolved homeowner association to reinstate their status as a nonprofit corporation. Nebraska Revised Statute 39-1405 allows counties to contact with homeowners associations for road maintenance. Nebraska Revised Statute 52-2001 gives procedures for liens on a homeowner's property for nonpayment of assessments to homeowner associations. The Municipal Custodian for Dissolved Homeowners Association Act is in Nebraska Revised Statute 18-3101-3104. This act gives multiple-- this act, excuse me-- this act gives municipalities and villages a legal structure for being appointed as the custodian of streets and common areas abandoned by a homeowner association that has dissolved. Condominiums, in contrast, have their very own chapter of statute in Nebraska law, Chapter 76. This chapter encompasses 46 pages of statute that spell out responsibilities and legalities of all manner of things related to condominium associations. Being a member of the condo, condo association, the duties of the board, meeting notices, association member rights, and anything that needs spelled out relating to condominiums. By the way, the Secretary of State website search for condominium associations came up with 384 compared to the 950 for homeowner associations. Let me state clearly that I do not intend to amend the condominium law in any way. It just seems to me

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

that if a condo association have-- has been regulated since the 1970s, maybe it is past time to do so for homeowners associations that number almost three times more than condo associations. Let's make a quick calculation of how much money would be involved. If Nebraska has 950 HOAs with 50 homes each, that's 47-- 47,500 families. The average association fee is around \$200 a year, 950 HOAs times 50 family homes at \$200 a year is \$9,500,000. That sounds like it's worth keeping an eye on. In fact, LB973 has a restriction that the amount homeowner association-- that the amount, excuse me, a homeowner's association budget can increase year over year without a vote of the membership and limits an association from entering a contract that would increase those annual dues, those annual fees, excuse me, by over \$500, unless approved by a vote of the membership. That would be a sizable jump when your average annual fee is estimated at \$200. Thirty-three states have HOA laws and regulations, 19 states disallow the prohibition of solar energy systems, 4 states actually have protective language for solar energy systems. Almost all states have condo association acts. At this research-- as this, excuse me, research continues, I have to ask myself if it is time for Nebraska to consider a more comprehensive approach to homeowner associations. You will hear opposition to this bill from builders and developers. My staff sent this proposed bill to numerous lobbyists and entities hoping to get constructive feedback, and in fact did make some changes from the committee-- comments that had been received. I remain willing to work on amendments for reasonable concerns. However, most of the feedback I've received is they simply, they simple-- simply want to keep the status quo. The interim hearing brought homeowners looking for an outlet for their frustration with how their homeowner association is living up to their duties. We consulted on this bill with an Omaha attorney who works with developers. He has reviewed this bill and considers this bill a reasonable approach. The homeowners I have contacted, I have contact with, who are not available to testify today, and they are not part of the organized lobbying group. This is a reasonable bill with reasonable goals. If there truly are issues in how the developer hands control to the HOA board, I am more than happy to address with an amendment. There is one area that I recognize probably needs to be addressed: SIDs, sanitary improvement districts. It is not my intention to affect the SID law. Overall, I think it's time Nebraskans who are members of homeowners associations have a better way of communicating and resolving conflicts with their association. If 308 condo associations have been statutorily regulated for 50 years, I

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

have to ask, why not 950 homeowner associations? I ask for your support of LB973, and I'm happy to answer questions. Thank you.

**HUNT:** Thank you, Senator Kolowski. Any questions from the committee? Senator Kolowski, to clarify, is it correct that this act will only apply to homeowner association, an existing homeowner association if they elect to be governed by it? They have to have a vote?

**KOLOWSKI:** That's my understanding, yes.

**HUNT:** Yeah. Looks like that's what it says here. Page 3, line 17.

**KOLOWSKI:** Um-hum.

**HUNT:** If a majority of the members of the homeowners association elect to be governed by the act. So also I had a question about this map. Did you help with this map?

**KOLOWSKI:** Yes.

**HUNT:** This map shows states with homeowners association statutes, and it shows that Nebraska has no existing statutes. Can you speak at all about the difference between the, the state of play in Nebraska and surrounding states?

**KOLOWSKI:** What I know is there are two other states that have laws in this particular area, and that's Alaska and Hawaii. So we can add two to the 48 states we have listed here. I'm not sure on the, on the question as to how that-- would you repeat just one more time, please?

**HUNT:** Well, tell me, tell me about the map and why you included the map, I guess.

**KOLOWSKI:** I included the map so you could see the variety of states that are clustered for the most part in the Midwest: Montana, North Dakota, South Dakota, Nebraska, Wyoming, Iowa. And then there's a little bit to the northeast and some of the-- in the Kentucky, Tennessee, Mississippi area. It just shows what, what has been done and what possibly could be done if this would be picked up by our state and, and how that could be used to assist us with the homeowners associations.

**HUNT:** All right. Thank you, Senator. Any other questions? Seeing none, thanks for your introduction.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**KOLOWSKI:** Thank you.

**HUNT:** First proponent for LB973. Welcome.

**ALEX PETRZILKA:** My name is Alex Pelt-- Petrzilka, P-e-t-r-z-i-l-k-a, I'm a foreman/installer/salesperson for Great Plains Renewables out of Omaha, Nebraska, and I'm here today to testify why my company and many others like it are in support of LB973, in particular, Section 34. Let me first start by saying this is not a matter of the solar industry versus the homeowners associations, and we're very supportive of the communities that you and we all live in. However, the restrictions that are made by homeowners associations sometimes cause major problems to homeowners and those of us working in the renewables industry. These issues include millions of dollars loss in revenue due to the lengthy process in dealing with homeowners associations and the restrictions that are imposed, efficiency loss of an array due to placement on the array not being installed in the best location possible, millions of dollars in tax credits being wasted because the amount of energy not being produced by those solar arrays, frustration from potential consumers and homeowners associations from misunderstanding and sometimes a lack of education about our renewables ener-- industry, as well as increased cost to the homeowner. As proposed in the bill, I believe it's at 15 percent that can be increased on top of what the original cost already is. Federal guidelines currently have it set at a \$2,000 cap for that increase, which is still a lot of money, as well as the inconvenience of having to put it in a position that's not going to get its best efficiency. A large majority of the issues that arise between homeowners and the homeowners associations can be easily dealt with in a few ways that will work both-- for both parties. In LB973, Section 34 and other bills like concerning the homeowners, it simply means that making sure that associations do not overstep their boundaries by abusing power granted to them. Communication between all parties involved in this process of going solar is very key. Communication between the homeowners and the homeowners associations, the communication between the homeowner and the solar companies they are working with, and I think more importantly at this point, the communication between the homeowners associations and the solar companies that are providing these installations. As time moves forward, solar is becoming ever more so popular, not just in the state of Nebraska, but in other surrounding states. And the added benefits to the homeowners and the homeowners associations is something that we in the solar industry are working very hard to try and make everyone aware of. Some of those

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

things that are solar powered doesn't not only increase the value to the homeowners, but also to the homeowners association by bringing higher-value homes to those areas. Solar panels are beautiful, they can be symbolic to the homeowners that we have worked with. They look at it as a badge of honor and showing others that they are financially wise by going green and being cost-effective, as well as their concern for their future and their kids' future. They protect our children's futures by cutting back on pollution and carbon footprints that we leave, as well as providing energy independence from fossil fuels and the like. It is possible for us to provide more options to those homeowners associations with better communication to make sure that we can do our part to make these solar arrays more aesthetically appealing to the homeowners associations who sometimes go against our arrays being street-facing to where a large population would see those on a regular basis. In closing from, from my opinion, LB973, in particular, Section 34, is not restricting the homeowners association or the homeowner. What it does is lay a foundation for them to work together to find a solution that works well for both of them. And it's my hope that the bill will assist all the parties involved to become more aware and educated on the options that are at their disposal.

**HUNT:** Thank you very much, sir.

**ALEX PETRZILKA:** Thank you.

**HUNT:** Any questions from the committee? Can you-- do you, do you think that solar energy systems increase or decrease the value of property?

**ALEX PETRZILKA:** It's a fact as recently that it potentially increases the value of the home. It can be from anywhere for the amount of efficiency that they use for every dollar spent on average of 20 hours spent for their electricity usage, that their value goes up at least one dollar. So you're looking at now roughly a \$20,000 to \$25,000 increase in property value.

**HUNT:** Thank you.

**ALEX PETRZILKA:** Um-hum.

**HUNT:** Thanks for your testimony today.

**ALEX PETRZILKA:** Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**HUNT:** Next proponent for LB973. And I also wanted to recognize Senator Arch is with us now, if you'd like to introduce yourself.

**ARCH:** I'm Senator Arch [LAUGHTER], District, District 14: Papillion, La Vista, Sarpy.

**HUNT:** Thank you.

**DAVID LEVY:** Good afternoon, Senators. I'll try and be as brief as Senator Arch. Good afternoon. David Levy, D-a-v-i-d L-e-v-y, Baird Holm law firm here in support of, in particular, Section 34 of LB973 on behalf of Omaha by Design. Omaha by Design is a nearly 20-year-old Omaha nonprofit that is particularly interested in urban design, urban policy, and sustainable energy. The prior testifier did a great job, and I won't try and refer to his last name, but he did an excellent job in explaining this. I'll try not to repeat it. But, you know, a couple of additional things. And Senator Kolowski touched on a lot of this in his opening as well. As Senator Kolowski mentioned, there are about 25 states, my count even has a few more, that have laws like this that prohibit or limit the ability of homeowner associations to prohibit solar panels on people's rooftops in particular. And you know, this is really about the right to participate in the new energy economy. You know, it's a fundamental thing to be able to participate in that economy, to be able to seek the benefits economically and environmentally of solar panels in particular, as they become more common and more economical. And there shouldn't have to be a tradeoff there between living in a neighborhood and participating in that economy. It's too fundamental of a choice to allow a small group of neighbors, perhaps, to make for all of these, all of the other people. Senator Kolowski also went through some, some math about the number of homeowners associations in Nebraska. In my understanding, there are between 200 and 250,000 Nebraskans who currently live in communities with homeowners associations in place and covenants in place. I'm not saying all of those restrict or prohibit solar panels, but this is a large segment of our population that we're talking about here. One other point I think is very important to make on this. As new housing is developed, that's often suburban housing, which is more likely to be in homeowners association and have covenants. Frequently those covenants are covenants that are used previously and used previously. And they can become outdated. I'm not sure I would have wanted to live next to somebody with solar panels on their roofs in the 1980s when they were a foot off the roof and they, they were big and bulky and so forth. But today's solar panels are much more discrete. They're much

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

more low-profile. And so covenants either that are reused from a long time ago or that have just been in place for a long time and may even in-- inadvertently prohibit, prohibit solar panels shouldn't, shouldn't be able to do that. You shouldn't have to choose whether to live in a neighborhood or participate in the new energy economy. So with that, I wasn't as brief as I promised, but I'm happy to take any questions. And I do encourage the committee to look favorably in particular on Section 34 of LB973.

**HUNT:** Thank you, Mr. Levy. Any questions from the committee? Senator Arch.

**ARCH:** Thank you. Perhaps you can answer this question best. How-- when, when does a home-- a potential homeowner become aware of the agreements, the homeowner covenants, all of those things? When is that provided to the, to the potential homeowner?

**DAVID LEVY:** Yeah, that's a good question. Certainly at some point during the negotiation of the real estate purchase, I suspect. Although I can't say for sure. But I strongly suspect that in the process of showing a home people may ask for the covenants and may see them then. So in that process, that back and forth of looking at a home and deciding whether to make an offer on a home and buy a home those covenants would be available to people.

**ARCH:** Prior, prior to the purchase?

**DAVID LEVY:** Yes, sir.

**ARCH:** Thank you.

**DAVID LEVY:** Um-hum.

**HUNT:** Any other questions from the committee?

**HUNT:** Seeing none, thank you, Mr. Levy.

**DAVID LEVY:** Yes. Thank you all.

**HUNT:** I'll invite up the next proponent for B973 and turn it back over to our Chairman, Senator Wayne.

**WAYNE:** You could have left it, it's OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**LOWE:** Wouldn't know who you are.

**WAYNE:** Welcome to your Urban Affairs Committee.

**EDISON McDONALD:** Hello, my name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d, I'm here today representing GC ReVOLT, we're a solar development company mainly operating in the net metering universe. We develop about 20 percent of the net-metered projects here in Nebraska. We also do some utility-scale stuff. We're here today in support of this bill. I think ultimately this is, this is really almost an artful piece of legislation, I think, in how it goes and creates a balance for both sides and ensuring that really you're taking everyone's viewpoints into consideration. We've had two projects that have been limited previously by homeowners associations. One thing that I do want the committee to at least take a look at is considering an amendment. I think the language is a little bit less than clear when it comes to regards to virtually net-metered projects versus just having, you know, an individual solar project. The other thing is I would ask that the committee consider going and instead of using the term "reasonable," maybe go and look at laying out specific circumstances that would apply within that reasonable definition. But yeah, with that, any questions? Otherwise, I'll let you get on to your six other hearings today.

**WAYNE:** Any questions from the committee? Seeing none, thank you for coming today. Any other proponents? Oh, we thought you were proponent. We were happy for a second. [LAUGHTER] Any other proponents? Seeing none, moving to opponents. Any opponents. Welcome to your Urban Affairs Committee, for the first time this year.

**JERRY STANDERFORD:** Good afternoon, Chairman Wayne, members of the committee. My name is Jerry Standard, J-e-r-r-y S-t-a-n-d-e-r-f-o-r-d, 14711 Industrial Road, Omaha, Nebraska. I'm here today on behalf of the Eastern Nebraska Development Corporation, Sherwood Homes and Lane Building Corporation. I've been in the building business since 1974 and oversee both Sherwood Homes and Land Building Corporation. We build single-family new homes and develop subdivisions to provide lots for our two companies to build up in the metropolitan area. Our opposition to LB973 is that this is a one-size-fits-all mandate imposed only on new subdivisions across the state of Nebraska. The extensive regulation and reporting requirements will make compliance an exhaustive exercise for resident board members. This can only result in the expense and unnecessary additional costs to retain

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

experts in the HOA management field, resulting in both higher HOA dues and assessments while reducing or eliminating the participation of residents in the subdivision. Currently, the Nonprofit Corporation Act that provides for the governance of the HOAs is more than adequate to govern the operation of these HOAs. As everyone in this room recognizes the desperate need for affordable and now, then-- and now, more than any time since World War II, the need for middle-income housing. LB973 will be in another mandated cost imposed on the buyers of the homes we're trying to provide. Currently, the documents governing the HOA in a new subdivision are filed with the restrictive covenants prior to the sale of the first lot. These same documents are also provided to the buyer of a new home or a lot in that subdivision at the time of the sale. Additionally, the receipt of these is acknowledged that the-- at the time that the, at the time the buyer receives them. The requirements and directives of the documents are written specifically to promote the health, safety, recreation, welfare, and enjoyment of the residents of the subdivision. These documents may be entirely different for a subdivision with 25 or 30 residents than one for 300 to 500 residents. However, in each case, these articles are written-- these articles written are not only a public record, are provided to the buyers prior to the sale. Often the decision to purchase a new home in a subdivision is somewhat based on the contents of the articles and how they will help protect the buyers' investment in the new home. New residential subdivisions are not all the same with regard to the size of the home, the size of the lots, the number of lots, the quality of construct-- construction, material choices, nor the amount of time it takes to build out the subdivision. Different subdivisions target different types of homes with varying amenities to be managed by the HOA. In order to be successful, developers of new subdivisions strive to provide the best neighborhood at a value to their buyers, whether it be a 1,000 square foot split entry or a million dollar estate lot. With the ever-changing economy and technology is important for both the success of the subdivision and the protection of the homeowners' values to retain flexibility afforded by the covenants and documents of the HOA until such a time that the residents can take over all the duties of the HOA and manage it by their elected boards. In closing, I would ask that you not advance LB973 and impose this legislation that only affects new home construction at a critical time in the state of Nebraska. With that, I would be happy to answer any questions you might have.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**WAYNE:** With that, any questions from the committee? I have one. Do most OHAs-- HOAs already have, hire like a management corporation?

**JERRY STANDERFORD:** No. Many do not. Especially the smaller ones. Many of those are run and managed by the residents at this time.

**WAYNE:** Thank you. Senator Lowe.

**LOWE:** Thank you, Chairman Wayne. Thank you for being here. So continue on with that train of thought, are the resident board members paid?

**JERRY STANDERFORD:** Typically not.

**LOWE:** To--

**JERRY STANDERFORD:** Some, some maybe they receive a stipend, maybe-- in the, in the HOA that I live in, I believe the treasurer receives a stipend, that's maybe \$500 a year. So it's quite a bit of work for him. But most, they are not.

**LOWE:** I'm just concern-- kind of concerned that these are unpaid people that will have to keep records of things like that.

**JERRY STANDERFORD:** And that is, that's--

**LOWE:** Added.

**JERRY STANDERFORD:** That's our, that's our concern is that the, the requirements of the statute, I think, will require many homeowners associations to seek additional help to kind of keep up with the compliance.

**LOWE:** Thank you.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for coming today.

**JERRY STANDERFORD:** Thank you.

**WAYNE:** Any other opponents? Any other opponents? Seeing none, anyone testifying-- are you an opponent or neutral? Are you an opponent, sir, or are you neutral?

**WARD HOPPE:** I'm an opponent.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**WAYNE:** OK. Thank you. Welcome to your Urban Affairs Committee.

**WARD HOPPE:** Thank you. My name is Ward F. Hoppe, I'm a lawyer in Lincoln, but I'm also a--

**WAYNE:** Can you spell your name for the record, sir?

**WARD HOPPE:** Ward F.-- Ward F. Hoppe, W-a-r-d H-o-p-p-e.

**WAYNE:** Thank you.

**WARD HOPPE:** I'm a lawyer in Lincoln. I'm here representing the Home Builders Association of Lincoln and the Metro Omaha Builders Association. I'm also a real estate developer and a builder across Nebraska. I'm here-- the Metro Omaha Builders Association and Homebuilders Association of Lincoln are both opposed to this bill because it restricts the, the ability of a builder to, and developer particularly, to craft the nature of their subdivision and their, their product. And I can assure you that for the most part, all builders want to create desirable living arrangements and lots for the homeowners of the-- ultimately of the homes they're building. So they craft it with some reason or purpose in mind. But they, they also want to be able to control the sell out of a subdivision. And that, in part, needs-- means that they need to be able to control the homeowners association and how it deals with the properties under its control during the time of that sell out. And what is objectionable, one of the things that are objectionable, objectionable by this bill is it limits that length of time. It limits that ability of a developer through the structural mechanisms and the rules that are set forth in the bill for a homeowners association to do that. Next, I want to point out that this bill applies to all new homeowners associations, not, as reflected earlier, only ones that vote to be measured by the bill or handled by the bill. It applies to all new homeowners associations after January of 2021, I believe is the date. So whether it applies to all existing homeowners association. Yes, there does have to be a vote, and they have to vote affirmatively to do that. But as to new ones, it's mandatory. Second, the-- I want to point out that it seemed from the proponents that this is really a subterfuge to get rid of-- or to get rid of restrictions for solar. You know, if solar is desirable in neighborhoods, developers will allow it in. The-- but the issue of whether or not they should be able to control how they develop out their subdivision is theirs. It is questionable, even though the bill would prohibit restriction by

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

homeowners associations to that end, it does not prohibit putting it, that I can read anyway, prohibit putting them in restrictive covenants, which then could be enforced by any homeowner. And so it-- my, my point is it shouldn't be in this bill in any case. Last, it's going to increase the cost of operation of homeowners associations because volunteers aren't going to be able to keep up with the paperwork this requires. I'd answer any questions.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here today.

**WARD HOPPE:** Thank you.

**WAYNE:** Any other opponents? Welcome to your Urban Affairs.

**CONNIE BURLEIGH:** Hi. Thank you for having me here. I am representing the Realtors Association of Lincoln and I-- or I'm sorry, the Nebraska Realtors Association, and I also have a company that manages a homeowner's association. I'm sorry.

**WAYNE:** Spell your name.

**CONNIE BURLEIGH:** Connie Burleigh.

**WAYNE:** Yeah. Thank you.

**CONNIE BURLEIGH:** C-o-n-n-i-e B-u-r-l-e-i-g-h.

**WAYNE:** Thank you.

**CONNIE BURLEIGH:** I've gone through the bill and given you a handout of just some different things that I think that would be very difficult for a new homeowner association group to be able to deal with. And while I think that it's good to have a guideline for homeowner-- for covenants and bylaws, I-- and I manage 10 associations and nearly a thousand units. In reading this over, it would be very difficult for me as a property HOA manager to be able to meet these guidelines. Number one is just getting 51 percent of the homeowners there, just like Senator Kolowski had trouble getting them here today. I-- that's my world, I live in it. So it's very difficult sometimes to get people. We have gone so much with the board of directors and walked door to door to get votes and notarize them so that we have proper records to make sure that the changes they want are done. I also think there's a lot of things that you can do to get neighborhood input, but

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

like surveys and things like that. But just like it would be difficult for you to pass a budget if you had to go to all the people in Nebraska every time and say, I need 51 percent of you to agree to this, that would be really, really difficult. So it's so much better to have them elect a board of directors. And then if they don't like the board of directors, they can vote someone, for someone when that term ends or they could vote to remove them. But it would be very, very difficult to be able to meet all of these goals. Most of the people that live in the homeowners association are elderly and-- not all of them, but a lot of them, a good portion that I manage. And \$75 to \$130 a month HOA dues is, that's a pinch for some of them. And that's what they range. And if these, if they had to follow these guidelines or if I had to, I would definitely have to increase my fees because I would have to hire more employees to be able to do all of the things requested in here. And some of them would be very, very difficult to even happen. For example, getting the quorum would be one thing. Having people sign a document for if we can email something out to them. I mean, we do get-- collect all of their information. But having to send out an email or a document just to be able to communicate with them and have them sign it would be difficult. So there's a lot of things in here that would have to change, I think, before it could be considered basic HOA guidelines. And with that, I'll answer any questions that you might have.

**WAYNE:** Any questions from the committee? Don't see none. Thank you for being here today.

**CONNIE BURLEIGH:** OK. Thank you.

**WAYNE:** Any other opponents? Now moving on to neutral. Anybody in a neutral testimony? Anybody testifying in the neutral? Seeing none, Senator Kolowski.

**KOLOWSKI:** I'd like to thank those that were able to be with us today and add to our, our hearing. I think it's important that everyone has a chance to do what has been done today. I think one of the reasonable aspects of the bill is that I am more than happy to address with an amendment anything that stands out as a difficult piece or problem with this particular bill as seen by some people. And I think that's an important aspect that we could sit down and, and go through an opportunity of finding common ground that would be excellent for all involved. I will just stop with that right there. And again, thank you

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

for the opportunity to present this bill today. Appreciate it very much.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here today.

**KOLOWSKI:** Thank you.

**WAYNE:** For the records, LB973 has a letter of support by Omaha by Design, and support by Interfaith Power and Light. And with that, that will close the hearing on LB973 and we will now open the hearing on LB794, Senator Hansen.

**M. HANSEN:** Thank you.

**WAYNE:** Go ahead, sir.

**M. HANSEN:** Sure. Thank you and good afternoon, Chairman Wayne and fellow members of the Urban Affairs Committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here today, today to introduce LB794, a bill that would adopt the Missing Middle Housing Act, which would allow the development of middle housing in areas currently only zoned for detached single-family home, houses in cities of over 500,000 residents, not-- excuse me, just 5,000 residents. Middle housing is defined as duplexes, triplexes, quadplexes, cottage clusters, and townhouses, which is basically anything between a freestanding single-family home and a large-scale apartment complex. These units are the middle of the housing spectrum, in the mind of many are missing. It's no secret that the vast majority of communities in Nebraska are suffering from a lack of housing and, more urgently, a lack of affordable housing, or sometimes called workforce housing. For example, studies from the 2010 Federal Department of Housing and Urban Development showed that Lincoln needs another 5,000 moderately-priced affordable rental units to meet demand. Over the five years I've served on this committee, I've heard time and time again of the need for more affordable housing. The time-- the need for more affordable housing options across the state. Meanwhile, prices for single-family homes, by far the most widely available housing option, continue to rise. Since 2012, home prices have risen 41 percent in Omaha and 34 percent in Lincoln, with similar trends in other communities. Single-family homes are expensive to build, expensive to buy, and expensive to maintain. And this problem is only getting worse as the

size of an average single-family home has ballooned from 1,500 square feet in the '70s to 2,500 square feet today. That's a 66 percent increase at the size that the same, that the average family size is, in fact, shrinking. Compounding this problem is, in fact, that most residential land is limited to only single-family detached homes. I've passed out maps the Research Office put together that shows vast amounts of land in the Lincoln and Omaha areas zoned for this purpose. In Nebraska, 72 percent of homes are single-family, which, as I noted, tend to cost more and require-- cost more than other housing options. The lack of choice in housing options like when most of our other housing regulations, is a relic from the post-World War II, when we prioritized this type of housing over others during the Baby Boom and expansion we saw after the war. One creative way to address this lack of housing choice and supply is to decrease regulation and allow the development of multifamily homes in areas where they're currently banned. This gets at the problem in two ways: It increases the supply of housing available and it gives people more options that may be more affordable than a just typical single-family homes. Unlike the stereotype of huge apartment complexes, multifamily homes have developed over time to fit, be able to fit seamlessly into the settings of existing neighborhoods. We need to get past the notion that everyone wants or needs or is able to afford the same type of single-family home. There are people who simply don't want more-- they're simple-- excuse me. There are people who simply want more options, such as retired folks who want to downsize, or at the other end of the spectrum, young professionals fresh out of college who want to live and work in Nebraska but not be able to want or afford a house in the suburbs. Finally, I'd like to point out a few things this bill doesn't do. It does not allow huge multi-unit condos or high-rise apartment buildings, it would not allow builders to come and build whatever they want with no regulations. Cities would still have the same regulations and processes that currently exist for areas zoned for varied housing types. I think you'll see from the testimony today and letters in support that this is a creative way to bring together a variety of stakeholders to begin the process of changing outdated zoning regulations and meet the demand for a wider variety of housing options. We also-- we often ask our colleagues where a bill comes from or who brought us the bill. In this case, I saw over the interim that states and cities were considering this option as a no-cost nonpartisan way to address the lack of affordable housing. During our research, my staff identified a similar bill to this that passed in Oregon and worked with committee staff to draft the green copy. As

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

I've been working on it, I've been blown away by the amount of attention this bill has created and a wide variety of groups who've reached out to me in support. I'd like to take this time to thank all of them. With that, I would encourage the committee to support LB794 and would be happy to take any questions.

**WAYNE:** Any questions from the committee? This seems like a very interesting bill somewhat.

**M. HANSEN:** Sure.

**WAYNE:** Listen to the proponents and opponents.

**M. HANSEN:** All right.

**WAYNE:** Then I'll have questions for you at closing.

**M. HANSEN:** I'm sure. Thank you.

**WAYNE:** First up, proponents.

**ERIN FEICHTINGER:** I'm going first.

**WAYNE:** You have every right to go first.

**ERIN FEICHTINGER:** That's what I thought, too. Thank you. Chairman Wayne, members of the committee, my name is Dr. Erin Feichtinger. It's good to be back in front of Urban Affairs. I'm here-- oh, let me spell that for you. E-r-i-n F-e-i-c-h-t-i-n-g-e-r. I'm representing Together, a social service agency focused on preventing and ending homelessness in the Omaha metro area. We do this by operating one of the largest all-choice food pantries in the state, providing crisis intervention for people facing the prospect of immediate homelessness, and supporting individuals and families transitioning out of homelessness through our intensive case management program Horizons. We support LB794 and thank Senator Matt Hansen for his continued commitment to addressing the housing issues that keep so many in our community from finding and keeping housing. LB794, like several bills in front of you today, is in part an attempt to address what is our historical legacy of segregation and discrimination in housing that undergirds our current housing crisis. In Omaha, as in so many other urban areas, that history has included redlining, restrictive zoning practices that reduce options for low-income individuals, and a lack of investment in specific communities, leading to concentrated areas

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

of poverty with lower opportunities in-- with fewer opportunities in employment, education, and access to the upward mobility we all desire. The single-minded focus and attendant policy support of single-family zoning has not allowed us to adequately address this legacy and the growing shortage of safe, affordable housing for low-income individuals and families. Reducing restrictive zoning requirements will make it easier to tackle this crisis because it allows room for creativity, where currently there is little. The city of Omaha identified in its consolidated plan for 2019-2023 that, quote, It is important to note that the city has a shortage of housing units that are affordable to the lowest-income residents by several thousand units, and that higher income residents occupy several thousands more. That shortage is felt daily in our efforts. In 2019, our agency, only one of several in the Omaha metro area, made 322 rent payments, 273 utility payments to help keep people in their homes. We provided navigation through the homeless service system to over 700 individuals and moved 43 households from homelessness to housing. In addition, 947 people came through our doors last year trying to find their way out of homelessness. We could do more, but we are constrained by the same forces at work keeping people from housing stability. We do not have enough supply to meet the demand. Adopting the Missing Middle Housing Act will not entirely solve the problem of affordability and access to housing in our community, but it is an important part of the solution, one that will reduce housing costs across the market and allow for more flexibility for service provider, providers such as ourselves to help people reach self-sufficiency. Having more safe, affordable options for housing at our disposal will decrease shelter stays and will significantly reduce the number of individuals and families facing homelessness. Thank you for your thoughtful consideration of this issue. Happy housing day in the urban affairs to you all, and I'm happy to answer any questions that you may have.

**WAYNE:** Any questions from the committee? Seeing none, thank you for coming today. Next proponent.

**PATRICK LEAHY:** Oh, thank you. I'm Patrick Leahy, L-e-a-h-y, Legislative District 31, southwest Omaha, representing AIA Nebraska. And by the way, FYI, right outside the door in the Rotunda is the Americans Architects Excellence in Design awards winners from last year on boards, and it will be there through next Friday. I'm here representing LB794, the missing middle, and AIA Nebraska is supporting that. What it's, what it's about, it's really about redefining

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

multifamily housing with more options, providing a bridge between the single-family houses we have and those large mid-rise and towers. When people want to have something close to a single-family house but can't afford the big ones that we have plenty of. It increases density without the-- in addition to increasing the density, it includes architectural design and site planning. And it's really those units that are between 75,000 and 250,000 that are sold faster than anything in the market right now. They're in great demand and there's not enough of them. In addition to the duplex, triplex, four-plexes, there's five more. There's courtyard apartments, done often in the 1880s to 1930s, bungalow courtyards, houses, townhomes, multiplexes, live-work. Think new things and things that have worked in the past. The other thing I wanted to include is why you do it. To provide more options, more housing types, more price points, young, old, mixed income from low to high. They're often and should be located in walkable areas, which will mean urban areas or where there's transit options to meet both those. Typically, one square block to one square mile-- to one or multiblocks from five square blocks to a square mile. And I have some examples too, if you want to ask about those. It's less-- what it does by providing this higher density and in a walkable area with transit, there's less need for more cars and more parking lots. So it's a nice place to live, and it's in great demand. The other thing I wanted to add is the, there are, there's several states and cities that are doing these now. The example in Nebraska is on Urban Waters in Papillion. It's got about 30 buildings when it's done. They've got about a third, they've got about 18 types total and about 15 to 18 are already built or in construction. And I'll-- with that, I can open to questions, I've covered everything.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**PATRICK LEAHY:** OK. Thank you.

**WAYNE:** Any other proponents? Welcome back to your Urban Affairs.

**WARD HOPPE:** Thank you. My name is Ward F. Hoppe, Ward, W-a-r-d, Hoppe, H-o-p-p-e. Again, I'm a builder. I build across this state. I'm a lawyer. And I'm here representing the Metro Omaha Builders Association and the Home Builders Association of Lincoln Coalition, as well as the Realtors Association. As a builder, let me give you a quick course on real estate development. Making real estate, all real estate development is based on linear feet. It costs twice as much to build a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

50-foot lot, to put the infrastructure in in a 50-foot lot than it does a 25-foot lot. If you take infill and you put on an existing 50-foot lot or an existing 75-foot lot or an existing 100-foot lot, the infrastructure is in place. If you put over that a density that increases, you're tripling the benefit of the existing benefit if it's a three-plex, you're doubling the benefit of the existing infrastructure if it's a duplex. And you can all do the math. So the, the concept of affordable housing, if you talking-- this bill doesn't necessarily speak only to affordable housing. It does speak to the affordability of lots that would apply to new housing. But if you're talking affordability, mass means more affordability. In other words, if you can build, and I'm gonna tell you this again on the next bill, but if you can build 10 units in one location, you mobilize once. You teach your subs how to build the units, if they're similar units, you teach your subs how to build the units once. So the second, third, fourth, whatever, they build faster and cheaper. You can buy in mass and a bunch of things. What this does, it puts an overlay on existing developments, really existing platting, that allows for density. Density does mean affordability in many respects, or it can. It leads to affordability. So the, the bill is great, it will help home, homeowners or renters because it allows for, for infill development of higher density that could be for rent or for sale. And I would support the bill, and as would Metro Omaha Builders, HBAL, and the Realtors Association. I'll certainly answer any questions.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**WARD HOPPE:** Thank you.

**WAYNE:** Any other proponents? Welcome to your Urban Affairs.

**ISABEL SALAS:** Hi, my name is Isabel Salas, I-s-a-b-e-l S-a-l-a-s, here representing the South of Downtown Community Development Organization where I'm a community organizer. We're in support of LB794, which has been introduced by Senator Hansen. And I'm also testifying today on behalf of Collective Impact Lincoln, which is a partnership between the South of Downtown CDO, Nebraska Appleseed, and Civic Nebraska, that works with residents of six Lincoln neighborhoods to both community, develop neighborhood leaders, and take action on policy that is responsive to their needs. One of our primary goals is to increase access to adequate and affordable housing. Decades ago, large multifamily developments added density in the core parts of our city,

including the neighborhoods that we serve at South of Downtown and that we are sitting in right now. The backlash to this development was the opposite extreme. Zoning that only allowed single-family homes contributed to high development costs and unaffordable housing outside of Lincoln's core neighborhoods for Lincoln's middle and working class folks. Developing affordable housing in single-family zoned neighborhoods is extremely difficult because of the sheer development costs that could otherwise be dispersed between two, three, or four households. This inability to build multifamily homes in other parts of the city created pressure on the core neighborhoods to meet the affordable housing needs of working and middle-income folks. Lincoln is facing a severe shortage of affordable housing, and LB794 helps to address this issue by removing a barrier posed by restrictive single-family zoning. LB794 eliminates single-family only zoning in the cities of metropolitan, primary, or first class and requires those cities to allow for more middle housing and previously single-family zoned-- only zones. However, it does not prohibit that single-family residential development, which is what I'm guessing is going to be the opponents, something that they talk about. It instead provides the opportunity to build more densely in larger Nebraska cities, eliminating the barrier for multifamily developments. So kind of like Senator Hansen talked earlier, Oregon passed a similar proposal. But basically the gist of it is that more density is better because it builds more housing and more opportunity, so we're taking that pressure outside of our core neighborhoods. When we're talking about healthier neighborhoods being mixed income, we're really seeing that stress being put on the core neighborhoods of a lot of cities to meet the affordable housing needs of everyone. So this proposal cover-- coupled with other commitments to affordable development, can help low-paid Nebraskans obtain affordable housing. And that is why we urge the committee to support LB794.

**WAYNE:** Thank you. Any questions from the committee? Thank you for coming down today. Any other proponents? Welcome to your Urban Affairs.

**SUZAN DeCAMP:** Thank you. Good afternoon, Chair Wayne and committee members. My name is Suzan DeCamp, S-u-z-a-n D-e-C-a-m-p, and I'm testifying here today as a volunteer for AARP Nebraska in support of LB794. AARP is a nonpartisan, nonprofit, nationwide organization that helps empower people to choose how they live as they age, strengthens communities, and fights for issues that matter most to families, including the promotion of livable communities. AARP strongly supports

the creation of diverse housing types to meet the needs and preferences of our changing demographics. Just as the housing needs of individuals change over a lifetime, unprecedented shifts in both demographics and lifestyle have transformed our nation's housing requirements. People of all ages want to live in walkable communities close to transit, jobs, and amenities, but housing costs preclude many working families, individuals, and seniors from being able to do so. The Missing Middle Housing Act will help provide diverse housing options which are necessary to meet these needs. The term missing middle was coined in 2010 by Daniel Parolek of Opticos Design, incorporated, who is originally from Nebraska, to define a range of multi-unit or clustered housing types compatible in scale with single-family homes that help meet the growing demand for walkable urban living. As detailed in AARP's recent publication, Making Room: Housing for a Changing America, adults living alone now account for nearly 30 percent of American households. And while only 20 percent of today's households are nuclear families, the housing market largely remains fixated on their needs. By 2030, 1 in 5 people in the U.S. will be aged 65 or over; and by 2035, older adults are projected to outnumber children for the first time ever. It is critical that communities address their range of needs now. According to AARP's 2018 Home and Community Preferences Survey, nearly 80 percent of adults age 50 and older want to remain in their communities and homes as they age. Approximately 1 in 3 adults report that major modifications to their home are necessary to accommodate aging needs. In addition, 7 in 10 people said they would consider building an accessory dwelling unit for a loved one who needs care to reside in. Accessory dwelling units are smaller, secondary, self-contained housing units that exist on the same property lot or parcel as a single-family primary residence, such as an unattached garage, cottage, or studio, or a unit that exists within the primary residence such as a basement or upper floor. They may also be an attached garage or an addition to an existing primary residence. Such type ship-- excuse me. Such types of housing units make it possible for homeowners to age in place in their own home with live-in care, or allow for homeowners to provide adjacent housing for their aging parents or their adult children, grandchildren, other family members or friends. These units can provide additional income from rent for older homeowners on a fixed income or security for a person who lives alone by having someone living nearby. For these reasons, AARP supports LB794. We would also like to ask that you consider including accessory dwelling units, or ADUs, as an allowed housing type as part of the bill. AARP believes the bill offers a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

reasonable policy that will increase the supply of affordable housing for our workforce currently priced out of the market, diverse housing options for older adults looking to downsize in their current community, and housing suitable for the caregiving of an older relative while providing them with the independence they desire. Thank you to Senator Hansen for introducing this important legislation and for the opportunity to comment. We would ask you to consider advancing LB794 to General File, and I'd be happy to answer any questions.

**WAYNE:** Thank you for coming today. Any questions from the committee? Seeing none, thanks again. Any other proponents? Welcome to your Urban Affairs Committee.

**ANGELA BRANT:** Good afternoon, Senator Wayne and committee, Urban Affairs Committee members. Thank you, Senator Hansen, for introducing this bill. My name is Angela Brant, A-n-g-e-l-a B-r-a-n-t, and I help people of all walks of life, debt levels, income levels, and credit scores, as long as they're above a 620, realize the American dream of homeownership. I'm a realtor and a major investor in RPAC, and I thank you for allowing me your time today. Fact: Families who pay more than 30 percent of their income for housing are considered to be cost-burdened. That means that they may have difficulty affording food, clothing, and transportation or medical care after they pay their housing bill. Nationally, an estimated 12 million renters and/or homeowners pay more than 50 percent of their annual incomes for housing. Fact: Low-density sprawl burdens local governments with higher economic costs as it requires new roads, electric lines, water mains. You know, the things that make up our neighborhoods. Whereas infill, infill development usually requires simpler, less costly upgrades to the existing city infrastructure. And let's be real. It's called the middle. So it's not an extreme and it is missing. Second, missing middle offers low-rise density diversity and forms the backbone-- or I'm sorry. Secondly, the missing middle offers low-rise density, diversity, and forms the backbone of a quintessential American neighborhood. I represent mostly Douglas and Sarpy Counties as a realtor. As of today, before I left, I pulled some information out of our MLS. Today there are 43 condominium or multifamily properties that have applied for FHA financing approval. As of today, there is one condominium or multifamily complex in each of the two counties, Sarpy and Douglas, that have successfully completed and have maintained their FHA lending approval. At this time, I currently have eight FHA preapproved buyers, and they're all under the age of 30 and they're looking for affordable housing. And to them, that means

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

anything under \$175,000. And they're all desiring a condo or a multi-style housing. Today, as I said, I work in Douglas and count-- Douglas and Sarpy County. There are currently 20 active multi-unit properties that are for sale at under \$175,000. Of those multi-unit properties none of them qualify for FHA financing. Furthermore, today in our MLS, again pulling only Douglas and Sarpy County, there are 201 single-family homes that are listed for sale for under \$175,000. Of those homes, zero of them are allowing FHA financing. I believe that the missing middle offers options, and I believe that it stabilizes communities and families. And it is my hope that the Urban Affairs Committee sees fit to advance this bill. Thank you.

**WAYNE:** Thank you. Any questions from the committee? Senator Crawford.

**CRAWFORD:** Thank you, Chairman Wayne. So you mentioned that you have, you have housing that's in that price range, but not FHA-approved?

**ANGELA BRANT:** Correct.

**CRAWFORD:** What would this bill do to help that?

**ANGELA BRANT:** I think what this bill would do to help that is I think it would take, as I speak with some of the smaller builders around the Omaha area, I think what that will do is, one of the reasons a seller will not put FHA financing down is most of the FHA buyers barely have their 3.5 percent down payment and another 3.5 percent for their closing costs. So they're asking a seller to cover their closing costs. When someone is buying an FHA property, as a realtor, you really do want to encourage them to get a home inspection. FHA home inspections are a little bit tougher to get by. If they go through peeling paint and some other things that a conventional loan would not necessarily ask, an appraiser would not necessarily ask for those repairs to be made. So what I believe many listing agents are doing is they are telling their sellers, don't accept FHA financing. It's a quick market. Your house is going to be gone very quickly. And if you don't have to make repairs to it or if you don't have to do things that an FHA appraiser would want you to do, I think that would be beneficial for you. I do believe what this bill would do is it would open up the market and it would open up the market to perhaps allow realtors to be a little bit more professional in how they present what is right for their buyers. I know that, that homes that don't allow the FHA financing, I do truly believe that a lot of it has to do with

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

the fact that it is a seller's market and they don't have to accept an FHA finance.

**CRAWFORD:** Thank you.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for coming today.

**ANGELA BRANT:** Thank you.

**WAYNE:** Any other proponents? Welcome back to your Urban Affairs Committee.

**DAVID LEVY:** Thank you, Chairman Wayne, members of the Urban Affairs Committee. David Levy, D-a-v-i-d L-e-v-y, here on behalf of Omaha by Design, a nearly 20-year-old nonprofit interested primarily in urban design, urban policy, and environmental sustainability. Echo a lot of the previous comments in support of LB794. This is really a modest approach, and I think it's very important. You know, you've heard a lot, and I think it's commonly understood that there's a housing shortage in Nebraska and especially when it comes to workforce and middle-income housing. This is an approach to that that involves deregulation. It's not an approach that involves a cost to the state or cost to the municipalities, but rather it's, it's removing barriers, it's deregulating to allow for the market and private industry to address those issues. A number of testifiers have talked about density and the importance of density. As Mr. Hoppe said, it can make development cheaper. As the previous testifier said, it also makes more efficient use of municipal services and municipal infrastructure. One of the things that, of course, is important about both of those things is they also help address one of the other things that you talk about most in this body, and that's property taxes and property tax relief. Density is growing the base, growing the base is true property tax relief. This is a small, modest step in that direction. And I would encourage the committee to support LB794. Happy to answer any questions.

**WAYNE:** Any questions from the committee? Seeing none, thank you for coming today.

**DAVID LEVY:** Thank you.

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Urban Affairs Committee February 4, 2020

**WAYNE:** Any other proponents? How many more testifiers do we have on this bill? You can raise your hand. That includes opponents or just proponents? How many total testifying? OK, thank you.

**MICHAEL J. O'HARA:** Chairman Wayne, members of the committee, I would like to thank Senator Hansen for reducing the bill. I'm Michael J. O'Hara, M-i-c-h-a-e-l, middle initial J, O'Hara, O-'-H-a-r-a, testifying for the Sierra Club in favor of the bill. You wonder if there is a real need for this. On January 31st, Bloomberg News had a story, and the U.S. housing crisis making its way into the heartland, where Omaha gets ranked ninth-least affordable using that 30 percent standard. The Sierra Club is interested in reducing urban sprawl, that would be the way we'd speak of it. Homebuilders would say things like linear feet, and we would agree on that. If you increase the number of units per linear feet density then you reduce the average total cost for the house. And when you do that, the fixed cost is going down faster than the variable cost. And that means you can increase amenities in the house and making it more attractive to make up for the fact that you have more density. This is a good bill because it encourages rather than requires creating a market. And by doing that, you're more likely to get private enterprise to enter it. We clearly would support this. And if you have any questions, I'd be glad to answer them.

**WAYNE:** Any questions from the committee? Seeing none, thank you for coming down.

**MICHAEL J. O'HARA:** Thank you.

**WAYNE:** Any other proponents? Welcome to your Urban Affairs Committee.

**WILL GREENE:** Thank you. My name is Will Greene, W-i-l-l G-r-e-e-n-e. Thank you, Chairperson Wayne and members of the committee. So I helped to found the Omaha Missing Middle Housing Campaign. We're a group, a grassroots effort comprised of architects, doctors, sustainability professionals, real estate professionals, retirees, and others committed to building a more affordable, inclusive, and sustainable Omaha. We were backed by a growing list of groups, including AARP, the Sierra Club, the Green Omaha Coalition, Mode Shift Omaha, Saddle Creek, and Saddle Creek neighbor-- sorry, Saddle Creek Corridor Neighborhood Association. It's a rare moment when our elected representatives consider a bill which holds such promise to do good in our cities. LB794 represents such an opportunity. Others today have

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

touched on the myriad of benefits missing middle housing could bring to our cities in offering age-in-place opportunities for our seniors, and allowing housing affordability by design and not necessarily dependent on government subsidy. It's boosted property tax revenues while efficiently using existing municipal infrastructure. It's a vital role in supporting our transit, bicycling and pedestrian investments. And I can go on. Instead, I want to focus on something that is less tangible but no less meaningful. It's the reason we fall in love with some cities and shun others. It can be found in our smaller towns and our largest cities. It's the friendly chat with the neighborhood corner store owner, it's the Saturday morning walk to the local cafe patio, it's a group of friends meeting on a Friday night at the neighborhood brewery. It's in a thousand seemingly mundane interactions that don't occur between 4,000 pounds of metal and glass traveling at 40 miles per hour. I'm talking about make-- what makes us cherish our cities. It's the difference between Omaha's Old Market and the current state of Crossroads Mall. For those that you know, who know, know it in Omaha. Cities that are cherished attract employers. These cities keep their youth instead of losing them to the coasts. We need policy like LB794 because it creates that built environment, it sets the stage for these interactions. If we allow our built environment to continue its decay, its sprawl outward, we are missing a golden opportunity. Cities that are striving to be more compact and more convenient are invigorated cities. We think leadership at the state level is exactly what is needed at this time. It will give cities a direction and impetus they need to implement positive changes locally. The need for this direction is evidenced by the city of Omaha's zoning code, which has not been substantially updated since 1987. As a closing note, we support the bill in its current form, but believe it could be strengthened by adding accessory dwelling units explicitly to the definition of middle housing in Section 3. Thank you so much.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for coming. And thank you for the work you do. Welcome back. Welcome to your Urban Affairs Committee.

**MATTHEW CAVANAUGH:** Thank you. Thank you, Chairman Wayne, members of the Urban Affairs. My name is Matthew Cavanaugh, M-a-t-t-h-e-w C-a-v-a-n-a-u-g-h, executive director of the Nebraska Housing Developers Association. I'll echo everything everybody has said. This is important to our membership in terms of lowering construction cost for increasing affordable housing. I just want to make one particular

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

point to address the question about why this issue should be-- local zoning should be addressed on this by the state Legislature on the state level. I think the answer to that is to look at a more remote level of government, the federal government, and the communication that they provided on the issue of affordable housing and addressing affordable housing. If we don't do something here, it is very likely that the federal government is going to mandate-- it's going to use the power of the purse to encourage greater, the deregulation of housing and zoning in local governments. So, for example, I'll just draw your attention to last summer, the President signed an executive order establishing the White House Council on Eliminating Regulatory Barriers to Affordable Housing. They identified overly restrictive zoning and growth management controls, unresponsive maximum density allowance-- unreasonable maximum density allowances, undue parking requirements, and cumbersome and time-consuming permitting and review procedures as items or barriers to administration, that the administration seeks to reduce. I'll just point out a quote from Housing and Urban-- Housing and Urban Development Secretary Ben Carson said: Most of the things that are driving the cost are not national things, they are not federal things. Eighty-plus percent of the cost is done at the state and local level. So there's been an awful lot of communication from this administration and the previous administration that if there isn't some deregulation on zoning and, and in housing and design on the local level, that they are willing to use local incentives and state-federal incentives, most of those linked to housing, such as the HOME fund, CDBG, Low-Income Housing Tax Credits to incentivize action on the state level. So I just want to point that out as if the adoption of LB794 will allow us to get ahead of this curve, it will allow our communities to know what's coming. The bill has built into it a ramping up period that allows communities to figure out how to best address this in their own local zoning laws. So I strongly urge the Legislature to consider advancing this legislation so that we can be ahead of any federal changes that might force us to act more harshly or rashly in the future. And I'd entertain any questions.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for coming today.

**MATTHEW CAVANAUGH:** Thanks.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**WAYNE:** Any other proponents? Moving on opponents. Welcome to your Urban Affairs Committee.

**LYNN REX:** Thank you. Senator Wayne, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're here today because this basically is a mandate. We're here today because it undercuts local control. We're here today opposing this bill, not because we don't support affordable housing and workforce housing, but because we know municipalities all across this state are working hard to that very end. At our conference, I can't remember a conference in the last three or four years that we haven't focused repeated sessions on workforce housing. What are great ideas to do it? Affordable housing. What works, how do you do it? North Platte's got the "Shot in the Arm" program. Mike Flood, the former Speaker, is coming again for the second time to talk about how to build communities where millennials want to live. How to do the kinds of things that you need to have in order to make sure that you have affordable housing and workforce housing. So let me just share with you. And I am, by the way, familiar with the presidential order, Executive Order and what that means and what it won't mean. We think that carrots are always better than mandates because this will have, we think, a backlash that may have the opposite effect. So with that, if you look on page 3 of this bill, line 6: on or before January 1, 2022-- which we appreciate the delayed date-- each city shall, not you might, but you shall, because of course, they can't do it now, allow the development of middle housing in areas zoned for residential use that allow for the development of detached single-family dwellings and a duplex on each lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. I would submit to you that in cities all across the state, and this applies to Lincoln, Omaha, and the 30 cities, the first class with a population of 5,000 and up, that they're already exploring and have been. Kearney, Bellevue, every city in this state of the first class, and certainly Lincoln and Omaha, are exploring ways to provide more affordable housing and workforce housing. So bottom line is we think that many of the folks that were here today, if not all of them, have they talked to their city government? Have they met with their mayor? Have they met with the city council? Have they met with the planners? I'm just suggesting to you that there's a way to do these sorts of things without the mandate. And so we respectfully basically oppose this bill. We think it's well-intended, there's a lot of legislation that we know is well-intended. But we do think that this isn't getting

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

out ahead of something, this is going to have some other implications where maybe folks are going to make decisions that they're not going to live inside cities. They'll go outside of cities, they won't live within the corporate limits of a city if they want to have a single-family resident do certain other things. This bill does not allow for certain things that we think should be a, accorded for. And in fact, right now, cities have the option to do it. And again, I would not be here today without telling you that in essence we have-- I can't again underscore the fact that this is one of the biggest issues in the state of Nebraska: workforce housing, affordable housing. We've appreciated the work that this committee has done in expanding TIF for that possibility. And also the other bill that Senator Vargas had, basically extending the same type, type of rural workforce housing that Senator Williams put in effect with passage of LB518 in, in 2017, I believe it was. So in any event, I'm happy to answer any questions you have, and happy to work with the committee and try to do some other things along the way. I think carrots always work better than sticks. I think this is going to have some implications that maybe have unintended consequences.

**WAYNE:** Thank you. Thank you for your testimony. Any questions from the committee? Seeing none.

**LYNN REX:** Thank you very much.

**WAYNE:** Thank you for coming today.

**LYNN REX:** Thanks.

**WAYNE:** Any other opponents? Opponents? Anybody testifying in the neutral? Welcome to your Urban Affairs Committee.

**DAVID CARY:** Good afternoon, Senator Wayne, members of the Urban Affairs Committee. My name is David Cary, D-a-v-i-d C-a-r-y, I'm the director of the Lincoln/Lancaster County Planning Department. I'm here on behalf of the city of Lincoln to provide neutral testimony on LB794. I want to thank the members of the committee for your time today on this matter. And I thank Senator Hansen for addressing the important issue of housing affordability in this bill. LB794 provides that for state-directed zoning code changes to allow for the development of varied housing types in single-family zoning districts. The issue of housing affordability is a top priority for Lincoln and we currently provide multiple incentives to address this issue. For

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

example, Lincoln zoning ordinance currently allows two-family dwellings by right in all residential districts and allows two-family townhouses and multifamily dwellings in half of all residential districts by right. In addition, our planning and development and community unit plan zoning provisions allow for and encourage a mix of housing types. These zoning provisions permit flexibility and encourage innovation and variety in design. Lincoln is also working to develop a better understanding of the affordable housing challenge and is in the process of creating additional tools to help address the issue. These efforts include finalizing the Affordable Housing Coordinated Action Plan, which is planned to be released by the end of this month, which is a good example of how cities study and plan for issues at the local level. One concern Lincoln has with LB794 is the potential loss of local control over existing policies and regulations. While the city of Lincoln supports missing middle incentives, the requirements and details of how that is applied should be determined by local jurisdictions. With this in mind, if the committee advances this bill, we'd like you, like to work with you to find solutions to give local flexibility while still incentivizing missing middle housing. Thank you for the opportunity to discuss this topic with you today, and I'd be happy to answer any questions you may have.

**WAYNE:** Any questions from the committee? Seeing none, thank you for coming today.

**DAVID CARY:** Thank you very much.

**WAYNE:** Anybody else testifying in the neutral capacity? Welcome to your Urban Affairs Committee.

**JEFF SPIEHS:** Good afternoon, council Chairman Wayne and members of the Urban Affairs Committee. My name is Jeff Spiehs, J-e-f-f, last name Spiehs, S-p-i-e-h-s, and I'm with the Omaha-Council Bluffs Metropolitan Area Planning Agency, or MAPA, which is the regional council of governments that serve Cass, Douglas, Sarpy, and Washington counties in Nebraska, as well as Pottawattamie and Mills Counties in Iowa. And I'm here on their behalf. The goal of MAPA's Heartland 2050 Housing and Development Committee is to create vibrant, equitable, walkable communities with a range of housing choices and locations. The "Close the Gap" initiative of the Heartland 2050 regional vision calls for creating vibrant places that are more livable, where people are better connected to jobs, education, and other destinations

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

through transportation choice. By 2050, the Omaha-Council Bluffs region anticipates adding as many as 250,000 more residents. And Heartland 2050's plan calls for more compact development, and that is consistent with the city of Omaha's downtown master plan, the city of Omaha's transportation master plan, Omaha by Design's environmental element, and the city of Bellevue's Fort Crook Road corridor study. All of those plans envision more compact and efficient communities. MAPA is not taking an official position on the particulars of this bill, but wanted to applaud the Legislature for starting the conversation around the critical issues of housing affordability. MAPA's Housing and Development Committee recognizes the guiding principles of the Heartland 2050 vision, which are local control and regional benefit, inclusivity, equity and efficiency. With those principles in mind, the committee supports missing middle housing as it supports greater opportunity for all socioeconomic groups to attain the goal of high-quality housing. So we want to thank Senator Hansen for starting the conversation around housing needs, and in particular, missing middle housing. And we encourage this committee to continue to explore the addition of the tools in our toolkit while recognizing local control and voice to address these problems, to promote, to promote more vibrant and sustainable communities. Thank you. Any questions?

**WAYNE:** Any questions from the committee? Seeing none, thank you. Any other neutral testimony? Welcome to your Urban Affairs Committee.

**ERIC ENGLUND:** Good afternoon, Chairman, other members of the committee. My name is Eric Englund, E-r-i-c E-n-g-l-u-n-d, I'm assistant planning director for the City of Omaha on behalf of the city of Omaha. As written, LB794 would require municipalities in the state of Nebraska, including the cities of the metropolitan class, to allow middle housing such as duplexes, triplexes, and quadplex, quadplexes in all zoning districts which allow for detached single-family housing. The bill does not prohibit any city from regulating the siting and design of middle housing, except such regulations shall not discourage middle housing through unreasonable costs or delay of which unreasonable costs or delay are not defined by the bill. Local control of planning and zoning within certain limits is given to each locality under certain-- under current state statutes. However, LB794 may be perceived as the state acting in a local matter. In this case, housing. The city of Omaha would prefer to keep these decisions at the local level. With that being said, the city of Omaha's master plan currently contains policy supporting the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

intent of the bill and the idea of mid-- the missing middle, specifically in that of a diversity of housing density goals, accommodating continued growth of the community, balanced mobility, and environmental resiliency. As proposed, LB794 would be expected to impact a large number of neighborhoods on a wide range of both strong support and strong opposition. The city of-- the city of Omaha has existing zoning tools, such as the PUR, Planned Unit Redevelopment overlay district, and others currently under review that can be utilized to increase density and housing options commonly referred to as the missing middle. The city of Omaha takes a neutral position on LB794.

**WAYNE:** Thank you for your testimony. Any questions? Senator Arch.

**ARCH:** Thank you. Thanks for your testimony. What's been rattling around in my mind is value of single-dwelling homes that may be adjacent to where multifamily or whatever would go in. How, how do, I'm no real estate person. How does that, how does that impact value when doing something like that happens?

**ERIC ENGLUND:** Well, I'm no real estate expert myself. I'm a planner. You know, we hear that a lot. I speak on behalf of the city at the Planning Board meetings, and we hear that frequently. You know, both a lot of opposition whenever projects come in about decreased value of their property based on the projects. Generally, we do not see that just from my overhead view of matters. You know, there is always that concern by neighbors that, you know, this is going to impact my property, my property values are going to decrease. And, you know, by and large, that's not something that we would see. I mean, that being said, if it was poor quality development, you know, the things that we're trying to prevent, it could theoretically, though.

**ARCH:** OK. Thank you.

**ERIC ENGLUND:** Yep.

**WAYNE:** Senator Crawford.

**CRAWFORD:** Thank you, Chairman Wayne. And thank you, Mr. Englund, for being here today. Could you tell us a little bit about what zoning initiatives the city of Omaha has taken to address affordable housing? Or, or any specific ones related to middle housing?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**ERIC ENGLUND:** Yeah, and it's-- you got to be careful about combining the two of the missing middle and affordability. You know, love the idea of accessory dwelling units. Those are not necessarily-- while more affordable than other types of housing, there are still large expenses involved in the development of those. Currently, one of the things that we're reviewing to feed off of the upcoming BRT, bus rapid transit route, primarily along Dodge Street, is the development of TOD, transit-oriented development, along that corridor. Many of these ideas of missing middle can play into that. Other factors that we are looking at as far as affordable housing, we're looking at TIF policy, how we can implement that tool to increase the number of affordable units. But it's a challenge. And, you know, I don't have any specifics that my division has been working on, but I know there are others in the department that have.

**CRAWFORD:** So right now you have, the map that we saw had large tracts of single-family unit houses and you don't have any initiative really in, in, in the works to try to convert any of those large tracts into something that would allow more for housing?

**ERIC ENGLUND:** I'm not familiar with the map that you--

**CRAWFORD:** OK.

**ERIC ENGLUND:** --looked at. But, you know, by and large, we don't have any pending code changes that would--

**CRAWFORD:** OK.

**ERIC ENGLUND:** --impact that.

**WAYNE:** I just have a question. So Section 6 of the bill, 14-403, I believe that section applies to the city, the city of Omaha. And I could be wrong, but--

**ERIC ENGLUND:** What page, Chairman?

**WAYNE:** Page 3.

**ERIC ENGLUND:** OK.

**WAYNE:** 14-403. Upon reading that section, you would-- wouldn't you agree that the state already regulates some of the zoning or regulates zoning because it's in statute?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**ERIC ENGLUND:** There is overview as far as zoning matters and platting issues. But as far as reach into the zoning code, I wouldn't, I would not say that there's much legislation that--

**WAYNE:** But you would agree that we--

**ERIC ENGLUND:** --that dictates the particulars.

**WAYNE:** The particulars. But you would agree that we as a state have regulations over state matters, and we've in 14-403 felt that these guidelines are important enough as a state matter that we put some restrictions on the city of Omaha to follow these, right?

**ERIC ENGLUND:** Yes. But I, I guess I don't understand necessarily what restrictions you'd be referring to.

**WAYNE:** Well, you have to comply the comprehensive plan design to lessen the congestion in the streets--

**ERIC ENGLUND:** Um-hum.

**WAYNE:** --to secure a safety from fire, panic. And I can keep reading.

**ERIC ENGLUND:** Yep.

**WAYNE:** But those are all restrictions on zoning, because we believe as a state that they're important and they're a state matter. So we, we do regulate state zoning by putting guidelines on.

**ERIC ENGLUND:** OK.

**WAYNE:** And you just feel that this missing middle housing is an overreach of that?

**ERIC ENGLUND:** We take a neutral position.

**WAYNE:** OK.

**ERIC ENGLUND:** You know, there are many elements that, that's proposed in the bill that, you know, we would be supportive. How there are many different areas of Omaha, many different neighborhoods that would have complete objection to this map.

**WAYNE:** I'm certain. That I do know.

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Urban Affairs Committee February 4, 2020

**ERIC ENGLUND:** But to just touch a little bit on that section that you're referring to. You know, this is a general overview. It doesn't touch on matters of lot size of setbacks of those matters that a zoning code gets into those details of.

**WAYNE:** Thank you.

**ERIC ENGLUND:** Yep.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here today.

**ERIC ENGLUND:** Thank you.

**WAYNE:** Any other-- where are we at? Neutral testifiers. Seeing none, Senator Hansen, you're welcome to close.

**M. HANSEN:** Thank you, Chairman Wayne and members of the committee. The first thing, before I forget, a couple testifiers raised the idea of ADUs, accessible dwelling units. I would be supportive of including that in the bill. I think several of the ones as described properly fit into the current definition of duplexes and things. But just clarifying that language would be a friendly amendment in the spirit of the bill. So I was-- I've been impressed with kind of the feedback and the response that I've got from this. Naturally, I kind of expected some of the municipalities to not be excited or-- and because it is, it is, it accurately kind of, you know, it changes their powers and duties. It limits the powers of cities, I understand that. But when you think about the proponent side, you think about the wider range of people who came out in support of this bill from, you know, groups of specific constituencies like, you know, everyone from the AARP to South of Downtown. I believe we have letters from, you know, other groups as well, to developers in the industry to, you know, neighborhood advocates, it's-- to the Sierra Club. It's quite a cross-section of people that are all hitting on this specific issue of specifically kind of zoning restrictions, specifically zoning restrictions that strongly favor single-family homes at kind of the expense of any sort of density. I think that's kind of an issue we're going to have to keep looking forward. You know, I appreciate where the cities are coming from, but they also point out it kind of, you know, it could be left up to them, but it's also been left up to them from the beginning of our zoning laws. They've had this power to change some of these things the whole time. As you heard, you know,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

there's kind of some thought of doing some things. But, I don't necessarily think kind of anything on scale that we're considering or that some people would certainly support. You know, I think about it on my drive into the Capitol. I kind of think about go down Holdrege, and I cut over 27th Street and go down N Street to kind of get downtown. And I drive past several developments that have leveled kind of historic city blocks in favor of multistory apartment buildings with retail on the first floor. One of them is in my district, and it leveled a whole bunch of his-- kind of historic buildings. I don't know if they were historically protected, but, you know, certainly well-known neighborhood restaurant and a few other things to build a large apartment complex with a big parking lot and some garages. You know, those types of developments seem to get approved by cities. But we're struggling for somebody who wants to convert a home into a duplex. You know, somebody who wants to convert a garage into a livable garage for a family member. Those projects aren't being as approved in kind of my mind. And that's what I'm trying to kind of rectify, kind of sometimes the haves and have-nots. With that, I'd be happy to answer any questions from the committee.

**WAYNE:** Any questions from the committee? Seeing none, thank you for coming today.

**M. HANSEN:** Thank you very much.

**WAYNE:** Letters of support: Lorraine Splot [PHONETIC], LLC; Platte Institute; Nebraska Realtors Association; Grow Grand Island; Voices for Children in Nebraska; and Together. In Opposition: Mollie Mahey [PHONETIC]. And neutral: Mercatus, Mercatus Center. And that will close the hearing on LB794. Senator Hunt.

**HUNT:** Next, we're going to open a hearing on LB866, introduced by Senator Wayne. Whenever you're ready.

**WAYNE:** Good afternoon, Vice Chairwoman Hunt and members of the Urban Affairs Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. As you may have noticed, LB866 is strikingly similar to the bill that I introduced last year, LB136. I introduced a new version of density bonus bill because I thought it was important that we continue to have the conversation about different ways that the Legislature can incentivize affordable housing. The primary difference between this year's bill and last year's bill is that

density bonuses only apply in areas that have been designated by the city as substandard and blighted underneath the Community Development Law. One thing that our existing affordable housing programs have in common is that they all cost money. Basically, we give developers money to build affordable housing. LB866 tries to take a different approach. Rather than using financial incentives to encourage affordable housing, we are trying to do so through a regulatory process. Under the Density Bonus and Inclusionary Housing Act, developers in the cities of the metropolitan class, cities of the primary class, and cities are the first class who agree to build a development that includes a certain percentage of low-income or very low-income units in an area that has been designated as ex-- I was about to say extremely blighted because, you know, that's my thing. But that's not what it is [LAUGHTER] -- substandard and blighted would receive two kinds of regulatory incentives. First, they would receive a density bonus, which basically means they could build a greater number of units than they would ordinarily be allowed under any city zoning ordinances. Second, depending upon the percentage of low-income units, they would receive one or more concessions or incentives, such as reduce-- reduction in site development standards, approval of mixed-use zoning, reduction in setback requirements, waiver of parking lot requirements. If the developer includes an on-site child facility or, or a commercial development as part of this project, they qualify for an additional density bonus or concession or incentive. By encouraging density and infill, LB866 will help cities save money on new infrastructure, city services, and maintenance over time. LB866 would also result in mix, mixed income housing, which is preferably-- preferable to what often occurs where housing is segregated by income. Most importantly, LB866 would encourage more affordable housing without a fiscal impact to either the state or to the city. Several individuals behind me plan on testifying who can speak better to the technical aspects of the bill, but I would be happy to answer any questions at this time.

**HUNT:** Thank you, Senator Wayne. Any questions from the committee?  
Senator Wayne, I have a question.

**WAYNE:** Yes.

**HUNT:** I think that this bill is beneficial for developers. Does it touch on anything around middle or lower-income or affordable housing?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**WAYNE:** So the idea is that if you're in a substandard or blighted area, we're trying to increase housing, increase commercial, or any type of job growth or housing growth. And so what we're saying is that if you're going to build a new development, Midtown is a good example, or 72nd and Pacific area, Aksarben area, that if you're going to do affordable housing, you're going to do housing development, if you set aside a percentage of low-income or affordable housing, in this case low-income, you can actually build an extra level. So instead of building five, you could build 6. And so you would offset the cost of building by the income you would receive by increasing your density, being able to rent more space or sell more space. So yeah, it's a, it's a different approach to affordable housing by cutting out regulations and providing developers with incentive on the regulatory side.

**HUNT:** OK. Thank you. Any other questions? Seeing none, thank you for your opening.

**WAYNE:** Thank you.

**HUNT:** First proponent on LB866.

**DAVID LEVY:** That could have gone on for awhile.

**HUNT:** Welcome back.

**DAVID LEVY:** Good afternoon again. This is the last time for me today. So we can be thankful for that. David Levy, D-a-v-i-d L-e-v-y, Baird Holm law firm, on behalf of Omaha by Design, which is a nearly 20-year-old nonprofit that focuses on urban design, urban policy and environmental sustainability, and also the Nebraska Association of Commercial Property Owners, which is a large organization with hundreds of members in Omaha and Lincoln, primarily, who are commercial property owners. I think Senator Wayne said it well. And I said a lot of it during my testimony on the last bill. This is a way to get at the housing shortage, the shortage of affordable and workforce housing in a way that involves deregulation rather than public money. It's another approach. It's another tool in the toolbox. Again, there is no cost to the municipalities or to the state. More density results in more people paying more property taxes and more efficiently and effectively using urban and municipal services, which helps reduce pressure on property taxes. This does have a carrot and a stick, and each sort of is reversed depending on who you are talking

about. In the case of the developer, the carrot is the additional density and the stick is providing the rent-restricted housing within the project. One of the really important things about density bonus is you get a mix of incomes in a housing development rather than having affordable housing over here, perhaps, and market-rate housing over here. In this concept, they are in the same project. The carrot to the city is that they get affordable and middle-income housing without having to pay anything for it. There is no monetary incentive. The stick is, yes, they lose some control. And I apologize in advance, I have to leave after my testimony due to an obligation in Omaha. And I mean no disrespect to those who will testify afterwards in opposition, but I know you will hear again that this is a mandate and this is taking away from local control. And that's a fair criticism. We have a crisis in our state in affordable workforce, middle-income housing. If we keep doing what we've done, we will keep getting what we've gotten. May not be grammatically perfect, but you understand the point. We need to do something different. This is a valuable tool that has worked in other states in the country. I appreciate Senator Wayne bringing this now twice. I appreciate the restriction to blighted and some-- substandard designated areas. I think that makes sense and that does give a city some control or at least some knowledge of where this tool might be used as they designate those, those areas. But again, there are tradeoffs. And we need to look at those things, and perhaps be bold and be brave if we're going to successfully address our, our shortage of affordable and workforce housing and our property tax problems, which in part stem from a lack of density. I want to take the opportunity to make a point I make to you every year, which is we're not yet at 2 million people as a state. We went over a million in 1890. So in 130 years now, we haven't added that second million people. Things like this, things like density, things like affordable and workforce housing contribute to that. And that contributes in part to our property tax issues. So, again, I appreciate your time. The last thing I would say is, yeah, I'm more than happy to work with Senator Wayne and the committee and the cities and anybody who's concerned about this to try and refine it, and without undermining the value and the benefit of the bill, to add safeguards where those are are doable to, to make cities and others who may be opposed to this concept comfortable. So with that, again, I appreciate your time on all of these bills today. It's a great discussion and I'm happy to answer any questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**HUNT:** Thank you, Mr. Levy. Any questions from the committee? Seeing none, thanks for your testimony.

**DAVID LEVY:** Yes. Thank you.

**HUNT:** Next proponent. Welcome back.

**WARD HOPPE:** Thank you. Again, my name is Ward F. Hoppe, W-a-r-d F. H-o-p-p-e. I'm here representing the Metro Omaha Builders Association, Home Builders Association of Lincoln, Realtors, and more importantly, myself. As I told you earlier, I, I'm a builder and I have a construction company, and I'm a developer. And I build workforce housing. This bill talks to my sweet spot, which is 80 percent median income and below. I build low-income housing tax credit property, which is 60 percent median income and below. And I build workforce housing in several, at least four, municipalities across this state. So what this bill does is it allows density. As I told you earlier, developments go-- runs in lineal feet. It is twice as cheap to build a 25-foot lot as a 50-foot lot when you're building streets. If you build a 15-foot, 15 feet frontage of a street that's 28 feet wide. It's quite a bit cheaper than one that's 38 feet wide. That's how the numbers are calculated. OK, so if you want affordable housing, you have to have affordable lots. Also, this increases density. That's the whole concept of the bill. Density equals mass. The more mass you have, the more affordable you can produce the housing, particularly at a time. I will say there are a couple of things that I would like to see cured in this bill, and that is I think the density bonuses should be mobile so that they can move from one piece of development to a different piece of development. Because, unlike Mr. Levy, I personally don't believe that it works really well for mixed-income developments. It is very hard to make a development work when you're selling \$250,000 lots in one area and trying to sell \$25,000 lots at another. Furthermore, this bill would require to get the density bonuses similarities and equality between the offerings. Well, that's just practically impossible. OK? You don't build for high-end customers or custom homes at the same price points that you do for affordable housing. And so there are a couple of flaws in this bill that I would like to see corrected. But the whole point of the bill is it gives flexibility to the developers to reach the price point of 80 percent median income and below. And it allows in those developments, it gives a bonus for those numbers. If you put 80 percent median income housing and below in the units. I would answer a lot of questions. Technically, I was just chairman of the National Association of Home

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Urban Affairs Committee February 4, 2020

Builders Affordable Housing Committee. This is my sweet spot, and I'd love to talk to you about it all day.

**HUNT:** Thank you very much, Mr. Hoppe. Any questions from the committee? I appreciate you staying today, and your enthusiasm. Thank you.

**WARD HOPPE:** Thank you.

**HUNT:** Next proponent of LB866. Welcome back.

**MICHAEL J. O'HARA:** Chairman Wayne, members of the committee, I'm Michael J. O'Hara. Michael, M-i-c-h-a-e-l, middle initial J., O'Hara, O-'-H-a-r-a. I represent the Nebraska Sierra Club and feel-- appear in favor of LB866. The Sierra Club stresses reduce, reuse, repurpose, recycle. And this bill does all of those. And the, one of the things we like about it is it encourages through the profit motive, and the profit is total revenue minus total cost. This directly reduces cost, increasing profit, and indirectly increases revenue. It does that by creating a subsidy. And what would justify the subsidy? You just heard the justification: buyers of higher-end homes are risk-averse to buying adjacent to lower-end homes. And this provides a price point adjustment that would allow the developer to go forward. We also like-- the Sierra Club also likes the fact that, and it provides flexibility. Page 9, line 23, Section 5(7) allows the reduction in the amount of parking, and we would like to see a shift away from individual cars and a more walkable environment. And if you create a higher density, you will be able to reduce the number of cars. From a business standpoint, the market areas divide-- define by the number of customers, not by geographic area. And you don't need the parking unless you're going to be bringing the customers in from far away, which implies low dense-- high density, is no need for the car. If you have any questions, we'd love to answer them.

**HUNT:** Thank you very much. Any questions from the committee?

**MICHAEL O'HARA:** Thank you.

**HUNT:** Seeing none, thank you for your testimony today. Next proponent for LB866. Welcome.

**KASEY OGLE:** Hi. Members of the Urban Affairs Committee, my name is Kasey Ogle, K-a-s-e-y O-g-l-e, and I'm a staff attorney at Nebraska Appleseed for Collective Impact Lincoln. Nebraska Appleseed is a

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Urban Affairs Committee February 4, 2020

nonprofit organization that fights for justice and opportunity for all Nebraskans. Collective Impact Lincoln is a partnership between Nebraska Appleseed, Civic Nebraska, and the South of Downtown Community Development Organization that works with residents of six Lincoln neighborhoods to build community, develop neighborhood leaders, and take action on policy that is responsive to their needs. As part of Collective Impact Lincoln's work, we advocate for greater access to quality, affordable housing for low-paid Lincolniters. We support LB866 because it starts to address Nebraska's severe lack of affordable housing. Nebraska has a shortage of 50,562 affordable and available rental units, which often forces renters to pay more of their income on housing than is affordable. Moreover, 65 percent of very low-income renters and 84 percent of extremely low-income renters in Nebraska are cost-burdened by their housing situation. While LB866 provides no guarantees of affordable housing, it provides more opportunities for affordable housing to be built. Given Nebraska's severe shortage of affordable housing, LB866 is a step in the right direction. LB866 requires Neb-- larger Nebraska cities to provide density bonuses and other incentives to developers who agree to set aside a percentage of any residential development in a blighted and substandard area to be offered as affordable to lower-paid Nebraskans. A larger density bonus and more incentives are offered to developers who agree to set aside more units as affordable, but developers are not required to participate in the program. This bill strikes a balance between providing opportunities for affordable housing, offering incentives to developers, and providing flexibilities to the cities. A city may deny the other incentives req-- requested by the developer if the city finds that the incentives would have a specific, significant, and adverse impact upon public health and safety. This provides a check so that the incentives sought by developers cannot be granted if they ultimately harm the public. Furthermore, the density bonuses and other incentives are only required for residential developments in areas that have been declared blighted and substandard under the Community Development Act. It also allows developers to choose whether or not to set aside affordable units in exchange for a density bonus and other incentives. Though mandatory programs at this time-- of this type have been proven to be more effective at providing affordable units, we support this bill because it provides opportunities for the development of affordable units that do not currently exist. Through Collective Impact Lincoln's work we have talked with residents who would be positively impacted by this bill. For example, Miss Clay has lived in the Belmont neighborhood here in

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Urban Affairs Committee February 4, 2020

Lincoln for eight years. She is a full-time student studying business, a full-time business services consultant, and a mother of five. Recently, her 15-year-old had to move in with his dad because the space in their apartment, for which they pay more than a thousand dollars per month, has become inadequate for her family. Miss Clay wants to move out of the Belmont neighborhood, even though she loves her children's schools and many of her neighbors. She has expressed the fear she and her children have dealt with since a mother of five children was shot last year in Belmont. Miss Clay believes that LB866 will not only give more people access to safe and adequate housing, but will help prevent the concentration of people of similar income levels in similarly inadequate and poorly maintained units. Miss Clay knows the stress and tension that toxic environments lead to, and she knows that incentivizing the development of more affordable units across urban areas will help prevent circumstantially driven crime. If LB866 were to pass, Miss Clay would qualify for a low-income unit, which she knows would allow her to have her whole family under one roof. For these reasons, we urge this committee to advance LB866. Thank you.

**HUNT:** Thank you, Kasey. Any questions from the committee? Seeing none, thank you very much for your testimony and for the work that you do.

**KASEY OGLE:** Thank you.

**HUNT:** Next proponent for LB866. Welcome.

**SUZAN DeCAMP:** Thank you again. Vice Chair Hunt and committee members, I am Suzan DeCamp, S-u-z-a-n D-e-C-a-m-p, and I'm here today as a volunteer for AARP Nebraska to testify in support of LB866. As I mentioned in my earlier testimony for LB794, AARP strongly supports the creation of diverse housing types to meet the needs and preferences of our changing demographics. And one of our priorities is supporting the development of livable communities. As defined by AARP, a livable community is safe and secure, has affordable and appropriate housing, diverse transportation options, and supportive community features and services. Once in place, these resources enhance personal independence and health, and they engage residents in an area's civic, economic, and social life. Proper land use, planning, and design are critical to developing livable communities. AARP strongly supports providing incentives such as density bonuses and waivers from requirements like parking and setbacks in exchange for including affordable housing. People of all ages want to live in walkable

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

communities close to transit, jobs, and amenities, but housing costs preclude many working families, individuals, and seniors from being able to do so. According to the Urban Land Institute publication What's Next? Real Estate in the New Economy, there is an increasing segment of the population, ranging from blue collar workers to early career singles, young families, and seniors that spend more than 30 percent of their income on housing, reducing their purchasing power for other necessary amenities. The density and inclusionary housing bill will help meet these needs. Allowing more homes that economize on land, building materials, and utility costs will bring home ownership and market rate rents within reach for more Nebraskans. Increasing density with mixed-income developments will ensure the opportunity of affordable housing for employees of businesses that are located in or will be located in the community, maintain a balanced community that provides housing for people of all income levels, and reduce the burden on property taxes with more effective use of public services. We recognize this bill as an important first step in creating housing options people need. Thank you to Senator Wayne for introducing the bill and for the opportunity to comment. We would ask you to consider advancing LB866 to General File. I'd answer any questions.

**HUNT:** Thank you, Suzan. Any questions from the committee? Seeing none, we appreciate your work. Thank you. Welcome back.

**MATTHEW CAVANAUGH:** Thank you. Vice Chair Hunt and members of the Urban Affairs Committee, thank you. My name is Matthew Cavanaugh, M-a-t-t-h-e-w C-a-v-a-n-a-u-g-h, executive director of the Nebraska Housing Developers Association, testifying in support of LB866. LB866 is an incentive-based approach that encourages developers to opt into creating inclusionary housing. LB866 does not require a financial investment from the public. Instead, it provides concessions on zoning restrictions to developers in exchange for the inclusion of, of restricted-- of income-restricted housing in an otherwise market-rate development. In exchange for setting aside some rents for apartments at levels that are affordable to families below the median income, developers can incrementally exceed the standard density limits set by the property zoning designation. This is a popular and increasingly common strategy for incentivizing affordable housing that is being utilized in communities large and small across the country. The cost of building a new home is rising painfully fast. According to the National Association of Home Builders, the construction costs account for 60 percent of the cost of a new home. Since the beginning of 2013, average construction costs have increased to almost 30 percent

nationally. Commodity prices impacting everything from lumber to drywall are part of the international market, over which we have very little control as we sit here in Nebraska. To curb the increasing cost of construction, it is important that we focus on those areas that are, that are under your control. Increasing the density of housing allowed in a development is one area you can control. Density gives the developer the ability to spread fixed costs of land, utilities, legal work, marketing, and other costs across additional units. While the real estate development review and approval process is important to guarantee a proposed project meets the community requirements, it can be mutually beneficial to the community and the developer when the regulating body gives an exception in exchange for the project, including design features that add social value such as affordable housing. It is a simple-- it is this simple idea on which LB866 is premised. I have provided the committee with a report from the National Low Income Housing Coalition that looks at fair market rent and average renter wages. As you can see, a minimum wage worker in Nebraska needs to work 56 hours a week to afford a one-bedroom apartment at fair market rate. This is up an additional hour from when I gave this testimony last winter. To afford a two-bedroom apartment, you need nearly two full-time minimum wage positions or to work 71 hours a week. According to the federal government's most recent American Community Survey, over 187,000 Nebraska households, or 25 percent of all Nebraskans, are housing cost-burdened. This means they're spending over 30 percent, and in many cases well over half, of their income on their rent or mortgage. The need for additional affordable housing in Nebraska is tremendous. And in these tight financial times, creating solutions such as LB866, which do not cost any additional investment, do not ask for any additional investment from the state, cannot be dismissed. Once again, we support LB866, and I ask the committee to vote to advance this legislation. And I'm happy to answer any questions.

**HUNT:** Thank you, Mr. Cavanaugh. Any questions from the committee members? Seeing none.

**MATTHEW CAVANAUGH:** Thank you.

**HUNT:** Appreciate it. Thank you. Next proponent for LB866. Seeing none, any opponents for LB866? Come on up. Welcome back.

**ERIC ENGLUND:** Thank you, Senator Hunt, members of the committee. Eric Englund, E-r-i-c E-n-g-l-u-n-d, assistant planning director for the

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Urban Affairs Committee February 4, 2020

City of Omaha. To summarize, LB866 makes three assertions. It acknowledges the need and fiscal benefits of increased density within the city, it identifies the need for providing and maintaining affordable housing, it identifies possible regulatory restrictions as a source of inflating costs presumed to prevent or preclude low-income housing. The bill makes no distinction between costs of development and quality of development. It also does not differentiate between aspects of the regulatory environment, such as master plan, land use policy, or zoning code. If adopted as written, any aspect of the regulatory context could be considered to be preventing the physical construction of a development and municipalities would bear the burden of proving why the regulation is necessary or risk being sued. This results in an indictment of all regulations that may be deemed by the developer as preventing the physical construction of their development. In effect, the price of significant regulatory reduction is the cost of providing low-income units. There is no reasonable way to quantify the costs of providing low-income units against the savings provided by waiving any number of regulations. Also, there is no consideration given to the possibility that certain waivers have less negative impact over others. In the end, the developer determines the priorities, requests the concession, and the city must approve or justify a denial. LB866 is a dismissal of the need and purpose of zoning in urban design. It lacks consideration that the design and quality of an environment is as equally important to its affordability. The two are not mutually exclusive. While certain factors can influence costs, one most importantly density, not all other regulations should be considered a reasonable means to lower project costs. It would be more common to limit the concession for low-income housing to a few regulatory variables such as density, height, or parking only, not every regulation or policy. This is too broad and sweeping a reduction of regulations with considerable risk for poor design or negative impact on neighborhoods. The city of Omaha is obviously supportive of finding solutions and providing sufficient, sufficient low-income housing, but believes that as written LB866 is not the answer to the problem, and the city opposes this bill. Thanks.

**HUNT:** Thank you very much for your testimony. Any questions from the committee? Seeing none, thanks for coming back.

**ERIC ENGLUND:** Thank you.

**HUNT:** Welcome back.

**LYNN REX:** Thank you. Senator Hunt, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're here today in opposition to LB866. And just wanted to underscore what the gentleman from the city of Omaha just talked about with respect to the broad reach of this measure. First of all, one of the things I would like to point out is that on page 6, starting on line 26, an applicant shall agree to provide and the city shall insure to protect the continued affordability of all income-restricted rental units that qualify the applicant for the density bonus for a term of at least 30 years. That assumes that the company, I guess, is not going bankrupt. Who's going to assure that for 30 years? Who's going to be around for 30 years to assure that? In addition, again, this is a well-intended measure. I just wanted to underscore my testimony from Senator Hansen's bill, which is that I think it is perhaps underestimating the tremendous work that's being done across the state on workforce housing, affordable housing. In fact, Mr. Hoppe, I was at a retreat by the city of-- cities of Lincoln and Omaha, their city councils. He gave a really great presentation there. He talked about the work that he's, he's doing in Grand Island. Some of you, I believe, toured in Grand Island some of his work when this committee had an interim study in Grand Island recently. So Grand Island's been doing some of the same things it's talked about. And Senator Hunt, you mentioned, Hunt, you mentioned a very important element of this, which is this does-- you said something like this provides flexibility for developers. This provides total flexibility and control for developers. This is a great win for developers. If I was a developer, I'd be here dancing in the streets, if I could dance. I would say, what a wonderful thing. Please get this advanced. But what else does it do? So if you look on page 8. Yes, there is a provision on line, starting on line 2: The city shall grant the concession and it's-- or incentives requested by the applicant unless the city makes a written finding that based upon clear and convincing evidence of any of the following. And that would be, A, a concession or incentive would have a specific, significant adverse effect upon the public health or safety or, B, the concession or incentive would be contrary to state or federal law. And then you jump up over to page 9, starting on line 1, and it talks about that basically in any case in which the applicant as complainant prevails, the court may assess against the city reasonable attorney's fees, costs of the lawsuit. In other words, the burden is on the city to make sure that they can prove that. So everything is based on the developer, is developer driven. It undercuts years of efforts by municipalities on regulatory

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

framework and everything else. And I just want to underscore this again, and at the sake of being redundant, this applies to first-class cities, Lincoln and Omaha, as did Senator Hansen's bill. These are the cities where there is growth. I wish I could say that there's growth in 529 cities and villages in the state in Nebraska, but there is not. So basically, those are the cities struggling, trying to find every way that they can to provide affordable housing and workforce housing. And this committee has done a lot of work, and Senator Wayne has done a lot of work to make sure that affordable housing is done and also with TIF and other kinds of things across the state. This bill is in great reach. And it's a developer-driven bill. We need developers. They do great things. By the same token, you have to have a balance. And we think this bill undercuts that balance. With that, I'm happy to respond to any questions that you might have.

**HUNT:** Thank you, Ms. Rex. Any questions from the committee? Seeing none, thank you.

**LYNN REX:** Thank you. And I do, I do want to say too, that there-- there is a middle, if you will, on this bill. There's a middle on Senator Hansen's bill. You don't have to allow certain types of dwellings in every single-family area. There are all kinds of accommodations that can be made. And cities are open to that now. That's why my other testimony applies to this, too, which is all the folks that are here promoting this, when did you sit down with your city? When did you go to Bellevue, when did you go to Kearney? When did you go to some of the other cities and talk about what can we do here to make this happen? And I know the cities of Lincoln and Omaha have because I was there when Mr. Hoppe gave his presentation, which was excellent. So thank you very much. And appreciate all the work that Senator Wayne has done and Senator Hansen as well. Thank you.

**HUNT:** Thank you. Next opponent-- opponent on LB866? Seeing none, next-- anybody here in the neutral capacity to testify? Thank you. Welcome.

**DAVID CARY:** Good afternoon, Senator Hunt and members of the Urban Affairs Committee. My name is David Cary, D-a-v-i-d C-a-r-y, I am the director of the Lincoln/Lancaster County Planning Department. And I'm here on behalf of the city of Lincoln to provide neutral testimony on LB866. I want to thank the members of the committee for your time today on this matter and others. And thank Senator Wayne for addressing the importance of housing affordability in this bill. LB866

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

provides for state-directed density bonus opportunities in housing projects that include affordable units. The issue of housing affordability is a top priority for Lincoln and we currently provide multiple incentives to help address this issue. For example, Lincoln provides a 25 percent density increase through our planned unit development, PUD, and community unit plan, CUP, zoning provisions for plan develop-- developments involving affordable housing units. We also allow for height limit increases, setback relaxations, and parking adjustments within these zoning tools. Lincoln also currently provides a monetary incentive for projects involving affordable units with a provision in it. So impact the ordinance to allow for reimbursement of those fees for a project that includes affordable housing. Lincoln is also working to develop a better understanding of the affordable housing challenge and is in the process of creating additional tools to help address the issue. These efforts include the development of a rental property registry and finalizing the Affordable Housing Coordinated Action Plan that I referenced in my earlier testimony. One concern Lincoln has with LB866 is the potential loss of local control over existing policies and regulations. Another is the potential for an administrative and tracking challenge resulting from this legislation with the requirement to track the affordability status of units that use the density bonus over a 30-year period. With all this in mind, if the committee advances this bill, we would like to work with you to limit the impacts this would have on Lincoln and find that potential middle ground, middle ground that was just previously referenced. Thank you for the opportunity to discuss this topic with you today, and I'd be happy to answer any questions you may have.

**HUNT:** Thanks, Mr. Cary. Any questions from the committee? Seeing none, thanks for coming in today.

**DAVID CARY:** Thank you.

**HUNT:** Any other neutral testimony for LB866? Seeing none, Senator Wayne, you're invited to close.

**WAYNE:** Thank you. I appreciate the feedback. First, I want to thank Lincoln and the League for being consistent on their testimony regarding Senator Hansen's bill and my bill. I guess the only difference is the introducer. With that, I think we need to address what really goes on in Omaha, and not just Omaha, but I think everywhere. We are limiting this to substandard areas. This isn't

completely a free reign for everybody. We're limited to an area that needs to grow, that needs affordable housing. The fact of the matter is, east of 72nd Street, except for maybe midtown and downtown and Aksarben, the only housing of any significance is being built is by LIHTC housing, which is a low-income tax credit that is for 15 years, and you have to meet a certain threshold. What we're trying to do is develop mixed-income housing by saying, if you want to build and you want to set aside some type of low-income housing, we'll give you a density bonus. We'll cut regulations. This is what I continue to hear from developers. And so is it a win for developers? Maybe. But what's currently working is not working for the people who are looking for affordable housing. We do have an affordable housing crisis. We have people who are looking-- living with multiple families just to make sure they have a roof over their head because we can't find affordable housing. This is a way for developers to do it through regulation, which I find interesting that this body continues to talk about less regulations. And this is what this bill does. So I hope this bill not only goes to the floor, but gets a chance for a prioritization, because it is time that we have a real conversation around affordable housing on the regulation side. Our first year here, for those who came in with me, Senator Williams' bill in 2017 was an \$8 million grant for rural housing that I think is going well. But that doesn't necessarily work for Omaha. Throwing more money at the situation may or may not work. But what we do know from talking to regulators, if you give us the ability to waive some zoning, waive some regulations, we have the ability to build cheaper and better at affordable rates. That's what we're trying to solve. So, yes, we are taking an out-of-the-box approach. We are trying to figure out how to do it in a way, because right now, east of Omaha-- east 72nd, it's just not happening. And with that, I'll answer any questions.

**HUNT:** Thank you, Chairman Wayne. Any questions from the committee? Senator Wayne, do you know of any-- what solutions that the city of Omaha are working on to address affordable low-income housing?

**WAYNE:** I don't know if the city is necessarily direct on it per se. I know that there are organizations who are trying to do it. But again, it's usually through TIF. It's usually through grants. It's usually through, for example, just outside of my district on 30th and Fort, that project was held up for almost two and a half years because they were waiting on a federal grant to close the gap of where they could actually probably make some decent money. Not, not a whole lot of money. We're talking 7 percent margins. But that is an apartment

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

complex right across the street from Metro that the funding just wasn't there. The gap for where they could put that housing didn't work. So they waited on some federal dollars. They finally got the federal dollars, and boom, we have a nice, affordable apartments in north Omaha. But outside of that, I don't see any change. We see what's going on around Seventy Five North, which is a private development through nonprofits that actually has caused a lot of concern in our community about gentrification. Rents are actually going up every year, and so they're trying to offset that on the nonprofit side. And the problem with the nonprofit side is we're not providing sustainable solutions. And what we're not doing is about it, is affordable housing is developing actual homes. These are rental places. So these people are never building wealth that they can pass on through an asset. So that's part of what we're trying to do is figure out how do we move regulations so people can build wealth and people can have affordable housing.

**HUNT:** I think part of the role of what we can do in the Legislature-- part of what we can do in the Legislature is, is push cities to think outside of the box.

**WAYNE:** Correct.

**HUNT:** When it looks like sometimes the solutions aren't resting with the cities--

**WAYNE:** Correct.

**HUNT:** --when they have opportunity to find solutions and then don't.

**WAYNE:** Absolutely.

**HUNT:** What concerns me is in 2019, 86 people in Omaha experiencing homelessness died. And that's 86 people who potentially could have been helped with a bill like this, where we have mixed density. We're putting them into neighborhoods where, you know, other folks of different incomes already exist, putting them into potentially a great school system in Omaha and Lincoln and so--

**WAYNE:** On that point, we have a huge potential problem coming into Omaha. The south Omaha projects are going to be torn down, and they're going to move that to a voucher where you can go live somewhere. I don't believe at this point there is, based off of the numbers, enough Section 8 housing or enough affordable housing for those people to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

move to. In two to three years, we are going to have a bigger crisis in Omaha around this issue. And from what-- instead of trying to find a government solution, I am using a very conservative principle to say, what does the market need to do or have, what tools they need to build affordable housing?

**HUNT:** All right.

**WAYNE:** Thank you

**HUNT:** Thanks, Senator Wayne. Senator Arch.

**ARCH:** I'm sorry. One more question. So there was, there was discussion, there was offer for some further opportunities to sit down and maybe reduce the number of regulations that we're talking about or a variety of these things. Do you think is that possible?

**WAYNE:** Yes.

**ARCH:** Do you see room for that?

**WAYNE:** Yes, I'm open. Yes, I'm open. There is a priority deadline by February 19th, and I'm sure Ms. Rex will have us at the Nebraska Club next week if we-- if she-- to solve this problem and have these conversations. I do think there's room. We heard the concerns last year in our last bill and we limited the geographic location by substandard. So really, it's, it's the city. If the city doesn't want to use this tool, they don't have to add substandard and blighted to areas. So we are providing some flexibility, and I'm willing to have more conversations.

**HUNT:** Thank you, Senator Arch. Any other questions from the committee? For the record, I think the priority deadline is February 21st.

**WAYNE:** Thank you, Trevor.

**HUNT:** You're very welcome. With that, we have a couple letters. We have letters of support from the Nebraska Realtors Association and a letter of support from the National Association of Social Workers Nebraska Chapter. With this, I'll close the hearing on LB866. And the committee is going to take a 10-minute recess to let us freshen up a little bit, and then we'll come back at 4:30.

[BREAK]

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**HUNT:** We back on?

**CONNER KOZISEK:** Yep.

**HUNT:** OK. Welcome back to your Urban Affairs Committee. We have two bills left and we'll start with LB1135 with Senator Wayne. Excuse me, gentlemen.

**WAYNE:** Good afternoon, Vice Chairwoman Hunt and members of the Urban Affairs Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. I introduced both LB1135 and LB999, which will be the next bill, in an effort to start a bigger discussion around the inequities in our criminal justice system, particularly the situation in the city of Omaha and Douglas County. I have been, I had a transparency LR last spring, or actually this summer, and this has been an ongoing effort to basically work on a big package that I plan on introducing next year. I had originally planned on introducing a much larger criminal justice reform package in Douglas County this year, but elected not to because of the short session. And this year, as many of my colleagues know, I am focusing on historically underutilized businesses. The main goal of LB1135 was to hear arguments that would be made against some of the proposed reforms in light of-- and so in light of these arguments that I've seen already in opposition letters from the city of Omaha and Douglas County attorney, I will be asking this committee not to take any actions on LB35, but I think it's a-- 135-- LB1135. I do think it's important to address a couple of things that were issued in the letters before us. Throughout them, the municipal statutes, each city or village office has a section of statute that effectively creates the office and defines the basic duties and position of the city attorney. In researching these issues, committee legal counsel discovered that, that while this section of statute defining the position of city attorney or village attorney for all other classes of municipality, there is currently no section of statute creating and defining the duties of a city attorney for the metropolitan class. LB1135 would simply add such section of language using similar language that almost mirrors the creating and defining of basic duties for the city attorney for all other classes of municipalities, and in no way interferes with the ability of a mayor or city council to refine and define additional duties. I would also note that similar issue was actually discovered and corrected by the committee in 2017, when it was discovered that there was no section of statute creating the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

position of village engineer. Thank you for your time. And with that, I will answer any questions.

**HUNT:** Thank you very much, Chairman Wayne. Any questions from the committee? Seeing none, thanks for opening. First proponent for LB1135. Seeing none, any opponents for LB1135? Welcome to your Urban Affairs Committee.

**MARTY BILEK:** Good afternoon, senators. My name is Marty Bilek, I'm the chief of staff for Mayor Stothert in Omaha. My name is spelled M-a-r-t-y B-i-l-e-k. Mayor Stothert is opposed to LB1135 because it would deny Omaha its local control over the city attorney's office pursuant to the voter-approved language contained in the city charter. With local control, the city has over, over the years been able to cooperate with the county board and with the county attorney's office to combine and share prosecutorial responsibilities through agreements that create efficiencies unique to Omaha and Douglas County. As it is now, the county attorney handles all felony cases in Douglas County and misdemeanors involving domestic violence. Similarly, the Omaha city prosecutor's office handles misdemeanors, whether they be ordinance or state statute violations. This arrangement allows the county attorney to specialize in cases typically heard in district court, while the city prosecutor can better focus on the larger volume of cases processed in county court. It is efficient for the city prosecutor and the county attorney's office to handle cases in this manner. LB1135 would nullify the agreements that Omaha and Douglas County have in place and would erase the efficiencies I have just described. Local control gives our city the ability to fine-tune operations and address the needs unique to our community. Indeed, all cities in Nebraska benefit from local control they have over their various city departments. It is important for mayors and city councils to have sufficient control over their operations and be able to make wise decision, adopt best practices, and ensure affordability to its taxpayers. Mayor Stothert asks that you oppose LB1135 because it would be detrimental and counterproductive in the city of Omaha. Thank you.

**HUNT:** Thank you, Mr. Bilek. Any questions from the committee? Seeing none, appreciate your testimony today.

**MARTY BILEK:** Thank you.

**HUNT:** Next opponent for LB1135. Welcome, sir.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**MATT KUHSE:** Thank you. Good afternoon, my name is Matt Kuhse, it's M-a-t-t K-u-h-s-e, I'm here to-- in two capacities. One, as the city prosecutor for the city of Omaha and, two, as a deputy city attorney for the city of Omaha. I'm uniquely situated to talk about the issue about the dual prosecution that's raised in LB1135. When I first began my work as a prosecutor, I was hired by the Douglas County Attorney's Office and assigned to the domestic violence unit. As you saw from my letter and from Mr. Kleine's letter, while our system in Douglas County is unique, I don't think any other jurisdiction does it, it works. When I first worked for the county attorney's office, I worked in the domestic violence unit. This allowed me to prosecute misdemeanor crimes of domestic violence, both using the city ordinances and the state statutes. When I was appointed to this position in 2016 as the city prosecutor, city prosecutor's office continues to prosecute both city ordinances and state statute violations. The language in, regarding the prosecution in LB1135 is unnecessary. As it currently exists in Nebraska Revised Statutes 23-1201, the county attorney is directed to be the one to prosecute violations of state law, those being felonies and misdemeanors. In Douglas County, both our offices cross-deputize each other. Every January, Mr. Kleine and myself issue letters to each other. I deputize every single member of the Douglas County Attorney's Office criminal division and their juvenile division, since juvenile cases are also handled on ordinances as special assistant city prosecutors. He then also cross-deputizes the people in the city prosecutor's office as special deputy Douglas County attorneys. So while I agree the statute already says that the county attorney is to only file state statute violations, we do so in the city prosecutor's office as special assistant-- or special deputy Douglas County Attorney's Office officers. This process has worked for, I think it was in the mid 90s when the city and the county agreed to this for two reasons: Efficiency, and the county attorney wanted to have a specialized and dedicated domestic violence unit. If this were to pass and if the prohibition would exist, it would create a situation in Douglas County that we have not encountered before. The county attorney would be forced to possibly abandoned his specialized domestic violence prosecution unit. The city attorney's office would continue to prosecute the ordinances. But under the current system, as Mr. Bilek indicated, it's a more efficient system. The county attorney is allowed to focus on the domestic violence cases and on the felonies that occur within Douglas County, leaving the city prosecutor's office to handle all the misdemeanor offenses that occur in Omaha and in the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

county at large. As indicated by my letter, I've spoken to numerous officials within the criminal justice system in Douglas County, including the county attorney, the public defender, and a number of members of the county court and the district court, and they have no issue. They see no issue, and there hasn't been an issue for the past almost 30 years since this agreement has been in effect. I ask the committee to not advance LB1135, and I appreciate the opportunity to give my comments.

**HUNT:** Mr. Kuhse, thank you very much for being here. Any questions from the committee? Seeing none, thanks for coming in.

**MATT KUHSE:** Thank you.

**HUNT:** Any other opponents for LB1135?

**DESIRAE SOLOMON:** Good afternoon. My name is Desirae Solomon, D-e-s-i-r-a-e S-o-l-o-m-o-n, and I serve as the Blair City Attorney, and I am here testifying in that capacity today against LB1135. LB1135, and when I read that gave great concern, and I talked to our leaders within the city of Blair. In Blair we did, and we still do, have a city code book that does have various city ordinances that we can go ahead and prosecute for. Although we do have an agreement with the county attorney's office, the county attorney's office prosecutes all of those state ordinances. We still have our ordinances on the books. This allows law enforcement to coordinate with me on specific city ordinance violations that otherwise the county attorney's office may not have time to prosecute, may not want to prosecute for a variety of reasons, or in the event of a conflict of interest. So I ask that you not pass this bill because you take away local control that we do use within the city of Blair that is very, very helpful to us. I can't say that we use this a local control all the time, but it is another tool that we can use in working with our county governments to make sure that we're being effective prosecutors and we're protecting the public in that regard. Again, I think the local control is very important, and I am-- and that is the reason why we are opposing this bill. Thank you. Do I have any questions?

**HUNT:** Thank you very much for coming today. Any questions from the committee? Seeing none, appreciate it. Thanks for coming from Blair.

**DESIRAE SOLOMON:** No problem.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**HUNT:** Next opponent.

**CHRISTY ABRAHAM:** Senator Hunt.

**HUNT:** Welcome.

**CHRISTY ABRAHAM:** Senator Lowe, Senator Arch. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m, I'm here representing the League of Nebraska Municipalities. And I want to thank Senator Wayne for his opening and providing a little more clarity about this bill and the next one that we're going to hear. When these two bills appeared, we did send them out to our city attorney subcommittee list, which is basically a group of city attorneys that are very active with the League and provide guidance to us. And uniformly what we heard from city attorneys is, we are not prosecuting state laws, and so we're not sure why this legislation is needed. We're prosecuting city violence--violations. We're not doing state ones. Now, we understand that in Omaha has a very unique situation, that they have an agreement with their county attorney and they are prosecuting state law violations. But for the vast majority of our cities, they're not doing that. So there just wasn't-- they weren't seeing what the need was for this piece of legislation. A couple of city attorneys did mention there are rare occasions, apparently, where they may be cross-deputized to be a deputy county attorney in some cases to sort of help workflow situations. And they were concerned about whether this bill would prevent that situation. So those are the only insights I have for you on this bill. And I'm happy to take any questions that you might have.

**HUNT:** Thank you, Ms. Abraham. Any questions from the committee? Seeing none, thank you for being here today.

**CHRISTY ABRAHAM:** Thank you.

**HUNT:** Next opponent for LB1135. Seeing none, anyone here to testify in the neutral capacity? Seeing none, we have four letters for the record, all in opposition, from the Nebraska State Bar Association; Mayor Jean Stothert, city of Omaha; Matthew Kuhse, Omaha City Prosecutor; and Don Kleine, Douglas County Attorney. Senator Wayne, you're invited to close.

**WAYNE:** Thank you. I again ask the committee not to move forward with this. But I do ask the committee to just remember all the testimony we just heard, because I do believe in local control. But I also believe

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

local control means you should pay for it yourself, which would be what we talk about on LB999. I'll answer any questions.

**HUNT:** Thank you, Senator Wayne. Any questions from the committee? Seeing none, I'll close the hearing on LB1135 and open the hearing on LB999 with Senator Wayne.

**WAYNE:** Thank you. Good afternoon, Vice Chairman, Chairwoman Hunt and members of the Urban Affairs Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. I introduced both LB999 and LB1135 as the, the previous bill we just heard, to address inequities in our criminal justice system, particularly city of Omaha and Douglas County. So let's talk big picture here, and I think it's important for our committee to understand this. In many cases, there is a criminal penalty in state law. And oftentimes, municipalities adopt similar city code or village ordinances. The major differences between the penalties between state penalties and municipal penalties is that most of the time you have the right to a jury trial for a crime, but for village ordinance violations, you do not. When a criminal defendant is charged by the county attorney's office, it is typically underneath the state law. What's happening in Douglas County is increasingly, increasingly right before a plea agreement is reached, oftentimes the defendant will be charged and amended at the last minute to a city charge, thus denying your right to jury trial. Now, it was important, that last hearing, the City Prosecutor Kuhse talked about the domestic violence task force. See underneath city, underneath state statute you have a right to a jury trial before you lose your Second Amendment right. That's what happens when you get convicted of a domestic violence. But what happens is they amend the charge the day of or the day before or a week before your trial to the city ordinance. And now you simply go before a judge. You can lose your Second Amendment right, along with many other rights, including sometimes places to live when they do a criminal background check, without ever going before a jury. Think about that. Without ever going before a jury. That's just one example. Here locally in Lincoln, believe it or not, there is a state statute that says if you do not have a license plate registration done on time, you can get a ticket at the state level. And our state statute says you have 10 days to fix it. And if you fix it, your ticket is gone. The city of Lincoln has an ordinance where it's a hundred dollar fine. So they cite you underneath the ordinance and ignore state law. That is a problem, and that is the bigger problem we're going to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

address next year. But as it relates to this bill in particular, I keep hearing on the floor about unfunded mandates. We continue to talk from Senator Erdman and Senator Lowe about we have to start pushing things down. Well, through the discovery of this bill, we have the opposite. We have a reverse unfunded mandate. And I call it RUM, just for giggles. The reason it's reverse unfunded mandate is because Douglas County supplements the city's prosecution without the city ever paying for it, so they can offer as many penalties and crimes and charges and never have to pay for it. But what's in the city Omaha budget for a prosecutor. The county picks up that tab. And if you look at the fiscal note that was written by the city of Omaha, it's a \$4 million tab. So what you have in front of you is maps. The pink represents the city of Omaha. Everywhere outside of that pink, including Ralston, including Valley, including Waterloo, Bennington, are supplementing prosecution in the city of Omaha. That is a problem to a tune of \$4 million. So we heard a lot about local control, and I agree with local control. But I believe you should pay for your own local control. So I'm simply saying that, if you want to prosecute and there is a jailable offense, and why that's important is because if you're a defendant-- defender and you are charged underneath the city ordinance and you might have jail time, you have to have, or you are entitled to, representation. Right now, the county picks up all of that cost. And I would estimate that that \$4 million is on the low side. They estimate all that cost. They take in all that cost, the county, people outside. Now, why is that important to my district? Well, if you look at that pink spark that says Glenn, that's Lake Cunningham, I represent Lake Cunningham all the way to the Missouri River. And I represent that other area that's a little gray just south of Lake Cunningham. Half of my district is outside the city limits but yet my constituents are supporting and subsidizing to a tune around \$4 million the prosecution of city ordinances. And some of that has nothing to do with criminal, it could be city ordinance violations, such as rental code problems. And that's where this part of this issue arose. There was a huge incident in which forced us to have a bill last year on housing codes, our building codes, I mean, rental inspections. And some of my constituents were concerned at the cost of the prosecution and the defense of that prosecution was beared by their taxes. I later explained to them that that's not true, that he had hired his private attorney. But if he didn't and he would have seeked jail time, he would have a right to counsel to a tune of \$4 million the city of Omaha doesn't get. So, yes, I'm a criminal defense attorney. I no longer do a lot of criminal law. But what happens when

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

the county sets their budget is they pretty much set an equal budget between prosecution and defense. So Don Kleine gets a budget and so does Tom Riley, both who are elected people. The city prosecutor is not elected. But the county attorney gets an additional 12 prosecutors to prosecute crimes to no cost of their own to the city. Tom Riley doesn't get that same 12 extra defenders. So we have, what I would say, staff who are in the public defender's office working tirelessly with about 50 misdemeanor cases a month. I think it's important for local control, but I think it's more important that they pay the costs because it will force the city to figure out what crimes are important, what crimes aren't, and there-- and then we can-- we as taxpayers know the true cost of our criminal code. Because right now we don't. We don't know the cost of our civil or criminal code in Omaha. All we know is that the prosecutors get this amount of budget, but we have no idea what the defense costs. So I think, if we're going to talk about local control, local control should foot their own bill. And I'm one who does not believe in mandates without providing some type of funding for it. I've said that, I've been consistent. But this RUM, reverse unfunded mandate, has to be solved. And this bill is an attempt to do that. Now, there is some technical language that we may have to clean up. I don't believe that the defense has to keep out an hourly budget like I do, or bill hourly. They can do a flat fee of \$100 per case, \$50 per case. But whatever it is, the city should have to pay their way for prosecuting offenses in the city limits. Why is it that Ralston in Douglas County gets to supplement? Why is it that Valley is supplementing the city of Omaha prosecution? Why is it that farmers who live north of me, who never come into the city but maybe to Wal-Mart, is supplementing the prosecution of city ordinances? I believe that is fundamentally wrong and they should be able to pay their own way. And with that, I will answer any questions.

**HUNT:** Thank you, Senator Wayne. Taxation without representation.

**WAYNE:** Absolutely.

**HUNT:** Any questions from the committee? Senator Lowe.

**LOWE:** Thank you, Vice Chair. How many times a month does this go on where the city, county do-- does this?

**WAYNE:** So every, almost every misdemeanor charge is prosecuted by the city. There are rare occasions where there might be a felony attached and the felony is dropped and is still handled by the DA, with the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

district attorney. But almost every misdemeanor inside the city is prosecuted, actually and sometimes the county, is prosecuted by the city attorney. And if it's a county charge, a county sheriff, then the county is paying that cost and should pay that cost. But I do think we have to look no farther than their own fiscal note. If it's going to cost \$4 million, then that's \$4 million that Senator Linehan, Senator DeBoer, myself, others who represent areas outside the city limit, that their taxpayers are supplementing criminal prosecution without a vote. Today I-- last few days, I've talked about votes on the, on the floor about property taxes that we shouldn't do anything without a vote. They had no say in this. But it happens every day. So on average, there's about 50 misdemeanors that are filed every day. Probably more than that if you look at courtroom 29. But those all go to, through city prosecution. But not all of those are city ordinances. Some of them are county ordinances.

**LOWE:** OK.

**HUNT:** Thank you, Senator Wayne and Senator Lowe. Any other questions from the committee? Seeing none, thank you, Senator Wayne. Any proponents for LB999? Seeing none, any opponents? Welcome back.

**MATT KUHSE:** I'm going to try and stay on the substance of LB999. But to clarify a couple of things, the reason why city ordinance cases Omaha, Lincoln, wherever don't get jury trials, is because there's a state statute that says so. As a member of the Executive Branch, I operate within the guidelines of what the Legislative Branch tells me. So there's a state statute that says you are not entitled to a jury trial on a municipal ordinance. It is not some sort of concoction for the city prosecutor's office or other municipal attorneys. One advantage that was not mentioned about when Class 1 misdemeanors, that carry up to a year in jail, a \$1,000 fine, or both, are sometimes reduced to city ordinance violations is because city ordinance violations are only punishable usually by up to six months in jail, a \$500 fine, or both. Our offenses, or the possible penalties for our offenses on municipal ordinances are usually quite lower than what the state statute requires. Additionally, this taxation without representation comment, remember my prior testimony on LB1135. If you are the victim of a crime in Bennington, in Valley, in any part of Douglas County, the city prosecutor's office is prosecuting the person. If you are assaulted in a bar in Waterloo, the city prosecutor's office handles that case. If you abuse your child in Ralston, the city prosecutor's office handles that case. This

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

disproportionate come-- comments about how we're taking money from other citizens and not providing any service as inaccurate. In fact, just anecdotally, I can tell you that not only am I the city prosecutor of the city of Boys Town, I am the city prosecutor for the village of Boys Town, I am the city prosecutor for the city of Bennington. I have agreed to enforce their ordinances at no charge to either location. To the bill itself, in its current format, far more homework needs to be done. These, the \$4 million note in the fiscal note came from I got the public defender's salary for Douglas County. Their salary for-- their money for their salary was \$4 million. There are approximately fifty one attorneys in the Douglas County Public Defender's Office who handle ordinance cases in the separate juvenile court and in adult court. The average salary comes to about \$80,000 because it runs the gamut. There are attorneys who make a \$130,000, there are attorneys who only make \$60,000, but they both handle ordinance cases. The bill does not address the flat fee. That is not in the bill. The bill calls for an apportionment of the salary of the public defender. So while Senator Wayne wants the public defenders to be doing their work, which is what I want them to do, they are also going to have to keep track of their time in order to qualify with this apportionment means. I think the public defender's time is best spent representing their clients, rather than keeping track of their hours. That doesn't address situations when people are charged with ordinances and statutes. Is the public defender then supposed to decide, I'm working on the felony only. Time ended and now I'm working on the ordinance. That is unrealistic. They are usually interconnected and blended. More time needs to be given on working with public defender's office, county officials, and yes, also the city, because in its current form, this bill is completely unfeasible and not workable for the city, and quite frankly, the public defender's office as well. I thank the committee for taking my comments into consideration.

**HUNT:** Thank you, Mr. Kuhse. Any questions from the committee members? Seeing none, thanks again for being here.

**MATT KUHSE:** Thank you.

**HUNT:** Next opponent for LB999. Welcome back, Mr. Bilek.

**MARTY BILEK:** It's good to be back. Thank you. Again, my name is Marty Bilek, I'm the chief of staff for Mayor Stothert in Omaha. My name is spelled M-a-r-t-y B-i-l-e-k. Mayor Stothert is opposed to LB999 as it

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Urban Affairs Committee February 4, 2020

disrupts the balance and harmony which exists, has existed in Omaha's criminal justice community for many years. Omaha and Douglas County have formal agreements that define the way the various city criminal justice departments interact with their county counterparts. These agreements define the various duties and responsibilities of each department and the cost-sharing that may be involved. The Douglas County Public Defender's Office provides legal services to, to defendants that are being prosecuted by either the city prosecutor or the county attorney. There is no charge back to the city. All of the property taxpayers in Douglas County, including those in Omaha, pay their fair share for the public defender services. LB999 would not save taxpayer dollars, nor would it make public defender operations more efficient. In actuality, the public defender operations would become far more complicated as it would now be necessary to separate city defendants and bills separately. This task is further complicated when defendants are charged with both city ordinance and state statute violations, and Matt Kuhse had just kind of elaborated on that further. The administrative overhead that would be created with this bill would likely make the public defender's operation either more expensive, less efficient, or both. The various criminal justice agencies that operate in Omaha and Douglas County do so in an efficient manner and without controversy. Mayor Stothert, the city council, the county board, and the various county-elected office holders have been working together for many years to ensure criminal justice is responsible and affordable in Douglas County. Mayor Stothert would ask that you would oppose LB99-- LB999 for these reasons. And I would like to make a couple of other comments kind of off the cuff here. When I came here, coincidentally, I ran into County Commissioner Clare Duda, he's the chair of the county board in Douglas County. And I asked him about this bill, because that's the one government entity that would benefit most from the provisions in this bill. And even he said that the county board doesn't seem to be excited about this and that they would probably come in neutral. And the last thing I'd like to add is that Senator Wayne had mentioned that the city really isn't paying its fair share. And I would, even though the public defender's office is a county operation and they get their budget from the county, all of the city taxpayers in Omaha are paying county property taxes and are funding the operations of all county operations, including the public defender's office. So we are paying our-- the taxpayers in Douglas County are paying their fair share. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

**HUNT:** Thank you, Mr. Bilek. Any questions from the committee? Seeing none, appreciate you coming.

**MARTY BILEK:** Thank you.

**HUNT:** Next opponent for LB999. Welcome back.

**DESIRAE SOLOMON:** Thank you. Good afternoon. Again, Desirae Solomon, Blair city attorney. D-e-s-i-r-a-e, Solomon is S-o-l-o-m-o-n. When I received this bill, I was very alarmed. And it's because I have a lot of background dealing with attorney fees. When I began my career, I was a Sarpy County public defender and I was assigned to a courtroom that was designated as a courtroom for the city ordinance prosecutions. And what came through that courtroom could be curfew violations, it could be certain things like dirty yard. And you may be thinking, what's a dirty yard? It's exactly what you're thinking times some. And the person that I was assigned to represent, necess-- didn't necessarily believe in government, but he did believe in having an attorney at public's cost. I can't even tell you, I probably handled 200 cases a year as a public defender within Sarpy County. He was one of mine. We were lucky enough to get defender data to log in what we were doing on a particular case. And I did call Thomas Strigenz from the Sarpy County Public Defender's Office, and I said, do you remember the case? And I used the person's name, and he had a reaction and I had a reaction because I probably, with two other staff members, spent nearly 100 hours defending that case. That one case in that given time, which started at 102 counts of dirty yard that I successfully defended into a guilty verdict of 1 count, and he was found not guilty of all the rest. So that's good quality defense work. That's what we want our public defenders to do. Why I bring that to this bill is, if you pass this bill, you are going to make the taxpayers of the city of Blair pay the rate of \$95 an hour for that attorney. You just assessed them a \$9,500 lawyer bill. And if you think that's the only time it's gonna happen, it's not. There is, and there are Supreme Court cases before the Nebraska Supreme Court that I did file and I did argue, and I argued those on January 8th. And you can find them In re interest of A.M., they are found in the Supreme Court 19-0378, 19-0533, and 19-0932 where we have it within the Washington County Attorney's Office. The county has objected to attorney fees that were filed by an attorney. The nuts and bolts of it is, is that attorney has as-- has asserted that she has worked every day on a case for nearly three years. It is close to \$40,000, if not more, that Washington County was assessed. I stand behind this because I was a public defender. I know

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

what it's like to feel overworked and when you're, you're doing your best. But I also stand before you as somebody who's been on the other side of these cases and had to argue what is reasonable and necessary attorney fees. And the judges are struggling. They're struggling with the balance of what these statutes mean. And I mean no disrespect to Senator Wayne here, but when we-- when I first read this bill, I didn't know what proportionate share of the salary meant. I thought, is that a proportionate share of my salary? Is that a proportionate share-- I didn't know what that meant. Council services, their expenses, those types of things, I can tell you when I audited attorney fee bills in Washington County, I got into a very calm argument with an attorney that claimed that he had worked three hours on a case. I had the journal entry. I said, I think it's an, I think it's an error, I think it's 0.3. He continued to argue. I said, you didn't meet with your client for three hours and discuss this case. You're out of court by 8:47 in the morning, it's time-stamped in the journal entry. This affects those communities. This affects the constituents. And I do agree, even though I'm opposing this bill, I do agree with Senator Wayne on one point. We want defense and we want taxpayers to, to have a voice in it. But is the voice getting overbilled? This bill, I think, creates a lot of responsibilities on city attorneys and on cities to fund and have to look at the different mechanisms and go through these bills. City of Blair is--

**HUNT:** Could I ask you to wrap up? Sorry.

**DESIRAE SOLOMON:** I'm sorry, I didn't see that. So that we don't-- we're not set up like the city of Omaha. So that is why the city of Blair is against that. And I ask you to oppose this bill and do your research into those factors. Thank you.

**HUNT:** Thank you, Ms. Soloman, appreciate it. Any questions from the committee? Seeing none, thank you for coming in today. Next opponent for LB999. Welcome back.

**CHRISTY ABRAHAM:** Thank you, Senator Hunt and members of the Urban Affairs Committee. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m, here representing the League of Nebraska Municipalities. As you heard me say in the last bill, we sent this bill out to our city attorney group to get their opinions and concerns, if they have any, about it. Here again, we have the split between the smaller communities and the larger communities. The smaller communities, particularly the villages, all came back and

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

said, I don't know that we're terribly concerned about this. In state law, it says our max penalty for a violation of a city ordinance is \$500. So they weren't getting the impression that they had any village ordinances that were even going to rise to the level of having jail time. In the larger communities, what they seemed really focused on and concerned on is something that the city of Blair touched on, and it's these zoning statutes that are in state law that says a violation of the zoning ordinance could result in 30 days in jail, and every day is a new violation. So if you have a dirty yard or a setback problem for seven days, you're looking at 210 days in jail. Whoa. So all of a sudden, the cities are thinking about, wow, in every zoning ordinance violation, you know, we're going to have to get a court-appointed attorney. Several city attorneys brought this to my attention, so that was one of the concerns that came up. And the final thing that I think you've heard much more eloquently from Blair and Omaha is the definition of what the reasonable fees are. And if this committee wants to move this forward, we are-- certainly want to be part of that conversation to really clarify for cities what those reasonable fees are so they can be in a better position of knowing what those are. So thank you so much for your time. I'm probably your last testifier today, so thank you so much for sticking with us.

**HUNT:** Thank you, Miss Abraham. Any questions from the committee? Seeing none, thank you for sticking with us.

**CHRISTY ABRAHAM:** Thanks so much. Glad to do it.

**HUNT:** Any other opponents for LB999? Seeing none, anyone here in the neutral capacity? Seeing none, Senator Wayne--

**WAYNE:** I will be quick.

**HUNT:** --you're invited to close.

**WAYNE:** Thank you. Thank you, Chairwoman Hunt. I think it's important to know that if the prosecutor decides to move from state statute to city code, or city ordinance the defendant doesn't have a say in that. That is up to the discretion of the prosecutor. So it isn't like we can elect not to have a jury trial when it's a city ordinance. And I will be bringing a bill next year to move all jury trials to 90 days or more, so that can-- that will be important. Also wanted to note that this highlights the dual prosecutor entities. And when you look at the city of Omaha and you look at the disparate impact that it has

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee February 4, 2020

on minorities this, this compounds the issue. Lastly, I think the committee should know how this works in Douglas County. And because of the smaller communities, I have no problem limit it to Douglas County and cities of the first, metropolitan class, or even just the three big counties. We've done that with other bills, and I think that's, that's, that's doable. But I do think it's important to understand how this is listed in JUSTICE. JUSTICE is the organ-- is the computer system that we use in the criminal system. So when you want to look at a case, you can look it up. Everything is coded by statute. So if it's a city code, it's coded by the city code. So you know which case is a city code. If it's coded by a state statute, like it could be the village of Waterloo or Waterloo, it's a state-- it's a state statute and it's coded by that. So when we talk about the appropriate fees, I think that's just language we can figure out to allow counties and cities to enter into agreements for a flat fee. I don't care if it's \$25 a case, I don't care if it's \$100 a case. I think we can meet with the parties and figure out what that is. But I do think if we're going to say local control, we have to get rid of the reverse unfunded mandate. That the city should carry their weight when prosecuting their city ordinances and not leave it for the county, particularly in counties where-- Douglas County, when half of the county is outside the city limits. They are supplementing prosecution and I don't think that's right. So with that, I look forward to working with the parties and working with this committee to put an amendment out and get this to the floor as soon as possible.

**HUNT:** Thank you, Senator Wayne. Any questions? Seeing none, thank you--

**WAYNE:** Thank you.

**HUNT:** --again. We have one letter of opposition from Matthew Kuhse, who is the Omaha city prosecutor. And with that, I will close the hearing on LB999.