

# URBAN AFFAIRS COMMITTEE

## NEBRASKA LEGISLATURE

LR 155: An interim study to examine current and potential economic development tools available to municipalities in  
Nebraska

One Hundred Fourth Legislature  
First Session

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## Introduction

Over a number of years, the Legislature's Urban Affairs Committee has heard repeatedly from city and village officials that municipalities in Nebraska only have two economic development tools at their disposal – the Local Option Municipal Economic Development Act<sup>1</sup> (commonly referred to as LB 840), and tax-increment financing (TIF) under the Community Development Law<sup>2</sup>. While the State of Nebraska has a number of comprehensive economic development incentives at the state level, the options for municipalities in Nebraska are somewhat limited.

In order to examine municipal economic development tools, the Urban Affairs Committee introduced LR 155, an interim study designed to take a comprehensive look at the economic development tools that are currently available to municipalities in Nebraska, as well as examining tools available to municipalities in other states. The committee held public hearings in Lincoln and Norfolk. A wide variety of city and economic development officials attended both hearings and made suggestions on ways to improve upon and expand the municipal economic development toolbox in Nebraska.

This purpose of this report is to review the current economic development tools available to municipalities, as well as compile the potential ideas that were presented to the committee which the Legislature may choose to pursue. In order to inform efforts to improve economic development tools, the report discusses the legislative history behind various aspects of the current tools and previous legislative efforts to create additional economic development tools for municipalities.

In conjunction with the LR 155 hearings, the Urban Affairs Committee also held hearings on LR 152, an interim study by Senator Crawford to examine the Local Option Municipal Economic Development Act. A number of suggestions to amend the Act were made during the hearings on LR 152, so this report also includes those suggestions that were relevant to the overall municipal economic development discussions in LR 155. The appendices include a copy of LR 152 and transcripts from the LR 152 hearings, in addition to those for LR 155.

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<sup>1</sup> Nebraska Revised Statute §18-2701 to §18-2739

<sup>2</sup> Nebraska Revised Statute §18-2101 to §18-2144

## Summary of Current Municipal Economic Development Programs

While a wide variety of state and federal programs can be considered “tools” for local economic development, this report focuses primarily on those programs which are delineated in Nebraska state statute. For example, while the Community Development Block Grant (CDBG) program through the U.S. Department of Housing and Urban Development is a critical economic development tool for many Nebraska municipalities, policies that direct the use of CDBG funds are largely a matter of federal rules and regulations, so CDBG funds are not included in the report.

When comparing municipal economic development tools in Nebraska to the tools available in other states, a major contributing factor that limits the options for Nebraska municipalities is the Uniform and Proportionate Clause in Article VIII, Section 1 of the Nebraska State Constitution. The Uniform and Proportionate Clause requires that property taxes must be valued and collected in the same way, which effectively prohibits municipalities from offering property tax abatement<sup>3</sup>. Since the provision appears in the constitution, the only limited exceptions to the Uniform and Proportionate Clause are constitutional amendments, most notably agricultural land, homestead exemptions, and TIF.

At Senator Crawford’s request, the League of Nebraska Municipalities prepared a comprehensive binder for the Urban Affairs Committee that highlights and summarizes key economic development tools available to Nebraska municipalities, which was a major contribution to the committee’s work. A copy of this binder is included among the appendices.

The primary tools that currently play the most significant role in municipal economic development are the Local Option Municipal Economic Development Act (LB 840) and tax-increment financing (TIF) under the Community Development Law. In addition to those two programs, this section examines a number of programs which either authorize the use of local funding for economic development purposes or provide state assistance with local economic development efforts.

### Local Option Municipal Economic Development Act (LB 840)

The Local Option Municipal Economic Development Act, commonly referred to as LB 840, allows municipalities to collect and appropriate local tax dollars for economic development purposes, if approved by local voters. The Act was passed in 1991<sup>4</sup>, and

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<sup>3</sup> See discussion on property tax abatement, *infra*

<sup>4</sup> LB 840 (1991)

requires that a municipality develop a local economic development plan, which forms the basis of the municipality’s LB 840 program. There are approximately 70 municipalities which have voted to create an LB 840 program, and a map of these programs can be found in Figure 1.

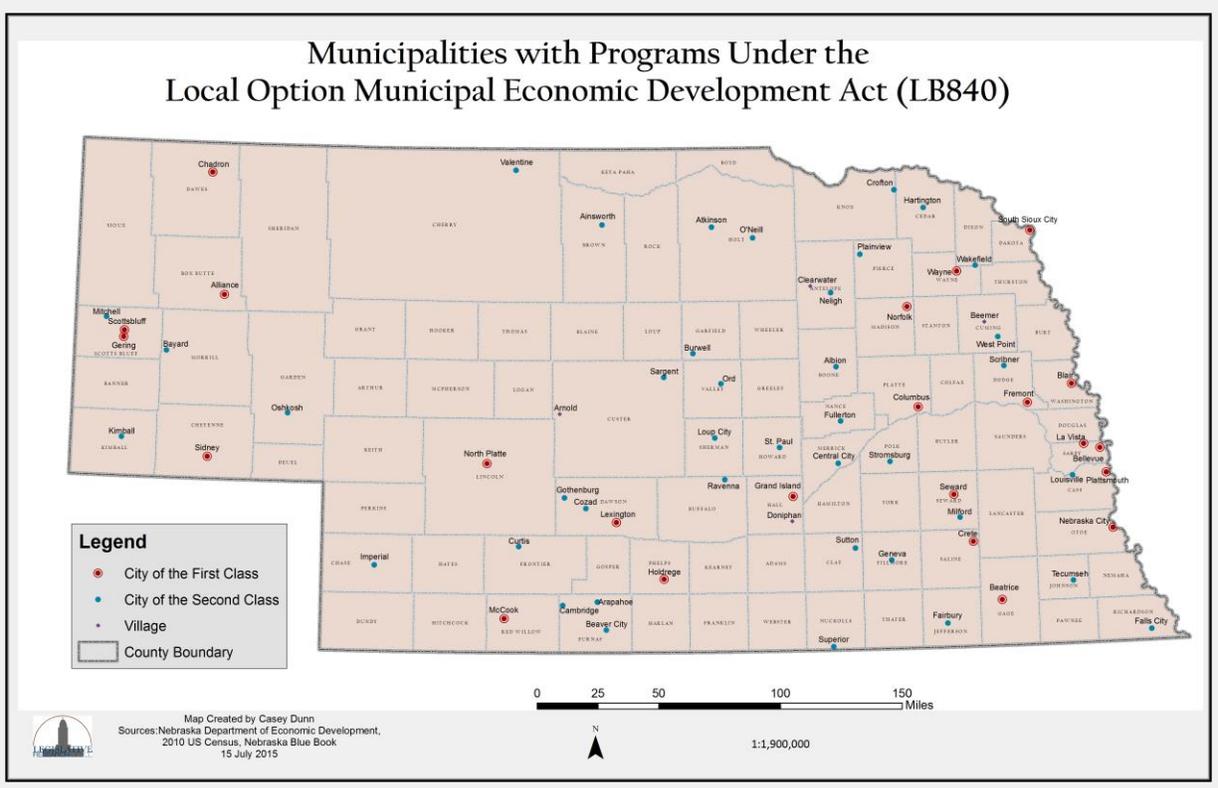


Figure 1. Municipalities with programs under the Local Option Municipal Economic Development Act (LB 840)

In 1990<sup>5</sup>, Nebraska voters amended Article XIII, Section 2 of the Nebraska State Constitution to specifically authorize municipalities to appropriate local tax dollars for economic development purposes. This new constitutional language, which became the basis for LB 840, requires voter approval of an economic development plan before municipalities can utilize the authority.

Under the Act, municipalities can spend LB 840 funds in two ways: 1) loans and grants to qualifying businesses; and 2) the payment of “related costs and expenses”, which generally includes things like the cost of public infrastructure projects and the cost to administer the LB 840 program itself. Historically, the definition of “qualifying business” has been limited to private business entities such as corporations, partnerships, and LLCs.

<sup>5</sup> LR 11 (1990)

The definition of “qualifying business” also limits the use of LB 840 funds to specific statutorily-identified business activities<sup>6</sup> like manufacturing, research and development, and tourism<sup>7</sup>. The Act has been amended numerous times to add additional business activities, including retail<sup>8</sup>, low-income housing<sup>9</sup>, broadband internet access<sup>10</sup>, film production<sup>11</sup>, rural natural gas infrastructure<sup>12</sup>, and relocation incentives for new residents<sup>13</sup>.

### Tax-Increment Financing (TIF)

Under the Community Development Law, municipalities can utilize TIF for the redevelopment of properties that have been deemed “substandard and blighted”. As applied, TIF allows the municipalities to issue bonds to pay the costs of a redevelopment project based on the projected increase in property tax revenues that the new development creates. Property tax revenues based on the value of the property prior to the redevelopment (the “base”) continue to flow to other political subdivisions that have a property tax levy on property within the redevelopment area, while any increased property tax revenues are dedicated to paying off the TIF bonds.

After fifteen years, or when the bonds are paid off, the increased property tax revenues then revert to the city’s general fund and other political subdivisions that have a property tax levy on property within the redevelopment area. As noted in Figure 2, TIF has been used by all classes of Nebraska municipalities throughout the state.

Since TIF is one of the specific exceptions to the Uniform and Proportionate Clause in Article VIII, Section 1<sup>14</sup>, Nebraska’s TIF statutes must comply with the TIF-enabling language in Article VIII, Section 12. The primary constitutional requirements are the requirement that property be designated “blighted and substandard” in order to be TIF-eligible, and the fifteen-year limit on the repayment period for TIF bonds.

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<sup>6</sup> There is an exception for municipalities with a population under 2,500, which have no restriction based on business activities.

<sup>7</sup> A complete list of eligible business activities can be found in Nebraska Revised Statute §18-2709.

<sup>8</sup> Added for municipalities with a population between 2,500 and 10,000 in 1994 (LB 1188), expanded to all municipalities in 2011 (LB 471)

<sup>9</sup> LB 207 (1995)

<sup>10</sup> LB 827 (2001)

<sup>11</sup> LB 863 (2012)

<sup>12</sup> LB 1115 (2012)

<sup>13</sup> LB 295 (2013)

<sup>14</sup> See discussion of Uniform and Proportionate Clause, *supra*

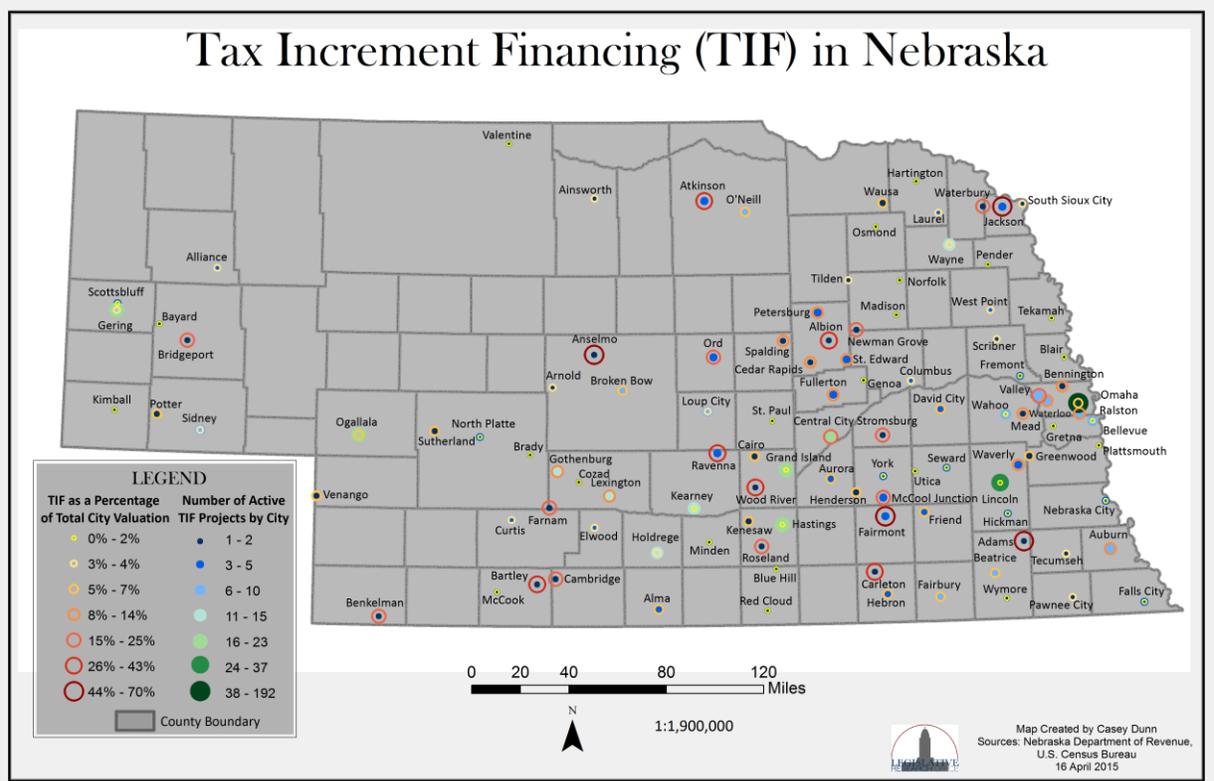


Figure 2. Use of tax-increment financing (TIF) by municipalities in Nebraska.

### Enhanced Employment Areas

In 2007<sup>15</sup>, the Legislature amended the Community Development Law to provide an additional financing option for infrastructure and other improvements. Under these provisions<sup>16</sup>, a developer enters into an agreement with a municipality to develop a pre-defined “enhanced employment area”. An occupation tax is imposed upon businesses within the enhanced employment area, with revenues from the occupation tax pledged to pay off revenue bonds issued by the municipality to finance improvements within the enhanced employment area.

An enhanced employment area can be used in conjunction with or separate from TIF. If an enhanced employment area is not within a community redevelopment area (i.e. if the area does not qualify to be designated as “substandard and blighted” under TIF), the occupation tax revenues can still be used to pay off bonds issued by the municipality for infrastructure such as streets, roads, and sidewalks.

<sup>15</sup> LB 562 (2007)

<sup>16</sup> Nebraska Revised Statute §18-2142.02 to §18-2142.04

### Nebraska Advantage Transformational Tourism and Redevelopment Act (NATTRA)

The Nebraska Advantage Transformational Tourism and Redevelopment Act<sup>17</sup>, often referred to as either LB 1018 or NATTRA, was enacted in 2010<sup>18</sup> to authorize municipalities to use local option sales taxes as an incentive for economic development. Under NATTRA, municipalities may rebate a portion of local sales tax dollars generated by a qualifying development to offset the costs of a project development.

Similar to LB 840, the statutory language in NATTRA must follow the authorizing language in Article XIII, Section 2 of the Nebraska State Constitution, including obtaining voter approval prior to offering the incentive. NATTRA was recently used by the City of Gretna for revitalization of the Nebraska Crossing Outlet Mall, and has been approved by voters in the City of La Vista for future use.

### Municipal Publicity Campaigns

Nebraska Revised Statute §13-315 authorizes municipalities and counties to expend public funds for publicity campaigns for economic development. Eligible uses of these funds include encouraging immigration, new industries, and investment, as well as conducting publicity campaigns to advertise the various agricultural, horticultural, manufacturing, commercial, or other resources of the municipality or county. The total amount appropriated under this section cannot exceed four-tenths of one percent of the total taxable valuation in the municipality or county.

### Industrial Development Bonds

Nebraska's industrial development bond statutes<sup>19</sup> authorize municipalities and counties to issue industrial development bonds to acquire, finance, and develop property to lease to manufacturing or industrial enterprises within blighted areas<sup>20</sup>. Bond proceeds may be used to acquire land, construct new facilities, purchase and rehabilitate existing facilities, and purchase new machinery. Payments on the bonds are then made from the lease payments made by the manufacturing or industrial enterprise. Industrial development bonds under these statutes are specifically authorized under Article XIII, Section 2 of the Nebraska State Constitution.

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<sup>17</sup> Nebraska Revised Statute §77-1001 to §77-1035

<sup>18</sup> LB 1018 (2010)

<sup>19</sup> Nebraska Revised Statute §13-1101 to §13-1110

<sup>20</sup> As defined in §13-1101(6)

In 2011, the industrial development bond statutes were amended<sup>21</sup> to allow municipalities and counties to issue revenue bonds to assist in the development of property for use by non-profit entities, regardless of whether the project or projects are located within a blighted area. These new provisions were designed to implement the authority granted under Article XIII, Section 4 of the Nebraska State Constitution, which was adopted by the voters in 2010<sup>22</sup> to enable the non-profit community to benefit from tax-exempt financing.

Under the authority in Article XIII, Section 4, bonds issued for non-profits are not obligations of the issuing municipality or county, but are paid back from the revenues of the project or projects. Any portion of the non-profit enterprise used for religious purposes<sup>23</sup> is ineligible to be funded through these provisions.

### Business Improvement Districts (BIDs)

Business Improvement Districts (BIDs) are special-purpose districts created by a city<sup>24</sup> to help fund improvements and developments<sup>25</sup> within an established business area. Under the Business Improvement District Act<sup>26</sup>, cities may impose a special assessment upon property within the BID or a general occupation tax on businesses and users of space within the BID. Common improvements and developments funded through BIDs include offstreet parking facilities, pedestrian malls, plazas, and sidewalks, landscaping, beautification, maintenance, and marketing of the business district.

The City of Omaha and the City of Lincoln each have multiple BIDs, and BIDs have also been created in the cities of Alliance, Chadron, Columbus, Grand Island, Hastings, and Kearney.

### Urban Growth Districts

In 2009<sup>27</sup>, the Legislature authorized the creation of Urban Growth Districts as an additional mechanism to finance municipal infrastructure needs. Under Nebraska Revised Statute §18-2901, a municipality may establish one or more Urban Growth

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<sup>21</sup> LB 159 (2011)

<sup>22</sup> LR 295CA (2010)

<sup>23</sup> Defined in §13-1101(3) as “used for sectarian instruction or study or devotional activities or religious worship”

<sup>24</sup> Under the Business Improvement District Act, villages are not eligible to create a business improvement district

<sup>25</sup> A complete list of eligible uses for funds under the Business Improvement District Act can be found in Nebraska Revised Statute §19-4019

<sup>26</sup> Nebraska Revised Statute §19-4015 to §19-4038

<sup>27</sup> LB 85 (2009)

Districts in areas of the municipality which were not within its corporate limits as they existed twenty years prior. Once the Urban Growth Districts are created, the municipality may utilize the estimated local option sales tax revenue generated within the district<sup>28</sup> to issue urban growth bonds and refunding bonds to finance and refinance the construction or improvement of roads, streets, streetscapes, bridges, and related structures within the district or in any other area of the municipality. The issuance of urban growth bonds or refunding bonds requires a two-thirds vote of the municipality's governing body.

Land Banking

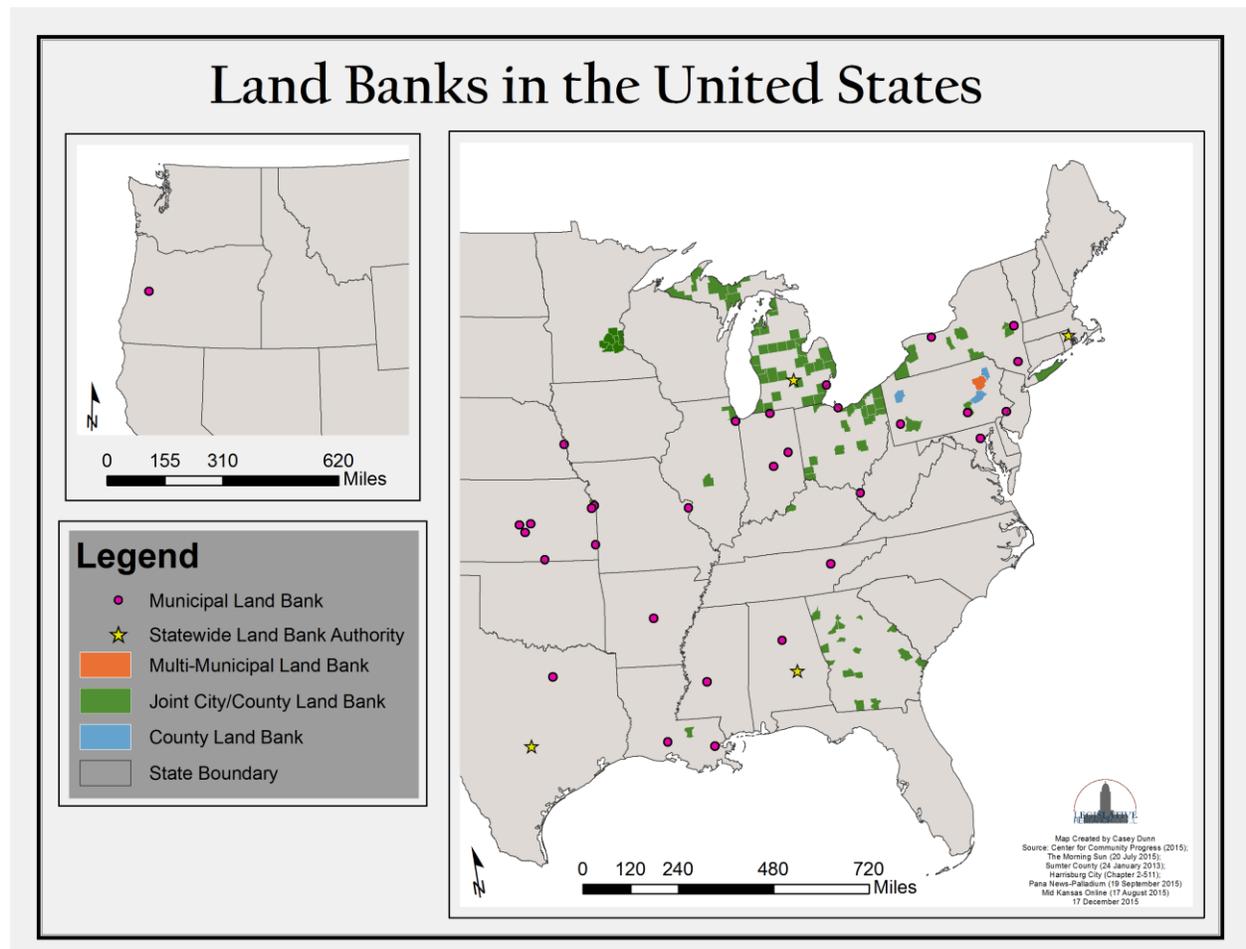


Figure 3. Land Banks in the United States

<sup>28</sup> Defined as “urban growth local option sales tax and use tax revenue”, this revenue is equal to the municipality’s total local option sales and use tax revenue multiplied by the ratio of the area included in the urban growth district to the total area of the municipality. Put another way, if the urban growth district consisted of 4% of the city’s total area, then the city could utilize 4% of its total local option sales and use tax revenue to issue urban growth bonds.

A land bank is a governmental entity or non-profit corporation that focuses on the conversion of vacant, abandoned, and tax-delinquent properties into productive use. Passed in 2013<sup>29</sup>, the Nebraska Municipal Land Bank Act<sup>30</sup> authorizes the creation of land banks in certain municipalities as a separate political subdivision.

Under the Nebraska Municipal Land Bank Act, only municipalities located within a county in which a city of the metropolitan class is located (Douglas County) or within a county in which at least three cities of the first class are located (Sarpy County) are eligible to create a land bank<sup>31</sup>. While land banks are created by municipalities, in form they are a separate political subdivision whose board is appointed by the municipality or municipalities that created it. Currently, the Omaha Municipal Land Bank is the only land bank in Nebraska.

Nebraska is one of eleven states that have enacted comprehensive state-enabling land bank legislation, although some local governments in other states have established land banks through their home rule authority. As seen in Figure 3, there are approximately 120 land banks throughout the country, with the highest number of active land banks in the states of Michigan, Ohio, and Georgia.

#### *Development Impact Fees/Sanitary and Improvement Districts (SIDs)*

Development impact fees, also referred to as development charges, capacity fees, or facility fees, are one-time costs imposed on new businesses or property owners to help fund the provision of new public infrastructure and services during an initial development. Impact fees are generally charged to developers and builders to offset costs of new infrastructure or infrastructure improvements for new homes and businesses.

While Nebraska has not enacted statewide enabling legislation for development impact fees, the City of Lincoln enacted an impact fee program in 2003. In 2006<sup>32</sup>, the Nebraska Supreme Court held that despite the lack of statutory authorization, the City of Lincoln had the ability to charge impact fees under its home rule charter authority<sup>33</sup>. Since only the City of Lincoln and the City of Omaha have elected to establish their own city charters, those two cities are the only Nebraska cities currently eligible to utilize development impact fees.

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<sup>29</sup> LB 97 (2013)

<sup>30</sup> Nebraska Revised Statute §19-5201 to §19-5218

<sup>31</sup> See the definition of municipality under §19-5203

<sup>32</sup> Home Builders Association v. City of Lincoln, 271 Neb. 353 (2006).

<sup>33</sup> Article XI, Section 2 of the Nebraska State Constitution authorizes cities with populations over 5,000 to establish a home rule charter



As of 2014, there were 320 SIDs statewide, more than 80% of which are located in either Douglas or Sarpy County. As shown in Figure 4, following Douglas County's 144 SIDs and Sarpy County's 118, the next highest county for SIDs is Cass County, which has just eight.

### County Industrial Areas

In 1957<sup>36</sup>, the Legislature authorized counties to declare tracts of land as industrial areas to be reserved for the location of industry. While this authority is not one that can be exercised by municipalities, it was an early attempt to provide incentives for local economic development. By law, county industrial areas cannot be annexed by municipalities, and are thus not subject to municipal property taxes.

In 1967<sup>37</sup>, the county industrial area statutes<sup>38</sup> were amended to require municipal approval prior to the designation of a county industrial area. While there is no termination date for county industrial areas, the statutes were amended in 1979<sup>39</sup> to allow county boards to review an area every two years to determine whether the designation was still appropriate.

### Enterprise Zones

Designed to encourage investment and economic growth in distressed communities, some type of zone-based economic development initiative, mostly commonly called enterprise zones, is present in the vast majority of states. Nebraska's enterprise zone statutes were passed in 1992<sup>40</sup> and 1993<sup>41</sup>, but the original enterprise zones designated under the Enterprise Zone Act<sup>42</sup> were allowed to expire after a decade.

The Enterprise Zone Act was reactivated in 2014<sup>43</sup>, and allows the creation of up to five enterprise zones by the Department of Economic Development. Under the Act, any city, village, tribal government area, or county may apply for designation of an area within its boundaries to be designated as an enterprise zone. Businesses located within the boundaries of a designated enterprise zone receive preferences under a variety of

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<sup>36</sup> Laws 1957, c. 51, §1 to §7, pp. 240-242

<sup>37</sup> Laws 1967, c. 99, §1 to §3, pp. 299-300

<sup>38</sup> Nebraska Revised Statute §13-1111 to §13-1120

<sup>39</sup> LB 217 (1979)

<sup>40</sup> LB 1240 (1992)

<sup>41</sup> LB 725 (1993)

<sup>42</sup> Nebraska Revised Statute §13-2101 to §13-2112

<sup>43</sup> LB 800 (2014)

state business incentives and grant programs, including the Affordable Housing Trust Fund<sup>44</sup>, the Business Innovation Act<sup>45</sup>, the Job Training Cash Fund<sup>46</sup>, and the Site and Building Development Fund<sup>47</sup>.

Once an area has been designated as an enterprise zone, the designation remains in effect for ten years. The Department of Economic Development has officially designated enterprise zones within the City of Omaha and the City of South Sioux City<sup>48</sup>. Further applications for enterprise zone designation cannot be made at this time, as the statutory period to apply for enterprise zone designation ended on July 6, 2015.

### Convention Center & Sports Arena Financing

In 1999<sup>49</sup>, the Legislature passed the Convention Center Facility Financing Assistance Act<sup>50</sup>, which created a state financing mechanism for publicly-owned convention centers. Under the Act, a percentage of state sales tax revenue that is attributable to the municipality building the convention center is “turned back” to help finance the convention center, with 70% of sales tax revenue allocated to the municipality for the convention center and 30% allocated to the Civic and Community Financing Fund<sup>51</sup>. The Act was amended in 2008 to include facilities that are both privately and publicly-owned, and was used to finance the Qwest (now Century Link) Center in Omaha and the Pinnacle Bank Arena in Lincoln. Further applications for state assistance under the Act cannot be made at this time, as the statutory period to apply for convention center financing ended on December 31, 2012.

Passed alongside the Convention Center Facility Financing Assistance Act, the Civic and Community Center Financing Act (CCCFA)<sup>52</sup> provides grants to municipalities for the construction, renovation, or expansion of civic centers, community centers, and recreation centers. The Civic and Community Center Financing Fund is financed through the Convention Center Facility Financing Assistance Act, with grants requiring a 50% match by the municipality. Total grant amounts are limited based on the classification of municipality, and as shown in Figure 5, 59 different municipalities have received grants under the Act since 2004.

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<sup>44</sup> Nebraska Revised Statute §58-703

<sup>45</sup> Nebraska Revised Statute §81-12,152 to §81-12,167

<sup>46</sup> Nebraska Revised Statute §81-1201.21

<sup>47</sup> Nebraska Revised Statute §81-12,146

<sup>48</sup> A third enterprise zone was also designated in Otoe County

<sup>49</sup> LB 382 (1999)

<sup>50</sup> Nebraska Revised Statute §13-2601 to §13-2612

<sup>51</sup> Nebraska Revised Statute §13-2704

<sup>52</sup> See discussion of Civic and Community Center Financing Act, *infra*

<sup>53</sup> Nebraska Revised Statute §13-2701 to §13-2710

## Municipalities Which Have Received Funds under the Civic & Community Center Financing Act (CCCFA)

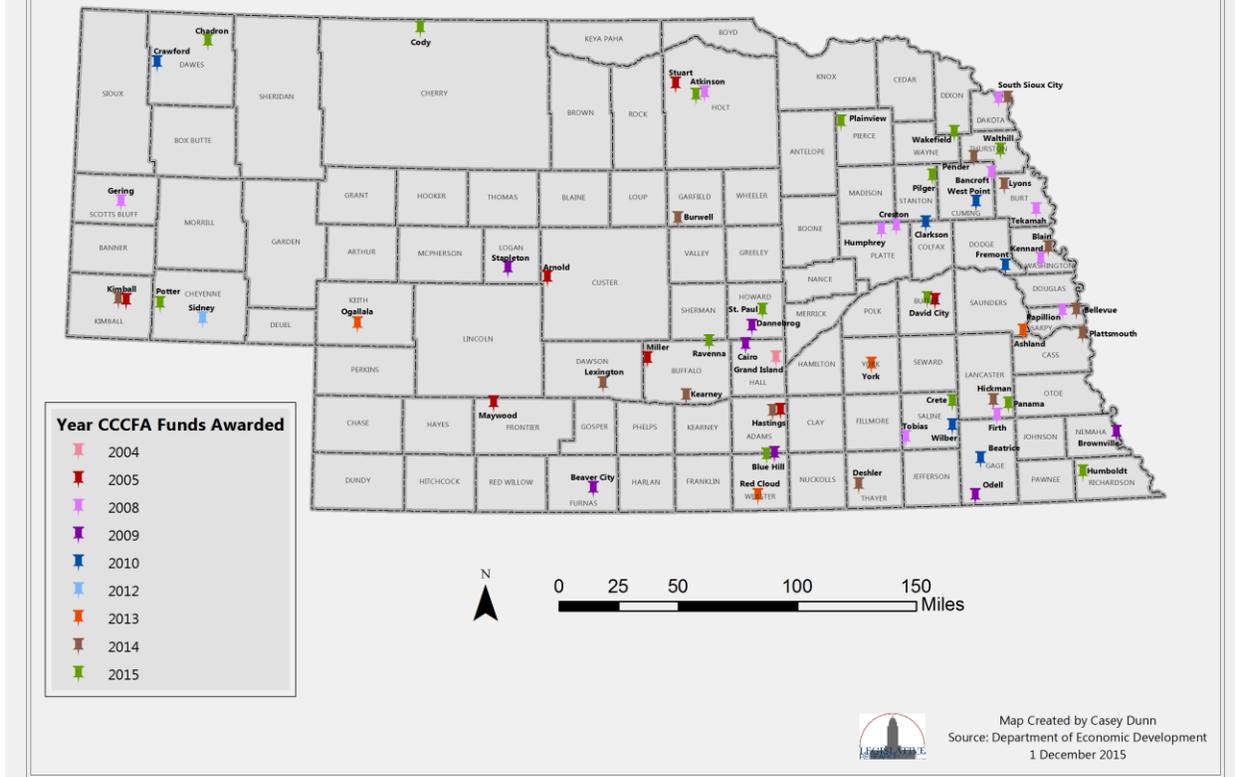


Figure 5. Municipalities receiving funds under the Civic & Community Center Financing Act (CCCFA)

The Sports Arena Facility Financing Assistance Act<sup>54</sup>, enacted in 2010<sup>55</sup>, expanded the sales tax turn-back concept in the Convention Center Facility Financing Assistance Act to smaller facilities. Under the Act, publicly-owned sports facilities with a seating capacity between 3,000 and 7,500 can apply for a state sales tax turn-back. The only municipality currently receiving assistance under the Sports Arena Facility Financing Assistance Act is the City of Ralston for the Ralston Arena.

<sup>54</sup> Nebraska Revised Statute §13-3101 to §13-3109

<sup>55</sup> LB 779 (2010)

## Potential Changes to Current Municipal Economic Development Programs

At the Urban Affairs Committee’s hearings on LR 155, the committee received a number of suggestions to improve upon and expand the economic development tools that are currently available to Nebraska municipalities. These proposed changes generally fell into two broad categories: 1) changes or additions to tools that are currently available to Nebraska municipalities; and 2) new tools that are currently being used by municipalities in other states, but that are not available to Nebraska municipalities.

This section focuses on changes to current economic development programs that are available to Nebraska municipalities which were proposed at one of the interim study hearings. While some suggestions are new, several have been previously introduced as legislation. In addition to summarizing the proposed changes, the section looks at the history of the proposed change if it has been previously proposed, and also examines any policy considerations that may be relevant to the Legislature.

*Discussion of these proposed changes is not meant as an endorsement or recommendation of any or all of the proposals. Rather, the goal is to provide useful information and a framework for future discussion on potential changes to Nebraska’s municipal economic development tools.*

### Local Option Municipal Economic Development Act (LB 840)

#### **1) Allow LB 840 Funds to be Used for “Workforce Housing”**

For a number of years, the shortage of available housing has been cited as one of the primary barriers to economic development and growth in rural Nebraska. The authority to fund so-called “workforce housing” through LB 840 plans was the most suggested change heard by the committee at its Norfolk hearing, and was suggested by mid-sized<sup>56</sup> and smaller<sup>57</sup> municipalities at both the Lincoln and Norfolk hearings.

The definition of “qualifying business” in Nebraska Revised Statute §18-2709 limits the use of LB 840 funds to certain statutorily-identified business activities<sup>58</sup>, such as manufacturing, research and development, and tourism<sup>59</sup>. The Act has been amended

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<sup>56</sup> The City of Norfolk and the City of North Platte

<sup>57</sup> The City of Neligh

<sup>58</sup> Municipalities with a population under 2,500 are exempt from this limitation, so funds are not restricted based upon business sector

<sup>59</sup> These are just a few examples, a full list of qualifying business activities can be found in §18-2709

multiple times to add additional business activities, including retail<sup>60</sup>, low- and moderate-income housing<sup>61</sup>, broadband internet access<sup>62</sup>, film production<sup>63</sup>, rural natural gas infrastructure<sup>64</sup>, and relocation incentives for new residents<sup>65</sup>.

While low- and moderate-income housing were added as eligible business activities in 1995<sup>66</sup>, the workforce housing needs cited at the interim hearings in many cases could not qualify as low or moderate-income. Testimony heard by the committee emphasized situations where local businesses were able to successfully recruit candidates for management or mid-level positions, but the candidates ultimately rejected the offer due to the inability to find suitable housing.

Potential issues in implementing this proposal include crafting a suitable definition for “workforce housing”, determining whether statutory criteria for workforce housing is necessary, and determining whether to allow workforce housing as an option only for certain classes of municipality. To an extent, the current statutory approach to low- and moderate-income housing could serve as a guide. Nebraska Revised Statute §18-2710.01 provides statutory criteria for LB 840 programs which involve grants or loans for the construction or rehabilitation of low- or moderate-income housing, while §18-2709 limits the use of LB 840 funds for low- and moderate-income housing to cities of the first class, cities of the second class, and villages.

## **2) Clarify the Authority of Municipalities to Amend Existing LB 840 Plans**

Clarifying the ability of municipalities to amend an existing LB 840 program to include new qualifying businesses or activities is another suggested change that was discussed at both the Lincoln and Norfolk hearings. Under Nebraska Revised Statute §18-1714, municipalities have the authority to amend their LB 840 plan “to conform to the provisions of any existing or future state or federal law<sup>67</sup>”, but that same section also prohibits them from amending their plan to “fundamentally alter its basic structure or goals<sup>68</sup>” without re-submitting the plan to the voters.

Due to the conflicting language in statute, a number of municipalities had expressed confusion about whether a municipality would have to re-submit its LB 840 plan to the voters in order to add a new type of qualifying business or activity that had been

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<sup>60</sup> Added for municipalities with a population between 2,500 and 10,000 in 1994 (LB 1188), expanded to all municipalities in 2011 (LB 471)

<sup>61</sup> LB 207 (1995)

<sup>62</sup> LB 827 (2001)

<sup>63</sup> LB 863 (2012)

<sup>64</sup> LB 1115 (2012)

<sup>65</sup> LB 295 (2013)

<sup>66</sup> LB 207 (1995)

<sup>67</sup> Nebraska Revised Statute §81-1714(2)

<sup>68</sup> Nebraska Revised Statute §81-1714(3)

subsequently added to the Act by the Legislature. In fact, multiple municipalities included language in their original LB 840 plans purporting to approve “any qualifying businesses or activities approved by the Legislature in the future”.

In January, Senator Coash requested an Attorney General’s Opinion on that question, and the opinion<sup>69</sup> found that current statutory language requires voter approval before a municipality may add an additional qualifying business or activity, even in cases where the statutory authority to include that business or activity was added to the Act by the Legislature after the municipality enacted its original LB 840 plan. Unfortunately, the opinion did not directly address cases where an LB 840 plan that was approved by the voters also included language purporting to approve “any qualifying businesses or activities approved by the Legislature in the future”. A copy of the Attorney General’s Opinion is included in the appendices.

Testimony heard by the committee on the issue of LB 840 plan amendment stressed the need for maximum flexibility in the tool, due to the fluid and dynamic nature of economic development. Municipalities often face tight deadlines in their efforts to recruit and retain businesses, and economic development officials were concerned that if forced to re-submit their LB 840 plans to the voters to incorporate new businesses or activities in their economic development efforts, opportunities would potentially be lost.

While the language of Article XIII, Section 2 of the Nebraska State Constitution clearly provides that the adoption of an LB 840 plan requires voter approval, there is no language in Article XIII, Section 2 regarding the amendment of LB 840 plans<sup>70</sup>. As a result, a strong argument could be made that Article XIII, Section 2 does not prohibit the Legislature from allowing the amendment of LB 840 plans without voter approval. Conversely, the argument could also be made that since voter approval is required to adopt an LB 840 plan, voter approval should also be required to amend an LB 840 plan.

### **3) Allow Grants and Loans Under LB 840 to be Made to Other Political Subdivisions**

When LB 840 passed in 1991, its primary purpose was to enable municipalities to provide loans and grants to private businesses. Qualifying business, as defined in Nebraska Revised Statute §18-2709, has historically been limited to private business entities, such as corporations, partnerships, and LLCs. After concerns were raised that a handful of municipalities may have been making loans and grants to other political subdivisions instead of to qualifying businesses as defined in §18-2709, the Legislature passed legislation in 2015<sup>71</sup> to further clarify that loans and grants under the Act may

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<sup>69</sup> AGO Opinion 15-001

<sup>70</sup> See *Id.*

<sup>71</sup> LB 150 (2015)

not be made to political subdivisions, state agencies, or other governmental subdivisions<sup>72</sup>.

At both the Lincoln and Norfolk hearings, representatives from some municipalities as well as representatives from other political subdivisions testified in favor of allowing grants and loans under LB 840 to be made to other political subdivisions. While such a change would in effect be a reversal of LB 150, which passed the Legislature on a vote of 47-0 in 2015, the argument was made that allowing municipalities to make grants and loans to other political subdivisions would help foster partnerships between municipalities and other political subdivisions, such as community colleges and county hospitals.

Support for this proposal was not universal, as the League of Nebraska Municipalities testified in opposition to allowing grants and loans under LB 840 to be made to other political subdivisions at both the Lincoln and Norfolk hearings. When Article XIII, Section 2 of the Nebraska State Constitution was adopted to pave the way for the passage of LB 840, the purpose of the change was to allow municipalities to provide loans and grants to private businesses. Opposition to allowing grants and loans to other political subdivisions under LB 840 largely stems from concern that it departs from the historical purpose of LB 840 and could lead to other political subdivisions viewing municipalities' LB 840 funds as a potential source of revenue. Additionally, municipalities currently have other options available to them to partner with other political subdivisions, most notably interlocal agreements under the Interlocal Cooperation Act<sup>73</sup>.

#### **4) Increase Statutory Caps on LB 840 Programs**

In addition to limits on the types of expenditures that municipalities can make with their LB 840 plans, the Act places two statutory caps on a municipality's annual spending on its LB 840 program<sup>74</sup>: 1) a flat dollar amount based upon the classification of the municipality; and 2) an amount not to exceed 0.4% of the taxable valuation in the municipality the prior year. Discussions at both the Lincoln and Norfolk hearings briefly considered whether to increase either of the two caps.

As originally passed, the flat-dollar spending cap was set at \$3 million for cities of the metropolitan class and cities of the primary class, and \$1 million for cities of the first class, cities of the second class, and villages. In 2000<sup>75</sup>, a three-tiered cap was created, with cities of the metropolitan class and cities of the primary class having a \$3 million cap, cities of the first class having a \$2 million cap, and cities of the second class and

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<sup>72</sup> Except for rural natural gas infrastructure development

<sup>73</sup> Nebraska Revised Statute §13-801 to §13-827

<sup>74</sup> Municipalities can also self-impose an additional cap on their program when seeking voter approval

<sup>75</sup> LB 1258 (2000)

villages having a \$1 million cap. These caps were each increased by \$2 million in 2011<sup>76</sup>, with cities of the metropolitan class and cities of the primary class having a \$5 million cap, cities of the first class having a \$4 million cap, and cities of the second class and villages having a \$3 million cap.

The second cap, based on taxable valuation, has not been increased since 1991. This cap was mirrored off of a similar spending cap for municipal publicity campaigns<sup>77</sup>, and could potentially limit the ability of municipalities with a lower taxable valuation but high potential sales tax revenue from fully utilizing their local option sales tax dollars for economic development purposes. While several cities were approaching the flat-dollar caps at the time they were increased in 2011, there have been no reported cases of municipalities approaching the cap based off of 0.4% of taxable valuation.

### Tax-Increment Financing (TIF)

Both the Lincoln and Norfolk hearings included discussions of how Nebraska's TIF statutes differ from TIF statutes in other states, particularly neighboring states like Iowa. Testifiers highlighted three primary differences: 1) the "substandard and blighted" requirement; 2) the maximum TIF repayment period; and 3) the "but-for" test.

#### **1) Replace or Eliminate "Substandard and Blighted" Requirement**

Proposals to replace or eliminate the requirement in Article VIII, Section 12 of the Nebraska State Constitution that property be designated as "substandard and blighted" in order to be eligible for TIF have been introduced numerous times in the Legislature, most recently in 2007<sup>78</sup>, 2012<sup>79</sup>, and 2013<sup>80</sup>. The 2012 and 2013 proposals would have replaced the "substandard and blighted" requirement with a requirement that the property be "in need of rehabilitation or redevelopment", while the 2007 proposal would have outright repealed the "substandard and blighted" requirement.

As shown in Figure 6<sup>81</sup>, 33 states have some form of blight requirement as part of their TIF statutes<sup>82</sup>. Historically, one of the main arguments made in favor of replacing or eliminating the "substandard and blighted" language is the belief of many property owners that declaring their property "substandard and blighted" negatively impacts

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<sup>76</sup> LB 471 (2011)

<sup>77</sup> See discussion of Municipal Publicity Campaigns, *supra*

<sup>78</sup> LR 2CA (2007)

<sup>79</sup> LR 376CA (2012)

<sup>80</sup> LR 29CA (2013)

<sup>81</sup> Data in Figure 6 is from the 2008 TIF State-by-State Report, issued by the Council of Development Finance Agencies. An update to this report is expected to be released in early 2016.

<sup>82</sup> Forty-nine states (all except Arizona) and the District of Columbia have authorized the use of TIF

their property values, when it most cases it does not. Testifiers at the Lincoln hearing also suggested that replacing or eliminating the “substandard and blighted” requirement would offer greater flexibility to Nebraska municipalities, and help bring our TIF statutes more in line with neighboring states like Kansas, which does not have a blight requirement, and Iowa, which has a blight requirement but allows the use of TIF solely for economic development purposes in limited circumstances.

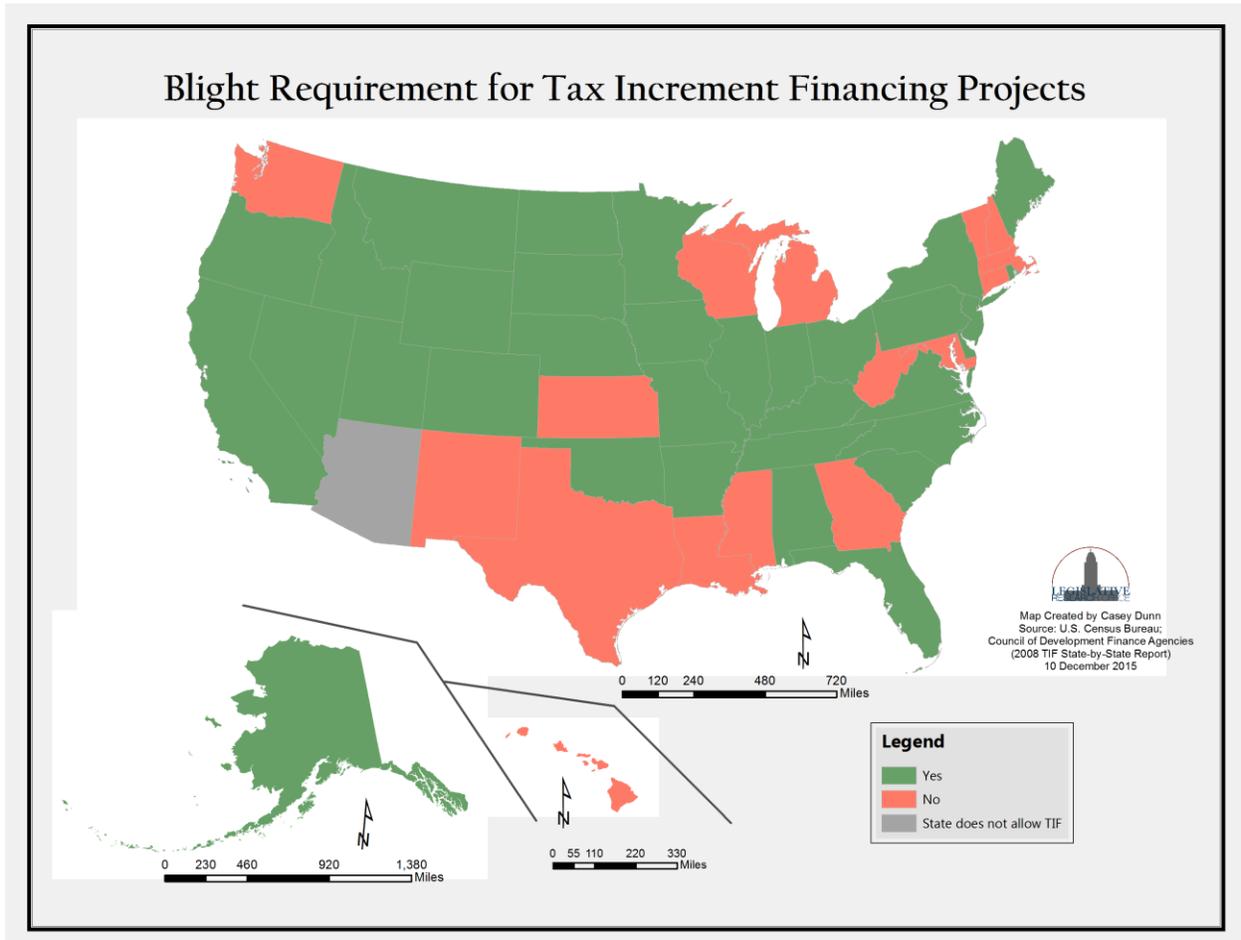


Figure 6. Blight requirements in state tax-increment financing (TIF) statutes

Since this proposal would require amending Article VIII, Section 12, the process of actually implementing the change would span at least two legislative sessions. The Legislature would first have to approve a resolution to amend Article VIII, Section 12, that resolution would have to be adopted by the voters, and then the Legislature would have to amend the TIF statutes to reflect the constitutional change.

## 2) Extend TIF Repayment Period

Like proposals to replace or eliminate the “substandard and blighted” requirement, proposals to extend the maximum length of time for the repayment of TIF bonds have

been introduced multiple times, in both 2012<sup>83</sup> and 2013<sup>85</sup>. Testifiers at the Lincoln hearing cited Nebraska’s 15-year TIF repayment period as evidence that Nebraska’s TIF statutes are one of the most restrictive TIF laws in the country.

Currently, Nebraska is one of just three<sup>86</sup> states with a maximum TIF repayment period of just 15 years, and one of those states – Montana – allows an extension to 25 years. As shown in Figure 7<sup>87</sup>, the maximum TIF repayment period in other states ranges from just 15 years to an unlimited period of time.

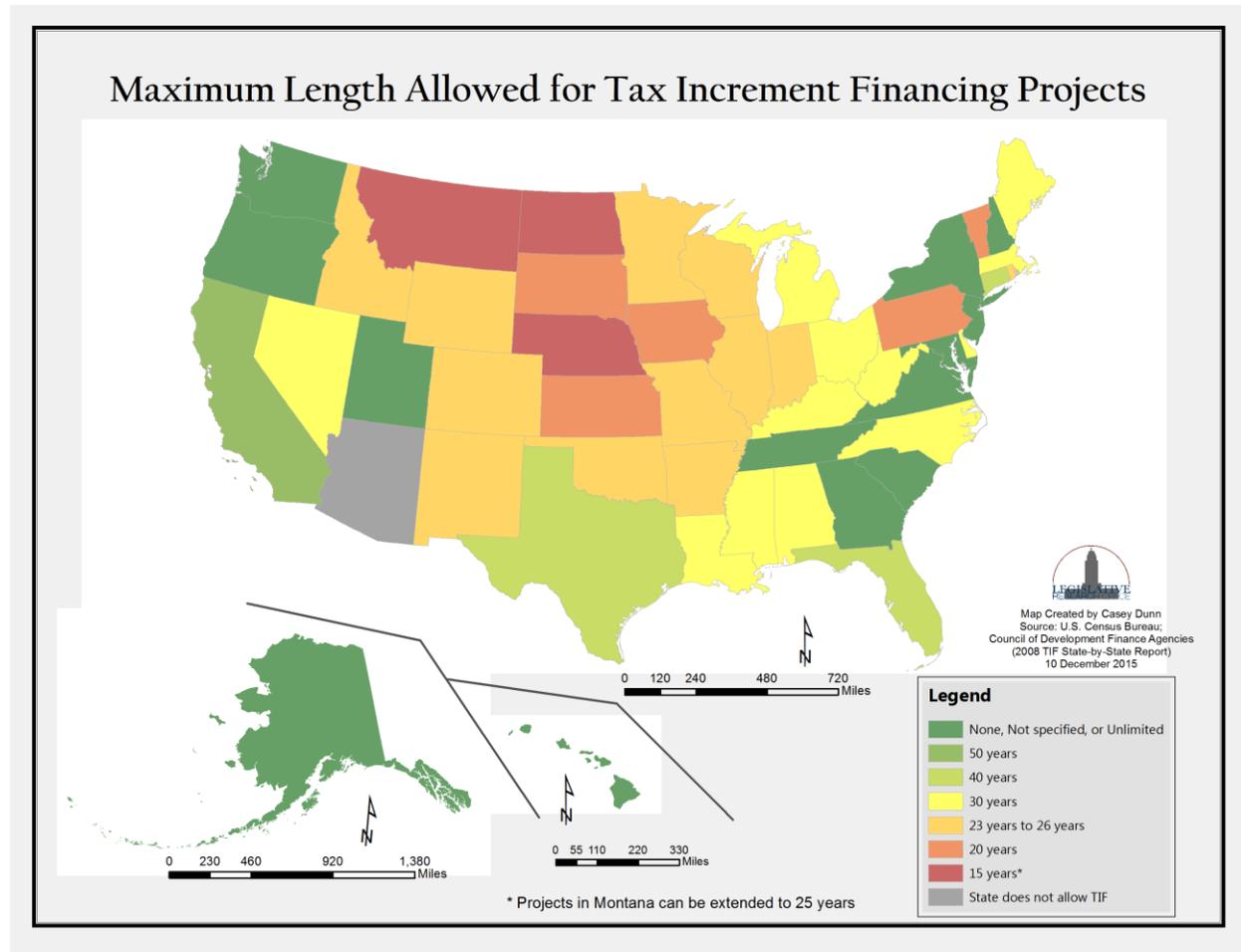


Figure 7. Maximum repayment period under state tax-increment financing (TIF) statutes

<sup>83</sup> LR 376CA (2012)

<sup>84</sup> LR 376CA also would have allowed the Legislature to further extend the TIF repayment period to 30 years in cases where more than 50% of the project area was formerly state-owned property.

<sup>85</sup> LR 29CA (2013)

<sup>86</sup> Montana, Nebraska, and North Dakota

<sup>87</sup> Data in Figure 7 is from the 2008 TIF State-by-State Report, issued by the Council of Development Finance Agencies. An update to this report is expected to be released in early 2016.

Since this proposal would require amending Article VIII, Section 12, the process of actually implementing the change would span at least two legislative sessions. The Legislature would first have to approve a resolution to amend Article VIII, Section 12, that resolution would have to be adopted by the voters, and then the Legislature would have to amend the TIF statutes to reflect the constitutional change.

### 3) Eliminate “But-For” Test

Nebraska Revised Statute §18-2116 requires that prior to approving a redevelopment plan that utilizes TIF, a municipality must find that the plan would not be economically feasible without the use of TIF<sup>88</sup> and would not occur in the community redevelopment area without the use of TIF<sup>89</sup>. These requirements are commonly referred to as the “but-for” test<sup>90</sup>.

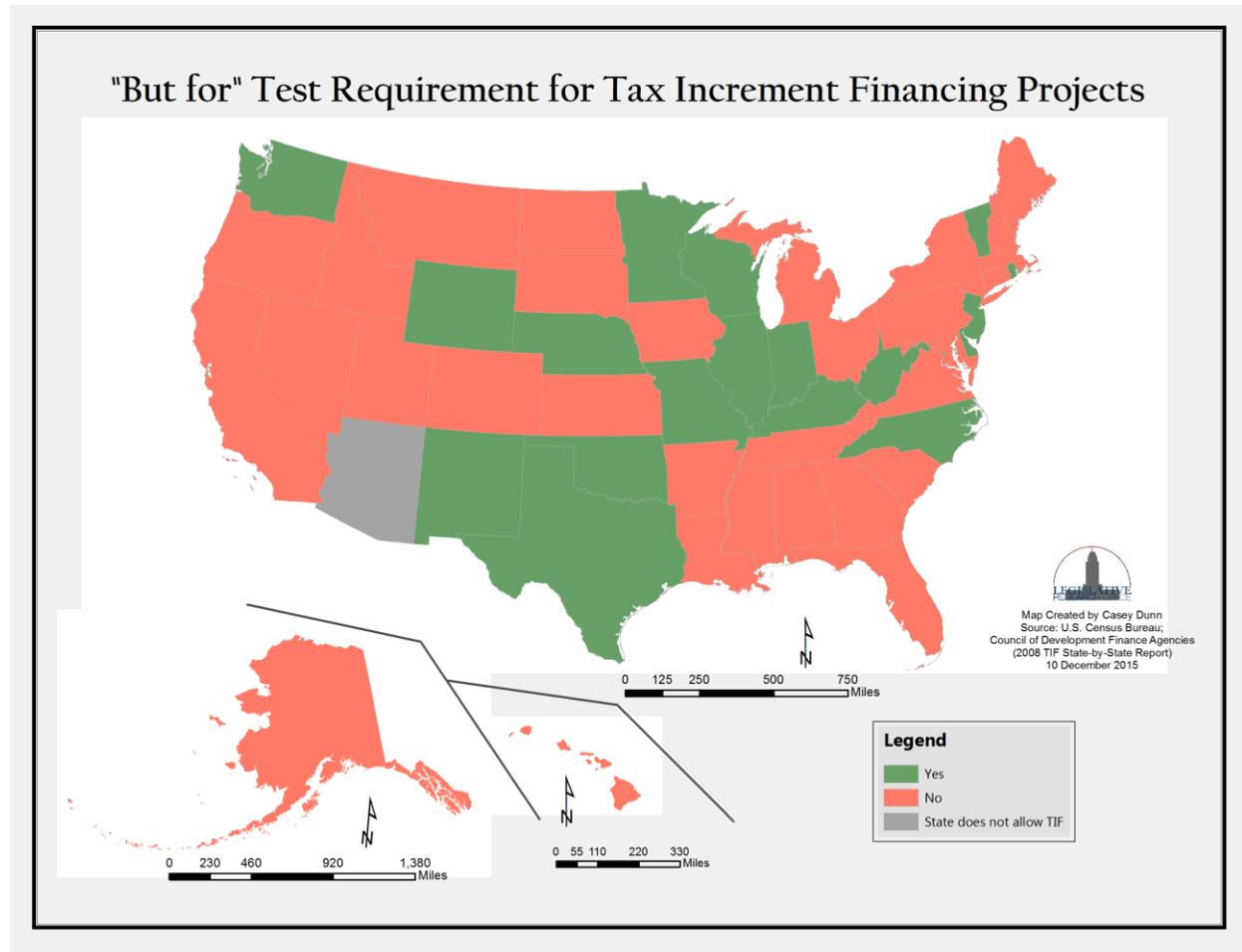


Figure 8. “But-For” requirements in state tax-increment financing (TIF) statutes.

<sup>88</sup> Nebraska Revised Statute §18-2116(1)(b)(i)

<sup>89</sup> Nebraska Revised Statute §18-2116(1)(b)(ii)

<sup>90</sup> It is worth noting, however, that the words “but for” do not actually appear in the statutory language that creates the “but-for” test.

As shown in Figure 8<sup>91</sup>, 18 states and the District of Columbia have some form of “but-for” requirement as part of their TIF statutes<sup>92</sup>. Testifiers at the Lincoln hearing cited the lack of a “but-for” requirement as a key difference between the TIF statutes in Nebraska and neighboring Iowa.

While eliminating the “but-for” test would provide greater flexibility to municipalities in utilizing TIF as an economic development tool, the test is often seen as a limitation on the use of TIF in cases where it may be unwarranted or unnecessary. In fact, the committee has previously heard testimony questioning whether the “but-for” test was being followed by municipalities in some cases. As a result, there may be greater interest in strengthening or clarifying the “but-for” test, rather than eliminating it.

#### **4) Resist Further Restrictions on Use of TIF**

While not a suggested change per se, a common theme heard at both the Lincoln and Norfolk hearings was strong opposition to further restrictions on the use of TIF by municipalities. Since 2012, at least one proposal to limit the use of TIF by municipalities<sup>93</sup> or establish state-level oversight of TIF projects<sup>94</sup> has been heard by the committee each session. The most recent legislative session saw three such bills<sup>95</sup>, each of which faced significant opposition from municipalities, chambers of commerce, and other business and development interests. As discussed earlier<sup>96</sup>, many municipalities already view Nebraska’s TIF statutes as among the most restrictive in the country.

### County Industrial Areas

#### **1) Update County Industrial Area Statutes**

Nebraska’s county industrial area statutes were passed in 1957<sup>97</sup>, and have remained largely unchanged since that time. In the more than 50 years since the designation of the first county industrial areas, several cities have grown adjacent to or completely around nearby county industrial areas, creating “doughnut holes” around those cities. While Nebraska Revised Statute §13-1117 provides that property owners within a county industrial area must provide for water, electricity, sewer, and fire and police protection at their own expense, in practice many cities do provide some city services

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<sup>91</sup> Data in Figure 8 is from the 2008 TIF State-by-State Report, issued by the Council of Development Finance Agencies. An update to this report is expected to be released in early 2016.

<sup>92</sup> As noted *supra*, Forty-nine states (all except Arizona) and the District of Columbia have authorized the use of TIF

<sup>93</sup> LB 918 (2012), LB 529 (2013), LB 1095 (2014), LB 238 (2015), LB 596 (2015)

<sup>94</sup> LB 1095 (2014), LB 445 (2015), LB 596 (2015)

<sup>95</sup> LB 238 (2015), LB 445 (2015), LB 596 (2015)

<sup>96</sup> See discussion on TIF repayment period, *supra*

<sup>97</sup> Laws 1957, c. 51, §1 to §7, pp. 240-242

within county industrial areas due to their proximity to city limits. Because county industrial areas cannot be annexed, they can also serve as an impediment to orderly municipal growth and planning.

Testifiers at both the Lincoln and Norfolk hearings highlighted the need to update the county industrial area statutes to address the “doughnut hole” issue, either by establishing a termination date for county industrial area designations or by creating a process to allow the annexation of a county industrial area by a municipality in certain circumstances. Legislation that would have established a termination date for county industrial area designations was introduced in 2009<sup>98</sup>, but was not enacted.

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<sup>98</sup> LB 350 (2009)

## Potential New Municipal Economic Development Programs

In addition to suggestions to change the economic development tools that are currently available to Nebraska municipalities, the Urban Affairs Committee received a number of suggestions for new economic development tools or programs at its hearings on LR 155.

While some suggestions are new, several have been previously introduced as legislation. In addition to summarizing the proposed new tools or programs, this section looks at the history of the proposed new tool or program if it has been previously proposed, and also examines any policy considerations that may be relevant to the Legislature.

*Discussion of these proposed new tools or programs is not meant as an endorsement or recommendation of any or all of the proposals. Rather, the goal is to provide useful information and a framework for future discussion on potential new economic development tools or programs.*

### Property Tax Abatement

At one of the Urban Affairs Committee's public hearings during the 2015 legislative session, a handout was distributed by one of the testifiers that listed the various economic development tools that were available in Kansas City, Missouri. While a number of comparable programs are currently available to Nebraska municipalities, one major difference between the types of economic development tools available in Nebraska and those available in other states is the lack of property tax abatement in Nebraska.

Tax abatement is a prevalent incentive in most states, allowing state and local governments to exempt or reduce the taxes otherwise owed by businesses in order to induce the business to relocate or expand within the state or local government. The Nebraska Advantage Act<sup>99</sup> and the Employment and Investment Growth Act<sup>100</sup> (commonly referred to as LB 775) serve as a form of tax abatement that is available to the state, but not to municipalities. These state programs provide income and sales tax credits, as well as a 10-year personal property tax abatement for certain projects.

The Uniform and Proportionate Clause in Article VIII, Section 1 of the Nebraska State Constitution requires that real property taxes must be valued and collected in the same

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<sup>99</sup> Nebraska Revised Statute §77-5701 to §77-5735

<sup>100</sup> Nebraska Revised Statute §77-4101 to §77-4112

way, which effectively prohibits municipalities from offering property tax abatement. The most common form of tax abatement utilized in other states, property tax abatement can be granted either as a freeze on assessed valuation prior to improvements, a reduction in the property tax rate for a designated period of time, or an exemption of a portion of assessed valuation.

Testifiers at both the Lincoln and Norfolk hearings, particularly representatives of municipalities that border other states, highlighted the inability to offer property tax abatement as a competitive disadvantage with municipalities in Iowa, Kansas, and other neighboring states.

Since this proposed new tool would require amending the Nebraska State Constitution, the process of actually implementing the change would span at least two legislative sessions. The Legislature would first have to approve a resolution to either eliminate or amend the Uniform and Proportionate Clause in Article VIII, Section 1, that resolution would have to be adopted by the voters, and then the Legislature would have to adopt statutory language authorizing property tax abatement.

### New Special Districts

#### **1) Transportation Development Districts (TDDs)**

Transportation Development Districts (TDDs) are special taxing districts created for the purpose of developing and improving transportation infrastructure. Typically, TDDs enable the use of sales tax or property tax to fund a wide variety of transportation infrastructure, including local streets and highways, mass transit, and multi-modal infrastructure. Unlike Urban Growth Districts<sup>101</sup>, TDDs usually provide for a new source of funding, as opposed to targeting of an existing funding source.

Recommended in written reports submitted to the committee by the Metropolitan Area Planning Agency (MAPA) and Omaha by Design, TDDs are sometimes referred to Transportation Improvement Districts or Transportation Benefit Districts. TDDs were cited by testifiers at the Lincoln hearing as a possible tool to fund mass transit projects such as the proposed urban circulator project in Omaha. As shown in Figure 9, some form of TDDs have been authorized in at least eleven states, including the neighboring states of Kansas and Missouri.

Legislation to authorize the creation of TDDs has previously been introduced in 2009<sup>102</sup> and 2010<sup>103</sup>.

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<sup>101</sup> See discussion on Urban Growth Districts, *supra*

<sup>102</sup> LB 536 (2009)

<sup>103</sup> LB 381 (2010)

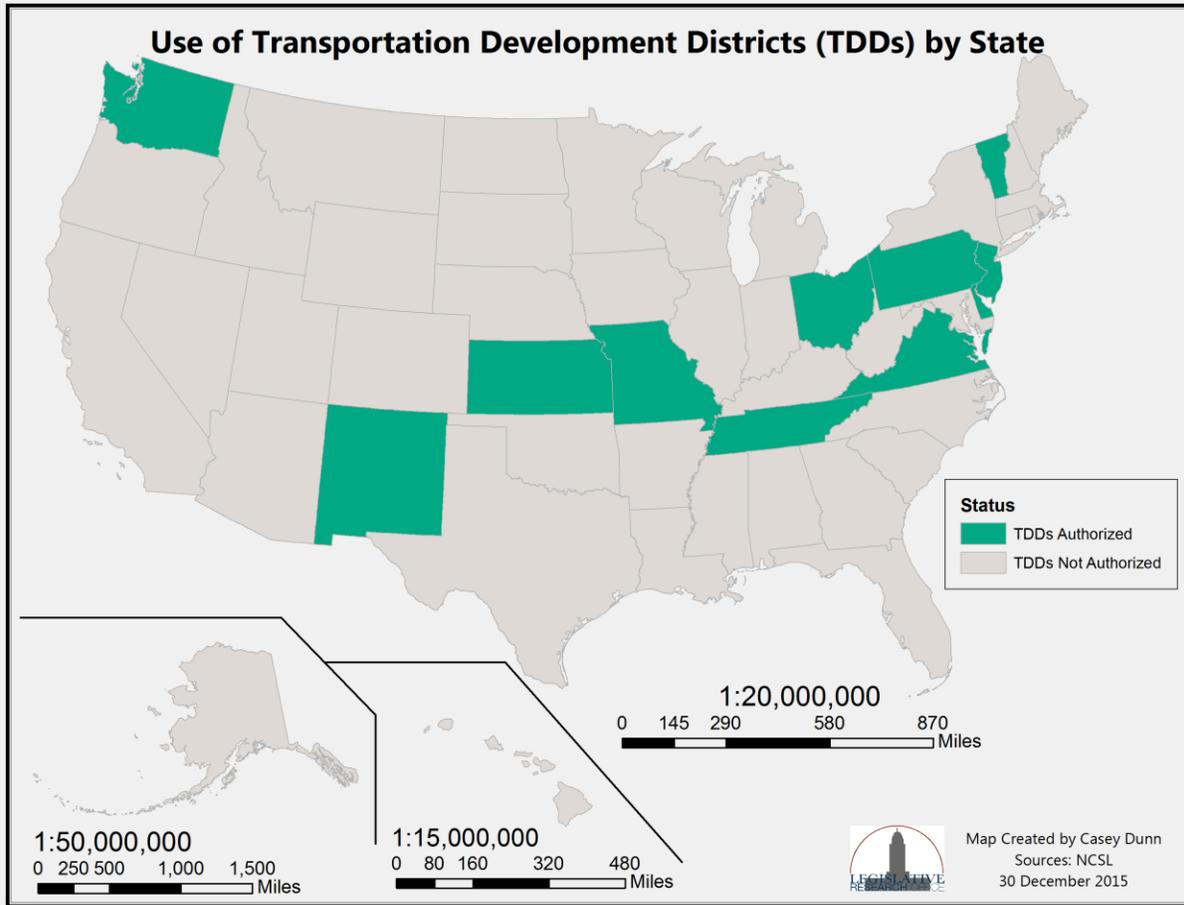


Figure 9. States that have authorized Transportation Development Districts (TDDs).

## 2) Community Improvement Districts (CIDs)

Essentially a variation of a Business Improvement District (BID), Community Improvement Districts (CIDs) are special-purpose districts created by a city to help fund improvements and developments within an established area. Unlike BIDs, a CID is typically not restricted to an established business area, and can be used in urban and suburban residential neighborhoods. CIDs typically levy a sales tax within the district boundaries or impose special assessments on property within the district to fund community revitalization and redevelopment efforts.

Recommended in written reports submitted to the committee by MAPA and Omaha by Design, CIDs are referred to by varying names in different states, including Community Benefit Districts, Community Commercial Districts, and Neighborhood Improvement Districts. In addition to the traditional improvements funded by BIDs<sup>104</sup>, CIDs have been utilized in other states to fund a wide variety of improvements and services,

<sup>104</sup> See discussion on BIDs, *supra*

including reducing traffic congestion and investing in neighborhood police forces. As shown in Figure 10, some form of CIDs have been authorized in at least ten states, including the neighboring states of Kansas and Missouri.

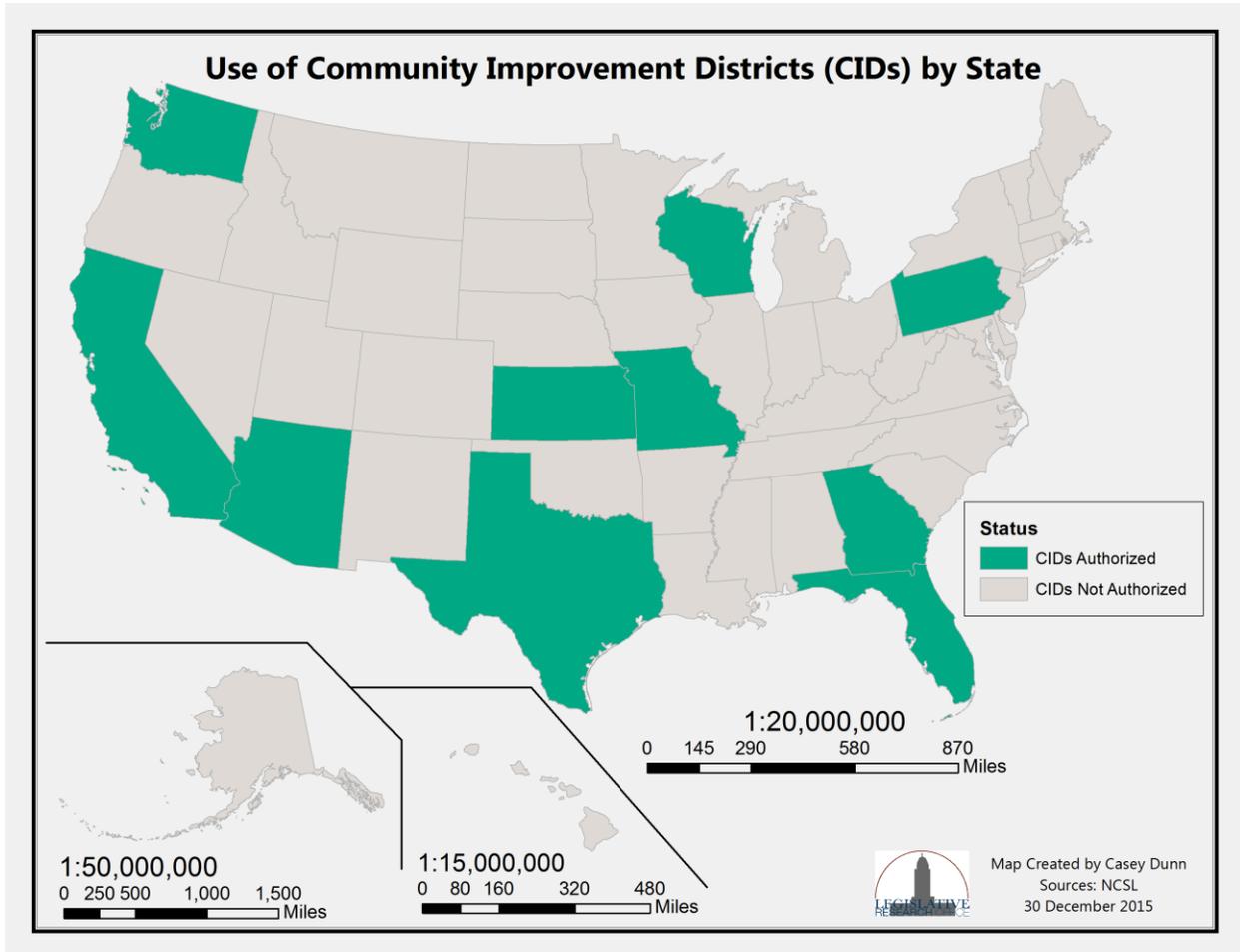


Figure 10. States that have authorized Community Improvement Districts (CIDs).

Legislation to authorize the creation of CIDs was previously introduced in 2010<sup>105</sup>.

### 3) Enhanced Infrastructure Financing Districts

Written testimony submitted to the committee by Nebraskans for the Arts recommended authorizing Enhanced Infrastructure Financing Districts (EIFDs). Established in the State of California in 2014, EIFDs are special districts designed to “fill the hole” left by the dissolution of redevelopment agencies in California. EIFDs utilize intergovernmental and private partnership models to help fund local infrastructure needs, allowing multiple financing tools to be bundled together.

<sup>105</sup> LB 381 (2010)

The primary financing mechanisms authorized under EIFDs appear to be similar to TIF, so it is unclear whether EIFDs would constitute a new tool, or simply a variation on TIF. To the extent that EIFDs would utilize TIF, any new statutory provisions would have to comply with the TIF-enabling provisions in Article VIII, Section 12 of the Nebraska State Constitution.

### Nebraska Cultural Finance Authority

Written testimony submitted to the committee by Nebraskans for the Arts recommended the establishment of a Nebraska Cultural Finance Authority, a state authority that would help provide funding for municipalities to finance or refinance cultural assets that are important to the local community. A similar model, the Nebraska Educational, Health, and Social Services Finance Authority<sup>106</sup>, currently assists Nebraska's private colleges and universities, private healthcare institutions, and private social service institutions in the construction, financing, and refinancing of facilities, equipment, and structures.

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<sup>106</sup> See the Nebraska Educational, Health, and Social Services Finance Authority Act, Nebraska Revised Statute §58-801 to §58-866

## Conclusion

When faced with the question of whether municipalities in Nebraska need additional economic development tools, the answer presented to the Urban Affairs Committee through LR 155 was a resounding, “YES!” While the Uniform and Proportionate Clause in Article VIII, Section 1 of the Nebraska State Constitution is a significant barrier to the common tool of property tax abatement, a variety of economic development tools that have been successfully implemented in other states could bring enhanced flexibility and diversity to the municipal toolbox in Nebraska.

Aside from new tools like CIDs and TDDs, changes to existing tools like LB 840 and TIF present additional opportunities to enhance the economic development options available to Nebraska municipalities. While the specific needs of each city or village are unique, the broader need for flexibility in economic development tools is not. In order to maintain strong local control and accountability in municipal economic development tools, it is also critical that discussion of potential changes include attention to both accountability and transparency in the use of these programs.

Regardless of what steps are taken by the Legislature to improve and enhance local economic development tools, consistent review of the tools in the toolbox will be necessary to ensure that Nebraska’s municipalities continue to be the economic engines of our state.

## Hearing Schedule

Friday, September 25<sup>th</sup>: Lincoln

1:30 p.m.

Room 1510, State Capitol

Thursday, November 5<sup>th</sup>: Norfolk

1:30 p.m.

Northeast Community College  
Lifelong Learning Center  
801 East Benjamin Avenue

## Appendices

### Legislative Resolutions

[LR 155](#)

[LR 152](#)

### Hearing Transcripts

[Friday, September 25<sup>th</sup> - Lincoln](#)

[Thursday, November 5<sup>th</sup> - Norfolk](#)

### Attorney General's Opinions

[AGO 15-001 Authority of a City to Amend an Economic Development Program Under the Local Option Municipal Economic Development Act](#)

### Reports Received by the Committee

[League of Nebraska Municipalities Binder - September 25, 2015](#)

[Metropolitan Area Planning Agency \(MAPA\), Economic Development Tools for Municipalities - September 2015](#)

[Omaha by Design, Financing Tools for Urban Redevelopment - September 2013](#)