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Urban Affairs Committee
November 09, 2007

[LR143 LR152]

SENATOR FRIEND: (Recorder malfunction) You are in room 1510 and this is the Urban Affairs interim study hearing, so if you're looking for...judiciary, cyberstalking, something of that...I don't know what is going on over there. I think I do know. You're in the wrong room. Again, this is Urban Affairs' interim study hearings. We've got a couple of items this morning: LR143 and LR152. Before we get started, a lot of folks in the room and obviously committee members and staff know about the firefighter in Wymore, Jeremy Wach. If we could have--politically correct or not--if we could have a moment of silence, I would ask for a moment of silence for Jeremy Walk and his family. The funeral is today at 1:00. We canceled some hearings this afternoon because of it. If we could just do that at this moment I would appreciate it. Thank you. Thank you very much. My name is Mike Friend, I am from Omaha, I represent District 10, northwest Omaha. And to my right, Senator Tom White, he is my neighbor, and he is District 8. District 8? Yeah. And Senator Janssen may be joining us later. Senator Janssen and Senator McGill, the Vice Chairwoman of the committee. Mr. Bill Stadtwald is the Legal Counsel. And I see Senator Cornett has joined us. Senator Cornett is from Bellevue. To my left is Beth Dinneen, the Committee Clerk. And Senator Rogert from District...what is that? I can't read it here, Kent. Sixteen. Thank you. And Senator Rogert has got an item on the agenda today as well. If we could silence our cell phones and pagers we would appreciate that. Everything is going to be transcribed, again, today, as a normal hearing. Those wishing to testify on a bill or on a hearing resolution, if you will, should come to the front of the room, get kind of in the on-deck area, be ready to be heard. Someone finishes testifying, if you could be ready to, you know, kind of take the seat, that would be great. I believe we have some green sign-in sheets just like in a normal hearing. If you would fill those out and place them in the testifier's box we would appreciate it. If you don't wish to testify, would like your name entered in the official record as being present at the hearing, please enter your name and information on the white sign-in sheet and we can have that entered for you. As you begin your testimony today, please, again, as per usual, say your name and then spell it for the record, so

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that we have that. Let's...we should be able to get through this stuff in an expeditious manner. I would ask you to not repeat a whole lot of what maybe somebody else has said during testimony. We can get through this, probably be done, I would hope by lunch time if everything goes fairly smoothly. That being said, we're not going to place time restrictions on you, but I might give you a wink and a nod. And then we can move on from there. If you have any handout material, the pages...I don't know this page... [LR143]

MOLLY KEENAN: I'm Molly. [LR143]

SENATOR FRIEND: Molly. Thank you, Molly. Are you from Lincoln? [LR143]

MOLLY KEENAN: No, North Platte. [LR143]

SENATOR FRIEND: North Platte. Molly is from North Platte. She will help you distribute any information you need distributed to committee members. And please no vocal...I don't think we have to worry about that today, but no vocal displays of support or opposition, if we could get through that. Anyway, we could get started. Mr. Stadtwald, I would ask you to maybe give us a historical perspective of LR143 and then Senator Rogert will take the issue and run with it from there. Mr. Stadtwald. [LR143]

BILL STADTWALD: Okay. For the record my name is Bill Stadtwald, S-t-a-d-t-w-a-l-d, Research Analyst for the Urban Affairs Committee, here to introduce LR143. This deals with a subject which has been part of the core of the Urban Affairs Committee's jurisdiction for a number of years: tax increment financing. We will in the next year, 2008, celebrate the thirtieth anniversary of the adoption of TIF. The voters of the state of Nebraska adopted Article VIII, Section 12 in 1978, which was the first time the authorization for tax increment financing. In the booklet that you have, most of the information that I'm just going to kind of briefly go through is available. Article 12 essentially states...or Section 12 says: for the purpose of rehabilitating, acquiring, or

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redeveloping substandard and blighted property in a redevelopment project as determined by law, any city or village of the state may, notwithstanding any other provision in the Constitution, without regard to charter limitations and restrictions, incur indebtedness, whether by bond, loans, notes, or otherwise...also authorizes tax increment financing, which simply means that upon the adoption of a proposal, the creation of the debt, the tax that is collected upon the increased value or the enhanced value of the property is devoted not to the political subdivisions, distributed to the various political subdivisions, for the use as other tax revenue, but solely for the purpose of retiring the indebtedness that was created to make the improvements. At such time as the debt has been paid off, the money reverts again to the various political subdivisions and pursues as normal. This cannot occur for longer than 15 years. That's the financing period. It has to be paid off within that period of time. From the very beginning of the use of tax increment financing there has been a tension which persists even until today between the notion of TIF as a means for improving property areas, substandard and blighted areas, which in the common parlance at the time it was adopted literally referred to ghettos and to the rundown areas of central cities; and the use of TIF as a means of economic development, as a way to provide incentives for businesses to locate in various areas and provide a way of enabling them to pursue economic activities the community felt was important to its future. One of the issues, one of the central issues and concerns with tax increment financing has been the fact that under our constitutional provision, it is a matter solely within the discretion of the cities and villages that exercise it. The Legislature may determine by law the definition of what is substandard and blighted property, but it is solely within the discretion of the city as to where they apply it and how they apply it. There is no oversight mechanism, there is no state body that looks and second-guesses what the municipal determination is. And the only real means within the law for challenging a decision by a city council in applying TIF to a property is by means of litigation, going to court and challenging the validity of the city's action. That reverts to a decision that has to be made by an individual citizen of that community. We don't have a definitive court ruling as to whether that would even apply to a resident of outside of the city whose taxes for the school

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district, for the county, for other purposes are being diverted for TIF purposes, as to whether that individual would have standing to challenge it or not. The further complication is the fact that it has an incredibly short statute of limitations. If an individual is to challenge a decision by a city council on designated property for TIF and granting TIF, they have 30 days after the effective date of the municipal action on that. If it's not done within that period of time it's conclusively presumed that the city has acted lawfully. An obvious reason for doing that, of course, is that it would be difficult to get financing for any project if there wasn't an early deadline. But it means that somebody has to act quickly. Within that context, even as early as 1984, we had the first challenge to the existing TIF statutes at that time. At that time there were several cities that decided to determine that their entire area was substandard and blighted. The Legislature then made some changes in the definitional sections of the statutes to actually set a limit saying that a first class city no more than 35 percent of the city could be declared substandard and blighted, the area of the city. And villages were allowed to go up to 100 percent of their area. That is in the definition of blighted under Section 18-2103. As I say, in 1997, there was a major attempt, LB875, to reform TIF, to change some of the definitions, to clarify matters, and to bring it up to date. And the problem has continued. The challenges to communities that people believed were declaring property subject to TIF which were not actually substandard and blighted under the definition in the statute, that the funds were being used for purposes other than those that were specifically authorized by statute. This lead up to a number of bills over the course of the years until in 2006, Senator Matt Connealy at that time and Senator Landis both made suggestions that it was time to change the way we looked at TIF to accept the fact that it was largely an economic development tool rather than a tool for dealing with blighted central city areas. And the proposal for a constitutional amendment, LR272CA and Senator Landis' proposal LR275CA were brought together into a proposal that became Amendment 6 on the ballot which went down to defeat by almost two to one in the last election in 2006. The basic difference in that proposal from current law were several. First of all, it removed the qualification that property had to be substandard and blighted before TIF could be applied. It left it largely to the discretion of

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the Legislature as to when TIF could be applied. And it brought it, again, under some form of state control through the Legislature, state oversight. It would bring the process into a position where the Legislature could keep an eye on it, either through itself or through the administrative branch or locally in some fashion. It authorized municipalities to exercise TIF not just within their own boundaries but within the area of their extraterritorial zoning jurisdiction. It authorized counties, for the first time, to use TIF. And it also extended the time span within which TIF could be done from 15 years up to 20 years. Senator Landis' proposal, which was amended into that further, brought in some special qualifications if the property was formally state-owned. It would allow an extension of the financing up to a period of 30 years. The idea being that there are a number of parcels of state property which are in or near current municipalities and that the only possibility for developing them or dealing with the problems of those properties was by the use of TIF and by some expanded financing and with the cities as well. As I said, that proposal went down into defeat in Amendment 6, 151,000 in favor to 344,000 against. In the last...in this last legislative session, 2007, in the early part of this year, Senator Rogert introduced LR2CA, which was in all facets identical to amendment 6. In addition to that, the committee proposed an amendment which would have extended the financing from 15 years to 20 years. That was the only major change that was done to that. That bill was advanced by the committee. Nobody testified against it at the committee hearings. It went to the floor of the Legislature and there it was held pending the opportunity for the committee to review it a little bit further in the context of an interim study hearing. I want to point out just a couple of other particular items. You have on your desks a copy of the book that is part of the annual report that's provided...municipalities since 1997 have been required to report to the Department of Revenue, initially...now it's the Department of Revenue, at that time it was the Department of Property Assessment and Taxation. This is the most recent version of that report. Just to give you some idea, and you can find it in the book, but I have put some of the summary pages in the material provided to committee. Right at the very end of the book it gives you some sense of the size of tax increment financing in Nebraska. There are currently, or as of December of last year, 443 projects, TIF

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projects in the state of Nebraska. The excess tax, the amount of tax that is used to pay off the financing for those TIF projects, the amount of tax that's essentially being diverted from the normal property tax stream amounts to nearly \$30.5 million. That reflects against an excess value, in other words, value that's been created by TIF, value which is being taxed to pay off the debts that were incurred for that purpose, \$1.46 billion of valuation in the state of Nebraska. And it's grown substantially over the years. From the first year in which reports were made, the total amount of excess taxes was \$12.6 million for 183 projects, up to as we noted now, \$30.4 million and 443 projects. As you would expect, Douglas County has the largest--and I have provided some of the summary sheets at the very end--Douglas County has the largest number of projects. And that was an excess tax of \$16.169 million. In other words, roughly half of all the TIF projects are being done in Douglas County, 132 actual projects. But it doesn't necessarily follow that it goes with the population or the size of the county. Dawson County, with a population of 25,000 people, has \$1.4 million in excess tax and 35 projects. That quite literally is 40 percent of what Lancaster County has, and it is more than double what Sarpy County has in TIF projects. It is being used heavily in some areas and not in other areas. That is roughly what the current situation is. If you have any questions. [LR143]

SENATOR FRIEND: Thank you, Mr. Stadtwald. Any questions for Bill from the committee? Bill, which is the...of the 443 projects, which county or which area seems to be...where does it seem to be the most predominant. I mean, per capita, Douglas... [LR143]

BILL STADTWALD: Douglas County actually has half of the taxes that are collected, although it's somewhat less than that. They have some larger projects, 132 projects. Lancaster County has 20 projects and about \$3.6 million in excess taxes. But as I say, you go to Sarpy County and it's a little less than \$700,000 in excess taxes on five projects. All of those are in Bellevue, by the way. Dawson County--which is much smaller, 25,000 people, that's literally only half the size of the city of Bellevue itself--they

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account for \$1.4 million in the excess taxes and 38 projects. Adams County...there are 44 projects going on in Adams County, all of those are in the city of Hastings. And their total there is \$830,000. [LR143]

SENATOR FRIEND: I'm asking you to make a...and maybe this was help us, maybe it won't. I'm asking you to make a value judgment here. If one of the reasons LR2CA was brought, I mean, the main reason, has been addressed over the last, you know, five years, is because there's a perception that tax increment...that substandard and blighted hammer is being abused. I mean, I'm asking you to make a guess. I mean, of the 443 projects, I'm not asking you how much abuse is out there. I'm asking you how easy it is for a city council to rubber stamp a substandard and blighted, because when we're out on the...I mean, I'm wondering if the abuse is there that we, I guess, are always told is there. And I'm not asking you to tell me that it is. I'm asking you how do we know and how would we find out? Where's the oversight? [LR143]

BILL STADTWALD: There is no formal oversight in the sense...the only real information that we have, other than if we were to follow each one of the communities, is in the report that's provided right there. Sometimes that report will provide you significant data. It will tell you what the project is about, and what is being done with it. In other instances it won't. [LR143]

SENATOR FRIEND: The counties provide this information... [LR143]

BILL STADTWALD: The cities provide that information. [LR143]

SENATOR FRIEND: To the property tax administrator? [LR143]

BILL STADTWALD: Right. Since 1997 they're reported...to make that annual report on what TIF projects are going on and the status of those projects. [LR143]

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SENATOR FRIEND: And I want to make sure I'm not off the beam here, this is the only audit...I mean the city council is not required. [LR143]

BILL STADTWALD: And this isn't an audit. [LR143]

SENATOR FRIEND: A city council is not required to provide any other audit information? [LR143]

BILL STADTWALD: No, other than what they internally may decide to do or what the city decides to do. They provide these reports on an annual basis. The department doesn't review the reports, they essentially compile the reports that they get from the cities. And they don't go back to check and see if the figures are accurate. They simply accept them and publish them and this is the information that goes out. [LR143]

SENATOR FRIEND: Okay. Any more questions for Mr. Stadtwald? [LR143]

BILL STADTWALD: It's almost impossible to say what projects are violations of law or not. Because without some kind of a definitive ruling from a court, it is on its face legitimate and viable and within the law. We can look at it and say... [LR143]

SENATOR FRIEND: Well, would have to assume all of them are. But, I mean... [LR143]

BILL STADTWALD: But you can look at some of them and ask, I think, one of the...if I can put in, from my own home community of Bellevue, when the city council in a recent decision decided to TIF a local motel for the purpose of putting in a water park within the motel. That kind of makes it difficult to state that the project was substandard and blighted within the definition of the statute, on its face. [LR143]

SENATOR FRIEND: Okay. Senator Cornett. Oh, sorry, I didn't see your hand, Senator White, sorry. [LR143]

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SENATOR WHITE: How many lawsuits are you aware of that have been filed challenging these designations? [LR143]

BILL STADTWALD: To get to the Supreme Court I think there were four over the course of time. None of them have actually addressed some of the key issues. They have dealt with Hastings, the one in Hastings, there was an attempt to take property which in and of itself was not substandard and blighted and attach it to another...to a larger tract which was substandard and blighted and the court says you can't do that, it had to stand on its own. And there have been some dealing with the use of funds, the manner in which funds were used, whether the funds that were generated by TIF could be used for Christmas decorations, that sort of thing. But some of the real...there are a couple of...some of the early cases dealing with the city of Omaha dealt with the point in time at which you determine the valuation before you applied TIF to the excess value. But beyond that, there have been a couple of cases I know of that never reached an appeals court. [LR143]

SENATOR WHITE: So out of these 400 projects it's not like there's an explosion of lawsuits indicating abuse. [LR143]

BILL STADTWALD: No. And again, we've referred to it as, you know, the crotchety old man is the main defense against TIF abuse. Unless you have a wealthy man in town who gets mad enough about it to decide to take the city to court and to pursue it all the way through, there is really very little for the average citizen to undertake litigation that would go on for several years and for literally...pay the attorney out of their own pocket. It strains even the most concerned citizens. [LR143]

SENATOR WHITE: Do the other tax entities have an ability to challenge a TIF designation? [LR143]

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BILL STADTWALD: Undetermined...by the statute it's a matter within the discretion of the city. They would have to challenge the city based upon the city's violation of the law. But it's...since the court has allowed that for an annexation disputes, have allowed counties to challenge annexations, that might be a clear indication that it would be possible for somebody else to do it. But we do, under the existing statute, require notice to the other property-taxing subdivisions before a TIF is approved to allow them to interpose objections, although they have no formal status to approve or disapprove. [LR143]

SENATOR WHITE: Thank you. [LR143]

SENATOR FRIEND: Thank you. Senator Cornett. [LR143]

SENATOR CORNETT: Bill, and I'm going to express my ignorance, but back to the project which you mentioned in Bellevue, and I know that that was TIF'ed and I know that there were some questions on whether it met the definition of substandard and blighted. My question is: what requirements are there from the entity providing the TIF designations in regards to the viability of the project, because as we all know, that project went bankrupt and left a number of people with very large debts? And the question was: is there any viability or requirements for the city... [LR143]

BILL STADTWALD: There is to be a cost-benefit analysis done. But again, the formal standards...I mean, they have to indicate whether the project would occur...it's the "but for" test. But for TIF, would the project actually occur? Would it occur in this location? But this is essentially...the city determines what is an appropriate cost-benefit analysis. There is no requirement that it meet any specific standard as to, you know, who does the study. To bring it down: there's really nothing that says that if they say to the developer, you think it's going work? Yup, I think it's going to work. Would you do this if we don't give you the TIF money? Nope. That's...well, the standard is met. [LR143]

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SENATOR CORNETT: The next question is: since that property has the TIF designation, and the project is bankrupt, the person purchasing or assuming that debt...would the TIF follow whatever the next project will be at that location? [LR143]

BILL STADTWALD: No. And at this point in time, I don't really know what the actual status of it is. It was my understanding the city never actually gave the...there was never any actual debt created by the city in terms of where the TIF would have to be paid for. The project fell apart before the time actually came when the money was there. Under any circumstance it is...the city bears no ultimate liability. There is no general fund liability at all. It all flows from the project itself. And essentially the risk that is being undertaken is by the investor who puts up the money. [LR143]

SENATOR CORNETT: I knew that there was no general fund liability, but I was wondering before the city, any city authorizes these projects, what are the requirements that are met in regards to viability...and you've answered that. [LR143]

BILL STADTWALD: They are mainly procedural and the decisions that are made are those within the discretion of the city council. They are their own arbiters of what is appropriate, and what is inappropriate, subject to a court telling them, no you can't do that, or no you have violated the law. Which in turn requires somebody to challenge the city and to be willing to undertake the cost of the litigation that would occur. [LR143]

Senator Cornett: Okay. That was the question. Thank you very much. [LR143]

SENATOR FRIEND: Thank you. Any further questions for Mr. Stadtwald? Seeing none, thanks for the information. Senator Rogert, could you give us a little bit of a feeling from the direction you're coming from? [LR143]

SENATOR ROGERT: Good morning. I will try not to repeat everything that Bill said. He stole my thunder a little bit. We'll let him go with that. I made a few notes just on the

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questions that were asked just a few minutes ago. Thirty years ago when this was created, I believe it was created for a different reason than it is being used for now in many instances. Blighted property remediation and economic development of those areas was definitely the idea behind it. And we still use it for that purpose in a lot of areas. But I see every day that we're not using it for that purpose in just as many areas across the state. I think it can be a great tool for developing industry and commerce across the state, whether you're in the urban or the rural areas, especially though in our struggling rural areas, where if you'll look at some of those...in the project summary, many of those are in south central Nebraska, western Nebraska, Hastings, Dawson County, those areas. They have done a really good job of attracting commerce and industry to their areas by using TIF. Now are they doing it on substandard and blighted property? The question that Senator Cornett asked was, what are the requirements? And Bill mentioned that really there aren't a lot. I mean, you can pay anybody a certain amount of money, a consultation to go out into a cornfield and declare it substandard and blighted. Or you can get a positive cost-benefit analysis just by literally asking, is this going to help our community? Sure. Well, then we'll do it. And I don't have a problem with that. It just doesn't go along with the intent of the original purpose of the law. And there is no oversight right at the moment to make sure that we're using this for the right purpose and we're actually doing it within the letter of the intent of what the original bill was about. And that is to develop areas that need help and not just to give developers a free ride when it comes to building some type of...whatever it is, wherever they're doing it. And that for the most part is what LR2CA does. It expands TIF authority to counties, in addition to cities. But to counteract that balance of expansion, we're providing further accountability, checks and balances, with state legislative oversight only if necessary. It's been brought up that that's an unnecessary step. But we're not going to oversee every single one of these projects. We're going to look at them as a whole. And when we notice something that probably needs to be looked into, we're going to do that. We're merely providing a legal consistency in the law for counties and cities to be able to use TIF by removing the blight and substandard requirement, but at the same time, providing legislative oversight for a mechanism that clearly affects the

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economic development of our state as a whole. No doubt, our rural areas and towns are dying in Nebraska, and they may need TIF as a tool to attract and create that type of business and employment to ensure their survival. With TIF being expanded to counties it may provide that assurance. We're not for certain that every county is going to us it, but I think that there are areas out in a county that are not within a zoning jurisdiction of a municipality. And right now the only mechanism we have to do that is for some small town to go seven miles out and skip-annex that ground. And then give them the TIF authority which needs to be substandard and blighted, which we all know it really won't be, but we'll declare it that way anyway. So it's just allowing us to use it in a more efficient manner and for the original intent, or the intent that I think it's being use for now anyway. We did...it was brought up last year that we talked about ballot costs. And I know that's a concern. In my opinion, I think these costs are incidental when it comes to be a situation of good public policy. And I want to add that for many years, issues have been placed on the ballot more than once. Last year, or in 2006 the ballot costs were extremely high, mostly because of Initiative 423 which was an outright repeal and required to be printed in a main newspaper three times prior to the election and there were several pages. And it was a million dollar deal. The TIF issue was placed on a very crowded ballot that year. The folks that had interest in it also had interest in the other initiatives, and they spent their resources trying to defeat that they felt were more important at that time. We also know that not enough money and education were utilized in order to get voters to understand what is going on with TIF. And a lot of people in the room today will tell you that they are committed to educating the voters and getting this passed if we so choose to get it there, provided we don't have another bout of initiatives that come about, which we may. We realize that it's a PR and a perception problem. It appears to be a big change on the Constitution because it's a lot of words. And in all reality it's not a big change. We're just changing a couple small things. Since its explosion in 1996, TIF in its form as an economic development tool today is already a reality. We would just like the laws to be consistent with that reality and support the concept of economic development in rural areas. So last week, Senator Friend was present and Bill as well, we had a meeting of the interested parties on this

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issue. And we had a frank and open discussion on the problems and the concerns and the benefits that we see with this bill. And I think if we so choose to move forward with it in session this spring, it will have the parties in the room here together to bring the bill forward in a form that will make everybody happy. [LR143]

SENATOR FRIEND: Thank you, Senator Rogert, are there any questions from committee members? [LR143]

SENATOR WHITE: Senator Rogert, I understood, and it may be an urban myth, that Warren Buffet's home has been...area has been designated blighted and substandard. Do you know whether that fact is accurate? [LR143]

SENATOR ROGERT: I have heard that is true, and Bill is nodding his head. I think so and I can't remember why, but they were wanting to build something there. Somebody wanted to do something in that area, yeah, and for some reason they, like you said, they just pay somebody the right amount of money...because there is no oversight, to say, well, who...unless somebody wants to challenge it and take it to court. And I don't have the money to do that and most of the people in this room don't have the money to do that, to handle those costs. That is the extreme circumstance that those things happen, but it's exactly why we're doing this. [LR143]

SENATOR WHITE: So that is the poster child for this bill. [LR143]

SENATOR ROGERT: Yeah. [LR143]

SENATOR WHITE: Thank you. [LR143]

SENATOR ROGERT: My aide has prepared a binder for you, and just...it's kind of been for the...to refresh your memory of how TIF works. And you can read through it at your own pace. But you can always keep it around your office for future use and (inaudible).

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[LR143]

SENATOR FRIEND: Thank you, Senator White and Senator Rogert. Are there any other questions? Seeing none, thanks, Senator Rogert. First testifier, please, on LR143.

[LR143]

MICHAEL NOLAN: (Exhibit 1) Senator Friend, members of Urban Affairs, my name is Michael Nolan, that is spelled N-o-l-a-n. I am the city administrator of Norfolk and am a supporter of what Senator Rogert's constitutional amendment, I think, would do for all of us in terms of making the Legislature more involved in the process of what TIF is. Among the handouts I've given you is a letter from the local manager of the Louis Dreyfus Company, which has been authorized by the corporate body for me to submit to you today, just basically talking generally about Dreyfus' commitment to northeast Nebraska and its support of LR2CA. Dreyfus has confided in our staff that they intend to do a \$50 million expansion, either in Nebraska or Iowa. So we're very, very interested in trying to, as much as we can, use every mechanism that we have available to help incentivize and defray some cost of infrastructure, which in this instance, would benefit not only Dreyfus, but Nucor Steel, Apache Manufacturing, Norfolk Iron and Metal, and other industries that are in the northeast part of Norfolk. The other handout is a history of how Norfolk has used tax increment financing. We've followed the letter of what the Legislature has required. We don't try to do sleazy, expedient things. We certainly are in support of anything that would be added to the bill by the Legislature to make the process more reliable. We at the same time would ask you to be careful and thoughtful about doing anything that would create a hindrance to the use of tax increment financing for the beneficial purpose that it provides. You'll see a lot of projects there, and every one of them clearly meant what I think was the intent of the Legislature when they established the blighted and substandard criteria. The second sheet that is attached to that is a amortization comparison based on a couple of assumptions. A 15-year amortization and a 30-year amortization, the reason that we prepared the 30 for this discussion was because when we proposed the original constitutional amendment and

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Senator Landis worked with us and the league to draft it, we weren't anticipating that the Legislature would add anything else to it. Senator Connealy amended his proposal into our...or I guess amended ours into his, and so we're...we saw that really as a benefit for the whole state. But our intent behind the original proposal that we had the Legislature authorize 30-year amortization was so that we could use tax increment financing to help us defray the substantial cost of raising the old, abandoned, and blighted regional center properties that stood there like hulks forever. And in fact, I went back to try to trace where...what the inception of some of them was, and I read about them standing in Mari Sandoz's book about her father, Old Jules. I tried to inquire whether or not he was perhaps a patient there and was told that HIPAA regulations did not allow them to tell us that. But be that as it may, they've been around forever, and with the exception of three them that still have some functionality, all of them are clearly within the realm of the blighted and substandard. So you can see that the difference between 15 and 30 years, which by the way is priced higher for the 30 years, because the bond council tells us that the paper would sell for more...would have to go at a higher interest rate to get into the market place. It doesn't provide a great deal of additional incentive, but it does provide some. So we're hopeful that you maintain that. I have reviewed a couple of tax increment financing statutes from other states. South Dakota does amortize at 20. I've made available to Senator Rogert's legislative assistant a copy of the South Dakota statute, which you can certainly review. I want to just talk to you a little bit about this and then I'll open up for any questions you have. This shows you, this proforma we put together, a very real profile of what tax increment financing does and what it doesn't do. And this proforma would show you...this is by the way at Omaha Avenue and 13th Street, which is the highest traffic corner in northeast Nebraska. It has 30,000 cars going through this intersection. And we worked on this, quite frankly, with Dial Realty, because this was the basis for us coming to you last session asking you to approve LB562. Because tax increment financing, by itself, when it comes to retrofitting commercial areas, old commercial areas, doesn't really provide a developer a whole lot of financial incentive to do that. They have a larger incentive to go out and build on green space and do it with a lot less rigmarole that doesn't involve a whole bunch of

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environmental consequences of trying to dispose of asbestos from old buildings. But you can see (inaudible) the bottom line of this proforma shows you that even with the addition of an \$800,000 tax increment financing project cost, there was still a \$2.9 million gap if they were to have acquired all of those properties and tried to retrofit a shopping center at that location. So we are, again, I'll reiterate, we are very much in support of what Senator Rogert and the committee are trying to do. So if there is anything we can do to be of help, we would like to participate in any subsequent processes you have to try to get all of the differences among the parties aligned on what we should be doing. Do you have any questions? [LR143]

SENATOR FRIEND: Thank you, Mr. Nolan. Any questions from committee members? Mr. Nolan, just one quick one from my standpoint. Is there any...and I don't think there's anything that would preclude a certain area from having a review board along with the city council. Do you guys up in Madison County, do have a review board other than... [LR143]

MICHAEL NOLAN: We have a community redevelopment authority, and it has been historically the city council. But, Senator, we use the "ACBD rule" whenever we do one of these things, which is we always consult before deciding. So the school board is aware of it, we sit down and talk with them and the county. [LR143]

SENATOR FRIEND: So it's not like the city council will...and look, I'm not bashing city councils here. I want to make this really clear. The city council has a vested interest in these types of things and I understand that. But they'll rubber-stamp something and there is further review that will more or less be required, in Madison County, for example, that's going to inform taxpayers of a possible diversion of property tax funds, I guess. [LR143]

MICHAEL NOLAN: Right. There certainly is...I don't have any problems whatsoever with accountability. And including, I mean not trying to part ways with the league here, and I

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know we still have something to try to work out a difference of opinion between legislative staff and league staff, but I don't have any problem with oversight and accountability for how this whole process works. I just suggest to you that we can do that in a way that is very efficient by localizing even that process by perhaps having the CRA designed to have county and school representation on it. And some type of...maybe you want to look at what the accountancy process is at the end, what kind of documents have to be submitted to the state or whatever. My primary concern here is that there's been, I think, an assumption that somehow trying to expand the amortization beyond 15 to 30 was going to create some kind of a huge windfall and be a disruption to the local subdivision. I don't think that's going to be true. The interest where I really have aligned and our city council has aligned with your staff and those of you who have dealt with this over and over again is that in fact it needs to be a process that has reliability and predictability. What irks us more than anything is when we follow the law and we find out that somebody hasn't followed the law and they do a deal. And the reason that we didn't have a chance to do the deal was because we weren't going to be expedient. So there you go. [LR143]

SENATOR FRIEND: But...so I don't want to put any words in your mouth. You wouldn't have a problem with folks like us sitting around a table and then kicking something out of a committee that through some state guidelines in relationship to accountability and some disclosure, if you will... [LR143]

MICHAEL NOLAN: Senator, you are the Legislature and you can pretty much tell us what you want us to do and I'm going to agree with it. (Laughter) I'm not going to tell you here that I'm having sight unseen that I'm going to agree with whatever you're going to write. (Laughter) [LR143]

SENATOR FRIEND: All right. I understand, Mike. [LR143]

MICHAEL NOLAN: Mike there is a...I think a philosophical problem that...what

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happened was, when Bill and I talked about legislative oversight on the part that was applying to the regional center, when Senator Connealy made the amendment, all of the sudden that became part of the discussion of the whole. I don't know how you get there. I'm just suggesting to you if your interest is making sure that there's more accountability in the process, let's look at some options that work for you and for the league and for everybody else and how we do that. The process, when it's not followed and people are trying to subvert it, it's the same people all the time. We know them. It's the same bond attorney all the time who does the sleazy deals, the same guy. When Richard Peterson (phonetic) is doing them, they come through the whole process the way the Legislature wants them to come through and they pass muster. And I know that is what your interest is. We are interested in being totally transparent without disrupting the functionality of this policy. [LR143]

SENATOR FRIEND: Thank you, Mr. Nolan. Any further questions? Seeing none, thanks for the testimony. Next testifier, please, on LR143. [LR143]

R J BAKER: (Exhibit) Hi, I'm R. J. Baker, R. J., B-a-k-e-r. I represent Elkhorn Valley Economic Development Council, and we serve a four-county area including Madison County, Antelope County, Pierce County, and Stanton County, and 16 communities within those counties. Mr. Chairman and committee members, I congratulate you on taking up the important matter of tax increment finance policy and also the research you're doing on TIF policy in other states. And thank you for the opportunity this morning. Tax increment finance is a tool which for the most part is misunderstood by both the general public and many elected officials. TIF is often considered by the public to be a pass on local property taxes and an award to companies or developers in economic development projects. I believe that any change that would be undertaken in TIF law will require a large education effort. The current TIF law in Nebraska is restrictive to the point of often taking communities out of competition when competing for economic development projects with communities in other states. The current restriction of using TIF only for infrastructure and the requirement that a property be

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both blighted and substandard either keeps communities from using TIF at all, or as you've heard, driving them to disregard the limitations with the assumption no one is enforcing the letter of the law. As you know, the competition among states for economic development projects nationwide is very intense. Most states have incentives like Nebraska Advantage Act, and the incentives are ratcheted up with each passing of a new state economics development package. Because state legislatures continually upgrade their incentives to level the playing field, the deciding factor on many projects, the thing that tips the scale, is the ability of the competing communities to offer local incentives. In Nebraska there are few tools to provide effective local incentives. Outside of LB840, there is little ammunition to fight the economic development battle for a community. TIF can be that tool if communities are empowered with the options to use their taxing authority for the long-term benefit of the community in a way similar...that the state Legislature uses their taxing authority to provide economic development incentives. My experience in Iowa points up three obvious changes that would improve TIF as a competitive tool: giving counties the authority to use TIF...and I would suggest to you that there are many old county industrial districts with older properties that this would be a very beneficial tool for redevelopment. Taking out the blighted and substandard clause as it's ignored by communities that simply don't believe anybody is going to enforce it. And communities that do stick to the letter of the law, I believe, don't use the tool as effectively as they could. A third thing that I think is very important is: in Nebraska right now you have to use the entire increment on a project. In Iowa we are able to use a portion of the new tax increment for a longer period of time to amortize improvements, giving taxing entities a share of the new taxes at a much sooner time frame. And I would add, in agreement with Mr. Nolan's comments on the 30-year amortization period, but also would add county, city, and school district properties to that situation. These, along with several ideas from other states could be considered, however, all will require a constitutional amendment. As we all know, constitutional amendments in Nebraska are hard to pass, and therefore should be simply stated, easily understood, and make sense to the electorate. Therefore, the recommendations we would make for any proposed constitutional amendment: do only one thing. That is

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to empower the Legislature with the authority to set tax increment finance policy as they do with other tax policies. Legislative authority to set TIF policy would provide local elected officials with a voice in the process, allow needed competitive changes to be made in a timely fashion, and level the playing field and economic development competition. Thank you. [LR143]

SENATOR FRIEND: Thank you, R. J. Are there any questions for Mr. Baker from the committee? Seeing none, thanks for coming down today. Welcome. [LR143]

MARLAN FERGUSON: (Exhibit 3) My name is Marlan Ferguson, M-a-r-l-a-n, F-e-r-g-u-s-o-n. I represent the Grand Island Area Economic Development Corporation as the president, and I am also here testifying on behalf of the Nebraska Economic Developers Association. I appreciate the opportunity to make some comments in regards to LR2CA. Tax increment financing is a valuable economic development tool that is bring currently used. However, it is not being used to its fullest extent. Considering the competitive environment growth in our tax base in Nebraska, the competition among various states all across the nation, we need to maximize the tools that are available to us. I would first suggest that the constitutional amendment allow, as we have already talked here this morning, for the Legislature to establish policy and guidelines for the redevelopment areas. As you know, the final decision is now at the local level with the city council. Therefore the program should be structured to allow for flexibility and changes determined by the state Legislature. The Nebraska Legislature has adopted two very successful programs with the Nebraska Advantage Act and the Local Option Economic Development Program. As to the current language in the resolution, we are very much in favor of removing to requirement that property be substandard and blighted for purposes of rehabilitating, acquiring, or redeveloping such property. The current language, I believe, is very confusing and subjective, as we've talked a little bit here this morning in terms of blighted and substandard designation. It is difficult for the public to understand and to buy in on a project or determination. I also have some concerns with the language concerning the 30 years for state-owned

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property, not necessarily opposed to that, but I think it needs to be very clear in the ballot issue that the 30 years pertain only to state-owned property and not overall. I think that would be an issue that the citizens may have trouble with, if that was not clear. If it is going on to the ballot, well, also, I would also agree with the previous speaker that we need to maybe look at extending that to local governments, particularly schools, city facilities. Two of our projects in Grand Island have been a rehabilitation of an old junior high school as well as the old city hall. Both of those facilities sat empty for a number of years before we were able to get the tax increment financing available to them. And then even then they were not able to make it work without some additional tax credits, for example, historical tax credits. Concerning the county availability, if a county is not allowed to have tax increment financing availability, which may or may not happen, I would really strongly suggest that we make tax increment financing available for other facilities in the county such as an expired or decommissioned military facilities. More specifically, in Hall County we have an old ammunition plant, about 20 square miles which has been decommissioned. It has access to two railroads. It's an ideal location for economic development for industrial growth, particularly with heavy manufacturing. But it's strongly in need of utility infrastructure upgrading. The railroad needs to be upgraded as well as sewer and water. So that can not be annexed by the city of Grand Island, because it's outside...two to three miles outside the jurisdiction. But certainly it would be a great opportunity for not only Hall County, Grand Island, but the state of Nebraska to get the infrastructure in that location to bring in some real industry to the area. So with that, in closing, again, I just encourage you to make the ballot issue as simple as possible, with a primary emphasis on eliminating the blight and substandard definition. Thank you. [LR143]

SENATOR FRIEND: Thank you, Mr. Ferguson. Any questions from committee members for Mr. Ferguson? Thanks for coming in from Grand Island. Okay. I had a question for you. And I wasn't going to put you on the spot or anything. You've given...you gave a couple of really good examples about how TIF directly affected the Grand Island community. Over the last few weeks, I've been researching some of the

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effects of TIF in other areas. Illinois has a similar, you know, type of substandard and blighted, you know, determination that a review board would have to make, before you could implement a tax increment financing situation. There have been studies out there that would indicate that sometimes TIF, especially in Cook County, is almost a myth. Where something was going to happen anyway, but everybody is getting so indoctrinated and they know in Cook County, for example, how to use it, and how to do it effectively, and how to get it done quickly. They're just doing it. And there was absolutely no reason to do it. Yours was not a good example. But if we wrapped--and I have a question behind this--if we wrapped some statewide regulatory review type of language around substandard and blighted, would you see that as a roadblock...I mean, and what I'm saying is, you've used it a couple of times effectively. Would you see the state saying, hey, by the way, you better come up with some review, and, by the way, you better come up with some budgetary analysis to back this up--do you see that as a roadblock necessarily? It wouldn't have been for you, right? [LR143]

MARLAN FERGUSON: Right. Really I don't. I think just the definition...if it was defined and it's defined...some of the terminology is taken out, we don't have a problem with following rules and regulations in whatever is set out by the Legislature in terms of what will be eligible. But... [LR143]

SENATOR FRIEND: Mr. Ferguson, could you have come up with an analysis...do you think? I mean, this might be an unfair question. Could you have come up with an analysis of the effects on a particular taxing body out in Hall County, for example? Could you have come up with an analysis of how this...before you TIFed something, about how this would have affected, you know, property tax...rate payers in Hall County. Before that was done, could an analysis have cheaply been come up with, I guess. I mean, I don't see that as a major hurdle, do you? [LR143]

MARLAN FERGUSON: No, no. I don't see that...you know, every project is different. In the case of the junior high, the school, that set their (inaudible) off their tax rolls for

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almost ten years. It's hard to say how long it would have set there before somebody had had the money to demolish it and build something different there. [LR143]

SENATOR FRIEND: The reason that I bring this up, and I don't mean to seem like I'm grandstanding, but I guess I am. The reason that I bring this up, and you're sitting there listening to it, because I lived in Grand Island, I know the school system pretty well. And I know that every time something is TIFed, you're diverting money away...you're diverting some tax money, a portion of the tax money away from that school system. Now the thing is, that ends up being a tax shift. They're going to come back down to the state and say, we need more state aid. So every time something is TIFed in an outlying community in a rural area, it can be argued that that is a tax shift. And we hear that all the time. And people are using that in a cliché format. It's not a cliché, because, G.I. needs that. They're going to need that state aid when there is more property tax, you know, taken off the roles. So what we...what we're concerned about is every time something like...every time this book thickens and somebody else creates a project, the income tax situation is twisted again. I mean, they're going to have to come down and they're going to have to increase state aid. The formula is going to change when a large TIF project goes through. So I don't want to be...we don't want to be seen as somebody who is going to be...people who are going to be roadblocks. But I think, and we said this in the meeting the other day, we have a problem here. Every time TIF is created and nobody can show us what the out years look like, like there is going to be a major benefit, the schools are going to be hit. And they're going to come back down and say, we need, you know, we need you to increase that, you know, that state aid. So for every action there is a reaction. And I hope that everybody maybe in this room would understand that if something isn't done, eventually people are just going to say, well, forget the substandard and blighted, we'll go ahead and violate state law. And, by the way, we'll just keep using TIF and we're going to use it like we're taking candy out of a Halloween basket. [LR143]

MARLAN FERGUSON: I don't disagree with the fact that there is some shift. However,

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that is why I agree with the "but for" test. They call up our project as showing that. They would not have been done but for the tax increment financing capability, which means they've spread the tax base, they've increased the tax base. We are currently looking at an ethanol plant actually inside the city limits. [LR143]

SENATOR FRIEND: So you used the "but for" before both of those? Okay. [LR143]

MARLAN FERGUSON: And then some projects such as an ethanol plant, generates not only property tax, but personal property taxes, which are not tax... [LR143]

SENATOR FRIEND: But it wasn't you guys just shrugging your shoulders. I mean, there is some...there are reports out there. [LR143]

MARLAN FERGUSON: The city of Grand Island have TIFed up only nine projects, those two I mentioned were the largest. The other ones were smaller, redevelopment areas where they expanded it. However, the city has been looking at an industrial park area that needs a lot of infrastructure for it. And that's not counting the one that we're talking about outside the city limits. [LR143]

SENATOR FRIEND: Did you guys TIF that water park, eight, ten years ago, or whatever? [LR143]

MARLAN FERGUSON: No. [LR143]

SENATOR FRIEND: All right. Thanks. [LR143]

MARLAN FERGUSON: Okay. You bet. [LR143]

SENATOR FRIEND: Thanks for letting me vent, I guess. How many more people wishing to testify on LR143 by the way? About three? I see three hands. Okay. Thank

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you. Welcome. [LR143]

GARY HEDMAN: Good morning, my name is Gary Hedman, that's G-a-r-y, H-e-d-m-a-n. I'm the president of the Southern Public Power District and have worked extensively with your previous testifier, Marlan Ferguson. I will be brief, hopefully respectful, maybe a little bit blunt. The blighted and substandard situation is a charade. There has never been a study that has been turned down. They have all passed. I have commissioned and paid for a blighted and substandard study. There are about three attorneys in the state that do those. And one is conservative, one is aggressive, and one is middle of the road. I chose middle of the road. I spent money for a study that is worthless. And there are a number of people that are making money doing those things. And I feel that needs...that really needs to end. Senator Rogert has a very good assessment of the situation. The original intent isn't being followed. But what we are doing is creating some good. What I would like to do is create jobs. Jobs create additional economy which does feed money into the school system with new housing and so forth and so on. I have been involved in economic development. I'm past president of the same organization that Marlan now heads up. Developing in the rural area is very difficult. And I came head to head with issues where a city could do tax increment financing but a county could not. And it made a big difference. I think someone asked to quantify some of the issues related to tax increment financing. I find it very interesting that your legal counsel referred to counties and how much the counties have done, when the counties really can't do this. I think we should have said how much has Omaha done, how much has Kearney done. That is what has really been happening. In the instance that I had where I did the study, Mr. Ferguson is exactly right. An ethanol plant was about 1/3 real property, 1/3 personal property, and the other 1/3 was called soft money. And so that all depended on the assessor's valuation of the property. But that 1/3 of real property created about \$6.3 million on an ethanol plant that...to help attract them to come to our area. It wasn't enough. They didn't come. But that was there. On the other hand, if I'm correct in my memory it was about \$300,000 a year in personal property tax that went back to the county. So the

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county looked at it and said, you know, this project is a benefit to us. And I think that's the crux of what I'm asking is: locally, shouldn't a county be able to look at something like that and say, that's a benefit for us. Let's do that. It's going to bring money in right now. And after the 15 year period we're going to have a lot more. Basically that's the crux of my testimony today. I'd be happy to answer any questions. [LR143]

SENATOR FRIEND: Thank you, Mr. Hedman. Any questions from the committee? Gary, how would you put a hammer behind, in your view--and you've been working with this a lot longer than I have--how would you put a hammer behind substandard and blighted so that you're not wasting money on...I mean, just a guess... [LR143]

GARY HEDMAN: I just don't...I don't think it's even needed. I would just eliminate it. It does no good. I was thinking about...and maybe I shouldn't mention this, but what could Nebraska do with the money we're wasting on substandard and blighted studies and the attorney fees and the engineering studies and all that? I've been through the process. You can get whatever you want done. And the only thing I can come up with is maybe we need to hire a new football coach, you know? (Laughter) [LR143]

SENATOR FRIEND: Well that could happen. (Laughter) I see no further questions, Gary, thank you. Welcome. [LR143]

GARY KRUMLAND: Senator Friend, members of the committee, my name is Gary Krumland. It's G-a-r-y, K-r-u-m-l-a-n-d. I'm here on behalf of the League of Nebraska Municipalities. We've generally supported the constitutional amendment that was on the ballot in 2006, especially the portion about extending the payback period for state-owned buildings to 30 years. We did not spend any time or money supporting it during 2006, because we devoted all of our resources, a lot of money and time, fighting Initiative 423, as Senator Rogert mentioned. We have reviewed the proposal LR2CA and our committees have come up with some recommendations. We strongly support the removal of blighted and substandard, as...I won't go into the reasons. You've heard

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those already. We do think it's a good idea to extend the authority of municipalities to do tax increment financing into their territorial jurisdiction, like the Urban Affairs Committee amendment would provide. And we do support the extension of the time period for paying back the bonds, especially the 30-year payback for state-owned buildings, but also support the committee's proposal to extend the time to 20 years for just the normal payback period. The committees do have some concerns about a couple provisions. And one of them is the authority of the counties to do tax increment financing. Just the way it was drafted could result in some competition between cities and counties. The example would be is if a box store wanted to come in and the city had planned that kind of development to be in one area. And then if the county started offering incentives and it was just put up right outside the zoning jurisdiction in another area, that could lead to a lack of planning (inaudible) upset early growth. At the meeting that Senator Rogert called the other day, there was some suggestions on how to deal with that issue. And we would be happy to look at those and work with the parties to deal with this issue. But that was one concern. Another concern I'll mention is about maybe approval of individual projects. We understand the desire for more oversight, and more legislative oversight and don't have a problem with that. But concern has been expressed that we hope that doesn't mean that there will have to be a state review of each individual project before that could go forward. Senator Rogert comments that is not his intent, and I don't think that was the intent. But I just wanted to put that on the record. I think we need to get all the parties together to get behind this if we're going to get a proposal passed in 2008. And we are willing to work with Senator Rogert and the committee and appreciate the efforts to get the parties together and to get the process started. We will be happy to continue to be involved with that. [LR143]

SENATOR FRIEND: Thank you, Mr. Krumland. Any questions from committee members? Hey, Gary, really quickly, I'm starting to see, over the last few months and even the last couple of years, that there is a difference between somebody TIFing out in a rural community or even outstate, anywhere outstate, and Omaha. Okay? And look, I live in northwest Omaha, and let me give you a quick example, okay, I've brought this

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up before. Eaton had a plant, north on 72nd street up there. They couldn't sell it. You could have put...maybe they could have sold it. You could have put 250, 300, 400 manufacturing jobs in that plant. It wasn't substandard and blighted. Someone argued that it was. The city council rubber-stamped it and said it was substandard and blighted. But what they did was, they did do that. They rubber-stamped it, said substandard and blighted, Eaton didn't want to pay for it, that's my understanding, so they flew the coop. The thing was bulldozed. It was cleaned up. The EPA came in. Part of the TIF money was used for cleanup. But down the street, across from the Home Depot, all that development...they didn't get TIFed. They build all that stuff. So, I mean, that's not happening out in Hedman's district. That's happening in Omaha. So the reason substandard and blighted is there is because it's a hammer. But the city council...I'm not being....yeah, I am being critical of our city council. They will go wham and rubber-stamp that, whereas somebody...the Home Depot didn't get that. So do you see the problem here? Do you see what we're up against? And it doesn't just happen necessarily in Omaha. There are sporadic instances that Senator Rogert has brought up that are of a concern. The reason that people in this state don't want to get rid of substandard and blighted is because they think it's a hammer. They think it's going to stop that type of behavior. But it doesn't. So where are we with this? [LR143]

GARY KRUMLAND: Well, I think by removing substandard and blighted you eliminate that problem. I mean, you make it an economic development tool. [LR143]

SENATOR FRIEND: But Gary, if he and I, or if any of us, said, you know what, we don't think what is happening up...they build a Target up there and a Great Escape Theatre and everything else. If we said we don't like that, that wasn't a substandard and blighted area, and we challenged it, we could have probably won. I would guess. Unless somebody could have said, well, there's a brownfield underneath this Eaton plant. And it is substandard and blighted. [LR143]

GARY KRUMLAND: And I can't comment on any specific project, but I do think adoption

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of LR2CA, especially removing the blighted and substandard, and then allowing the Legislature do develop the regulations, I think would take care of a lot of that concern. I mean, that is the problem that you've heard from other witnesses, about what is blighted and substandard. [LR143]

SENATOR FRIEND: I guess what I'm saying, oh, sorry Tom. One more question from me, Tom. I guess what I'm saying is if we just removed substandard and blighted, like I said, I would have voted for that. But the people didn't. When it got to the ballot and the people see it, they go, no, we're not going to let people do this without...I think they might have understood what they were looking at. Or at least they felt like they did. [LR143]

GARY KRUMLAND: Possibly but... [LR143]

SENATOR FRIEND: They saw it as a hammer and they said, no, this is not going away. You are not going to do this to our communities without having good cause. Right? [LR143]

GARY KRUMLAND: Possibly, but every issue on the ballot, I mean, and there were a lot of issues on the ballot, were confusing every issue that had anything to do with finance, with bonds, with anything was defeated. So I'm not sure that you can say that there are specifics in there that it was defeated. And also there was no effort at all to educate the public on what it did. [LR143]

SENATOR FRIEND: Point well taken. Tom, sorry. [LR143]

SENATOR WHITE: No, not at all. The question I have is if this gets on the ballot, will the league support it, expend effort and money to help it get passed, to do the education? [LR143]

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GARY KRUMLAND: I would say, generally we would on something like this. The hesitation I have is if we get another 423-type initiative on the ballot, we would probably devote, again, our resources to fight that. And we just don't have all that many resources to go around. But assuming that there was nothing else on there like that, and we came up with a proposal that we all agreed with, yes, I think we would get out and help. [LR143]

SENATOR WHITE: The other question, I think what Senator Friend, one of the things he is pointing out is there is a concern that there are political winners and losers in these and developers aren't going to have a fair shot. In other words, a developer that gets TIFed, if it's wide open, hurts the developer that doesn't. Do you have any thoughts on how we could address that? [LR143]

GARY KRUMLAND: Probably nothing specific. I do think that is typical of any economic development incentive. And right now, I guess if we're competing with something in Iowa, their TIF project is wide open, ours is much narrower. [LR143]

SENATOR WHITE: Well, and it hasn't stopped the politics anyway, I think is Senator Friend's point. [LR143]

GARY KRUMLAND: Yeah. But I think by opening up and having clear criteria for it, I think will help some of that. [LR143]

SENATOR WHITE: Okay. Thank you. [LR143]

SENATOR FRIEND: Thank you. Thank you, Senator White. Any other questions from the committee? By the way, the Omaha City Council works really hard. (Laughter) Thank you, Gary. Any other testifiers on LR143? [LR143]

J D SCHLUNTZ: I may need help getting out of town. [LR143]

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SENATOR FRIEND: (Laugh) We do have the State Patrol outside the door, I believe.
[LR143]

J. D. SCHLUNTZ: I'm J. D. Schluntz, I live at Huntley, Nebraska. I've got some notes...
[LR143]

SENATOR FRIEND: Could you spell your name, J.D., for us? [LR143]

J.D. SCHLUNTZ: S-c-h-l-u-n-t-z. I got some things I wrote before I got here, some comments I made afterward. The Legislature and you people weren't here when they did give the cities the right to tell the school districts, the county, the educational service unit, the NRD, the community colleges, the fire district they can't collect taxes. It's just wrong. If I could change one word in there I would change it where it says the cities can forgive all property taxes (inaudible) the city taxes. And they can do as they please and it won't bother me too much. And then I'd like to tell you how it happened in Harlan County, Alma, Nebraska. It's about where I live. They've have four projects that's been TIFed. One of them was downtown, maybe it needed it. They put in a coffee shop. The other one was an addition to an auto dealership. And there was a body shop. And the last one is a motel. And if it's blighted it was because the corn was blighted when it was out there, because that's what it was to start with. And on their community redevelopment thing, they had the county treasurer on there. She resigned basically because they weren't following the law on the blighted and substandard. She told me they say they can't get a loan but if they go some place else they could sure get it. In this law you've got the...the value stays the same on a lot, whatever, for 15 years. Now the values of the rest of the town could double. But that value would stay the same. So the school districts and all these other things wouldn't get anything even on your preliminary value. We covered that one. And you talked about this last constitutional amendment was on the ballot. I voted against it. I thought it was expanding TIF and I didn't really want to expand TIF. And I think if you put on there, "Get rid of TIF," that you

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would pass it very easily out in the country. I really do. And this saying to take the substandard and blighted out, would that mean that all new commercial property won't pay property taxes? Isn't that what it would come down to? If it wasn't some...standards in there. And they talk about development. Development will take place if it's profitable. And I'm going to cut short because I'm done. You got questions? I appreciate you being here. [LR143]

SENATOR FRIEND: Thanks for coming, J. D. Any questions from the committee? Thanks for coming down. Appreciate it. Are there any other testifiers on LR143? I guess it's my resolution. And I waive closing if there are no other. Senator Rogert, did you have any comments, closing comments? I would waive mine and that would close the hearing on LR143. And we can move on to LR152. Mr. Stadtwald, I would ask you to give us a briefing on an interim study examining issues under our jurisdiction in the Urban Affairs Committee. [LR143]

BILL STADTWARD: Again, this is Bill Stadtwald, Research Analyst for the Urban Affairs Committee, introducing LR152. This resolution in one form or another has been introduced for the last 20 years to provide an opportunity for the committee to look at general things that may not have been of particular importance at the time the legislative session ended. It was determined that it might be a good point at this time to take a look, pardon me, at some of the natural gas legislation that the committee looked at two years ago, and see how it has been operating and where there are any other particular concerns regarding it. Specifically, LB1249, which was adopted two years ago, natural gas has always been one of the core issues of the Urban Affairs Committee. One of the principle victories of the past few years was the adoption of the State Natural Gas Regulation Act, which for the first time provided the Public Service Commission with general jurisdiction over natural gas regulation issues in the state of Nebraska. When that bill was adopted, one of the principle issues that was left that was essentially put on the side was the question of service territories, exclusive service territories, a determination of who would serve in unserved areas with natural gas.

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LB1249, which was introduced in the year 2006, originally was part of a battle that went back to 1999 when the Legislature enacted LB78 and it dealt with particular concerns in the Omaha metropolitan area between the Metropolitan Utilities District and the private natural gas utilities, specifically Aquila and who would serve customers in the rapidly growing areas in the Omaha metropolitan area. LB78 in 1999 was the first time that the Public Service Commission was granted any jurisdiction in the natural gas area, and it was with regard to providing service in new areas. At that time, in LB78, the Public Service Commission essentially served as an appeals body. If there was a challenge on the right of any particular...of MUD or the private utility to provide service, the question after the pipelines were underground was brought to the Public Service Commission for them to determine whether it was appropriate or not. That issue was kind of leapfrogged with the State Natural Gas Regulation Act. It wasn't specifically dealt with. LB78 was left there on the side. But with the other broader issues it was raised again in LB1249 and in the prior year in LB49. LB1249 originally started as a general statewide legislation that defined specifically who had the right to serve in certain areas and who presumably had the authority to extend service to new territories that were not currently served. After a number--and I've provided you with the information from the Chamber Viewer as to all the various amendments and proposals and attempts that were made with regard to LB1249--it essentially...an amendment towards the end of the session, within really the last couple of days of the session, changed LB1249 from a bill that dealt statewide with just a revisitation of LB78 and a reversal of LB78. Instead of having the pipeline in the ground and then going to PSC to determine whether it should be removed or not, it said, you go to the PSC first to determine if there is a question whether you should put the pipes in the ground and provide service to those areas. And it provided some general guidelines with regard to publication. A company that proposed to extend pipelines would have 15...would file that. If there was no complaint regarding it within 15 business days, they could proceed and pursue it. There was also a presumption that any pipeline that was placed within the boundaries of a metropolitan-class city or in the zoning jurisdiction served by that city, it was appropriate for them to do so by the company serving at the Metropolitan Utilities District. This was the principle issue and hopefully

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provides some of the resolution for the issues. The major question this morning was: what has been the experience in dealing with LB1249? Has it worked? Are there additional changes that need to be made? The Public Service Commission was also invited to present to the committee any legislation that it felt that it would like to see dealt with by the committee in the next year. I've also provided some basic information--I won't go into it in any great depth--with a major ruling that was made by the Public Service Commission dealing with its ability to regulate the creation of intrastate pipelines. Going back to the Natural Gas Act and the Supreme Court, U.S. Supreme Court's ruling regarding that in 1950, any pipeline that carries natural gas is an interstate commerce and subject to federal jurisdiction. After that Supreme Court ruling there was a provision to the Natural Gas Act that is called the Hinshaw exception, which was adopted, which basically said that if all the natural gas is consumed, is collected and consumed within the boundaries of one state, the general body with responsibility for regulating natural gas in that state can assume jurisdiction of that. [LR143]

SENATOR FRIEND: Thank you, Bill. Are there any questions from committee members for Bill? Senator White. [LR152]

SENATOR WHITE: Bill, collected, does that mean from the ground? [LR152]

BILL STADTWALD: No, no, from an interstate pipeline. For example, if you have an interstate pipeline that goes through and you want to build a pipeline from that interstate pipeline to another point in Nebraska where it would be consumed. Collected in the sense that it's collected from the interstate pipeline in the state of Nebraska and delivered and consumed within the state of Nebraska. [LR152]

SENATOR WHITE: Okay. Excellent. So we can except that then. [LR152]

BILL STADTWALD: Yes. [LR152]

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SENATOR FRIEND: Go ahead, Senator White. Bill, tell...you probably can't sum this up really quickly, and maybe we can talk about it later off the record. But tell me what type of impact at all you would guess this would have in a place like Madison County right now, or some things that are happening around this state. [LR152]

BILL STADTWALD: The Madison County, the Norfolk situation was the one that gave rise to it. And the application to the Public Service Commission by a company to build such a pipeline. The ruling itself was in general terms. It just stated, we believe under a set of circumstances similar to those as specified here, that we have the jurisdiction. And the ruling essentially said, we're now open for applications and we will assume jurisdiction if it is appropriate under the circumstances. So it doesn't deal with that specifically. I think one of the principle issues was a matter of time. A state commission is able to act on these kinds of applications and approval in a much more expeditious manner, a shorter period of time, than if it goes through the federal process. And that that of course would allow, as in the case of Norfolk, had they been able to act more quickly to get a new supply of gas into Norfolk, they might not have lost an economic development opportunity that that they had to forego, because they were not able to do so. [LR152]

SENATOR FRIEND: But it's my understanding...the way you described this, it's my understanding that there will no enabling legislation possibly needed in order to expedite that situation up there. [LR152]

BILL STADTWALD: No. At this point in time, the commission said, under our existing statutes they believe they have the authority to do so. [LR152]

SENATOR FRIEND: Senator White. [LR152]

SENATOR WHITE: Is that a one-time application to FERC by the commission and then they have jurisdiction on all intrastate, or is that a case-by-case? [LR152]

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BILL STADTWALD: Well, I can't...there may be others...it's my understanding that it would be generally for all time. I mean, they make the application and they say under these circumstances. There might be different circumstances. Generally, if you're providing it to a community and there are some additional circumstances, Nebraska, under our existing law, if you are a large-volume user, the state Public Service Commission does not regulate the rates. That large-volume user negotiates directly with the utility and gets a contract. Under those circumstances there is kind of a modified form of federal regulation, which is something unique that hasn't fully been tried yet that they're going to be entering into. So the public service commission would regulate the pipeline but not for all purposes. For purposes of some large-volume users there would have to be some light-handed federal regulation, because we don't regulate those kinds of provisions under state law. So...but, that we'll have to see. I'm... [LR152]

SENATOR WHITE: So the big consumers would buy it and broker, hedge off their use, they're exempt. [LR152]

BILL STADTWALD: To the extent to which the state does not regulate the rates and service, there would have to be some form of federal approval for that, even though the pipeline generally would be under state regulation if it was treated as...if it was serving customers that we're regulating. [LR152]

SENATOR WHITE: Is the industry comfortable with that situation? Or would they prefer? [LR152]

BILL STADTWALD: Let them speak for themselves, there were people that spoke both for and against it at the public hearing that the commission had on the question. [LR152]

SENATOR WHITE: Thank you. [LR152]

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SENATOR FRIEND: Thank you. Any more questions for Bill? Seeing none, thanks for the information. Can I see a show of hands? I know the Public Service Commission is here, can I see a show of hands of other people wishing to testify on LR152? I see four, five, okay. I'll give the PSC as much time as they want. Everybody else is limited. No, I'm just kidding. (Laughter) All right. Okay. Let's continue. Actually I wasn't kidding. I will limit the time if it gets too crazy. Welcome. [LR152]

LAURA DEMMAN: (Exhibit 4) Good morning. Mr. Chairman, members of the committee, my name is Laura Demman, L-a-u-r-a, D-e-m-m-a-n. And I am the director of the Natural Gas Department at the Public Service Commission. The commission appreciates the opportunity to address the committee today regarding the operation of LB1249 since it took effect in 2005, and to provide a preview of the commission's 2008 legislative agenda. As the committee counsel explained, LB1249 created a notice requirement for pipeline construction projects undertaken by Metropolitan Utilities District and Aquila in the greater Omaha area. With the input and cooperation of both utilities, the commission has adopted guidelines fleshing out the details required for notice filings, which must include a description of the location and the size of the project. Notices are published on the commission's web site, generally the same day that they are received. One way of measuring the success of the new law would be to look at the number of disputes requiring a hearing. Prior to LB1249, the commission average two pipeline cases a year, nearly all of which required a fully hearing in Sarpy County, as the law requires. Under the new law we've had none. A total of 19 notices have been filed by the two utilities over the past two years. One lead to a filed objection, but the parties ultimately settled that dispute without going to hearing. The new law appears to be operating smoothly and efficiently. If there are any questions about LB1249, I'd be happy to address them before moving on to the commission's legislative agenda. [LR152]

SENATOR FRIEND: Thank you, Ms. Demman. Are there any questions from committee members? Laura, I think Senator Cornett and I were...we have war wounds from that

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particular session. You brought up a point in here that says...the reason I brought that up is you brought up a point in here that says, there are ways to look at measuring success. One of them is pipeline cases. I didn't see this happening. I saw the cases continuing. Could there be other reasons for the measurement of success? So in other words, can there be investor-owned or public utilities that said, you know, not only are we sick of going in front of the Legislature, but we're sick of going to the PSC, and we're not really sure what this is going to do. So we're going to be a little reticent before we, you know, step forward here. I'm asking you to make your opinion known as to why...I guess what I'm saying, and I find it hard to believe, that what we did actually solved it. So I'm asking you. [LR152]

LAURA DEMMAN: Another way to look at it is to look at the experience the commission has had since 1999, when LB78 took effect. There have been a number of pipeline cases, a number of decisions rendered that are starting to define the areas where Aquila and MUD can serve. And if you look at a map showing the commission's decisions over the years, you start to see definition of...not service territories, but areas where that utility tends to win the case. So the commission's experience at rendering decisions and starting to define the criteria under LB78 and the areas...I think that has probably had a greater impact. [LR152]

SENATOR FRIEND: Okay. That's fair. Are there any other questions for Ms. Demman? I guess we can move on to your wish list. [LR152]

LAURA DEMMAN: Okay. At the commission's regular public meeting held August 14th, the commission adopted four proposals for natural gas legislation. The first is to increase the current cap on directly-assessed expenses. The Natural Gas Department is cash-funded by assessments on the three natural gas utilities under its jurisdiction: Aquila, NorthWestern and SourceGas, formerly known as Kinder Morgan. The law provides for two types of assessments--the "quarterly" assessment, which covers general operating expenses, and "direct" assessments, which are for costs of specific

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proceedings before the commission. Direct assessments include costs for services of the public advocate and consultants for both the public advocate and the Commission. Under state law, the amount of money that may be directly assessed to each utility is capped at 1 percent of the company's annual net jurisdictional revenues, making the caps unique to each to each utility. During the 2006-2007 fiscal year, the cap for SourceGas was exceeded by approximately \$70,000. In that fiscal year the utility had filed a rate case and two applications for approval for the sale of the utility, both of which required extensive work by the public advocate and consultants. Additionally, experience with rate cases now tells us that the cap for NorthWestern will not be sufficient for a fully-litigated rate case. Northwestern's cap is approximately \$85,000, and the lowest-cost rate case at the commission has been \$205,000. Northwestern filed its first rate case under the new law this summer, and opted to negotiate with the affected municipalities, as allowed by statute. A settlement with the cities is under way, and if approved by the commission will avoid a fully-litigated rate case and the associated costs. However, it is important that the commission be prepared to handle a regular rate case for NorthWestern if the need arises. As a solution, the commission proposes setting up three tiers for determining a utility's cap on direct assessments. The tiers would be based on the size of the utility, using number of meters in the state as a criteria. The top tier, a utility which provides service through 100,000 or more meters, would include Aquila and would remain at the current 1 percent cap. The next tier, 50,000 to 100,000 meters, would include SourceGas and the cap would increase to 2 percent. The third tier, fewer than 50,000 meters, would include NorthWestern, with a cap of 4 percent. These caps are designed to yield sufficient revenue to handle a rate case and an additional extensive docket in the same year. And I should note that these caps only come into play for actual expenses, when a docket is filed and work is needed on it. The second proposal is to repeal the law allowing use of interim rates. After a natural gas rate case is filed, a utility may start collecting its proposed rates on an interim basis and subject to refund until final rates become effective. For a regular rate case at the commission, which ordinarily takes 210 days, the utility can start collecting interim rates 90 days after filing. For a municipally-negotiated rate case, interim rates

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can begin 60 days after filing. In either event, the utility can collect its full increase before either the commission or affected cities have spoken. This fact causes concern and frustration for ratepayers, who often believe that the interim rates have received final commission approval. The need for a refund with interim rates also creates confusion. In SourceGas' rate case, which concluded in December of 2006, no refund was due to customers because of the way interim rates were implemented. Additionally, in Aquila's most recent rate case, the issue of a refund is complicated and delayed because the case is on appeal. The commission will also be seeking legislation to clarify that the ex parte rule prohibits communications from parties in rate proceedings under the Natural Gas Regulation Act. The Administrative Procedures Act provides that communications pertaining to rate-making are not prohibited by ex parte communications. However, because the law establishes the presence of a public advocate as an adversarial party, rate proceedings under the Act are unique, as compared to those in other areas. In the commission's experience, parties to a rate case have informally agreed to honor the ex parte prohibition, so this change would make the law consistent with common practice. As drafted, the commission's proposal would preserve the right of members of the public to contact their commissioners to express opinions about a rate proposal. Also with respect to rate cases, the commission wishes to change the commencement date of the time period allowed for rendering a decision when a jurisdictional utility elects to propose negotiating with the cities. Currently the 210-day deadline by which the commission must decide the case begins to run when the application and intent to negotiate are filed. However, the cities have 60 days to decide whether to negotiate and to pass the necessary resolutions. Should they choose not to negotiate, 60 of 210 days permitted have already passed. This leaves insufficient time for the public advocate to review the application and prepare its case and for the commission to render its decision. Therefore the commission would like to amend the act to allow the 210-day period to begin to run when the 60-day period for cities has expired or on the date when sufficient resolutions declining to negotiate have been adopted. That concludes my testimony. Thank you for the opportunity to be here today. [LR152]

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SENATOR FRIEND: Thank you, Ms. Demman. Are there any questions from committee members? Senator White. [LR152]

SENATOR WHITE: With regard to the increase in the cap, would NorthWestern be charged for a litigation of the rating...rate matter that Aquila for example, initiated? [LR152]

LAURA DEMMAN: No. Each utility is only charged for dockets that they are responsible for, that either they have filed or the commission has opened against them. [LR152]

SENATOR WHITE: Okay. So we're not going to see the smaller utilities subsidizing the larger utility's litigation. [LR152]

LAURA DEMMAN: [LR152]

SENATOR WHITE: Is that correct? [LR152]

LAURA DEMMAN: That's correct. [LR152]

SENATOR WHITE: Is that under statute or by rule under the PSC? [LR152]

LAURA DEMMAN: It's under statute. That's the purpose of the two types of assessments. The quarterly assessment is for general expenses that could be attributed to all of the utilities, whereas the direct assessments are specific to each utility. [LR152]

SENATOR WHITE: With regard to interim rates, you both want to prohibit the utilities from increasing the rates pending the litigation and extend the time that they may have to continue to provide gas at a lower rate. Is that the sum total of those two provisions? [LR152]

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LAURA DEMMAN: The extension of time only would apply for municipally-negotiated rate case. [LR152]

SENATOR WHITE: Where they're negotiating? [LR152]

LAURA DEMMAN: Right. The only utility that has opted to do that so far has been NorthWestern. And the result is that the public advocate would be prejudiced in the time that he gets to review the case. [LR152]

SENATOR WHITE: The issue I have with that is doesn't that penalize a utility that wants to negotiate a settlement? Because they are being forced to provide gas at a lower-than-acceptable rate, in their mind, and why aren't you discouraging settlements short of a full hearing? [LR152]

LAURA DEMMAN: It would probably discourage them from wanting to negotiate, right. [LR152]

SENATOR WHITE: Is that a good thing? [LR152]

LAURA DEMMAN: Not necessarily. It's another risk that they would take, another risk added to their... [LR152]

SENATOR WHITE: But the risk would be in negotiating. Normally the system is predicated on the risk being placed on those who would pursue it to full litigation, to encourage settlement. But here we're discouraging settlement and encouraging aggressive litigation, are we not? [LR152]

LAURA DEMMAN: The...and I guess the trade-off with their risk is that in a municipally-negotiated cases they're going to get to collect their final rates sooner, or

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typically they have more control over it anyway, because the time period for negotiating isn't set by statute. The utility and the municipalities can agree to how long they want to negotiate. [LR152]

SENATOR WHITE: Marketing energy has been extraordinarily volatile lately. You are looking at extending the ability of the utilities to react to market conditions, are you not, by not taking away interim rates for up to a year? Have you done any economic studies of what that would cost and what the impact would be on the utilities? [LR152]

LAURA DEMMAN: We haven't. And I should note that the rate cases only apply to the distribution costs, not to the cost of the commodity, so... [LR152]

SENATOR WHITE: But the distribution costs are tied to oil, gas, everything like that, correct? [LR152]

LAURA DEMMAN: Sure, they're certainly impacted by market conditions. [LR152]

SENATOR WHITE: Thank you. [LR152]

SENATOR FRIEND: Thank you, Senator White. Any other questions for Ms. Demman? Ms. Demman, this seems like a 90-day agenda as opposed to one of those 60-day agendas. There are some...I mean, Senator White alluded to a little bit of it. There's a little bit of heavy-lifting in here. You don't expect me to do this, do you? (Laughter) You don't have to answer that. You don't have to answer that. Are there any other questions for Ms. Demman? Seeing none, thanks for coming. [LR152]

LAURA DEMMAN: Thank you. [LR152]

SENATOR FRIEND: First testifier on LR152, the issues...the Urban Affairs Committee issues. Welcome. [LR152]

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BUD BECKER: (Exhibit 5) Good morning. Good morning, Chairman Friend, members of the Urban Affairs Committee. My name is Bud Becker, last named spelled B-e-c-k-e-r. I am the vice president for regulatory affairs for SourceGas Distribution. I am also the chairman of the board of the Nebraska Natural Gas Association, and today I appear on behalf of the NNGA. The testimony then goes on to tell you who the NNGA is, its constituent members, and the number of customers we served. Basically in Nebraska, combined, we serve about 324,000 customers in Nebraska. Mr. Stadtwald and Ms. Demman have covered a fair bit of the legislative history bills that have been enacted over time, so I'll spare you repeating the history of LB78 and LB1249, which you'll find on page two of my testimony. A bill which hasn't been touched on that I'd like to hit on quickly is that in LB384 was passed by the Legislature in 2002. And it dealt with a revision to the manner in which municipalities could condemn the natural gas systems owned by investor-owned utilities. Under the prior law, the procedure was that the town board would pass a resolution to proceed with condemnation, then the citizens would vote yea or nay, and if they voted yea, then the proceeding would go on to determine the value of the property that was in issue. What LB384...the two key changes it affected were, number one, it said that when the town council or board passed a resolution, it needed to give a statutory reason, and the reasons were set forth in the statute, as to why condemnation was appropriate: public safety, the rates were too high, things like that. And secondly, it switched the steps two and three so that the town citizens now had the value in front of them before they voted, so that they knew more particularly what they were voting on. Before it was just yea or nay without any value at all. LB384 says the value is before citizens so they knowingly vote on proceeding. There has been discussion of LB790. That created the State Natural Gas Regulation Act in 2003. That bill, except for limited circumstances, spelled out in the act, the commission's jurisdiction does not extend to publicly-owned utilities. One of those limited circumstances is the prohibition which prevents all entities, public or private, from installing pipe that duplicates or is redundant of existing pipeline. In this regard, the Legislature was extending to additional natural gas companies the double-piping

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prohibition that's basically incumbent in LB78 and LB1249, in order to promote safety, existing investment, and orderly growth. We are...in recent months we've been aware of efforts of at least one municipal natural gas utility to offer legislation to exempt from the double-piping prohibition municipally-owned utilities. We suggest to the committee there is no need for any change. The policy goals supporting the no double-piping restriction remain today as they did in 2003. Even though Nebraska is a rural and sparsely populated in many areas, the NNGA members have been able to provide safe and reliable service at reasonable rates. Since passage of the Regulation Act, the commission has been presented with and has resolved a number of issues. For instance, the commission, with input from various interested parties, adopted a comprehensive set of rules and regulations governing multiple aspects of natural gas regulation, such as rules for disconnection of service during cold weather, the information to be displayed on customers' bills, and the documents and data to be filed by jurisdictional utilities seeking general rate increases. The commission has addressed or is in the process of addressing general rate increases by each of the jurisdictional utilities. An important aspect of these rate cases has been the ability to place rates into effect on an interim basis while the rate case is being resolved. Interim rates for utilities are not a new feature of Nebraska law. The interim rate provision has been part of the Nebraska law for over 20 years. It was an original part of the Municipal Natural Gas Regulation Act, passed in 1986. Under the Municipal Natural Gas Regulation Act, interim rates were permitted to go into effect after 90 days and the city councils, the town boards had 180 days to take final action on the rate application. The interim rate provision was a specifically-bargained for provision in 1986 and 2002, when the State Natural Gas Regulation Act was passed. The State Regulation Act provides for interim rates after 60 days when there is municipal negotiation or the standard 90 days otherwise. The State Regulation Act was negotiated as a complete package and this was absolutely an integral part of that act. Among other things, the interim rate provision is a trade-off for providing the commission more time for final consideration of a rate request. The municipal regulation act, as I said, provided for 180 days for a decision by the towns. By comparison, the state regulation act provides the commission with up to

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270 days to make a decision. So an additional 90 days was added as part of the negotiation of the State Regulation Act. Because the use of interim rates by jurisdictional gas utilities are subject to the commission's oversight, including payment of interest on any over-collections under interim rates, customers are protected from the possibility of excessive interim rates being placed into effect. In addition, interim rates allow jurisdictional utilities a more stable approach to recovering their costs, thereby producing financially healthier utilities that ultimately benefit customer service and reliability. Using interim rates during a rate case review process that can take several months to complete is an important tool for the NNGA members. It allows us the ability to keep current with our costs until final resolution can be reached, while maintaining the high-quality service our customers expect. Interim rates, in addition, are a widely-accepted, regulated practice throughout the country. No regulatory system is perfect. The NNGA has some concerns, such as the uneven playing field between jurisdictional utilities and municipally-owned utilities or the Metropolitan Utilities District. But at this juncture, no member of the NNGA is proposing any amendments to existing law, except as will be described in the testimony of Mr. Mechtenberg. However, the NNGA has also been aware of the possibility of a variety of natural gas legislation may be introduced during the 2008 legislative session. The NNGA is committed working with you and your colleagues in reviewing this legislation so that it meets the needs of our customers and the industry. That concludes my remarks. And I thank you for your patience. I am available for questions. I would then...Ms. Demman testified on behalf of SourceGas. I would respond very quickly that the increase in the assessment is something we would like to discuss with the commission as to some ideas we have in mind as to how costs might be controlled so that an increase might not be necessary or could otherwise be mitigated. As to interim rates, that was specifically discussed in my testimony and we definitely believe that the interim rates are a very much needed financial tool for a utility, because when it files a rate case, it is required to file a demonstration of a revenue deficiency, and to make the utility then wait nine months to be able to start recovering costs is not an appropriate public policy, and we think that the Legislature, when it acted originally, got it right. Thank you. [LR152]

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SENATOR FRIEND: Thank you, Mr. Becker. Are there any questions from committee members? SENATOR WHITE. [LR152]

SENATOR WHITE: Yes sir, you don't have a problem in principle with the utility paying the cost of the litigation involved in the rate case, do you? [LR152]

BUD BECKER: No. [LR152]

SENATOR WHITE: You would like to see some cost savings as well. [LR152]

BUD BECKER: And Senator, those costs are passed on to our customers. [LR152]

SENATOR WHITE: Certainly they are. Certainly they always are. Would you object if encouragement in cost savings to make it more efficient process were accompanying an increase in the allowable amount that could be assessed? [LR152]

BUD BECKER: That sounds like an appropriate balance, yes. [LR152]

SENATOR WHITE: Thank you. [LR152]

SENATOR FRIEND: Thank you, Senator White. Any other questions from committee members? Mr. Becker, I don't want to delve into this too deeply, but I find it a little curious...you stand around here, you walk around these halls enough, and you hear enough things if you want to start believing them, then I think you can get yourself in trouble in these hallways. But you had mentioned--I find it curious--you had mentioned that you've been made aware of efforts by at least municipal gas utility to offer legislation to exempt the operations from a double-piping prohibition. I just find it curious...and I can't speak for Senator White or Senator Rogert, they haven't talk to me about it. That's all news to me. I find it rather curious that if somebody is going to come

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to this committee with an exemption to double-piping prohibition that they wouldn't alert us by November...what are we at? November 9th. I'm not asking you to reveal sources or do anything else. This is the type of thing, though, Mr. Becker, that ends up, you know, festering a little bit. I'd like to almost clear this up, that I haven't been approached. And I guess it would be... [LR152]

SENATOR WHITE: I have not been approached. [LR152]

SENATOR ROBERT: Nor have I. [LR152]

SENATOR FRIEND: Okay. That's more of a statement than anything else. [LR152]

BUD BECKER: That's excellent news. Great. [LR152]

SENATOR FRIEND: Thank you, Mr. Becker. Thanks for the testimony. [LR152]

BUD BECKER: Thank you. [LR152]

SENATOR FRIEND: Welcome. [LR152]

DAN MECHTENBERG: (Exhibit 6) Good morning. (inaudible) ...copy of my testimony. Good morning, Chairman Friend and members of the Urban Affairs Committee. My name is Dan Mechtenberg, and that's M-e-c-h-t-e-n-b-e-r-g. And I'm the director of business operations for Aquila's natural gas operations here in Nebraska. And today I'm appearing on behalf of Aquila to speak to the procedures developed as a result of LB1249's passing in 2006. Aquila provides natural gas services to approximately 197,000 customers in more than 110 communities in the eastern 1/3 of Nebraska. It employs over 450 people in the state. Aquila has provided safe, reliable natural gas for more than 75 years in eastern Nebraska. Aquila is pleased to report that LB1249 has been a positive step toward safe operation and orderly development in the Omaha

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metro area and has shown what some of the potential benefits would be if there were service territories. The required filings have provided transparency of planned projects and opened communications as intended. What might have been legal disputes before the Nebraska Public Service Commission were avoided by exchanging information and mutually resolving issues. This saved money for ratepayers of both utilities by reducing litigation costs and protecting against stranded investments. And as Ms. Demman pointed out earlier, there have not been any contested cases at the PSC since LB1249 has been enacted. We appreciate the work of Senator Friend and the Nebraska Legislature for demonstrating leadership and enacting LB1249 to address territorial issues surrounding the Omaha metro area. Service territory regulation is in place in over 30 states. It provides safety and order to operations for natural gas and other utilities, saves ratepayers money, and would benefit Nebraskans. LB1249 requires Aquila and MUD to submit planned extensions or enlargements of their gas system to the Nebraska PSC for determination that the project is in the public interest prior to any investment being made by either Aquila or MUD. However, there are more filings required by Aquila under the act. For example, MUD is exempt from seeking PSC approval inside Omaha or its zoning jurisdiction. MUD is only required to file when it intends to serve outside Omaha and its zoning jurisdiction. However, Aquila is required to file whenever it seeks to serve in all counties where both providers serve, including Douglas, Washington, Saunders, and Sarpy Counties. Aquila feels there are some process improvements that could be made that would reduce administrative costs and create a fair environment for natural gas ratepayers. The only way to fully address orderly development of natural gas infrastructure and provide for operational efficiency and safety is with service territory regulation administered by the PSC. However, short of providing service territories and in the spirit of improvement of existing law, the following points are offered as the most important revisions to address at this time. First, reciprocity and reduced administrative costs: grand Aquila the same exemption from filing for projects in the communities and their zoning jurisdiction where Aquila serves as a sole franchised provider, just as MUD has an exemption from filing for projects inside Omaha and its zoning jurisdiction. The communities have a franchise natural gas

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provider and, as with MUD in Omaha, there should be no concern for LB1249 issues, as there is only one provider of natural gas. If this is good policy, it should apply to both sides. Secondly, advance order development. Safeguard Sarpy County areas that will eventually be annexed by Aquila-franchised cities from having two natural gas providers, causing confusion for customers, public safety officials, and the community at large. The continuation of two providers does not follow orderly development one would find with service territories. Again, this is providing those communities the same rights that exist in Omaha. Third, planning for the public interest: Aquila has served Elkhorn since 1931. And current statutes give MUD condemnation rights without consideration of LB1249 presumptions and without knowledge of natural gas infrastructure design principles. There are different goals or motives for annexation of areas by a city versus condemnation by a utilities district. City annexations are not driven by utility service--they are driven by growth and financial considerations. The elements of LB1249 aren't a consideration. Without established service territories, Aquila is forced to cede the natural gas system inside the city limits, yet Aquila will continue to serve customers surrounding the annexed area contrary to orderly development. Annexations are not always a nice, square, grid-like proposition. And such was the case in Elkhorn. Elkhorn has pockets of unannexed areas inside the corporate limits. For example, Summer Glen is a subdivision virtually right in the middle of Elkhorn which was not annexed by the city of Omaha. Aquila will have piping running directly through and have system regulator stations inside MUD service area that are necessary for Aquila to continue to serve customers in the non-annexed areas and located outside the corporate limits. There are several critical service and safety issues that arise because of the piecemeal annexation by the city. These are issues that LB1249 was designed to prevent. Hopefully these operational challenges will be resolved this time through negotiation. But it would be best if these issues were resolved prior to annexation. Give the PSC clear and precise authority to regulate defined service territories and keep the Omaha metro area and Sarpy County from becoming a patchwork of natural gas systems. While LB1249 has produced some benefits for ratepayers and utility operations, we urge the committee to look at further improving public safety and orderly

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development of natural gas infrastructure as the communities continue to grow and the amount of undeveloped lands between the communities diminishes. Aquila has actively and consistently supported service territories as part of the regulatory framework to be used by the PSC. Omaha is protected from a patchwork of natural gas distribution system. The public interest will not be well served if other cities in Sarpy County are permitted to become a checkerboard of natural gas system, where every call to locate piping and every call for service requires two companies to respond. With that, I'll close. Thank you for your time and I'd be happy to answer any questions. [LR152]

SENATOR FRIEND: Thank you, Mr. Mechtenberg. Any questions from committee members? Dan, you brought up a true and to me pretty intriguing point in regard to one of your first bullet points there that MUD is treated differently according to the law with this exemption from filing for projects inside of its zoning jurisdiction. They...isn't it fair though, to say that they do have sort of a constraint? And I know members of the MUD Board...the MUD Board is kind of a constraint to them. I mean I don't think Tom Wurtz on the MUD Board could get along on a daily basis in a, you know, real extreme, cohesive way. I mean, isn't it fair to say that the laws do treat you differently, but there may be some constraints placed on MUD that are just different than the constraints placed on you? For example, I'm not sure...going in front of the PSC to seek approval to extend zoning jurisdiction is kind of commensurate to MUDs. I don't think it's in MUD's best interest, is my guess, to always extend anytime. And the MUD Board has said that, I think in the past to its management. Am I way off the beam here? Or is it something that, I guess, can be... [LR152]

DAN MECHTENBERG: Well, I can't speak to the relationship with the MUD Board and their management. I guess from our side, you know, we're the exclusive franchise provider in most of the communities in Sarpy County. And, you know, feel that we're in the same position where if we're going to extend a gas main...one of those communities, we're the sole franchise-holder. Then, you know, why would we file for that same project and go in front of the commission, because in fact we are franchised

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in the community? You know, how we extend service, put main in the ground is spelled out in our franchise agreements. [LR152]

SENATOR FRIEND: Thanks, Dan. Senator White. [LR152]

SENATOR WHITE: MUD is governed by a popularly-elected board. Aquila is not. Do you see that as an important factor as why Aquila may have to submit to zoning jurisdiction but MUD does not? [LR152]

DAN MECHTENBERG: Are you talking within the communities that we serve? [LR152]

SENATOR WHITE: Well, of course, where MUD serves they answer to the people directly through their board. I'm asking, is that a distinction that comes into play? [LR152]

DAN MECHTENBERG: Well, I suppose it could be. [LR152]

SENATOR FRIEND: I see no further questions. Dan, thanks for coming down today. [LR152]

DAN MECHTENBERG: Thank you. [LR152]

SENATOR FRIEND: Appreciate it...next testifier on LR152, Urban Affairs issues. [LR152]

DAN CROUCHLEY: Senator Friend, members of the committee, my name is Dan Crouchley, C-r-o-u-c-h-l-e-y. I'm senior vice president and general counsel at Metropolitan Utilities District. I just wanted to comment on the actual experience relative to the requirements of LB1249. I'll just say that it's going very well. I think as it came up, people might have had heartburn about the requirement of prior notice, but once in

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place, we, as far as I'm concerned, both sides, adapted to it. The amount of communication between Aquila and MUD has increased many fold...is what I'd suggest. And it actually ends up that the communication, the informal communication on this subject precedes notices. So we know we have to do the notice. So if someone has a project, I'll get a phone call and asked up front whether that...if MUD might have an issue with that project. So many of these issues are already resolved before even the actual, official notice has to go out. If you have war wounds, Senator, we'll give you a Purple Heart. I think I would suggest that we leave the manner of LB1249 exactly the way it is. It's working quite well. I think...I thought I heard your question, Senator Friend, that you didn't see it resolving this. But there... [LR152]

SENATOR FRIEND: Well, I was curious as to whether it did, Dan. [LR152]

DAN CROUCHLEY: Okay. There has not been, I think...the only time that a protest might have been filed was when we ran out of time before somebody had answered a question on one side or the other. I can't even remember which one that was. And the minute the questions were clarified, it was all dropped. So we're...the experience under the LB1249 mechanism has resulted in no lasting protest before the Public Service Commission. And with that, I'll answer any questions. [LR152]

SENATOR FRIEND: Thank you. Are there questions for Mr. Crouchley? Senator White. [LR152]

SENATOR WHITE: I was concerned by Aquila's point that we could have a balkanized natural gas system. And if you take Elkhorn, for example, under the existing law, if MUD did condemn, could they leave Aquila with pipelines that were designed to serve basically a whole small city, which they would still have to maintain to serve some isolated parts? In other words, would Aquila have to maintain a system to serve the unincorporated neighborhoods? You guys would take off with the vast majority of the customers, and they'd be stuck with a pipeline to a handful of customers. And if so, do

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you think that is something we should be concerned about? [LR152]

DAN CROUCHLEY: If there is one pipeline from a town border station that comes in and in fact is the service to Elkhorn, the condemnation of exactly what is in the city of Omaha is...does leave some remaining areas. The pipeline, in my opinion, would be used to serve all...it would serve the same people. It would result in a transportation circumstance with regard to the areas outside of the city of Omaha, which then there are a number of them. And that would result in...I'm not sure what the figure is, but there would be leftover customers that would be Aquila customers. [LR152]

SENATOR WHITE: And would be the economic consequences to Aquila of trying to serve those customers when many of the customers have been taken away? I mean, is that even economically viable for Aquila? [LR152]

DAN CROUCHLEY: I would suggest that it...as a business decision, no. It is not. And that it should be...result in us being the server of those people. But we can't do it with regard to the condemnation authority. [LR152]

SENATOR WHITE: Well, you can inversely condemn it by making it impossible for them to economically serve them, can't you? [LR152]

DAN CROUCHLEY: I don't think so. I think we'd transport. In other words, if you've taken over Elkhorn, former Elkhorn, you've got a subdivision that's not in the city of Omaha, outside that, you have to meter it in some manner. But MUD transports to that location. [LR152]

SENATOR WHITE: How about service? Is it going to make it more complicated to locate and repair gas leaks, things like that? [LR152]

DAN CROUCHLEY: No. [LR152]

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SENATOR WHITE: Why not? [LR152]

DAN CROUCHLEY: Because it's...everybody knows where their stuff is. This isn't as we talked about earlier, quote, double piping. It's a distinct area that happens along the edge all the time. By the way, as the city of Omaha annexes those islands go away, because we take them over as the city of Omaha annexes. So there is an interim period. This is subject to discussion, I'll say, between us. In the interim period there are some islands. As the city of Omaha chooses to annex, those islands disappear. [LR152]

SENATOR WHITE: So the worry that was described here of Elkhorn and patchwork service in not realistic in your assessment? That's not a real... [LR152]

DAN CROUCHLEY: Interim issue of insignificant worry...I don't see that as a big deal. That's...I mean, unless we see a bill that suggests that you're removing our condemnation authority. Then you will get a concern on our part. But I've never heard of such a consideration. [LR152]

SENATOR WHITE: I guess I'm not asking whether its of MUD's concern, but is it a legitimate concern that we could end up with a Balkanized service system? [LR152]

DAN CROUCHLEY: Nope. And I'm sure they'll disagree. But we will be serving the former Elkhorn and in time, the little islands that currently are...will be served by Aquila through annexation. So it's a time-limited problem to the extent that it's a problem. [LR152]

SENATOR FRIEND: Thank you, Senator White. Dan, can I follow up on something Senator White just said? I was talking to Bill off the side. If you...one of the things that would concern people like us sitting up here is if you were distributing or if you were carrying that natural gas in a scenario that you just brought up, to areas that were not

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MUD users. You are precluded from, you know, bilking Aquila or anybody else for the amount of that transportation, aren't you? Because the MUD Board...that would have to be...the distribution rate is consistent throughout the MUD district. You can't say, oh, by the way, Aquila, we're going to nail you out here and we're going to force you out of the business by charging a little extra for this distribution in this area. That's not going to happen because it can't happen. Is that a fair assessment? [LR152]

DAN CROUCHLEY: In the sense of a transportation rate being established, a uniform one, that's correct. This particular one in discussion the figure has gone from zero to no other discussion. So, you know, I hate to say that right up front. But the idea in negotiation was that any transportation issue would be resolved without quote bilking anyone. [LR152]

SENATOR FRIEND: Okay, not that I'm... [LR152]

DAN CROUCHLEY: It exists, I mean, in theory. But the transportation rate is uniform. I mean, right now [LR152]

SENATOR FRIEND: And dictated by the MUD Board and your transportation rate [LR152]

DAN CROUCHLEY: Yeah. There are...they're very minor. One or the other of us transports for the other...can't even...it's in southwest Omaha. I'm not even sure there's a transportation... [LR152]

SENATOR FRIEND: Okay, I should have understood that a little bit better, but thank you. [LR152]

DAN CROUCHLEY: No, that's fine. Thanks. [LR152]

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SENATOR FRIEND: Any other questions from committee members? Seeing none, thanks for the testimony. [LR152]

DAN CROUCHLEY: Thank you. [LR152]

SENATOR FRIEND: Next testifier in regard to LR152, Urban Affairs issues. No other testifiers? This is my resolution, I waive closing. And that will close the hearings. Just a reminder: this afternoon's hearing is cancelled. It is not postponed, it is canceled. And that closes the hearings for the day. Thank you all. [LR152]