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Urban Affairs Committee
October 06, 2017

[LR60 LR81]

The Committee on Urban Affairs met at 1:30 p.m. on Friday, October 6, 2017, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR81, and LR60. Senators present: Justin Wayne, Chairperson; Matt Hansen, Vice Chairperson; Sue Crawford; Sara Howard; Tyson Larson; Dan Quick; and Merv Riepe. Senators absent: None.

SENATOR WAYNE: Good afternoon, welcome to the Urban Affairs Committee. My name is Senator Wayne, I represent District 13--which is north Omaha, northeast Douglas County--and I serve as the Chair of Urban Affairs Committee. We will start off having members of the committee introduce themselves. And we'll start with Ms. Senator Howard.

SENATOR HOWARD: Thank you. I'm Senator Sara Howard; I represent District 9 in midtown Omaha.

SENATOR RIEPE: I'm Merv Riepe and I represent District 12, which is Ralston and Millard in the south part of Douglas County.

SENATOR HANSEN: I'm Matt Hansen, representing District 26 in northeast Lincoln.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

SENATOR QUICK: Dan Quick, I represent District 35 in Grand Island.

SENATOR CRAWFORD: Good afternoon. Sue Crawford; I represent District 45, which is eastern Sarpy County.

ANDREW NORTHWALL: Andrew Northwall, committee clerk.

SENATOR WAYNE: Thank you. Also assisting the committee will be our pages: Heather Bentley from Miller, Nebraska, who is an agriculture economics major at the University of Nebraska-Lincoln; and Joseph Gruber from Omaha, who is a political science major at the

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University of Nebraska-Lincoln. This afternoon we will be hearing two interim study resolutions: LR81, an interim study to examine the adoption and enforcement of State Fire Codes; and LR60, an interim study...excuse me, to examine the issues related to the use of tax increment financing, better known as TIF, which was raised in December of 2016 in a report issued by the State Auditor. On each of the tables in the back of the room you will find a blue testifier sheet, it's over here, and also a pink one. If you're planning on testifying, please turn in a blue one to Andrew before you testify so we can keep accurate records. If you would like to have your opinion or voice heard, but don't want to actually testify, please turn in a pink one. And again, those are in the back of the room. We would ask that if you have any handouts that you would please bring 10 copies and give them to the pages so they can pass out to committee members. In addition to the copies, if you need more copies, please let the pages know and we'll provide that. Testimony for each interim study will begin with the introducer's opening statements. After their opening statement, we will hear from invited testifiers, after which we will take testimony from the public. Since these are interim studies, there are no proponents and opponents, it's just information that we are trying to seek. We will ask that you begin your testimony by first giving your first and last name, please spell them for the record. We will be using the four-minute light system today. When you begin your testimony, the light will be green; and then yellow light means a one-minute warning; and a red light will mean please wrap up your final thoughts. I would remind everyone, including the senators, to please turn off your cell phones or put them on vibrate. And with that, we will begin today's hearing with LR81. And since I am the introducer, I will turn it over to Senator Hansen.

SENATOR HANSEN: Perfect. Please proceed.

SENATOR WAYNE: Good afternoon, Vice Chairman Hansen and members of the Urban Affairs. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent the 13th District in north Omaha and northeast Douglas County. LR81 is the interim study to examine the adoption and the enforcement of State Fire Codes, and it focuses on three areas: the fire code adoption process as compared to other codes, such as building codes, energy codes, electrical codes, and plumbing codes, which are all adopted; the role of the political subdivision as it relates to enforcing those codes; and the interaction between the fire code and other state and local codes. First I'll start with the adoption process. Unlike other codes--the building code, the energy code,

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electrical code, and plumbing code--under the jurisdiction of the Urban Affairs, the State Fire Code is not adopted by statute. It is adopted entirely through rules and regulations process by the State Fire Marshal. The current fire code conforms generally to the 2000 edition of the Life Safety Code which is promulgated by the National Fire Protection Association. The LSC, which is the Life Safety Code, is often referred to as NFPA 101 or pamphlet 101. Last year the State Fire Marshal began the process of updating its rules and regulations to conform generally to the 2012 edition of LSC. Those regulations are currently on-hold due to an executive order issued this summer, which suspended all agency rule-making in order to review of existing and pending regulations by all code agencies. While Section 81-502 provides the rules and regulations adopted by the State Fire Marshal...provide that the rules and regulations adopted by the State Fire Marshal may conform generally to the LCS (sic) standards...I'm sorry, LSC standards, it does not specify which editions of those rules and regulations should follow. In addition to LSC, the current rules and regulations also adopt a number of NFPA pamphlets, including NFPA 1; which is commonly referred to by NFPA as the fire code. The Urban Affairs Committee receives handfuls of inquiries and complaints over the last few years regarding the lack of frequency in updating the State Fire Code. In addition to the State Fire Code, the State Fire Marshal was required under 81-541.01 to adopt and promulgate rules and regulations establishing a high-rise building fire code. These regulations were required to conform generally with the 1979 Uniform Building Code, which is no longer in publication. Because NFPA 101 and NFPA 1 now include provisions equivalent to the high-rise building code, this statutory language is likely obsolete. Fire code enforcement...next we'll turn to the fire code enforcement. The enforcement of the State Fire Code is predominantly provided by the State Fire Marshal's Office. The fire code can be enforced by local governments if the enforcement authority is delegated to a qualified local fire prevention personnel. There are currently eight cities that have been delegated along with the authority of the University of Nebraska-Lincoln. If enforcement of fire codes is being provided by the State Fire Marshal's Office, inspection fees are paid to the Fire Marshal's code according to the fee structure set up by state statute. That statute has not been updated in a significantly long time, so that's one of the things that we might want to look at as a committee, of modernizing those fees. And then we also got to talk about the interaction between the fire code and other codes. Because local code officials are primarily responsible for building inspections, there can be interplay between fire code and city codes or other codes, like building codes and electrical codes. Specifically, the Urban Affairs Committee has been contacted multiple times

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over the last couple years regarding disagreements between fire codes and the International Existing Building Codes, which is a component of the state building code. A representative from the Fire Marshal's Office, along with several other kind of individuals behind me will testify and answer mostly the more technical questions. And again, this was primarily brought on because we get some calls about interplay between a city who has one code interpretation and the fire code has a different one. We did meet with the Fire Marshal and they got through the process of the more restricted is typically the way it is governed. But out of that meeting I think this committee definitely needs to look at the fee requirement and fee structures in the statute and see if there's anything we can do there along with the obsolete language. [LR81]

SENATOR HANSEN: Great, thank you. Are there any questions for Senator Wayne? Seeing none, thank you for your opening. Okay, we don't have any invited testimony, so we'll just take proponent...or not proponent, excuse me, just public comment as you wish. Ready? [LR81]

REGINA SHIELDS: (Exhibit 1) Good afternoon, Chairman Wayne and members of the Urban Affairs Committee. My name is Regina Shields, R-e-g-i-n-a S-h-i-e-l-d-s, and I am the agency legal counsel and legislative liaison for the State Fire Marshal Agency. I am here to provide information regarding how and when fire codes are adopted by the State Fire Marshal, as well as general information about how the agency interacts with other political subdivisions, including the interaction between fire codes and other types of codes. I did want to mention the State Fire Marshal apologizes that he can't be here today to testify, but he is out of the office all this week. Nebraska Revised Statute 81-502(5) states in part that "the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section may conform generally to the standards recommended by the National Fire Protection Association Pamphlet 101, known as the Life Safety Code, and associated pamphlets." Pursuant to this section, the agency adopts National Fire Code Protection Association pamphlets through their regulatory process in Title 153 of the Nebraska Administrative Code Chapter 1. Within that chapter is a listing of the pamphlet number, the title of the pamphlet, and the year edition that is being adopted. These pamphlets make up what is commonly referred to as the Life Safety Code. The agency utilizes these pamphlets to conduct fire inspections of various facilities. When the agency updates to a new edition of the Life Safety Code and its associated pamphlets, this requires all new code books and electronic access be given to the agency personnel. The average cost for the physical

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and electronic updating is between \$55,000 and \$60,000. This cost is just the materials and does not include any training time for the staff on the new code. It should also be noted that a large percentage of the inspections conducted by the agency are done in facilities that come under the jurisdiction of the Centers for Medicare Services, CMS. As part of the requirements when conducting these inspections, the inspecting entity must utilize the Life Safety year edition which CMS has specified. CMS has just recently started the updating process to utilize the 2012 year edition. As such, the agency is also in the process of adopting to the newer year edition. As a part of that process, the agency is working toward a new feature for the code adoption, which will allow people to view the full text, including Nebraska-specific amendments, to NFPA 1 and NFPA 101 at no cost. This is a new feature and is being done as part of the agency's efforts to be more efficient, effective, and customer-focused. The agency is very aware of the frustration felt by some of our customers when it comes to trying to find the exact text of various NFPA codes and the exact year edition for each pamphlet. The agency is also very cognizant of the fact that changes that occur within newer year editions of the code, also that there are situations where customers have difficulty complying with certain code regulations. To address these concerns, the agency has adopted an equivalency process wherein customers can request alternatives to what was ordered in the fire inspections. These requests were reviewed by agency personnel; and if it is determined that the alternatives provide the same level of safety, then the equivalency can be granted. The SFM has jurisdiction throughout the entire state to conduct fire code inspections and other duties outlined in statutes, such as, but not limited to: arson investigations, underground storage tank inspections, and plan reviewing. The agency has delegated this authority to fire prevention bureaus or fire departments in eight cities and to the University of Nebraska-Lincoln. When these entities are acting under a delegated authority, they must enforce NFPA pamphlets that are adopted by the State Fire Marshal. They also have the ability to enforce any local code requirements that have been adopted at the local level. This flexibility allows the local entities to tailor a fire code to their local needs, but also ensures that the minimum standards adopted by the State Fire Marshal Agency are met. When there is a conflict between the codes, the most restrictive standard must be met. There are a variety of other code systems utilized throughout the state, which have been discussed. Each of these codes was written with a specific purpose in mind and is necessary to ensure safety and efficiency in their respective areas. However, that does not mean the codes are interchangeable. For example, the building code is designed to protect property, thus dealing with issues of structural strength and

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composition of building materials as well as other things. The Life Safety Code is designed to protect people and focuses on issues of egress, including all the safety issues associated with that various occupancy. While there is some overlap between the codes, they were designed with two different but very important purposes. Thank you for your time and attention, and I would be happy to answer any questions. [LR81]

SENATOR WAYNE: Any questions from the committee? Seeing none. Can you tell the committee when the fee structure was updated last? The code...I mean, the statute? [LR81]

REGINA SHIELDS: We have various fees within the fee structure, so some of them were adopted at different times. But the last one was done in 2004 for one section. [LR81]

SENATOR WAYNE: For one section. But the majority of them haven't? [LR81]

REGINA SHIELDS: Been done since the '90s. [LR81]

SENATOR WAYNE: Okay, thank you. Any other questions from the committee? Seeing none, thank you. Any other public comment? [LR81]

JAY DAVIS: Good afternoon, Senator Wayne and Senators. Good to see everybody today. My name is Jay, J-a-y, Davis, D-a-v-i-s. I am assistant planning director and superintendent of the permits and inspections division for the city of Omaha. I'm actually here today representing both the Omaha Fire Department and the city of Omaha planning permits and inspection division basically just to comment on the fact that we're probably one of the ones that has the most awful situations as far as the Life Safety Code and the building code goes. I could go back through some history, but I'm not going to necessarily. But the International Code Council actually replaced four different code bodies back in 2000. We originally started out trying to work nicely with NFPA, then we decided we couldn't play well with each other. And here we are in 2012, 2015, and 2018 editions where we're now playing with each other again. And very well, I might add. So some of the things that we're hearing across the communities, and particularly in our case, where the more restrictive does apply, that's correct in either case. But what we're hearing and what we know is that there are things in 2000 edition of the Life Safety Code or NFPA 101

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that just do not mesh with the 2012 version of the building code. Some of it deals with exiting, some of it deals with life safety requirements. And more importantly it also deals with ADA requirements, which is also delegated to us through the State Fire Marshal's Office. And because of that, designers are struggling from almost day to day on their projects to how do we make something work. Well, you can go through plan review where you can get it all done; but when they get out into the field, how does it really work in reality? So I want to underscore the fact that the Life Safety Code is a very, very important document. We in Omaha use all of the NFPA documents, not just 101. We use the whole series, from the fuel gas code all the way up to NFPA electrical code. And we use those because they all fit within our international code; but as a design process, they all have to tie together. And so if we have to do one thing over here that works for the Life Safety Code, even though it's more restrictive, if it's something that was done in 2000 and technology has changed in 2012 that would make it much more efficient to do that, then that's kind of where we need to work together to get both approved. I understand the State Fire Marshal's position in the fact that we are the delegated authority for them. They don't have the manpower of personnel, and quite honestly we do, but not to the extent that we can do really what would be done if we did both jobs together. They're in even worse shape than we are from number of personnel. So they're asked to do a lot, they cover all of the schools in the state. We're fine with that, but that's a lot of work for them. And we understand that things don't progress like they should. And in today's environment, and I think there's probably a couple of developers from the Omaha area sitting behind me too, that will tell you that we don't go fast enough. Well, we can only go so fast, and I can't imagine being under the pressure of the State Fire Marshal's Office trying to go any faster. By bringing the two codes together would certainly help both sides of that argument, helping us get through the process of designing and building in a manner that's efficient and cost-effective for all involved. I'm here to answer any other questions if anybody has any. [LR81]

SENATOR WAYNE: Any questions? Seeing none, thank you. [LR81]

JAY DAVIS: Thank you. [LR81]

SENATOR WAYNE: Any other public testifier? [LR81]

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DEBORAH EBKE: Good afternoon. My name is Deborah Ebke, D-e-b-o-r-a-h E-b-k-e. And I don't mean to be disrespectful, but I put some notes in my phone so I'm just going to use that...that's why I have my phone. But I'm the treasurer for Bonham Theatre Project in Fairbury, Nebraska. I've been intimately involved for the past five years with renovating the historic Bonham Theatre. And the fact that the most recent adoption of the NFPA Life Safety Code is 2000 has been a detriment and its been a hindrance to our progress on our project. First, we were hampered by the expectation that we had to be in compliant as a new construction, in spite of the fact that we were a 90-year-old building. And our architect at the time was not very receptive (sic) in advocating for us to try to challenge some of those expectations of the Fire Marshal. Their position, and I understand it, was that they have to work with that office on a daily basis and they didn't want to have challenges with them. So consequently, we as an organization decided to do the communication with the Fire Marshal ourselves. And so after months of discussion which, you know, ultimately it was a couple of years with various levels of the state government, the Fire Marshal's Office did decide that we could be considered existing construction with a totally different set of code requirements and we could also comply with the 2012 Life Safety Code 101. Some of the challenges, I'll just kind of give you a couple of them here, that when we were addressing were being able to provide two separate exits for persons that are handicapped in a landlocked building. We also had a historic staircase that was open and we wanted to continue to keep that open. And also there were older features in the building that had prescriptive differences...or differences from the prescriptive tolerances. For example, the rise in the run of stairs have to meet certain codes. They met the code back years and years ago when they were built, but they didn't meet currently. But they were within a tolerance amount. So those were some things that we addressed. And then our job was complicated, and it was mentioned earlier, that since we were allowed to use the 2012 code we had to prepare what are called equivalency concepts forms and just demonstrate how the 2012 code would allow us to be as safe as the 2000 code. So ultimately the Fire Marshal's Office and our organization we got along fine and we all treated each other with polite and professional attitudes. But I truly believe that, particularly for small towns and historic properties, there needs to be an update of the code. I'm a retired CPA and I can guarantee you that we would never be allowed to use 17-year-old code to file your tax return or to do your audit. So, you know, I think it's an issue of being able to accommodate small towns and big cities and not, you know, particularly with historic properties.

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And not continue, you know, to help updates for the blight. So anyway, I appreciate your time today and I would be happy to address things that affected us if you have questions. [LR81]

SENATOR WAYNE: Any questions from the committee? Seeing none, thank you. [LR81]

DEBORAH EBKE: Thank you. [LR81]

SENATOR WAYNE: Welcome to your Urban Affairs Committee. [LR81]

TODD AERNI: Good afternoon, everyone. I'm Todd Aerni and I'm with Hillcrest Health Services in Bellevue, Nebraska. I'm the director of facilities there. I'm here today on behalf of the Nebraska Health Care Association. I chair their Life Safety Task Force. I just want to talk a little bit about the healthcare piece of how this all works with the fire code. So the lady from the Fire Marshal's Office touched on it a little bit, but a couple of challenges we have in the healthcare world is, you know, the State Fire Code that's adopted is the 2000 Life Safety Code. So all of the jurisdiction that would work in their delegated authorities--Omaha, Bellevue, Lincoln--the delegated authority is required to adopt that code as their code standard. So when we come in there to do a nursing home or a skilled nursing facility, we have to comply with that code at the same time because the State Fire Marshal is the delegated authority for CMS in our state. And CMS has adopted the 2012 Life Safety Code, we also have to comply with that code. So we run into this challenge of trying to design a building that has to comply with multiple codes. And because the Life Safety Code of 2000 is outdated, many of the local jurisdictions have adopted a supplemental code, the International Fire Code or something like that, to help with some of the other challenges you've heard about today. So it's more today just to talk about, you know, the challenges we have been multiple codes in a healthcare setting. A couple things today maybe I ought to add, too, is just I think there seems to be a lack of coordination between state agencies with new codes. In a previous life I was the code official for the city of Papillion, so I've been involved in that side of my life. And we really struggled with it doesn't seem like say the State Fire Marshal, the Energy Office, and the State Electrical Board, and the energy code folks really talk a whole lot. They're really worried about their specific silo. And when they adopt something, they don't actually think about how it affects the other pieces. And so having codes that are kind of all over the board, you know, different codes, different national standards has made it very,

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very challenging just across the board. A couple of examples maybe that I could give specific to that, not actually even in code adoption, just in changing regulations in general. We recently had a building that got occupancy here in the city of Lincoln, the entire process we were told was all through the delegated authority. So we worked the entire two years through the process with the city of Lincoln, everybody was on the same page. We submitted for licensure to DHHS last week and were told I needed a CO from the State Fire Marshal. Called the State Fire Marshal up and they're like, no, no, no, it's the delegated authority. That's how it has always worked in the past, you don't need to get that. Went back to DHHS and they said nope, it has to be the State Fire Marshal. So now we're three weeks later waiting for them, because as you heard earlier they are very, very busy. And so now at the end of the day DHHS or somebody has changed the regulation or the interpretation at the end of the day that we had to have the State Fire Marshal involved from day one. And so that was a challenge we had to work through with them. Again, the State Fire Marshal did a great job on that. It was just kind of a change in the way they coordinate things and just didn't really pass that along. You heard a little bit about technology changes. Obviously as codes change and evolve over time, new technology is taking to that. We had another example I'll give you where we all know, you know, phones over time nobody has a land line hardly anymore. Well, the current regulation of the Life Safety Code 2000 requires you to have hard land phone lines in your building so when the fire alarm goes off it calls the central station which then notifies the fire department to come. Well, we've kind of gone away from that technology, one, because it's expensive; and two, its outdated. We've now gone to a cellular dialer. So instead of that call going out through a land line, it goes out through a cellular phone. That was something that was kind of new to Nebraska, so we had to work through that process with the State Fire Marshal. At the end of the day, it worked out and it was great; but it was an example of where had we adopted the codes as they adopt and as they change the cycles we wouldn't have had to have the conversation or the discussion. It would have just been one of those things that would have been approved from day one. With that, I would take any questions. [LR81]

SENATOR WAYNE: Any questions from the committee? [LR81]

SENATOR CRAWFORD: Thank you. [LR81]

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SENATOR WAYNE: Thank you for coming today. Any other public testifiers? Welcome back.
[LR81]

MATT SCHAEFER: (Exhibit 2) Thanks. Good afternoon, Chairman Wayne, members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, testifying today on behalf of the Nebraska Association of Commercial Property Owners. Members of that group develop, own, and manage commercial property across the state of Nebraska. Our members generally don't have issues with the Life Safety Code when it applies to construction of new buildings. As you heard from a previous testifier, the real struggle is when it's applied to renovation of existing buildings, especially older structures. You're looking at a letter from our association president that details one recent example in Omaha where a commercial tenant essentially abandoned a project because there was little leniency in a Fire Marshal review of a proposed plan to renovate the building to allow that tenant to grow. And even the adjacent tenant was willing to give up some space and they were willing to make quite an investment, but ultimately that project was abandoned. On a personal level, I'm involved in a neighborhood project just south of here and trying to revitalize that neighborhood. It's mostly residential, but there's a few commercial spaces sprinkled in between. Most of them are very old, some of them are in rough condition or vacant. And it's really a shame if the prohibitive nature of cost and difficulty in bringing those up to code would prevent a renovation of those spaces. And it's really a loss for the community, a loss for the neighbors who have to walk by it every day, and a loss to our economy, not just the building owner. That's all I have. Thanks for your time. [LR81]

SENATOR WAYNE: Thank you. Any questions from the committee? Seeing none, thank you. Any other public testifiers? One more time, any other testifiers? With that LR81 will add the Nebraska Association of Commercial Property Owners October 6, 2017, letter into the record. And this will conclude and close LR81. Now we'll move to LR60, an interim study to examine the related issues to the tax increment financing that were raised in a December 2016 report issued by the State Auditor's Office. I will note the purpose of this study is specifically to look at the issues of the Auditor's report, so I will ask testifiers please try to keep your remarks limited and focused to those issues that were found in the report. For this hearing, we will have a brief introduction of the issues raised by the Auditor's report by committee legal counsel, followed by invited testimony from Senator...State Auditor Charlie Janssen, as well as other municipalities

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whose projects were actually listed in the Auditor's report. Following the invited testimony, we will receive public testimony. Among our testifiers today are two individuals who have drove a long distance and so we'll have those...they're going to call in about 3 pm to 3:30 pm, around that time. So we will break testimony to hear those conversations or testimony via telephone. We do have a large number of testifiers invited for this particular study. We'll do our best to get through this in a hurry. We will maintain the light system except for the introduction. And with that, Trevor. [LR81 LR60]

TREVOR FITZGERALD: Good afternoon, Chairman Wayne and members of the Urban Affairs Committee. For the record, my name is Trevor Fitzgerald, that's T-r-e-v-o-r F-i-t-z-g-e-r-a-l-d, and I'm introducing LR60 on behalf of the committee. I apologize to committee members who have heard more or less the same spiel two other times. The purpose of LR60 is to take a comprehensive look at the December 20, 2016, report that was issued by the Auditor of Public Accounts. That report was issued following the Auditor's review of 22 projects in Nebraska by Nebraska municipalities that utilized tax increment financing or TIF. In conducting their review, the Auditor's Office initially selected 35 TIF projects, but only conducted examinations on 22 of those 35 originally selected projects. As committee members no doubt recall, this past legislative session saw multiple TIF bills introduced, including three that were introduced to address various issues that were raised by the report. In addition to the Auditor's report itself, copies of those three bills are among the materials committee members have in their binders. One of these bills, Senator Groene's LB597, was indefinitely postponed by the committee; while the other two, Senator Crawford's LB95 and Senator Groene's LB489, were held by the committee. As part of the audit, each of the 22 TIF projects that were examined by the Auditor's Office was reviewed for compliance with 14 different criteria. Rather than review each of these criteria separately, both my testimony and the corresponding committee memo will break down the issues identified in the Auditor's report into six main categories. In cases where legislation was introduced to respond to those issues, I will mention that as well. The primary issue identified by the Auditor's report was poor recordkeeping, in some cases amounting to a complete lack of records retention for certain TIF projects. Recordkeeping issues of some form or another were identified in 16 of the 22 projects that were reviewed by the Auditor's Office. While several municipalities have testified at prior hearings that there are not specific recordkeeping requirements in the Community Development Law, the Records Management Act governs

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records retention by local governments. Prior to 2009, the applicable records retention schedule for various records only required municipalities to retain records for between three and five years. Since TIF projects may last as long as 15 years, many records created prior to 2009 may technically not have been legally required to be maintained for the length of the TIF project. In 2009, the records retention schedule for city and village clerks was amended to require that any supporting document received or generated by the city or village that provides support for the receipts or payments associated with the TIF project be retained for 3 years following the end of the fiscal year in which the property taxes are divided, so for the length of the 15-year TIF project plus an additional 3 years. As a result, any such records created after 2009, as well as any prior records that were still existing in 2009 when the records retention schedule was amended, were legally required to be maintained by municipalities. I would note that the language in the current records retention schedules focuses on receipts and payments so it could be unclear whether certain TIF-related documents, such as redevelopment plans, substandard and blighted studies, and cost/benefit analyses fall under current requirements. If the committee wishes to ensure that such documents are absolutely legally required to be maintained going forward, legislation that specifically requires these documents to be maintained should be introduced. Some TIF projects that began after the records retention schedules were changed in 2009 still had recordkeeping issues, however, and in some instances it appears that municipalities failed to keep most records, relying on developers and their attorneys to keep some TIF records instead. One of the major changes that was proposed in LB95 last session was explicit statutory requirements that municipalities which use TIF retain copies of all redevelopment plans, substandard and blighted studies, cost/benefit analyses, and other supporting documents for a period of three years after the property taxes are no longer divided for TIF purposes. The second main issue identified by the Auditor's report deals with annual reporting through the Department of Revenue. Under current law, each municipality which has approved one or more TIF projects is required to provide an annual report to the Property Tax Administrator with a short narrative of the project and basic information about the division of property taxes for the project. The Auditor's report found that the Department of Revenue has taken the position that the annual report is not required and that only amendments to the original TIF redevelopment plan not previously filed be submitted after the initial report is filed. And again, one of the changes that was proposed in LB95 was to clarify that this annual report on TIF projects was actually required annually. The Auditor's report also found that 2 of 22 projects reviewed had inaccurate

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information listed in the Department of Revenue's TIF report, although the Auditor's Office did not determine whether it was the municipalities or the Department of Revenue who was responsible for the inaccuracies. The third main issue identified by the Auditor's report deals with cost reimbursement for TIF projects. In 6 of the 22 projects reviewed by the Auditor's Office, some issue related to cost reimbursement was identified, including cases where the developer incurred expenses prior to the approval of the redevelopment plan. Depending on the nature of these expenses, reimbursement of them could call into question whether the project needs the so-called but/for test. I would note that the words but/for do not actually appear in statute. Under Section 18-2116, prior to approving a redevelopment plan which utilizes TIF a municipality must first find that: "(i) the redevelopment project...would not be economically feasible without the use of TIF" and "(ii) the redevelopment project...would not occur in the community redevelopment area without the use of TIF." Together these two requirements are what is commonly referred to as the but/for test. As proposed this past session, LB95 would have prohibited the reimbursement of costs incurred prior to the approval of the redevelopment plan, except for costs related to the preparation of the redevelopment plan, the substandard and blighted study, or the cost/benefit analysis. The fourth main issue identified by the Auditor's report is the designation of areas as substandard and blighted. While many people have a predetermined notion of what constitutes substandard and blighted property, it's important to note that the terms "substandard area" and "blighted area" are both defined terms under the Community Development Law. These definitions, which can be found in Section 18-2103, were already in statute when Article VIII, Section 12, which authorized TIF, was passed by the voters in 1978. The only substantive change to these definitions since TIF was enacted in 1979 was in 1984 when the definition of blighted area was amended to add additional criteria and to place a maximum limit on the area in a municipality that may be declared blighted. A substandard area is defined as an area "in which there is a predominance of buildings or improvements" with one of six factors or any combination thereof. In lieu of reading those factors, I will just note they can be found in your memo as well as the statutory language in your binders. Similarly, a blighted area is defined as an area due to the existence of certain factors or any combination of such factors that "substantially impairs or arrest the sound growth of the community, retards the provision of housing accommodations, or constitutes an economic or social liability and is detrimental to the public health, safety, morals, or welfare in its present condition or use." Again, the list of 10 statutory factors for determining a blighted area can be found in your memo as well

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as the statutory language. In addition to that list of 10 factors for determining a blighted area, the statutes also require that at least one of the following conditions also be present in a blighted area: "(i) Unemployment in the designated area is at least 120 percent of the state or national average; (ii) the average age of residential or commercial units in the area is at least 40 years; (iii) more than half of the plotted and subdivided property in an area is unimproved land that has been within the city for 40 years and has remained unimproved during that time; (iv) the per capita income of the area is lower than the average per capita income of the city or village in which the area is designated; or (v) the area has had either stable or decreasing population based on the last two decennial censuses." The Auditor's report identified issues with substandard and blighted designations in 16 of the 22 projects that were reviewed. I would note, however, that some of the report's findings appear to possibly require more than what is actually included in the statutory definitions of substandard area and blighted area. For example, even though the definition of substandard area only requires a "predominance" of factors and not necessarily a majority, and I would note predominance is defined under Black's Law Dictionary as "something greater or superior in power and influence to others with which it is connected or compared." The Auditor's report highlighted 12 projects because they showed less than 50 percent of structures were determined to be dilapidated or deteriorating. In addition, and in that case, again, a majority is not required. And also it didn't take into account whether necessarily other factors might have been met by that same project. It simply looked at that 50 percent threshold. In addition, there were a number of cases where the municipality was, of course, unable to provide a copy of the substandard and blighted study conducted for the project. In those cases, the Auditor's report assumes that because documentation was not provided the area did not meet the statutory definitions of substandard and blighted. As proposed LB95 would have required that municipalities conduct a study or analysis on whether the redevelopment project meets the definition of substandard and blighted, which effectively codifies what most municipalities are currently doing, although I know from the previous hearings there were some cities who historically had not always done those studies. And also LB95 would have required that copies of the studies or analyses be made available on the municipality's web site or made available for public inspection at a designated location. The fifth main issue identified by the Auditor's report deals with the required cost/benefit analysis for TIF projects. Under Section 18-2113, municipalities are required to conduct a cost/benefit analysis for each redevelopment project whose redevelopment plan includes the use of TIF. Cost/benefit analysis issues were identified in

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8 of 22 projects reviewed by the Auditor's Office. In most cases where cost/benefit analysis issues were identified, the reason appears to be that the municipality was again unable to provide a copy of the cost/benefit analysis that was originally conducted. Finally, the Auditor's Office identified a handful of other issues in 8 of 22 projects that were reviewed by the Auditor's Office, some of which were unique to a single TIF project. For example, several municipalities' redevelopment agreements were missing required elements and several TIF projects had late or outstanding property tax payments on the properties in those projects. The committee memo specifically identified four of the unique issues that were identified by the Auditor that the committee may consider examining in greater detail. Municipalities for two of those four identified projects testified at the North Platte hearing, so I will not discuss those issues at this time. The first of those, the other two identified TIF projects with unique issues, and I note I'm doing these in alphabetical order, was the 18th and Q redevelopment project in the city of Lincoln. The current definition of redevelopment project in the Community Development Law includes a laundry list of eligible items that can be included in a TIF project. In addition to those items specifically listed, the definition includes a catch-all provision to authorize other items that may not be specifically listed in statute. As part of the 18th and Q redevelopment project, the city of Lincoln included facade enhancements and energy efficiency improvements, which while not specifically listed under the definition of redevelopment project clearly fit within that catch-all provision. And I would note LB489, which was introduced last session, would have repealed that catch-all provision in the definition of redevelopment project. The second identified TIF project with unique issues was the Farmers Cooperative project in the village of McCool Junction. The Auditor's report identified significant issues concerning the use of TIF by the village of McCool Junction, both with the Farmers Cooperative project and a second project, the Junction Motor Speedway project. A full narrative on these findings can be found in the Auditor's report on pages 8 and 9, as well as pages 23 and 24. Issues included excess TIF revenues from one TIF project being used on another TIF project, TIF revenues being used for general infrastructure projects of the village instead of on a specific project, and no debt being issued to support the use of TIF on one project. As noted in your memo, on July 10 Senator Wayne sent a letter to each municipality that had a TIF project included in the Auditor's report requesting that they send a representative to testify at one of the committee's hearings on LR60. The committee has received confirmation from each of the 22 municipalities whose TIF projects were actually audited of their intent to testify at one of the hearings. And nearly all of the municipalities whose TIF

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projects were initially identified by the Auditor's Office but were not audited plan to testify as well. Information on each of those municipalities and which hearing they either testified at or planned to testify at can be found in the list of audited TIF projects document in your binders. With that, I have reached the end of my brief remarks and I would be happy to answer any questions the committee may have at this time. [LR60]

SENATOR WAYNE: Any questions from the committee? Seeing none, thank you. [LR60]

TREVOR FITZGERALD: Three for three. [LR60]

SENATOR WAYNE: Next we'll have State Auditor Charlie Janssen. [LR60]

CHARLIE JANSSEN: Thank you, Chairman, members of the committee. Chairman Wayne, I would also like to thank you for holding another Friday afternoon hearing. I appreciate that. For the record my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I am the Auditor of Public Accounts. I appear hopefully briefly in front of you today to kind of repeat what I mentioned in Grand Island. On a personal level, I have never had a problem with TIF projects, in fact have advocated for them in the past, presently, and in the future in my own community of Fremont. And I think it's a good program overall. And I applaud this hearing and these hearings for trying to make it a great program moving forward and continue with that. I do want to set the record straight. The Auditor's report was never ever intended to be an assault on TIF projects. This office is very neutral, I think it always has been, it currently is, and it will continue to be as long as I occupy that seat in that office when it comes to these audits. We look at the finances and we try to give the Legislature the full view of it. Whether I personally agree with it or the auditors agree with it, we just give you the raw data on what is or is not happening. So the Auditor's Office has been and is neutral on TIF financing one way or the other, as we are with all of our audits. Anybody with any accounting background probably knows that audits are critical in nature. They don't point out the good, they only point out the bad. It says that in the first paragraph all the time, but people don't read that paragraph. They just read the bad and say, where is the good? So it's not in there. Sometimes we don't have enough paper to say all the good about something. So there's that. I'm just trying to save some money for the state certainly. The one thing that the Auditor did take a little issue with was, and it was laid out very well by

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legal counsel and we'll expand on that, on recordkeeping. And the fact that there was...there seemed to be some testimony in the past that said we didn't have to keep records on TIF projects. Now there could be some ambiguity in that, but I can certainly tell you, you do have to keep records on TIF projects. Even if you didn't, if you were in your private life or government life and you had legal counsel come to you at your business or place of work and said we're going to go into a 15-year, multi-million dollar project, and you don't have to keep records. Or a financial advisor for that matter. Don't keep records. I would probably ask that legal counsel or financial advisor to see the door. That wouldn't make any sense for me, unless I was trying to do something. And I'm not implicating anybody by saying that. I do believe you have to keep the records, even notwithstanding the 2009 change. And I think we'll expand on that a little bit more. But even if you weren't by, I don't know, some oversight, you should certainly. I really applaud this committee, especially for going out to central Nebraska, which is a great place of our state, on a Friday afternoon, on a Husker game night. But I'll be happy to answer any questions.
[LR60]

SENATOR WAYNE: Any questions from the committee? Senator Crawford. [LR60]

SENATOR CRAWFORD: Thank you, Chairman Wayne. And thank you, Auditor Janssen, for being here. I just wanted to clarify one question. One difference between your own project with legal counsel and a municipality in terms of recordkeeping is that we do have record retention schedules and guidance on how long to keep things. And so I guess I would ask if it's your expectation that municipalities would be compliant if they are complying with records retention schedules laid out in state regulations. [LR60]

CHARLIE JANSSEN: Probably not equipped to answer that right now, but I know how difficult it is to keep these records and the ambiguity that has happened with many cities. It's not that they're not trying, and I don't think it's our staff's opinion that they're not trying. It's very difficult. There has already been positive benefits that's come out of these hearings thus far. I just recently saw the League send in a checklist of TIF, which is outstanding to have for municipalities. There's quite a bit of turnover in municipalities. Some of us have been around in this place, some longer than others. And even in this Capitol, the knowledge that leaves this place on a yearly, if not monthly, basis is phenomenal. Phenomenal is not the right word, but it's quite a bit. So we

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want to, we as auditors, the more records the better. And if you want a more transparent look at how a policy is working, it can only be as good as the records retention that we have. So again, we're not implicating anybody for doing anything wrong in that situation. I just think it's very difficult. And I think the League and the counties they work very well trying to make sure that happens. As I mentioned out in Grand Island it's just very difficult. A lot of times when you go to one seminar a year or two seminars and you go to a breakout hearing and you talk about TIF financing, but you're also talking about other stuff as well. So, but yeah, it's our standing that whatever needs to be done with TIF financing if it's not very clear that you have to keep records it should be crystal clear that you have to keep records. [LR60]

SENATOR CRAWFORD: Your point is that the statutes should be adjusted to make that more clear? [LR60]

CHARLIE JANSSEN: They could be. They should be, I guess, just to make it more transparent for everybody to see that. I think there was testimony along the lines that it doesn't even state in the statute for TIF financing that you have to keep records which I agree with, it doesn't. But that does not clear the municipalities of not keeping their own personal records. [LR60]

SENATOR CRAWFORD: So from the Auditor's Office, the standards for keeping records go beyond what's explicitly required in statute and records retention regulation. [LR60]

CHARLIE JANSSEN: I don't think we go beyond it. We will conform with it. In this case I think, and we will point out a little bit later, that I think they already should have been complied with. [LR60]

SENATOR CRAWFORD: So the requirement is to be compliant with the statute and record retention schedule. [LR60]

CHARLIE JANSSEN: Whatever statutes that would fall on the cities and municipalities would be our requirement. And that's dictated by the Legislature and that's what we follow when we do our audits. [LR60]

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SENATOR CRAWFORD: In this case as well, you feel like that was followed? In this audit as well you feel that was followed? [LR60]

CHARLIE JANSSEN: All of our comments on that, we looked at the statutes. Yes. [LR60]

SENATOR CRAWFORD: All right, thank you. [LR60]

CHARLIE JANSSEN: And thank you. I know you've been very active in TIF financing since you've been down here. [LR60]

SENATOR CRAWFORD: Right. And I just do want to comment, yes. I think we have heard, you know, several municipalities discuss ways that they're improving their processes. [LR60]

CHARLIE JANSSEN: They are, and that's a great thing to see because I think it's a great tool for our state. [LR60]

SENATOR WAYNE: Any other questions? Seeing none, thank you. [LR60]

CHARLIE JANSSEN: Thank you, Chairman. Thank you, committee. [LR60]

CRAIG KUBICEK: Thank you for inviting us, our office, to testify today and in the past two hearings in North Platte and Grand Island. My name is Craig Kubicek, C-r-a-i-g K-u-b-i-c-e-k, and I'm an assistant deputy with the Nebraska State Auditor's Office. I'm just going to be brief and expand a little bit on what Trevor's introduction was and then a little bit on what Auditor Janssen had mentioned. And then Russ Karpisek will be here to testify a little bit more from our office. So as Trevor had mentioned, we initially started with 35 projects and due to time constraints and not getting information we narrowed that down to 22 projects. And this was not our office's sole decision to go out and look and test for TIF. We were...received some complaints from senators and based on that we sent out letters to every single senator based on those complaints to see if they had any concerns within their district. So that's kind of the background of why we did this. Like Trevor mentioned, our letter involved testing 14 attributes mostly based on the statutory requirements that you guys have put forward. So as a result of

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those testing, I'm just going to kind of hit these at a high level because they've already been covered. But one of them that wasn't covered is a municipality created a revolving loan program where a specified amount, usually 25 percent, was used to fund other redevelopment projects. Some of the other ones were covered in Trevor's testimony and he said he wasn't going to reintroduce those because those were covered in the past. But I just want to kind of highlight that. As far as lack of documentation, we noted 14 projects did not maintain adequate documentation. And I just wanted to expand on that a little bit, like I mentioned in Grand Island. We had 14 that didn't, but for those ones that we didn't mention having issues we did note that some of those were getting the documentation from the developer and did not have those actually on-hand. So, you know, we were getting responses back: hey, we requested this from the developer. You know, can you give us a week or so to get that back. You know, and then future requests had to go out and saying, you know, have you got this documentation. So I just wanted to make that clear that even though it might not have included a, you know, finding or been part of the 14 we did have issues or note issues that maybe that documentation wasn't necessarily at the municipality. Like Trevor had mentioned, we did have one village that kind of stood out with major issues. And that was the village of McCool Junction. And our recommendation was that the village cease doing TIF until they kind of cleaned up their act and followed some of our recommendations based on the issues that we saw. And that included not having a bond document on file that they had created. It included TIF revenues exceeding the actual costs of one project. It also included TIF revenues collected for one project that had no debt been incurred. So they issued a bond but did not actually go forward with the debt. So our question is does that meet the statutory requirements of debt, if you issue debt...or a bond but don't actually get actually get any money or file the debt, is that actually debt? And then one bond was not filed with our office. So based on those issues that I kind of summarized and what Trevor did in his intro, we had some recommendations to municipalities, and that included: respond to the APA's request timely--and we've put in some legislation to help get those records timely; ensure project costs are adequately documented by signed contracts. Again, some of those that didn't necessarily include the documentation findings we were getting back unsigned agreements, unsigned documents. And from our office's perspective, we don't know if that's the actual proofed document or was there a subsequent document that was actually signed and had changes. Costs should equal or exceed the amount of the TIF revenues received; ensure ad valorem taxes distributed, received, and paid are accurate; ensure studied areas, redevelopment

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plans, cost/benefit analysis meet statutory requirements; obtain general understanding of the Community Development Laws prior to moving forward with TIF projects. So in some of these cases that we asked questions about, you know, they weren't really knowledgeable about what was actually going on when we were asking our questions and had to look for clarification on some of our questions that, you know, weren't overly difficult questions, but just kind of a general understanding of those laws. And then governing bodies should be approving documents and ensuring consistency. And then we also based on those, our testing, we had some options for the Legislature to consider: Analyze whether the Community Development Law is being utilized as intended; review current TIF requirements and wording of such laws to provide guidance and consistency among municipalities; and the potential or option of creating a committee or separate authority. And what I've kind of done in the other two hearings is I just wanted to expand in addition to this letter we've also done a city that had a TIF project and we noted similar concerns where they did not have the documentation of those issues. So with that, I'll open it up to any questions or turn it over to Russ Karpisek for further testimony. [LR60]

SENATOR WAYNE: Any other questions from the committee? Seeing none, thank you for coming. [LR60]

CRAIG KUBICEK: Thank you. [LR60]

RUSS KARPISEK: Chairman Wayne, members of the committee, for the record my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I am the legislative liaison for the Auditor of Public Accounts, Charlie Janssen. Just for a little bit of background on me, I was a small town mayor for 12 years; I was a state senator for 8 years, sitting on this illustrious committee for 2 years; and I am currently a county commissioner in Saline County. So I've been on every side of this issue. I've been around it for a while. I, along with Senator...Auditor now, darn it, I'll never get it right...Janssen are not opposed to TIF. And I think it can be a very, very good tool for places to use. And I will tell you that his office is very neutral on things. I will tell you serving with him for six years in the Legislature I didn't think that would be the case. But it is. And I do appreciate that. Again, Craig and Trevor really went over this very well. The biggest thing that I want to talk about again is the recordkeeping part. And I know that this has been a big deal that the audit said there weren't adequate records kept. And I guess we can argue back and forth for years

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about this, whether you had to or you didn't have to. But I will just say: state statute 84-1201 legislative intent "(2) Records containing information essential to the operations of government, and to the protection of the rights and interests of persons, must be safeguarded against the destructive effects of all forms of disaster and must be available as needed. It is necessary to adopt special provisions for the selection and preservation of essential state and local records, thereby insuring the protection and availability of such information." Trevor also talked about the Secretary of State and the State Records Administration. Yes, that was 19...2009, thank you, Trevor. I'm trying to just go through this quickly. Was it before that? I don't know. I've dug, I can't really find a lot. Another one is Statute 18-2102.01 is at least from 1999. "A permanent record shall be kept by the authority of all warrants, orders, or requisitions so drawn, showing the date, amount, consideration, and to whom payable. When paid, the same shall be canceled and kept on file by the city treasurer. The books of any authority established under this section shall from time to time be audited upon the order of the governing body of the municipality in such manner as it may direct, and all books and records of the authority shall at all times be open to public inspection." As Trevor said, this talks about warrants, orders, requisitions. I really have a hard time thinking that anything that a city does doesn't need to be recorded. I mean, you have to keep your motions and the votes on things and everything. I don't understand how all that wouldn't apply. Again from the Auditor's Office a suggestion for the Legislature on how to maybe clear some of these things up. One thing that will clear a lot up I think, and I have to send a big shout-out to the League of Municipalities for the checklist that they send us. I didn't look at it real close, but at least it to me...not at least, it shows that they're trying to work on it. We just all want to do this right. We don't, as the Auditor's Office, don't want TIF to go away. We just want to make sure that we're all in-bounds on it. If it wants to be expanded, if it wants to be contracted, that's up to the Legislature, not our office. As the Auditor said, we didn't anyway want to go out and say any bad things about TIF, but we say a lot of bad things about a lot of things. And that's unfortunate. I would be glad to try to answer any questions, and thank you for your time. [LR60]

SENATOR WAYNE: Any questions from the committee? Seeing none, thank you for coming today. [LR60]

RUSS KARPISEK: Thank you. [LR60]

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SENATOR WAYNE: Next we have Jeff Miller from the city of Bennington. [LR60]

JEFF MILLER: I'm sorry, I don't have a blue sheet, but I'll probably fill one out. Jeff Miller, city attorney for the city of Bennington, Young and White law offices, 8742 Frederick Street, Omaha, Nebraska. The city of Bennington's TIF project originated in 2006. It was a 144-lot subdivision which included approximately 120 single-family residential lots, some 18 duplex lots which were part of a senior living center. It also involved the senior living complex. And that arose because in 2003 the citizens of Bennington got together and came up with a vision of what they needed for their community. And one of the main things was a senior center because the senior citizens that needed special living arrangements and health arrangements they had to go to Fremont or they had to go to Blair or Omaha for those living accommodations. And so the mayor pursued and came up with this TIF project which brought 144 lots and the senior complex to the city of Bennington. It has worked out great. They have added a new wing to it, it offers different types of living and care arrangements for the senior citizens, and it's all full except for 18 lots. And that's despite the fact that we obviously had the 2008 recession. With regard to the Auditor's report, with regard to Bennington's TIF project, it found four things: one, was that there were some delinquent property tax payments on some of the TIF lots. Obviously that's not within our authority to go out and collect those property taxes. It found that the 2015 TIF report by the Department of Revenue had inaccurate information on property values. Again, that's not something that's the responsibility of the city of Bennington. It found that there were untimely responses or untimely response by the city of Bennington. And that is certainly true because we have one person city clerk that is there full-time. This involves significant difficulty and work in searching for records. We did provide all the records. Some of the requests that were asked of us were confusing and we had to seek clarification of that. The Auditor also sought additional information in documents throughout the process. But we were untimely. Probably the biggest thing that they found with regard to the city of Bennington and its TIF project was a lack of documentation supporting the project expenses by the developer. And the Community Development Law does not require that we obtain those documents or those records of the developer's expenses. Our redevelopment contract did not require that. This TIF project was established where the documentation was provided up-front. When they came to us to request TIF, they had to provide estimates of expenses for the sewers, streets, water, all the things that were involved with the project. That was reviewed by the city engineer and then established as

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being reasonable and supportable, and then that's where we make the decision or the local officials make the decision that it's a TIF project, these are valid TIF expenses, and then we issue the TIF bond. And whatever tax increment is increased or caused by that project that is then paid towards the bond holder. So there is a documentation process to support the amount of the bond and the TIF...or the TIF project expenses, and that was done up-front. The city of Omaha does it this way. The city of Omaha does not require the developer afterwards to support expenses of the TIF project either by providing contracts or invoices or other documentation of payment. So with that, I'm happy to answer any questions. [LR60]

SENATOR WAYNE: Any questions from the committee? Generally speaking, when you issue a check to a vendor let's say, or to a refund for whatever service was provided, how long do you maintain those records? And would that fall under the records management act? [LR60]

JEFF MILLER: It would fall under I think it's Rule 24 of the Department of Records, that we would follow that guides. But the city of Bennington had all our records. [LR60]

SENATOR WAYNE: All right, so I was asking just to make sure. I did...but the maintenance of your records, is that strictly within the city or is that also within the county? I guess what I'm getting at is not all of the duties for maintenance of record of TIF fall strictly on the city. It's also in part with the county's help, right? [LR60]

JEFF MILLER: With the county? [LR60]

SENATOR WAYNE: Yes. [LR60]

JEFF MILLER: Yes, they have involvement with TIF and they would be keeping TIF records also. [LR60]

SENATOR WAYNE: All right, thank you. Any more questions? Seeing none, thank you for coming today. [LR60]

JEFF MILLER: Thank you. [LR60]

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SENATOR WAYNE: Is somebody from the city of Laurel here? I saw you twice in the hallway today and I didn't know who you were, sorry. [LR60]

MARK PATEFIELD: Yeah, a quick lunch. [LR60]

SENATOR WAYNE: Oh, you did see that. I had court this morning and I was running behind so yes. [LR60]

MARK PATEFIELD: Good afternoon. My name is Mark Patefield, M-a-r-k P-a-t-e-f-i-e-l-d, and I am here as the mayor of the city of Laurel. I don't have a lot for you today. The project that was audited was the very first TIF project that the city of Laurel had undertaken so it's kind of interesting for us to be graded on that to see how we did. The year it was done was 2013, which also is kind of interesting because obviously 2012 was an election year so this was my first year as mayor. We had just gotten a new economic development coordinator, a new city administrator, and a new city attorney. So this project had been going for a while and then changing all the people didn't make it any easier. But we did try to navigate the requirements as well as we could. We did look at other cities, specifically the city of Omaha, looked at how they did things and how our process was going to go. But obviously we're a lot different than a city that size so we had to, you know, tailor it. It's not one-size-fits-all. So that was kind of how we came up with our process alongside of legal counsel. So that's how that happened. As far as the findings of the requirements, as Bennington has, we don't have a large staff. And so one of the findings was that we couldn't find record of a public hearing that we had had, and that just required more digging and digging until we did find it. The other recordkeeping requirements, as many were pointed out, were kept by the developer, which we were able to get from them. And then the final one was the cost/benefit analysis which we had worked out...or I should say they had worked out previously. But there wasn't a written copy of that found. But basically, you know, through the whole process I think it worked as it was supposed to work. The recordkeeping requirements weren't perfect we found, and now we can use that going forward. But we were able to have a large project completed that wouldn't have been possible if not for the TIF funding. And that really cascaded down. It was just kind of the tipping point for the city that we had a lot of projects decide to come in after the very first one went out. Not all of them used TIF, I think we've only done four total. But last year I think we did 13 new business openings, so it was

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really beneficial. You know, we talk about those taxes not being available, but there was a lot of development that happened immediately after. All of those valuations on adjacent properties did go up. So for the city of Laurel in our experience obviously we've learned going forward how to do it better. But I think the purpose of it worked out, we couldn't ask for it to go any better. So do you have any questions for me? [LR60]

SENATOR WAYNE: Any questions? Senator Crawford. [LR60]

SENATOR CRAWFORD: Thank you, Chairman Wayne. And thank you for being here, Mayor. Do you recall what the cost/benefit analysis process was for that project for which you did not have records? [LR60]

MARK PATEFIELD: Similar to what they said. The developer brought all the estimates for what was going to go in, you know, all the everything. We looked at that, looked at the total, what the valuation was going to be at the end. I know I looked and I think the taxes from the valuation are going to be more than the property was valued by itself, you know. So it was kind of a pretty easy determination as far as that went. [LR60]

SENATOR CRAWFORD: And that was part of the public conversation, public minutes? [LR60]

MARK PATEFIELD: I remember the CRA discussing those, having the developer bring in all the plans, going through those. So yeah, they would be in the CRA minutes somewhere. But yeah, that was with the previous...ED acts as the CRE recordkeeper chairman, and so changing that. And their two systems of recordkeeping didn't always match up so there was some difficulty finding all of that. [LR60]

SENATOR CRAWFORD: Thank you. [LR60]

SENATOR WAYNE: Any other questions? Seeing none, thank you. [LR60]

MARK PATEFIELD: Thank you. [LR60]

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SENATOR WAYNE: Next we'll have Dave Landis, city of Lincoln. And we'll put him at the three-minute mark because he usually goes over about four minutes. Welcome back. [LR60]

DAVE LANDIS: (Exhibits 3, 4, 5, 6, 7) Thank you, Senator Wayne, members of the committee. Dave Landis, urban development department director with the city of Lincoln. In four minutes I'm going to try to do three things: I'm going to try to talk about the two ways that we got mentioned in the State Auditor's report and I'm going to talk about facade enhancements and where I think the statute authorizes it. First, where were we in the State Auditor's report? They asked us for two projects, both of them pretty complex. One of which we got in on time, the second one was a very complex project--Innovation Campus, and the person who did that complex project was on vacation. So we called and we said, look, the person who is done doing this project won't be back for a couple of weeks, can we provide the information then? And they said that would be okay. And we did exactly that, but we didn't hit the time line. And all I can tell you is I did it by phone calls, not e-mail. So either you can believe me or not, but that's what happened. So we asked for more time and we got a verbal confirmation that would be acceptable. That's one of the two ways that we got mentioned. The second way that we got mentioned was because of the failure to follow a notice provision that they thought was appropriate and that we should have used. And they cite 18-2119. It's kind of complex language. "An authority", that would be the city, "by public notice" for a couple of consecutive weeks "prior to the consideration of any redevelopment contract proposal relating to real estate owned or to be owned by the authority", that would be the city, "invite proposals from, and make available all pertinent information to, private redevelopers or any persons interested in undertaking the redevelopment." And "The authority shall consider all redevelopment proposals and the financial and legal ability" to carry out the redevelopment obligation. That's a notice that we follow all the time when we have a block of city land and we want to invite a redeveloper on to do our land and we're prepared to sell it. Exactly what we're doing down in the south Haymarket when we did an RFP process for an entire block of city-owned land. We did exactly that notice. This situation was a wrinkle that we thought another provision answered better. This is the first piece I want to show you. The land that occasioned the Auditor saying that we should have done our own RFP process was this little blue section. The red section was the University's land. The University was going to put a garage on that land and they wanted our land to do it, and they were also going to see if they couldn't get some housing. Well, the provision that the

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State Auditor's pointed to is I think where we are trying to get people to come to our land and build. What was happening here was we were selling land to the University so the University could go out and get a developer to come in and do the work. In fact, this is all owned by the University and it is now...we replaced blight and substandard conditions and the University and their private developer that they picked by an RFP process, just like it says here, built this. The provision we think applied to us is in...let me cite it. We think the provision that applies to us is this: 18-2120. "In carrying out a redevelopment project, an authority", the city, "may: (3) convey to the municipality, county, or other appropriate public body". A "public body", the University. We get to sell to a public body any such real estate "in accordance with the redevelopment plan" and "is to be used for parks, schools, public buildings, facilities, or other public purposes." We sold the land for a University garage. They are that entity and that's the provision we think it applies. We provided that argument to the Auditor, it was our response. There hasn't been an answer to that, but we think there's a different theory and we don't think we're wrong on that score. My time is up and I didn't get to the third piece but I'll come back on another day that's appropriate. [LR60]

SENATOR WAYNE: So I will ask the question that everybody wants to know: what's the third one? [LR60]

DAVE LANDIS: Okay. Fell into my trap, excellent. One of the things that did get mentioned was whether or not there was statutory authority to do facade enhancements as a reimbursable TIF cost for expense. I want to cite the very first section of the TIF law and the very last section. First section is the intent provisions and the last one says "and this act is to be construed liberally to effectuate the ends of the act." And the ends of the act are the very first section, and it is 18-2102. And let me just pull out one paragraph. "It is further found and declared that the prevention and elimination of blight is a matter of state policy, public interest, and statewide concern and within the powers and authority" incurred to the state. The difference between building with EIFS, which is like a pretty cheap stucco, it's a safe building and it's legal but it doesn't last long. It shows mars, it shows the effect of rain, it stains. And when you see it, it shows its age very quickly. It also makes the surrounding area look dowdy and rundown. In other words while it's safe and meets building and safety codes, it is not long-lasting. Brick is long-lasting. The warehouse district in the Haymarket is 100 years old with those brick buildings.

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They last, they continue to look good, and they keep and maintain their form. Which is why if the intention is to prevent blight and you're building a building, building a building with a shelf life of 60 years or 80 years prevents blight in a way that building a building for 20 years does not prevent blight. And that's why we think that in this law there's authority to do what we're doing. That's my third point, Senator. [LR60]

SENATOR WAYNE: Thank you. Any questions from the committee? [LR60]

DAVE LANDIS: Thank you for your time. [LR60]

SENATOR WAYNE: Thank you. This is what happens when we get attorneys and CPAs and all of us in a room together, you all come up with different theories. Next we have...we're going to hop down to Omaha. Thank you for coming in. [LR60]

CASSIE PABEN: You're welcome. Good afternoon, Chairman Wayne and members of the Urban Affairs Committee. My name is Cassie, C-a-s-s-i-e, Paben, P-a-b-e-n, and I'm the deputy chief of staff for the city of Omaha. The city thanks you for the opportunity to discuss the issues related to TIF that were raised in the December 2016 report by the Auditor. It should be no surprise, I think I'm in front of you at least once every session regarding TIF, that I am here on behalf of the city supporting TIF and the projects that we do with it. As you know, it's really our only true redevelopment tool that we have and we view it as not only an investment in an existing project but as an investment in our future. To specifically address the Auditor's report, on June 10, 2016, the city received a notice from the Auditor informing us that four projects had randomly been selected for review. The city compiled the documents requested and submitted them back to the Auditor on July 8, 2016. I should note though in the requests that we received there was not a date identified as to when the Auditor expected to have the materials submitted to them. Given the time frame that we were in, College World Series, not that that's an excuse for anything, but College World Series, Fourth of July we think under 30 days is a pretty good time frame to get those turned back around. The Auditor's report that was released on December 20, 2016, indicated that only one TIF project from the city of Omaha was actually examined; that was redevelopment project 172, otherwise known as Underwood Properties at 5001 Underwood Avenue. The project was approved in 2005 and consisted of the rehabilitation of a building

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complex, including the preservation of a historic building that was structurally deteriorating and found to be unsafe due to past fire damage. You could also point to this project as the catalyst for revitalization of the Dundee Business District. The Auditor's report will show that there was only 1 deficiency out of the 14 attributes tested for this project. That deficiency was documentation that expenditures could be traced to supporting documentation or attribute B listed on page 5 of the report. The city, after receiving notice from the Auditor about this deficiency in November of 2016, worked with the developer and obtained the AIA document G702, which outlines construction funds spent on TIF-eligible expenses. The city sent this documentation to the Auditor on December 2, 2016. To ensure that this deficiency is not an issue in the future, the city has started requesting this document on all TIF projects. Furthermore, starting January 1, 2018, the city will reserve the right to place a hold on the certificate of occupancy for the project until the AIA document is received. Outside of the contents of the Auditor's report, the city is always looking for additional ways to improve and provide greater transparency around TIF projects. Recently the city of Omaha's city council passed a resolution directing the planning department to compile an annual report and present to the mayor and city council on TIF. This report will contain, but is not limited to, the following information: number of active TIF projects, number of TIF notes paid in full, number of TIF projects approved by city council with specific project information, total amount of TIF approved and associated...total project costs, and percentage of land within the corporate limits designated as blight and substandard. In addition, we are working on a link on our web site that will essentially be a TIF directory. This link will list all TIF projects and allow anyone to easily access any plans, agreements, etcetera that are associated with that project. We are hoping to have this link active by the end of the year. We're poised for extraordinary growth in Omaha, we must not make it more difficult for us to grow as well as the state to grow. As for any of the other TIF-related items in the study, I would be happy to answer any questions you might have. [LR60]

SENATOR WAYNE: Any questions from the committee? Senator Crawford. [LR60]

SENATOR CRAWFORD: Thank you, Chairman Wayne. And thank you for being here. [LR60]

CASSIE PABEN: You bet. [LR60]

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SENATOR CRAWFORD: Could you just speak to what your process is in terms of record retention in determining which records you keep or dispose of over time? [LR60]

CASSIE PABEN: I would tell you I think we keep everything right, wrong, or indifferent. The one deficiency that we have was something that I think has been debated in the past, and I'm not going to get into whether you should have it or not. We recognize it's probably a good practice to have, which is why we have implemented the controls we have. We maintain the original application, everything that gets approved by city council, all the documents related to it, we keep that definitely through...the application and everything in a file definitely through the life of the TIF note. And if I remember correctly, we keep it up to five years after the TIF note has been paid in full. But obviously anything that is approved by city council, whether it's the plans, the blight and substandard study, any of that stuff is obviously kept indefinitely through our file bound with our city clerk's office. [LR60]

SENATOR CRAWFORD: Through five years? [LR60]

CASSIE PABEN: Five years after the note is paid off. [LR60]

SENATOR CRAWFORD: After the project. Thank you. [LR60]

SENATOR WAYNE: Any other comments or questions? [LR60]

CASSIE PABEN: Which I would tell you though, Senator Crawford, when I first started at the city I found some that were much past five years. But again, I mean that's as we look for space and where we store everything that's just something that we've implemented. [LR60]

SENATOR CRAWFORD: Thank you. [LR60]

SENATOR WAYNE: Thank you. Thank you for your testimony. We got about a minute until somebody is calling in. Sprint says 3 pm, my clock says 2:59 pm, so I don't know which one is right. So we'll just stand at ease. [LR60]

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SENATOR HANSEN: Hi, do we have Shane Siewert? [LR60]

SHANE SIEWERT: Yes, this is. [LR60]

SENATOR HANSEN: Hi, Shane. This is Senator Matt Hansen, and thank you for joining us for the LR60 hearing. [LR60]

SHANE SIEWERT: Sure. [LR60]

SENATOR HANSEN: If you'll go ahead and state and spell your name for the record and then give us an overview of your city. Please go ahead. [LR60]

SHANE SIEWERT: My name is Shane Siewert, S-h-a-n-e, last name S-i-e-w-e-r-t, and I'm the city manager of Valentine. [LR60]

SENATOR HANSEN: All right. Well, we'll be ready for you to share your testimony about your TIF projects in the city of Valentine. [LR60]

SHANE SIEWERT: Did you say you're ready now? [LR60]

SENATOR HANSEN: Yes. [LR60]

SHANE SIEWERT: I guess if we're talking about the audit my only comment is we don't dispute anything in the audit. We did forget to collect the receipts. At that time we weren't aware that we needed to. We thought once it was approved that was all we needed to do. But since we found out we're going to try and, you know, go back to the recipients and collect the receipts again. [LR60]

SENATOR HANSEN: All right. Well, thank you. Let's see if the committee members have any questions. Are there any questions for Mr. Siewert? Seeing none, thank you for your time. [LR60]

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SHANE SIEWERT: All right, thank you. [LR60]

SENATOR HANSEN: All right, we'll move back to our in-person testifier list. And do we have Mike Bacon with the village of McCool Junction? When you're ready. [LR60]

MIKE BACON: (Exhibit 8) I am. Good afternoon, Mr. Vice Chairman. My name is Mike Bacon. I'm an attorney representing the village of McCool Junction. My CV is attached to the prepared testimony that is here. I've consulted on more than 200 TIF projects in Nebraska in more than 75 communities. I've been a city attorney for more than 35 years. I appear here to testify in response to the State Auditor's report on McCool Junction. As a general statement, I believe that the audit statewide has been helpful in highlighting issues that need to be addressed by municipalities. I will respond to the issues raised by the Auditor as far as McCool Junction is concerned. The first shortcoming was that the blight study there was a calculation on the objective criteria, which was the average age of buildings had to be more than 40 years. The planner calculated that there were 64 percent of the buildings that were older than 40 years. We had him go back and recalculate and in fact the average age did exceed 40 years, so it met that criteria. Secondly, the co-op project. The report challenges the use of taxes to fund infrastructure, claiming it is to be used for projects unrelated to co-op improvement. The local co-op built a 750,000 bushel grain elevator in town. Inbound trucks delivering grain hold approximately 1,000 bushels at 56 pounds per bushel or 56,000 pounds per truck--750 trucks in, 750 trucks out. There is no rail to take the corn away. Redevelopment provides that street and other improvements throughout the blighted area be made. The village street superintendent who is here with me today reports that the traffic to the bin site has already ruined the street. Engineers' estimates are that it will take \$360,000 to repair that and allow the replacement of that so it does not continue to deteriorate. Although the redevelopment plan describes a large area in the village in which to utilize the TIF funds, it was the village's intent to use the funds from the co-op bin to replace the street damage by the increased traffic. The plan used a larger blighted area legal description for two reasons: first, routing to and from the bins impact a number of streets in the village. And being the son of a truck driver, they will pick the route that they like, and that has to be determined by actual usage. The second is that this is a village of 410 people, 162 homes. They don't have the resources to go out and survey that area every time. The report also challenges the issuance of a co-op TIF bond to be held by the village to fund the infrastructure improvements to be completed in the future.

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National bond counsel from GilmoreBell has done this a number of times in the state of Nebraska. It is...we also have a written opinion from other national bond counsel on two issues: one, that that is an appropriate expenditure under the Community Development Law; and that that is an appropriate way to do it. This process did not originate with McCool Junction or with Mike Bacon; it's national bond counsel. The TIF bond was not filed at the State Auditor's Office, and again we have an opinion of the national bond counsel that it is not required to be. On the Junction Motor Speedway, the village really screwed up. I would appreciate time to be able to address that issue. [LR60]

SENATOR WAYNE: I'll give you time to finish that up. [LR60]

MIKE BACON: Thank you. The Junction Motor Speedway bond was a bond that was to go for the payment of a sewer for a new raceway built in town. It was going to be a sewage lagoon, that didn't work. They had to have the city put in a lift station and a sewer pipe. The redeveloper signed a contract, got the TIF bond to do the lagoon, could not do it. We renegotiated the redevelopment contract, which was amended and approved by the redevelopment agency, giving the TIF bond to the village and having them undertake that cost. That TIF bond is just a piece of paper and is only going to be paid in the future when the taxes come in, so the village went to get a loan to do that. Unfortunately, the taxes that kept coming in to pay that bond off exceeded what was expected by the tune of \$103,000. And although the bond documents, the bond resolution, and all instructions to the village clerk and treasurer were they were to stop that division of taxes and to pay it back to the county assessor, she didn't do it. She was terminated, by the way, for inappropriate fiscal activity at the village. When the State Auditor brought this to light, the village immediately calculated the amount that was over-kept and got a grant from a local nonprofit, paid those funds back in full with interest. At a board meeting at which I was in attendance, the following action was taken: the village is going to have its independent auditor audit its TIF projects annually. Cost/benefit analysis, although the documents were provided, they just disappeared. Documents that should have been there, including an original bond document, were simply missing from the files kept by the clerk. Going forward, the village has engaged our firm to make sure all the files are complete and up to date. All private TIF projects going forward will require cost certification prior to bond issuance so each one of those expenditures is examined. I have included in the handout something to indicate the value of TIF

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in this community of 410 people. In 2007, the total village valuation was \$11 million. As we sit here today, it's \$20 million. That's what six TIF projects--four of them private and two capture to replace the street--can do in your community if you will allow that to generate activity. The but/for test for those four projects that are private projects generate \$1.6 million in valuation that would not be in that community but/for TIF. The project that was captured to replace the street is \$1.3 million in valuation. That won't generate enough to pay for the street that's been destroyed by those 750 trucks in and out at 56,000 pounds. Finally, I would suggest to you that along with Christine Abraham and three others we prepared a chapter for the State Bar Association that addresses almost all of the elements raised by the State Auditor, including cost/benefit analyses, processes, even how to go about determining the but/for test. I can't make that available to the committee because it is the property of the Bar Association and will be released later this week. What I can tell you is this has been an eye-opening experience. And in addition to the checklist that the League has provided, we're going to have to idiot-proof this because you have good, well-intentioned people that get rattled when they read a 30-page bond resolution that says: when the bond is paid off send this notice. They can't even calculate how much is interest and how much is principal. So going forward in my practice, we're going to have that flow chart and even have a calculation on how to do it. The village clerk did not seek that, just kept making those funds available for community improvements. Every penny, every penny plus interest has been repaid to the county. [LR60]

SENATOR WAYNE: Any questions from the committee? Senator Crawford. [LR60]

SENATOR CRAWFORD: Thank you, Chairman Wayne. And thank you for being here, Mr. Bacon, and for your work on trying to clarify law with the municipalities moving forward. You mentioned in terms of the infrastructure tied to the co-op the logic of the road. So that the road is tied to the bin co-op because of wear and tear, trucks coming in and coming out. But on that project, were there infrastructure that was paid for included in that project above and beyond the roads? [LR60]

MIKE BACON: The plan authorizes improvement of roads. At this point in time, they have not done the roads. They are waiting for the funds to get together and try and figure out how to do it. Just because they have a TIF bond doesn't mean they've got money. So they have to figure out

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how they're going to create the funds out of that. The but/for is not the building of the co-op elevator, the but/for is we don't have money to build the road. That's the redevelopment project. And the real estate in the redevelopment area under 18-2147 may be pledged for that. That's just the way the statute is set up. [LR60]

SENATOR CRAWFORD: So the Auditor's report mentions municipal buildings, structures, and park infrastructure as part of what was also included in that project. [LR60]

MIKE BACON: Could be. The redevelopment plan basically contains my standard laundry list for a project that follows basically 18-2103(12). However, the intent of this whole thing was we've got to fix the streets, here's the canned redevelopment plan so we don't have to charge you a whole bunch of money. This is the process that was set up. If there are additional funds...well, in this case there simply won't be. We have a \$360,000 estimate right now. TIF over 15 years on that I think will be \$390,000 which won't be enough to pay the interest. So there isn't going to be any. If there could be in that area, I believe that that would be a good use of that. Generationally, a town of 410,000 (sic--410) aren't going to get a \$1.3 million investment in their community. It just doesn't happen in a town of 410 people. So can that be a stairstep, if you will, to help eradicate some of the other things that are going on? Streets aren't necessarily paved in that town, they don't have curb and gutter. They have grass waterways and tubes under streets. You wouldn't live in a place like that because it would gather water in the rainy season and there would be mosquitoes and mud and muck. So should you use that one-time happening to help alleviate blighted and substandard conditions? I think so. I would argue that that's a good thing. But in this case, they were aiming at the street. Did the plans say more than that? Yes, they did. But I'm the one that did the plan, they didn't do the plan and wouldn't know that difference. So but that's... [LR60]

SENATOR CRAWFORD: So you're saying the plan... [LR60]

MIKE BACON: Is a broad-base plan. But the intent of the village is to fix the street because a lot of these streets aren't paved concrete. What they are is gravel that's been oiled and then graveled and then oiled and then graveled and oiled. And they just bust up. And the farmers are going to

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bring...and they want farmers to come to town because that supports their few businesses that they have so. [LR60]

SENATOR CRAWFORD: And the changes that you've been working on and moving forward, is it your recommendation or have you made any changes in what you recommend as a process to keep the plan or proposal narrower in the future for municipalities like this? [LR60]

MIKE BACON: Sure, it is. You have the horns of a dilemma here. You don't have a lot of resources in small towns and so there are a lot of times I don't charge small towns to do TIF projects because they just need to be done. But in order to do that, you've got to hire surveyors, engineers, and a lot of that. Or you can call one of the two full-time people in this community. Jim Green, who is slightly younger than me at 62, is often out installing sewer and water lines or little pieces of paving--Jim, can we go do this. So it is a struggle. But I will tell you that the recordkeeping and that process just is inexcusable that anybody would whine about that. In my practice starting a number of years ago it is, no, don't bring the receipts to us afterwards. It is we will endorse on the back of your bond the amount of expenditures that you prove to us with two things: a paid invoice and a cancelled check. So then and only then is that principal amount endorsed on the bond. Now if I was Omaha, I wouldn't like that because that's 400 or 500 projects. But in little towns, the smaller towns, that's certainly the process that we've done. They don't like it because it makes them work harder but. So I don't have any objection to any of your recordkeeping, you just should. Have they done it before? No. And practitioners never required it before either because we followed the Omaha model. My model changed a couple of years back before all of this started so. [LR60]

SENATOR CRAWFORD: So do you assist the municipalities you work with also in keeping records of things like public notices for hearings and those types of records? Or you're mostly focused on the expense kinds of records? [LR60]

MIKE BACON: No, it's we prepare all of the documents. And so going forward what we're going to do is keep a closing document, if you will, a three-ring binder, of here's your project, here's your notice. In my practice, I've decided to kind of idiot-proof it for the clerk saying: these are the things you got to keep, these are the things that they care about, here is a flow-chart of the

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way this all goes. And it's a rather daunting task because you can go this way, do you have this? If yes, go ahead; if you do not, stop. And then and so forth. So yeah, it's been an eye-opener for me. And before what you do is provide the documents, provide the direction, provide even the agendas for what's supposed to happen; and then ask for copies back, which sometimes happens and sometimes does not. So in this case, what we're going to do is go hold their hand and make them give them back, because they don't like to be the goat. And this is a great community and they're growing their valuation. I have not seen a village of this size grow their valuation by a factor of 74 percent in 10 years. That's just outstanding. [LR60]

SENATOR WAYNE: I have a...just because I was gone when you were (inaudible). How many projects do you do on average, TIF projects do you do on average in the state? [LR60]

MIKE BACON: Well, I've been doing it for 25 years. Probably 10 or 15 a year. [LR60]

SENATOR WAYNE: And how many in the Auditor's report were you involved in? [LR60]

MIKE BACON: A number of them. [LR60]

SENATOR WAYNE: And how many of them had deficiencies that you were involved in, of the number of them? [LR60]

MIKE BACON: Let's see. Scottsbluff, those two, those were clean. The deficiencies of not having the receipts, almost everybody has that deficiency. And that's a process that we started a couple of years ago. The others, the recordkeeping and those things, those aren't processes we have any control over. But filing the redevelopment contract and those types of things, they simply didn't, nor did most of the practitioners require, delivering those documents. Where those costs appeared was in the application. Like the Bennington project was explained, those dollars were shown up-front. That's the way most of them are handled so. [LR60]

SENATOR WAYNE: So your testimony was, and I wrote it down, the main intent of the TIF was for the road. Has the road been fixed yet? [LR60]

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MIKE BACON: No, sir. [LR60]

SENATOR WAYNE: And just so you know, Omaha has those same streets in my district and people do live there. But we...if the main focus of the project for TIF is the roads, why hasn't the roads been fixed? [LR60]

MIKE BACON: You don't have...a village of 410 people doesn't have the financial resources to do that. So it's the gathering of funds and the management of those funds to do it when you can pay for it. [LR60]

SENATOR WAYNE: But in the meantime we'll use TIF to fix everything else around the roads? [LR60]

MIKE BACON: No, those resources are held to deploy them on the roads. [LR60]

SENATOR WAYNE: So when you talked about future deployment, has your firm asked for an AG Opinion in this matter or just relied on the national experts you hired or consult with? [LR60]

MIKE BACON: No, I haven't asked for an AG's Opinion, but the regional bond counsel and the state bond counsel have both given us opinions that that's appropriate. And both of those firms have in fact done those exact same things. I just looked at one before I came down today, that I was not involved in that a national bond firm was. [LR60]

SENATOR WAYNE: But as an attorney you would agree that just because other people do it doesn't necessarily make it follow the law? [LR60]

MIKE BACON: No, but if you take a look at the statutes, it's clearly authorized in 18-2147. Glad to walk that through for you if you would like. [LR60]

SENATOR WAYNE: Let's walk through it. Go ahead. [LR60]

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MIKE BACON: Sure. So 18-2147 says that you can divide the taxes in a redevelopment project "or any part thereof" to pay a TIF bond. Redevelopment project is defined as lying within an area. The redevelopment project doesn't have to include all of the property in that redevelopment area for division of taxes. In fact, a number of other practitioners are doing TIF projects where there is a phased approach and so they don't launch all of the TIF on day one. If they did, they wouldn't be able to get housing put in place. So because if you start a subdivision, that's going to take multiple years to do, that's a provision that can allow for that. It is also a provision that allows you to bootstrap or fix roads or issues in a blighted and substandard area. Capturing all of the taxes can be problematic because the taxes are on one building in an area may be needed to do that road. But if we pledge all of the other taxes on all of the other lots in that town, what if someone wants to come in and do a TIF project five years later in that one spot? You've already used up one-third of the TIF. In fact, that's happened in one town where this national firm did an area-wide TIF like I'm talking about done here and they pledged the taxes for all the lots in the downtown area. Someone wanted to do a medical building but needed TIF to make it happen. Half of the TIF period had expired and they weren't going to be able to generate enough money to make it worthwhile to make the investment. So that community, Sandhills community, doesn't have that medical office building. [LR60]

SENATOR WAYNE: So I'm just trying to...how big is the village? [LR60]

MIKE BACON: It's 410 people, 162 homes. [LR60]

SENATOR WAYNE: How many...because I'm trying to figure out if I TIF a building, and I'm familiar with Omaha and the way the process works, and some villages and cities outside of Omaha. If I TIF a single building, what becomes the demarcation point of when I can stop using TIF to do general infrastructure updates? If I have a building in the middle of town, at what point can I stop using that single building? [LR60]

MIKE BACON: It's defined in the redevelopment plan. And it is one that it is subject to an application to planning and zoning, the community development agency hearing from the city council does this make sense, is this an investment that the community wants to make. Public hearings, you can have at least three public hearings on that in addition to the blight public

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hearing. What I would suggest to you is that if you sit in Lincoln or Omaha and try and judge what is good in Burwell, Nebraska; or if you sit in Gothenburg, Nebraska, and decide what is good in Lincoln or Omaha, you have a different world view. [LR60]

SENATOR WAYNE: Well, the assumption is, is I'm trying to judge what's good. And that's not what the assumption is. What I'm trying to figure out is based off of the law and the intent of the law how far can you take that demarcation point? That doesn't matter whether you're in Omaha or not. And in fact... [LR60]

MIKE BACON: Sure. You can go... [LR60]

SENATOR WAYNE: Let me finish. And in fact the law doesn't designate and the constitution doesn't designate Omaha as a specific TIF versus Gering, Nebraska. The law is the law. So again, if I TIF one building in any community, where is that demarcation point? [LR60]

MIKE BACON: It has to be within a blighted and substandard area, and it has to be in a defined redevelopment area. [LR60]

SENATOR WAYNE: So I could take one building, go down 10 blocks and use it, and not have it even be contiguous? [LR60]

MIKE BACON: I believe that's what the statute provides. Yes, sir. [LR60]

SENATOR WAYNE: And do you think that's the intent of the law? [LR60]

MIKE BACON: I think the intent of the law, if you take a look at the legislative history and the debate that they had on that, is that they wanted the local government to make that decision. I understand that it politically raises hackles and it is a hot button. But I don't think there's a solution that is imposed here as opposed to at the local level. I think that's where you get that. What I see at the local level, and people tend to believe, that local city councils just want to TIF everything. That has not been my experience. The first year they might be excited about that, but after that they start to figure it out and negotiate whether or not they're going to give them

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everything they ask for. And even though people think that they're not told no, in dozens of cases I've seen those requests turned down. But it's different in a village than it is in Omaha. Your Ameritrade Center can happen a couple of two or three or four times in a decade. A \$1 million grain bin in a town of 410,000 (sic) maybe happens once in a lifetime. [LR60]

SENATOR WAYNE: But I don't think the issue...the issue is not with the grain bin, it's everything around the grain bin. So the issue isn't whether the Qwest Center or CenturyLink can happen, it's whether the homes north of there that are not necessarily directly connected could happen there. And that's the question that we're asking is that...or at least I'm asking is... [LR60]

MIKE BACON: How far can you go? [LR60]

SENATOR WAYNE: I don't think the issue is whether you can TIF and build the grain bins. The question is can you still continue to use TIF to develop everything around there but/for the main intention, which was the street? If the main intention of TIF was the street, we're developing everything but the street. [LR60]

MIKE BACON: No. The money is being held so that they can do the street. The money has not been spent on those other projects. The money is being held to do the street. [LR60]

SENATOR WAYNE: Any other questions from the committee? [LR60]

SENATOR CRAWFORD: So instead of a bond that you're paying off, you're holding the money? [LR60]

MIKE BACON: No, there is a bond issued. The bond is issued and held by the village. And that process has been opined on by other people bigger than me. I didn't create that as an idea. [LR60]

SENATOR CRAWFORD: There is a bond. [LR60]

MIKE BACON: There is a bond. [LR60]

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SENATOR CRAWFORD: But it has not... [LR60]

MIKE BACON: Been funded. It has been offset against the city's obligation to complete that structure. So the city could go get cash from the bank, use that fund to put in the street if it was allowed under the statutes. Or the statute requires that we finance the redevelopment project, it doesn't say we implement it right away. We can save the money up until we have the ability to put that project in place. And there are at least, as the former Senator Landis said, if you look at the statutes, it says you're to liberally construe this and allow the cities to have the ability to figure out how to do this on their own. This is all these communities have literally. In a town of 410 you don't have that much, you can't do an LB840 because you're not going to get any money. This is it. This is it. And the piece that people don't see is that when you invest in these TIF projects you generate the level of assessed valuation, those are 8 million non-TIFed assessable dollars available in that community. What started that? It wasn't LB840. It wasn't a huge bump in population. It was the willingness of the city to try to stimulate growth and eliminate blight. [LR60]

SENATOR WAYNE: So outside of the audit report but based on the audit report, how many other TIF projects have you done? Let's say since the Auditor's report came out until present. And the follow-up question is of those you may have done in the past and now, are you going back and helping them do corrective action to comply with the Auditor's report has poked out in other cases and kind of where we keep hearing this reporting of other things? [LR60]

MIKE BACON: There's no corrective action on any of the others other than making sure that they keep the records straight. It's been about three or four years ago we went to the prove that you got your expenditures in advance. [LR60]

SENATOR WAYNE: And just for transparency, like how...you obviously gave your testimony of your experience and how many TIF projects you do. Roughly how much money have you made off of municipalities when it comes to TIF-related projects? And you can just give a ballpark. For the record I'm being transparent. You are here obviously for a municipality, but you are a hired attorney and that is public record. [LR60]

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MIKE BACON: I have no clue. Some of them I've done for nothing, some of them I've done for \$3,000, some \$10,000, some more than that depending on the complexity. [LR60]

SENATOR WAYNE: Any other questions for the distinguished gentleman who has endured a lot of questions? I appreciate you being here and thank you for your help on the checklist. I did look over it, it is really good. And I think it will solve a lot of our problems moving forward and appreciate it. [LR60]

MIKE BACON: Thank you. [LR60]

SENATOR WAYNE: Sorry, not the checklist. The red book. I'm getting them confused. That testimony kind of went over, so we've got some phone catching up to do here. So we'll wait a minute or so, so if you got to get up and stretch and do some jumping jacks or something it will all be recorded on the mic. Hello, this is the Urban Affairs Committee. [LR60]

RICK KUCKKAHN: This is Rick Kuckkahn, city of Alliance. [LR60]

SENATOR WAYNE: Yep, we will...give me 30 seconds, we were just taking a quick break. Not even 30 seconds, about 10 seconds, and we'll turn up the mic. And if you can please state your name and the spelling of your name and we'll go from there. [LR60]

RICK KUCKKAHN: Thank you very much. I'll wait just a little bit here. Let me know when I should start. [LR60]

SENATOR WAYNE: You can go ahead and proceed, sir. [LR60]

RICK KUCKKAHN: Okay. My name is Rick Kuckkahn, spelled K-u-c-k-k-a-h-n... [LR60]

SENATOR WAYNE: Rick, are you there? [LR60]

RICK KUCKKAHN: I am. [LR60]

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SENATOR WAYNE: Okay. Just you were cutting out a little bit. I didn't want to throw my phone provider under the bus. But go ahead and proceed. [LR60]

RICK KUCKKAHN: Did you get my name and association? [LR60]

SENATOR WAYNE: Last name, please. [LR60]

RICK KUCKKAHN: K-u-c-k... [LR60]

SENATOR WAYNE: We'll figure it out. All right, we got it for the record. Maybe I should step out because last time went a lot better when Senator Hansen was doing it. Go ahead and proceed. [LR60]

RICK KUCKKAHN: Yeah, it's kind of a complicated name, German origin. But I wanted to thank you, Senators, for allowing me to testify via the phone--very considerate, efficient, and helpful for me. And I'm sure that most of what I have to say you've heard before, so I'll try to be brief. You've all heard the high-quality value we place on TIF. Anytime there is a session on the law participants, including city managers like myself, developers, and most local politicians I know agree with its value. Among the attributes, it provides a vehicle to redevelop problem sites underutilized, often eyesores to the community. Improving these sites adds value and confidence to the surrounding uses. Often surrounding users will on their own make improvements given the new investment which would not have happened without the boost that TIF provides. With renewed use comes jobs and various other economic development advantages all positively impacting the community. We have very limited incentives at the local level and I argue TIF is among the more impactful tools we have. I'll be the first to admit the law possibly is vague, subject to limited interpretation. However, we all work together and can work together to improve problems that arise from this. The League has worked hard to provide support and education to improve knowledge and understanding and, of course, experience is the best teacher. (Inaudible) findings and will adjust and shore up areas of weakness in the future. While I've only been in Alliance a year, I have had direct experience for 18 years in Scottsbluff. Generally, Alliance has struggled with many of the same shortcomings other communities have faced. First, accounting for the proper spending of TIF dollars has not been carried out as we

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understand it should be. I would, however, suggest the developers, since they own the bonds used for public improvements, understand that the community expects those public improvements promised to be delivered. I can't think of cases where that (inaudible). Again, the accounting has to be solid and the taxpayers' money accurately accounted for. There's no question about that. Redevelopment plans were another common problem with information lacking, such things as boundary delineation and land use being sited. Administrative guidelines and additional instruction either face to face formally or in written instructional materials would be helpful. Cost-to-benefit analysis is another common area of concern (inaudible) of the audit. We had three projects that were reviewed. So from the city's perspective, we have a very valuable tool and certainly don't want to do anything to jeopardize keeping it in place. We are and will take steps to assure inadequacies of the past are corrected. For example, checklists are now available to account for process steps, which were provided by Lincoln attorneys at the last League meeting. I don't know that we need the state to review all TIF projects from the beginning to end, but certainly the idea that plans will be sampled and reviewed periodically would hopefully enforce a higher standard. We have already in place a more formal review process and criteria for political decisions. I know that none of these shortcomings in Alliance appear to be an effort to hide anything or get around the law. Again, we don't want to jeopardize the use of this tool. Rather the law's intent or implied requirements were not fully understood. And additionally I'd like to suggest that we are (inaudible) seeing attorney involvement, certainly at the community level, professionals that have an understanding and knowledge, a more sophisticated knowledge of TIF. So I think our confidence level over the years has been pretty (inaudible). (Inaudible) stand ready to do whatever is needed to assure legislators, the state administration is satisfied that these tax monies are being spent wisely and citizens are confident these projects do not unfairly benefit private interests. Rather, the entire community is enhanced through redevelopment such projects provide. And I would be happy to answer any questions that you might have. [LR60]

SENATOR WAYNE: Thank you. And I'm assuming you had a written testimony written down that you were reading. [LR60]

RICK KUCKKAHN: I did, and I can send that in. [LR60]

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SENATOR WAYNE: Can you e-mail me and Trevor Fitzgerald prior to the hearing, and that way I can add it to the record as a letter? Because we heard...you were fading in and out and at one point you said schools, inadequate, checklist, higher standards. And I don't want you to get in trouble because they could probably interpret that a lot of different ways. But I'm sure there were a lot of sentences in between some of those words. So if you could e-mail that just so we can make sure the record is clear on what you were saying. I don't want you to be misinterpreted. [LR60]

RICK KUCKKAHN: Sure, I would be happy to. [LR60]

SENATOR WAYNE: Does anybody have any questions? Senator Crawford. [LR60]

SENATOR CRAWFORD: Thank you, Chairman Wayne. And thank you for your testimony. And I apologize, it was cutting in and out. Could you just summarize if there...I think you mentioned the value of the checklist. Are there any other changes that you're expecting to happen in implementation of TIF projects in your community? [LR60]

RICK KUCKKAHN: Well, I think that the Auditor's report was pretty clear on some of the shortcomings. And the kinds of adjustments that we'll be making will address those. Probably one of the three that I mentioned, the accounting for project cost, that's something that's fairly straightforward. I mean, our finance department can get a higher level of involvement there. And I think in the past we were looking to developers to provide that information in some formal way. And we will make sure that they now formally understand they have to submit all billing and all payments to the city so we can track them. [LR60]

SENATOR CRAWFORD: Thank you. [LR60]

RICK KUCKKAHN: The redevelopment plans, the kinds of things that were cited in the redevelopment plans I think are fairly easy kinds of elements. And I indicated boundary delineation, surrounding land use; those are pretty straightforward kinds of (inaudible). (Inaudible) cost/benefit analysis is something I think we need to flesh out a bit more thoroughly than we have in the past. It's been a what I would...purely rudimentary cost/benefit analysis and

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we need to look more (inaudible) there (inaudible). We are definitely making steps (inaudible) with some of the information that the League has provided over the years. And as I've said, the city attorneys and the attorneys on the private side were involved in projects (inaudible) clearly. [LR60]

SENATOR CRAWFORD: Thank you. [LR60]

SENATOR WAYNE: All right, thank you. Yeah, you're cutting in and out pretty good. But any other questions? Seeing none, thank you for calling in and please send that e-mail. I'll talk as long as I can to make sure it gets part of the record for you. [LR60]

RICK KUCKKAHN: I'll do that, thank you. And I'm sorry for the telephone connection. [LR60]

SENATOR WAYNE: Thank you. Can you turn the mics back down a little bit? Next we have city of Nebraska, Grayson Path. Nebraska City, sorry. What did I say, city of Nebraska? And why is it when you can't hear you turn your ear like you can hear it? I don't understand. Everybody does that, it's just... [LR60]

GRAYSON PATH: I brought a picture for everyone too. [LR60]

SENATOR WAYNE: Thank you. Please state your name and spell your name, and welcome to your Urban Affairs Committee. [LR60]

GRAYSON PATH: (Exhibit 9) Thank you, committee. My name is Grayson Path, G-r-a-y-s-o-n P-a-t-h. I'm the city administrator of Nebraska City, Nebraska. I'm here to discuss one of our projects that was not audited. It was requested obviously by the APA, but it was not audited. It was called the "Man on a Bike" TIF project. And I will just quickly disclose that all of our current counsel, all of our administrative staff and our attorney staff, were not present during this project so I have to...we've done the best we can to review the files to be prepared for today. So the "Man on a Bike" project was first proposed in 2008 by a local business owner who wished to take an existing blighted and substandard property at a highly visible location of 11th Street, redevelop it, and convert the property into an energy-efficient structure for his future business.

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Regarding the property, at the time in 2008 it was an abandoned and aged gas filling station--that you see in the back there of the sheet I've given you--having been used off and on as a car dealership over the years with soil contamination issues and a tired 300 square foot structure with a canopy as well. So a very small, dilapidated structure on 11th Street, a very, very prominent spot in our community. The dilapidation of the structure detracted from the economic viability of the surrounding blocks and deterred from the preferred pleasant look of this highly used main thoroughfare. The redeveloper worked with NDEQ, as well as the former owner of the gas company, to clean the site as best as possible in order to make it useful for that property. Once the land was cleared of contamination, the redeveloper requested \$110,000 in TIF to provide for the needed equity to: one, purchase the land for about \$78,000; demolish and grade the remaining site, \$20,000 roughly; and add a new curb guttering and parking for about \$11,000. The property was originally assessed at \$40,900, it is now assessed at \$490,000 today. Now and as I said, an image there of the canopy is in the back there. You can see the before and after of the beautiful structure we now have in our community. According to the redeveloper, TIF was vital to achieve the equity they needed with the bank in order to make this project happen. Without TIF, I'm pretty confident that today we would still have that dilapidated structure still standing. Now in regards to the Auditor of Public Accounts' study, we do appreciate the APA's patience with us as we work through gathering the files we needed. With our inexperience at the time, we had a lot of turnover, our clerk was in the job for about two months, I had been on the job for about a year by that point. We did find all of the documents and submit them to them, but we were a little late, and so we do appreciate their patience with us in getting that to them. And the "Man on a Bike" was a very successful project. I think it was the essence of what TIF is for. It took a very blighted and substandard structure in an area and turned it around into a beautiful structure that we can be proud of in our community, that helped the surrounding area. I'd be happy to answer any questions that the committee has for me. [LR60]

SENATOR WAYNE: Any questions? Thank you. Seemed like a good project. Thank you.
[LR60]

GRAYSON PATH: It was, thank you. [LR60]

SENATOR WAYNE: Next we have Randy Gates, city of Norfolk. [LR60]

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RANDY GATES: Good afternoon. Norfolk is one of the...oh, better go back and spell my name. R-a-n-d-y G-a-t-e-s, finance officer for the city of Norfolk. Norfolk was one of the 35 TIF projects initially selected. We weren't one of the 22 that had the pleasure of undergoing a full audit. So I think I can say we would have had everything in line if we would have had that audit. I can say that. I really do believe we would have. We responded timely to the State Auditor's initial request, eight calendar days later we got them all the information they requested and I think it was in good form. I don't know if that's why we weren't selected or not, but I'd like to think it was. I looked over the State Auditor's report and I must say I was surprised by some of the findings. Some cities are definitely taking a much more liberal interpretation of TIF statutes than the city of Norfolk is. In some cases, they appear to be misinterpreting the existing statutes. In other cases, cities simply aren't complying with the existing requirements. And I don't think the solution to that is adding more requirements. Whatever the Legislature decides to do, I hope they consider that in cities in Nebraska there's very few tools we have for redevelopment. About the only local funds we can shoot that way are TIF dollars and LB840 dollars. I wasn't sure what you were looking for in the way of testimony, but there were five things specifically listed in LR60 that were to be addressed by the interim study. And I'll speak briefly to each of those. The first was a review of the recordkeeping requirements related to TIF projects under the Community Development Law and Records Management Act. Some cities didn't have the appropriate documentation--some cases it appears they never had it and others maybe it had been disposed of or lost. This is an area where I don't think we need additional law; we just need to follow the existing law. Second, a review of the reporting requirements for TIF projects to the Property Tax Administrator under Section 18-2117.01. The APA seems to think this requires an annual filing for you send in the same information again and again and again and again until you've done that for 15 years. I don't think that's what statutes say and that's not the position the Department of Revenue has taken. I believe the Department of Revenue position is correct, 18-2117.01(a) states that the annual report is to include "A copy of the redevelopment plan and any amendments thereto if they have not been previously filed." It seems to me silly, and if there is any change required to that section I think it should be made to take the Department of Revenue's position that we don't have to file the same information over and over and over again. But I think it's clear that we don't have to now. The third thing was an examination of redevelopment project costs that are typically reimbursed through TIF and whether reimbursement of certain costs would violate the but/for test in 18-2116. This is really two

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questions, the first one is the cost being paid for with TIF in accordance with the intent of the Community Development Law. There was a section that includes...well, 18-2103(12) had improvements in accordance with the redevelopment plan. The APA seems to think this is a broad catch-all that you can do anything you want to with that. I think that's a misinterpretation. Section 18-2103(12)(f) reads in its entirety "to carry out plans for a program of voluntary or compulsory repair, rehabilitation, or demolition of buildings or other improvements in accordance with the redevelopment plan." We have read this to allow repair, rehab of demo buildings, or other improvements such as parking lots, fencing, that type of thing. So you can repair, rehab, demo those other improvements and it's not a broad catch-all. I find it hard to read it that way. The second question is if reimbursement of certain costs could potentially violate the provisions of the but/for test, where three of the projects examined by the Auditor all or substantially all of the cost had been incurred before they had gone through the due process required by the Community Development Law. In these cases, it seems like either the TIF wasn't necessary or cities had predetermined to utilize TIF before going through the due process required by the Community Development Law. I'm no attorney, maybe there is clarification needed. But it seems to me...I see I've got my red light on, so I won't get all the way through here, but I'll conclude my testimony. But it seems to me that what's there in that but/for test it's hard to read it to say that you can go ahead and do the whole project and then start the due process required by the Community Development Law. Like I say, I'm no attorney, but I don't think statutory changes are needed there. It just seems illogical that you could do it the way some of these cities are doing it. I've got more to say, but I ran out of time. So I'll answer any questions. [LR60]

SENATOR WAYNE: Any questions from the committee? Thank you again. Thank you for coming down. Next we have Lance Hedquist from the city of South Sioux City. [LR60]

LANCE HEDQUIST: (Exhibit 10) Thank you, Mr. Chairman, members of the committee. My name is Lance, L-a-n-c-e, Hedquist, H-e-d-q-u-i-s-t. I'm the city administrator of the city of South Sioux City. I'm pleased to be here today to talk about comments that we have on a very important tool, and that's the tax increment financing bill. I think the TIF districts have worked out extremely well within our community. We've used it to tear down derelict buildings; derelict housing units; create in one area a neighborhood park for that area that did not have any; build

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roads, water and sewer lines; revitalizing the downtown in our communities. We've eliminated several salvage yards within our area, as well as by doing such paved the way for new development and create a positive atmosphere in areas where property valuations have decreased to areas that have grown. I think it's important to note that our TIF districts have all had the support of the Dakota County Commissioners and the South Sioux City School Board. In fact, two of the five members in the Community Development Agency were selected by the school board to sit on that committee, and they've been very great members for our economic program through that agency. We have the oldest joint city/school/county meeting in the United States, it's been meeting since 1979. Where our city, school officials, everybody gets together and faces each other, just like we're doing here today, and talk about how we can use the talents of our employees, how we can protect some...the property taxes within our area, and provide better services to our citizens. I was asked to comment today on the West 25th to 39th Street TIF district. This is an area that was the beginning of an open storm water system. The Westside Drainage project is an area of a former lake that was in our area. It's got a gravel roundhouse road adjacent to a railroad property; it's got older housing and commercial structures, 76 percent are over 40 years of age. And of the 144 buildings only 65 were classified as structurally sound, while 33 had major defects and 25 were listed as substandard. Some of the water lines serving that area are two-inch water mains. And anybody that watches water systems knows two inches is not really a water main by any stretch of the imagination. And many of those are 85 years of age as that's an older part of our community. Since the year 2009, the area has seen positive growth. Within that area we have fire damage buildings being repaired; we've had three businesses on 29th Street being rehabilitated; we had a business expansion; we had one business that stayed open that had planned to close; we replaced an old contractor lot that was weedy, ugly with a new storage facility unit on that facility; we've seen the construction of 48 new housing units for the elderly and handicapped, including 13 single-family lots, 7 duplexes, 7 triplexes, and a community center; we remodeled an 86-unit housing complex; demolished a single-family house and replaced that with a new house. Valuations in that area, and remember this started in 2010 basically, that has gone from \$17 million to \$24 million in value over that period of time. So I think it's been a remarkable success and we certainly appreciate what the TIF has enabled us to do. [LR60]

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SENATOR WAYNE: Thank you, I learned a little bit. Any questions from the committee?
Seeing none, thank you for coming today. [LR60]

LANCE HEDQUIST: Thank you. [LR60]

SENATOR WAYNE: Next we have Nancy Braden, city of Wayne. And the city is no relation to me, just want to clarify for the record. [LR60]

NANCY BRADEN: Good afternoon, Chairman Wayne and members of the committee. My name is Nancy Braden, N-a-n-c-y B-r-a-d-e-n. I'm the finance director for the city of Wayne. We were one of the communities that was selected but did not get audited. We submitted our paperwork in a timely manner and again never heard anything from the State Auditor's Office until we received the letter. Our project was our 2009 Western Ridge housing subdivision. This is a city-owned and developed subdivision, 52 lots. There's nine houses or nine lots left at this point in time. Like many other communities of our size, we're facing housing shortages for affordable housing. Affordable housing has been addressed in our last three housing studies and that's why we decided to use TIF on this project. It is a rolling TIF, so as the houses were built we added them to the TIF schedule. It was scheduled to be paid off in 2025, most likely it will be completed in 2022 or sooner. It was supposed to be a \$500,000 TIF and we only issued \$325,000 of that, the rest of it was picked up by the city. These lots are sold with no assessments and at a lower cost to keep the housing cost down. In 2014 the city switched from a community development agency, which was basically the city council, to a community redevelopment authority. The makeup of our community redevelopment authority is the mayor, a council member, the superintendent of schools, a county commissioner, and three members at large. The three members at large are basically a banker, a manufacturing/finance person, and a Wayne State College employee. All of the TIF projects we have been doing have been unanimously approved by this committee. We currently...or we continually look at the state statutes and review what we're doing to make sure we're doing it right. One of the things that we have implemented is the process to verify the use of the TIF funds before the bonds are issued. At that point, I would entertain any questions. [LR60]

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SENATOR WAYNE: Any questions from the committee? Seeing none, thank you for coming today. [LR60]

NANCY BRADEN: Thank you. [LR60]

SENATOR WAYNE: Next we have Brian Newton, city of Fremont. [LR60]

BRIAN NEWTON: (Exhibit 11) Good afternoon, Chairman Wayne and members of the Urban Affairs Committee. My name is Brian, B-r-i-a-n, Newton, N-e-w-t-o-n, and I'm the city administrator from the city of Fremont. We were not audited, we were not asked for information, but because of the Costco project I wanted to come down and talk a little bit about the TIF that we used for Costco. I really want to talk about three different things. First of all, I'm not going to read all this, but I want to really highlight the chart that I have in front. So far, Fremont has done nine TIF projects. The first project we did was in 2005, it has since been paid off. The other nine projects, you can see we start on the left we go by year; the name of the project; the amount that was TIFed; next is the tax base value, you can see we TIFed about \$4.5 million. The tax bases on those projects were about \$5 million. And then on the last column there or about the fifth column there is the amount of estimated tax value that currently exists today on the county's books, and that's about \$20 million. The type of project, whether it was commercial or residential; and then last the number of jobs or the number of units. You can see we've only done two residential projects, and I've got the number of units that was provided. Most of what Fremont has done is for commercial or industrial projects. You can see if you take a \$4.5 million investment and you turn that into \$20 million, or if you even take the \$5 million in estimated tax base it's now worth \$20 million. You can see the cost/benefit ratio certainly pays out on these projects, okay? Next page, let's talk about the TIF project. When Costco first came to Fremont, it did not necessarily choose the Hills Farm site. That's because it was in a flood plain and they passed on it, they went up to Nickerson. It was only after the Nickerson village council turned down the zoning request that they came back and looked at the project. Obviously, they were concerned that it was in a flood plain and it would require a lot of mitigation to take it out of the flood plain. That's the reason we started working with them on a TIF project. You can see the projected uses of the TIF. The first one, the extraordinary grading and site development, \$6.5 million it's going to take them just to bring their facilities out of the flood plain. That's a lot of

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dirt. Next, the public infrastructure, \$5.5 million. We're adding to our lagoons to we're going to treat their high strength industrial waste, that's \$5 million. The extensions it's going to take to serve Costco is \$4 million. And the last is city fees. All total, you can see in the chart there, they're TIFing \$18.3 million. The current tax base on the 400 acres is \$4.3 million. The estimated value when they're done, and this is a conservative number, they're going to put in \$150 million investment in real property taxes and real property investment. We also estimate that it's going to be at least \$100 million in other investment as well. It's an industrial project and more importantly it's going to bring 800 to 1,000 jobs to the area. If you look at their paperwork and their cost/benefit analysis, you can simply see we take an \$18 million investment and we turn it into \$150 million. That's a 34 percent rate of return on that investment. It's a good decision. We have all of our paperwork in order on all of our projects. Some of the things that we feel are important and why I am here to support it is that we believe local control is absolutely necessary in the TIF project. These decisions are made by our local CDA, they're approved by the city council which undergo public scrutiny every step of the way. Second, one size certainly does not fit all. Even though Fremont has chose not to do residential projects, other communities feel it very important to use the money for residential projects. They should be allowed to do that. Last, the but/for test has been talked about. And in Fremont's case, but/for the TIF development we're making serious investments in our city. But/for the TIF that we're using, we're adding to our real property tax values. But/for our TIF, we're getting tax receipts on personal property, we're getting tax receipts in sales, occupation tax that we wouldn't otherwise get. And but/for the TIF projects, we're actually getting jobs in Fremont, that's what counts the most. And last, but/for TIF, we're adding additional investments in housing and in services and bringing new businesses to Fremont. Thank you again for allowing me to address you, and I would certainly take any questions. [LR60]

SENATOR WAYNE: Any questions from the committee? Seeing none, thank you for coming today. [LR60]

BRIAN NEWTON: Thank you. [LR60]

SENATOR WAYNE: I see the mayor from Bellevue. Did you want to testify, we're doing cities? Okay. And then we'll finish out our invited testifiers with Christy Abraham. [LR60]

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RITA SANDERS: Good evening, Senator Wayne, members of the Urban Affairs Committee. My name is Rita Sanders, R-i-t-a S-a-n-d-e-r-s. I am the mayor for the city of Bellevue. I am here this afternoon on behalf of the city of Bellevue to express our strong support for the continued use of TIF in our community and throughout the state. The tax increment financing has been proven to be effective and is one of the only economic development tools that Nebraska communities have to offer potential developers. Currently, the city of Bellevue has four projects that are using TIF financing. The projects have brought over \$12.5 million in increased valuation and numerous jobs to the city. These projects and the redevelopment of some of these areas would not have happened without TIF incentives, and they bring a much larger valuation to the area which is beneficial to the growth and sustainability of our community. As required by state statutes before any TIF project is approved and started, the city notifies the county board, the appropriate school district, the ESU, Metro Community College, and the NRD to give them ample opportunity to raise concerns or oppose these projects. Over the last 20 years, the city of Bellevue has had no other taxing authority object to any of the TIF projects that has been brought forward. Prior to approval of a redevelopment plan and the use of TIF, projects are reviewed for compliance with state statutes by our planning department and planning commission. Upon completion of these projects are monitored by the city's finance department to ensure the TIF eligibility expenditures have been made prior to any excess tax funds being released. These projects are also part of the city's annual audit and reported to the state as required by the statute. Additionally, assessed valuations often exceed projection resulting from the property being fully returned to the tax rolls in less than 15 years permitted, usually within the 10 years of the project's start date. I realize the State Auditor's review of TIF projects identified many issues on the use of TIF, but I feel that the city of Bellevue has controls in place over the entire TIF project from beginning to the end, which ensures that the statutory requirements and the spirit of the law are being followed, as well as assuring that the plans for the affected areas meet the city's long-range plans. In conclusion, the city of Bellevue asks you to allow Nebraska communities the ability to offer incentives to businesses while helping to redevelop blighted areas by supporting the continued ability to offer TIF. And with that, if you have any questions. [LR60]

SENATOR WAYNE: Any questions from the committee? [LR60]

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RITA SANDERS: Thank you. [LR60]

SENATOR WAYNE: Thank you for coming today. (Inaudible) Step right up. Welcome back to your Urban Affairs Committee. [LR60]

CHRISTY ABRAHAM: Thank you, Chairman Wayne and members of the committee. [LR60]

SENATOR WAYNE: Now last time you promised us the 90 seconds or 60. [LR60]

CHRISTY ABRAHAM: Ready? Time me, I'm going, I'm going. I'm not quite the fast-talker that Lynn Rex is, but I'm developing that skill. My name is Christy Abraham, that's spelled C-h-r-i-s-t-y Abraham, A-b-r-a-h-a-m. I'm here representing the League of Nebraska Municipalities. Thank you for allowing me to testify on the third and hopefully last time on LR60. As you know, you've heard from a dozen or so communities today that were here at your request. And I apologize that I'm a big emotional marshmallow, but I'm just so proud of their testimony and what they've brought to you. I think they've proven to you that they really took the Auditor's report seriously and they worked in a most creative and thoughtful way to address those concerns that were raised and did it on a local level. I just want to mention as I did in North Platte and Grand Island the League is continuing to also address the Auditor's concern. You've heard mentioned several times today the checklist. It warms my heart that communities are enjoying it and find it useful. The TIF manual is underway, we're developing that. As you heard from Mr. Bacon, he really was the lead on the TIF red book chapter for the Bar Association. The other thing I want to mention is we did say that we were going to start meeting with school districts and counties, and we did have a meeting yesterday with the Nebraska State Education Association, the Nebraska Association of School Boards, and the Nebraska Association of County Officials. We wanted an opportunity for them to bring us their concerns about TIF and how municipalities might be able to address those concerns. As you probably remember me saying, the League is working on a model ordinance for municipalities. And so a couple of things that I think we will be adding to that ordinance include sort of allowing both school districts and counties to sit on the community redevelopment authority. You've heard other cities talk about that they are already doing that and we want to put that in the model ordinance as sort of a best practice that you should maybe encourage your school districts and counties to be

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involved on that level. I think it will help the communication between all of those groups. The other issue we heard is notice provisions, that school districts and counties want as much notice as possible about a TIF project. So we're going to put some provisions in our model ordinance about that also. So again, thank you so much for your time on all three of these hearings. It's been a pleasure. And I'm happy to answer any questions you might have. [LR60]

SENATOR WAYNE: Thank you. Any questions? Seeing none, thank you. [LR60]

CHRISTY ABRAHAM: Thank you. [LR60]

SENATOR WAYNE: At this time we'll open it up to the public. If you want to come up to the front row so I know how many people are testifying and have an idea. And step on up and turn in your blue forms and please state your name, correct spelling of your...or I hope you spell it correctly, of your first and last name. And we'll go from there. Welcome, my dear friend. [LR60]

DOUG KAGAN: (Exhibit 12) Good afternoon. My name is Doug Kagan, that's D-o-u-g K-a-g-a-n, 416 South 130th Street, Omaha; representing Nebraska Taxpayers for Freedom. Under current Nebraska law, municipalities can use tax increment financing for redevelopment of properties considered "substandard and blighted," as stated in Article VIII, Section 12 of the statutes. Now used throughout the state we see TIFs increasingly used in nonblighted areas and not in compliance with TIF criteria. These areas could gain redevelopment without TIFs. The law meant for TIF use only if a project could not proceed without it. After hearing complaints from state senators and the public, State Auditor Janssen released an audit of TIFs in January, revealing minimal monitoring and oversight, also violations of TIF authorizations. We support the Auditor's suggestions that the Legislature evaluate use of TIF funding and more narrowly define what constitutes substandard and blighted property. Limit TIFs to actual distressed areas with a high poverty rate and/or high unemployment rate. The Legislature must create a mechanism to monitor compliance of projects with the law to protect taxpayers, demand precise recordkeeping and submission of records, and provide a clear avenue for complaints. Require publication of cost/benefit analyses to the public--TIF agreements should allow measurable benchmarks for success, and regular performance reviews should measure progress toward those benchmarks. Allow the Auditor to audit all TIF projects--TIF misuse shrinks the tax base and

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deprives local subdivisions of immediate tax receipts, shifting more of the property tax load onto other taxpayers. The state must increase school financial aid to substitute for lost revenues. A vicious cycle occurs when a developer can win TIF designation to pay for a residential project, for example, that places more children in a local public school district, while the TIF actually restricts the tax base. TIF projects in my county, Douglas County, cost \$35 million in lost taxes. Businesses can play one locality against another by requesting TIF designation. TIF should not become a tool to bid for developers. TIF usage has morphed from its original purpose of renewal into a vast economic development tool. To conclude, NTF urges state senators in January to reform the TIF statute to relieve taxpayers of the heavier property tax burden that TIF misuse now imposes. Thank you. [LR60]

SENATOR WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for coming. And thank you for staying. [LR60]

SILAS CLARKE: Silas Clarke, I'm the city administrator in Hickman. That's S-i-l-a-s, Clarke, C-l-a-r-k-e. I was not on the audit list, but I thought it was important and my city and mayor also thought it was important for me to give a statement today. The city of Hickman, just south of Lincoln, we have had three TIF projects since 2005. And I want to point out just a little bit of history and kind of the but/for for one single one. And first off I've heard some comments, just heard some comments, I really do think the Legislature has created the necessary safeguards around there, which is local control. Yes, are there things we as municipalities can do better? Yes. Are we trying to address those? Yes. But the story I have for you today is the city of Hickman has been working on the redevelopment of Old Town in the blighted area for many years. Within the heart of the area the old Hickman school building, originally constructed in 1926, remains standing and became in disrepair. For decades the old schoolhouse was used as an apartment building and slowly became a nuisance to the community. On March 14, 1987, Craig Dodge, a Lancaster County deputy, was murdered in the apartment building after responding to a reported assault in an apartment there. After this very unfortunate event, the structure was continued to be used as an apartment building until the city of Hickman finally was able to receive access, which was not immediately granted by the current owner, and identified 24 separate building code violations in 2008. So you can see how many years this was past. Upon eviction of the residents, the city began working to find a private developer for the property,

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since the city could not afford to buy it and demolish the building that was there. So after multiple municipal meetings regarding the property, a gentleman named Mr. David Klein asked the city if he was able to move three houses actually onto the property and needed some financing help for demolishing the old schoolhouse. So demolish the building, site preparation, and the new houses, and also donating a very small portion of the property to an on-site memorial for Mr. Craig Dodge, Deputy Dodge. So this was determined through local control that this was the best use of TIF funds for that site. Now my biggest point is the redevelopment of this property was not made possible without the public financing and this single building over the years greatly impacted and led to the substandard conditions of the entire Old Town Hickman. As the schoolhouse slowly deteriorated, so did the properties around it. The project has ultimately assisted with the redevelopment of the entire Old Town of Hickman. The old schoolhouse was the largest building in the blighted area, it sat right in the middle. It was an immense eyesore and attracted a very highly mobile population that had many negative confrontations with the Sheriff's Department over they years. Many of them have stories of that structure. After the demolition of the structure and redevelopment of the old schoolhouse property, the area has slowly begun to redevelop. The single family residential owners in the area started to take pride in their properties again. Many of them did sell and new owners coming in. And I would love to take any of you for a tour in that area. These improvements to the blighted area have taken place through private funding, every single one of them in that Old Town area except for that old schoolhouse redevelopment, which needed the tax increment financing. While work remains in that Old Town area, the city and a multitude of other taxing entities has immensely paid off since the redevelopment of the entire Old Town area. And this project only cost through TIF funds \$44,947. So you can see a very small amount of funds through TIF led to a ginormous increase in property values in the area, an overall improvement for Hickman. So my point is for a town like Hickman, there's many other, you know, small towns across this state, and this really is our only economic development tool out there. I'm not an LB840 community at this time. It's just something that we definitely have talked about. Weren't able to get that passed...haven't tried, excuse me. But we needed the funding for some other purposes. But the city has used it sparingly, logically, and in a way that has brought private development well beyond the single properties that have received the tax increment financing. Through your continued commitment and also local control, we will continue in a revitalization of our old downtown. But I would say with the current law we look forward to also doing the same for our

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downtown area, which is definitely in need of redevelopment. So thank you for having me.
Thank you. [LR60]

SENATOR WAYNE: Any questions? Seeing none, thank you. [LR60]

JIM SAZAMA: Good afternoon, Chairman, members. [LR60]

SENATOR WAYNE: Good afternoon, sir. [LR60]

JIM SAZAMA: You guys are looking good. I've got to compliment you on your patience. I've been sitting here most of the afternoon listening to the dialogue taking place... [LR60]

SENATOR WAYNE: State your name and spelling of your name first. Yes. [LR60]

JIM SAZAMA: Name--you want the name I use here in America or one I use out of country?
[LR60]

SENATOR WAYNE: In America would work for me. [LR60]

JIM SAZAMA: Jim. [LR60]

SENATOR WAYNE: And your last name. [LR60]

JIM SAZAMA: S-a-z-a-m-a. [LR60]

SENATOR WAYNE: Thank you. [LR60]

JIM SAZAMA: You caught me on a roll there, buddy. I grew up in this fine state and I've been a taxpayer for a long time. And I see the State Legislature years ago approved this TIF scape deal, I'm going to call it that, but you guys don't have a handle on it at all. I see a lot of abuse of TIF all over the state. Now, I don't know if you guys saw this article here, but it was in the Omaha World-Herald, and it was August 17, 2017: TIF burden on taxpayers. I can testify to that because

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my real estate property taxes went out of sight this year because other people aren't picking up their fair share. We have a lot of TIF deals in Omaha, Nebraska. That's where I'm from, rent a house there. Fremont, where I grew up, we see a project taking place there where we have a multi-billion dollar company, I don't know, they probably do a hundred billion a year...\$200 (billion), \$300 (billion), \$400 billion a year in business. Now what we're going to do is set aside some money so this Costco chicken processing organization can come in and get paid money to come in to this area and we're going to move dirt, we're going to do a whole litany of things here at the taxpayers' expense. There's going to be a burden on the schools, a whole litany of things. Now I got to compliment the guy from Sioux City. He said something and was the only person here today that said this, that they have a community involvement. I mean, you guys all heard that. It's even recorded that they get the community involved in these different projects in South Sioux City. That's commendable. You know, it's too bad the city of Fremont doesn't do those kind of things, have a committee set up and whatnot. They have city council meetings, but it's either kind of city council's way or the highway, which is really sad. And if you go around these communities in the state of Nebraska, they probably all run the same. You know, the same deal: money, money, money, money, money. Now if I give Mr....Senator Quick here half a million dollars today, I could do that this afternoon and you could go out and start a business. Okay? But I'm not going to require that you pay any type of taxes or overhead or utilities or anything, you know, for a period of what, 10, 15, 20 years, whatever you like. You would jump on that in a heartbeat. And you would, every one of you guys would do that. Now I hope this body of people does something to get a better handle on what we're doing regarding TIF. Great little project, some places have done well with it. But you guys need to get a handle on it. Now I could go on and on here for a while. But this article here, if you guys haven't read it, read it. Read it. It's August 17 of this year, it's the Omaha World-Herald article. Now do you guys have any questions of me? [LR60]

SENATOR WAYNE: Any questions from the committee? Seeing none, thank you for coming. And thank you for your patience of staying to testify. [LR60]

JIM SAZAMA: You bet. Thanks for your patience today, guys. [LR60]

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JACK DUNN: (Exhibit 12) Jack Dunn, J-a-c-k D-u-n-n, representing Policy Research and Innovation from Omaha. I'll speak quickly so. While TIF, when used properly, can afford many benefits, my testimony will focus on problems with TIF and recommendations to solve these problems. Since PRI is located in Omaha, I will also mention problems specific to Omaha. Problems with TIF...I don't know how much I have to go through this, everyone knows the problems with TIF. Some recommendations are the ones that have been mentioned by the State Auditor. Define "blighted" and "substandard" clearly and unambiguously, make but/for requirements precise and unambiguous, define "redevelopment project" clearly and unambiguously, make provision for the developer to fund the relocation of affected residents or businesses, document project costs in a clear and detailed manner, require a comprehensive and methodical cost/benefit analysis. And, of course, these are not the only suggestions. I include a handout also from another conference that I went to. I would like to also specifically address what I believe is the extremely aggressive use of TIF by the city of Omaha. And I should mention that I am quite pleased that the city of Omaha is providing more transparency in their TIF work. That's a recent development and very much to be applauded. However, Omaha seems to be betting its future on attracting a significant chunk of the country's creative class. Omaha's many new TIF-supported developments in and around the urban core are targeted towards the perceived needs and desires of this class. This strategy is not unique to Omaha, other cities have gone down the same road. Sadly, however, what has resulted in these cities is an ever-expanding monoculture environment in which diversity, vivacity, spontaneity, and artistic and entrepreneurial innovation are crowded out by the imperative for higher and higher returns on property. Peter Moskowitz in his book, How to Kill a City: Gentrification, Inequality, and the Fight for the Neighborhood, makes the point that where this creative class strategy has been implemented, as for instance in cities like New York, San Francisco, Seattle, and so on, it's always to the detriment of existing residents; though to the great benefit of developers. Current use of TIF in Omaha primarily benefits the real estate industry rather than the citizenry. To counteract this, the state can require information and procedures that grant citizens more power in determining where, how, and which projects are approved. Such requirements have been suggested by many observers. In addition to our recommendations above, I included that handout. I also hope that you will take advantage of the new resource, the Nebraska TIF Database, which is nebraska.TIF.report, no dot com or dot org or anything like that. Just nebraska.TIF.report, created by Policy Research and Innovation and Open Nebraska. This free

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and public database lists the TIF projects recorded by the Nebraska Department of Revenue since 2008. Anyone can review the TIF projects in their locality by clicking on the county and the city and the individual project. In conclusion, I would like to say that there have been enough studies on tax increment financing. It's time now to act, to implement the recommendations already put forth by these studies, that citizens of our state are impatient and ready for positive change. We encourage this committee and the State Legislature to enact the recommendations of the Auditor for Public Accounts and others as a way to let the citizens of Nebraska know that you are listening and acting to protect their interests. Thank you. Any questions? [LR60]

SENATOR WAYNE: Thank you for your time. Any questions? Thank you for coming down. [LR60]

JACK DUNN: Thank you. [LR60]

RICK SANDERS: Members of the committee, my name is Rick Sanders, it's R-i-c-k S-a-n-d-e-r-s. I would like to say a quick hello to our esteemed senator from Bellevue, well-liked and respected. I'm a Bellevue businessman and I had experience with TIF in that I started a retirement community in 1999 that used TIF to develop a 13-acre corner at Cornhusker and Fort Crook Road in Bellevue. And at that time, some of the existing regulations were in place, but I think it was an easier time for TIF. And that project was very successful for the city. I think the valuation of the land when it was acquired was a couple hundred thousand dollars, between \$200,000 and \$300,000. We have eight buildings on there now, the last one is under construction. And this is what, 17 years later? The aggregate valuation of that project will be \$24 million roughly, so very successful. We have 60 new jobs there taking care of seniors. There are probably 200 residents, maybe half of whom came from out of state to be closer to kids. And so it's been a very good economic development tool. And I think you've heard from cities who have had a need for this sort of thing. Sitting behind me is my son, Blake. Blake grew up in Bellevue, he went to the University of Nebraska and got a finance degree. And he is part of the brain drain that we experience here in Nebraska, he went to Phoenix, Arizona, where he was a banker and now he's a developer, has a partnership and they're starting out and they're doing quite well so far. I asked him about TIF and incentives in the Phoenix area and Arizona, and he said no, we don't have any, but we grow by 80,000 residents per year in the Phoenix area. So their growth is

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tremendous. Nebraska doesn't have that opportunity. You've heard small towns testify here that they're fighting for their survival. And TIF does increase valuations. School districts, other taxing entities, they may have to wait for those revenues, but that revenue stream does increase. And perhaps there are tools that can be implemented relieving the cap on school districts' tax limit or something that can get them through that period until those revenue streams come on-line. But it's undoubtedly that happens. Property taxes are a problem in Nebraska, frankly. It's an economic development problem. We are a very high property tax state and that inhibits the ownership of real estate, really, whether it's residential or commercial. You know, we have to deal with that. A lot of our developers have the choice to develop in Iowa or Arizona. A lot of those are national companies. And Nebraska needs to compete, so we need to have every tool we can at our disposal. And interestingly it occurred to me that our high property taxes actually make TIF the perfect tool for Nebraska because with those high property taxes it increases the amount of funds that come back and the timing. It accelerates that timing to pay off those TIF funds. So that about summarizes I guess my thoughts on the matter. [LR60]

SENATOR WAYNE: Any questions from the committee? I would point out that Arizona is the only state in the country not to use TIF or have TIF. And ours is a little more restrictive because it's in our constitution. So it's a little harder for us to start moving some things around. Then there's the complication of the uniformity and proportionality clause that makes it even a little more harder to do what other states do like Arizona, or even across the river in Iowa. So that's part of also what this committee will be exploring. So thank you for your testimony. [LR60]

RICK SANDERS: Thank you. [LR60]

SENATOR WAYNE: Welcome back to your Urban Affairs Committee. [LR60]

RENEE FRY: Thank you. [LR60]

SENATOR WAYNE: I can't wait for you to provide all the answers today. [LR60]

RENEE FRY: (Exhibit 14) I wish I had them. Good afternoon, Chairman Wayne and members of the Urban Affairs Committee. My name is Renee Fry, R-e-n-e-e F-r-y. I'm the executive director

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of OpenSky Policy Institute. I want to start out by saying we do not oppose TIF, but we do believe it's imperative that we as a state ensure that projects are a good investment and that we're helping our communities thrive, particularly since taxpayer dollars are involved. I want to reiterate today our support of LB95, which would address many of the issues that were raised in the audit. We support the provisions in LB95 that require redevelopment authorities to author reports on an area's blight qualifications and present the findings before the public. We also support the regular review of the cost/benefit analysis for each project. There is substantial research indicating that TIF may not always improve economic growth in municipalities. For example, a study by the Lincoln Land Institute found that growth in TIF districts can be offset by declines elsewhere within a municipality. Essentially by subsidizing the development of a store in one place it eliminates demand for a store elsewhere in the municipality. For example, or more specifically, David Merriman came and spoke at our symposium in January of 2016. He is a professor at the University of Illinois-Chicago, and also a visiting fellow at the Lincoln Institute of Land Policy. He studied 26 empirical studies looking at the effect of TIF on economic activity. And he found half of those studies found that TIF was primarily positive, 13 of those studies. But he also found that of those 26 studies, 4 studies found that the effect of TIF on economic activity was primarily negative. He found that 6 studies were neutral and 3 studies were mixed. And he indicated why TIF might not work in all cases is that it might be capturing growth that would have occurred anyway or that it might just move growth from one place to another. So by reviewing the cost/benefit tradeoff of TIF projects, we can determine if these projects are really worth their price tag. And this is no different than the process we go through on the state budget or review of other state tax incentive programs. I did pass out a memo that Bill Lock put together a couple of years ago as a Revenue Committee analyst. We have updated those numbers, it looks at the impact of TIF on TEEOSA or K-12 funding formula. In updating those numbers, we find that in 2015 TIF...well, according to...and this is on the Department of Revenue web site: in 2015 TIF reduced taxable property in Nebraska by \$3.1 billion in property tax revenues by \$66.3 million. We estimate that in FY '17 K-12 property tax revenues were reduced by about \$36 million due to TIF, about \$23.6 million of which was paid by the state in increased school aid to compensate for reduced local resources. So for other local subdivisions we estimate the losses for those subdivisions to be about \$30 million, including \$8.2 million for counties in 2015. Which is why we would recommend making an adjustment or amendment to LB95 to allow the affected units of government the choice of either opting out, although I know we have

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constitutional issues with that, or at a minimum guaranteeing them a seat alongside municipalities on redevelopment authorities. For example, in 2015 Colorado passed a law that ensures that 3 of the 13 seats on redevelopment authorities are guaranteed to local governments aside from the municipalities, including counties, special district, and school district representatives. So with that I would thank you for your time and ask if you have any questions. [LR60]

SENATOR WAYNE: Any questions? Seeing none, thank you for coming. Thank you for staying. [LR60]

RENEE FRY: Thanks so much. [LR60]

SENATOR WAYNE: Next. [LR60]

BOB LUEBBE: Hello, my name is Bob Luebbe, L-u-e-b-b-e, and I'm a lifelong resident of Nebraska, and I have lived in the Ashland-Greenwood School District for over 20 years. My wife and I both work in Ashland and own some property there. And I helped lead the successful fight against what I believe was an improper use of TIF in Ashland. Let me give you a quick background. Ashland is a high-growth area between Omaha and Lincoln. We have several active SID developments in the Ashland area, with many homes being built. A group of investors have been sitting on about 40 acres of farmland, essentially a cornfield, on the outskirts of Ashland for over 10 years now, and they wanted to develop up to 150 lots for single-family homes on these 40 acres. And each lot was expected to sell for around \$45,000 with home prices estimated to average from \$250,000 to \$300,000. Sometime last year the developer started promoting the use of tax increment financing to our city council to help pay for the water sewer lines and other infrastructure work they needed. They said they simply could not see how they can move forward with the project without the use of TIF money, and they brought in a well-known TIF attorney to help convince the council on how this funding mechanism could be used to pay for this infrastructure. But before the TIF financing could be used, the attorney told them they had to blight and annex this farm ground. So they hired an engineer this last winter which wrote a report on how this area, this farm ground, was substandard, dilapidated, and possibly even a danger to life and property. And I have the blight study here if anyone would like to see it. So

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essentially they just drew a big circle around these 40 acres of cornfield, including a few older homes that were nearby, and the city council declared that entire area as blighted. But many in the community cannot understand how productive farmland could be considered blighted, substandard, or dilapidated. The attorney seemed to have found a loophole on if the ground has not been improved on for X number of years then it could be considered blighted. And with this argument, however, that would allow literally hundreds of thousands of acres of that farm ground to be blighted, which seems ridiculous and not the original intent of the law. Then the dollar request came from the developers and their attorney came in and they asked for \$2 million of TIF money to pay for those infrastructure requirements for the first phase of 50 lots. They were elusive on what the true costs of TIF were going to be to the community and our school system, so we decided to educate ourselves and came up with our own calculations based on current tax levies. And we were very surprised that over \$1.1 million of property taxes were going to be diverted to the development from the school system, over \$300,000 from the county, and over \$900,000 from the city. And after learning about this financial impact, the school board unanimously came out in opposition to the use of TIF for the project. And unfortunately, the school does not get a seat on the community development agency, the city council appointed themselves to that and they kept moving forward with the annexation because the developer's attorney said don't worry about the shortfalls to the school system because the state is just simply going to backfill any of that lost property tax revenue. However, they would not guarantee that. So many citizens in the school district got really upset and energized and we flooded our city council meetings. We invited outside news media and in less than 30 days we gathered 737 signatures on a petition and submitted those to the council members. And thankfully the citizen...or the city listens to its constituents and just a month ago, due to this large opposition, the mayor and the city council abandoned the use of TIF for this project. And I think if the community would not have gotten educated and involved in this it probably would have sailed through. So I really think that there needs to be oversight and monitoring at the state level. Essentially any kind of ground can be blighted, which I don't think is right. We don't think it should be intended for development, but redevelopment. And I think the school system and the county should get a seat at the table for these projects. Any questions? [LR60]

SENATOR WAYNE: Any questions from the committee? Senator Crawford. [LR60]

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SENATOR CRAWFORD: Thank you, Chairman. And thank you for being here. So it sounds like in your case though it was local control that really stepped up to challenge this project, is that correct? [LR60]

BOB LUEBBE: Right, that's correct. The citizens we just...we thought we would go to the council meetings and their attorneys would be there and they would, you know, talk about how this is totally legit and we shouldn't worry about it. The state is going to backfill, you know, any state aid that's lost to the schools. And it just didn't seem right to me, not only as a local citizen, but also as a Nebraska state taxpayer, that those funds would get diverted in that fashion, considering they were going to bring so many students into our school system with this project. [LR60]

SENATOR CRAWFORD: And when you say funds diverted, you mean new property tax revenues. [LR60]

BOB LUEBBE: Yeah, new property...right, that's correct. [LR60]

SENATOR CRAWFORD: Not existing property tax revenues. [LR60]

BOB LUEBBE: Right, right. And I understand that the project is still going forward. So even though they said it couldn't happen without TIF, magically they've now come up with the money. And I understand that the city is either going to get a bond or the developer is going to kick in more money to move this project forward. So it did not meet the but/for requirements obviously. [LR60]

SENATOR CRAWFORD: Thank you. [LR60]

SENATOR WAYNE: Any other questions? Seeing none, thank you. [LR60]

BOB LUEBBE: Thank you. [LR60]

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LYNN REX: Mr. Chairman, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. Christy has already told you we had a stakeholders meeting yesterday and part of that was to discuss giving school districts, and perhaps counties, too, but certainly school districts the option of having somebody on a CRA, which we're going to build into a model ordinance. So I think that's an issue that we're addressing on the local level. I don't think you need state legislation for it. We, in fact, found out that many cities are already doing that, and we think that that's something that needs to be there. It was pointed out to us by the schools that they don't want to mandate because they may not want a seat on the CRA. So but to have the option, I think that's important. With respect to the Ashland project, I just want to clarify a few things. I did go, as you did, Senator, and also I think Senator Linehan was at the town hall meeting at a church in Ashland, and I went to that. And to me, the most important part of that was toward the end when Senator Groene who was there, who I think did a nice job, and so did the individual who just spoke ahead of me, of trying to basically get input from those that were there. Senator Groene said, you know, we toured the Iron Horse project, which is an SID outside of Ashland, and there are a lot of empty lots there. We have a city here that wants to use tax increment financing for more housing in the city. If you've been through Iron Horse, you're talking major beautiful homes, mansions. That's not what the city of Ashland was purporting to do. They're going to be nice homes, but they're going to be homes that will be affordable for folks, but not multi-million dollar homes. That being said, it is a misnomer, and frankly inaccurate, to state that the project did not meet the but/for test. It did. It is also inaccurate and a misstatement to say that the project is going through without TIF. It isn't. It is fundamentally going to be a different project in Ashland. And what's going to happen is it's going to cost frankly the city taxpayers more in the long run because of the lack of TIF. What's going to...instead of the developer taking on the risk, it will be the city and the taxpayers taking on the risk. In addition, the project itself is narrowed down dramatically. I spoke with the city administrator, she said to me, look, this is going to take a much, much, much longer period of time. And by the way, I also wanted to undercut the argument that the Ashland schools did not need kids. They want more kids in Ashland schools. So I think there's a lot more to that story, and perhaps someday that will come out. But for the time being, please understand it absolutely met the but/for test, number one. Number two, it is not the same project going forward. And number three, we really appreciate working with our partners, with the schools, and counties, and others to see what we can do to try to make sure that they have more input on the front end

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because I think that that's been an ongoing issue. With that, I'm happy to respond to any questions that you might have. [LR60]

SENATOR WAYNE: Any questions from the committee? I might have one. What are your thoughts on the original intent of the TIF language in the constitution? [LR60]

LYNN REX: Well, at the time, and it's with some regret to tell you that I actually remember all of that because I was around and working with the League at that time. So what I can share with you is that the intent of that clearly was to allow municipalities to redevelop, to take areas that otherwise would not improve. Because I think everybody pretty much knows that in the core areas of cities it's hard to get folks to come in and developers to come in when you have to remove asbestos from buildings and do things of that nature. So I think that that was the initial thought, especially because it was mainly driven by Omaha at the time. That was the original thought. And then as it has in many, many, many other states, TIF has also evolved into it's a very fine line between redevelopment and economic development. And those cross over. And just because you have some economic development doesn't mean it wasn't redevelopment. And I think that is a fundamental misunderstanding as well, that there are some folks saying oh, it's only for redevelopment. It is, but that does not mean that you do not have economic development as a side to that. And for those of you that toured in North Platte, you may know that with the Menards, as well as with the Walmart retail center out there, I know, Senator Quick, you were there, I know Senator Justin Wayne was there on the tour. I think you were on the...no? Okay. In any event, on that tour one of the things that was very insightful to me was just looking around at all of the other industries and companies that are surrounding both of those major...the Menards building as well as the retail building by the Walmart. And the city said to us, we didn't have to use TIF, we didn't use TIF. But they located there because of Menards, they located there because of Walmart. There's apparently some major egg plant that's about ready to locate by the Walmart as well. So basically you don't need TIF for everything, but sometimes you need it for some things in order to incent. And this is in fact, Senator, as you know with LB840, this is the major economic redevelopment tool in the state of Nebraska. And I use the word economic development tool in a broader sense, because it has evolved to that. It's evolved from redevelopment and economic development together. I think it is both. [LR60]

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SENATOR WAYNE: So you mentioned that it was originally pushed by Omaha for the core part of the cities. And currently we've evolved from that. But my question is more around, and this is what I'm struggling with, it's one thing to make a practice conform to a law and it's another thing to change the law to conform to what's best for the practice. And I feel like here we're conforming to a law that maybe the original intent is not there, and not even the statutory authority. And sometimes we're stretching that authority to make it fit economic development. Because it's in our constitution, I understand the frustrations of how hard it is to change that. And you can dodge this question, so I'm giving you a way out. Is it time to change that constitutional language to make it more economically develop friendly versus what it was originally intended for? Because I feel like we sometimes, not everybody, we get away from the community development or what it was purposed for. So my question is, is do we need to change that to solve some of the problems with the fundamental issue that we're dealing with, with TIF? At least that's what I saw this year as Chair, is around redevelopment versus economic development. Would it be easier for us or better for the state to change that? And you can say, I haven't talked to my members, I would rather go back and talk about it, and I'll let you out of it. But I'm just in my head I'm really trying to figure this out. This is where I'm struggling with it. [LR60]

LYNN REX: I want to begin by saying I think that the municipalities across the board have done their very best to comply and to comport with the statutory requirements that were in play for this constitutional amendment. And I think that that's number one. Number two, I think that the...and again, you've heard it until I'm sure you're sick of hearing it. But overwhelmingly there's a documentation issue in terms of lack of compliance. It was not fundamentally cities going out and trying to do something that they didn't have authority to do. Number three, the League introduced with Senator Greg Adams, he introduced it on our behalf, LR29CA in 2013. That bill was introduced that was a proposed constitutional amendment. We had worked with Trevor when he was working with Senator Mello previous to that on that particular...something very similar to that as a proposed constitutional amendment. It basically did two things: it would have stricken the words saying "substandard and blighted" and insert the words "property in need of rehabilitation and redevelopment. There are reasons for that, most importantly because as some of you may know, some folks don't like having their property declared substandard and blighted. Whereas if one says to you, Senator Quick, you know, we think that you've got property in your neighborhood in need of rehabilitation and redevelopment, you think, oh great. I

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would like to have that improved. They say it's substandard and blighted you think, oh my gosh, it's going to impact my property tax value. So that would have stricken that language, inserted the words "property in need of rehabilitation and redevelopment." Secondly, it would have extended the period of time for payback from 15 to 20. And Senator Adams introduced that, we did a study for him to find out how municipalities across the state are currently using the 15 years. Very, very few of them ever go the full 15 years. Almost everybody puts in the 15 because that is allowed, but they almost paid back...almost everybody pays back within 8 to 10. So that bill was advanced out of committee, left on General File with a standing committee amendment to strike the 20, insert go back to 15. The rest of the language is intact. In January of 2014, that was advanced to Select File. An amendment was then pending dealing with what some other things that could be done with that. There was Senator Schumacher had an amendment, Senator Chambers had amendments to it. And at the end, Senator Adams decided not to proceed with that. It was on Select File. So LR29CA was on Select File, quite frankly we had the votes to advance it. I think it would have passed had it been placed on the ballot. And I think it would go a long way to assist in this. Prior to that, Senator Landis, when he was a state senator, and Senator Matt Connealy from northeast Nebraska, had a proposed constitutional amendment to place on the ballot that was actually placed on the ballot. And during that time frame it actually struck the words "substandard and blighted" and put in the words "economic development or redevelopment." And it also would allow counties to have tax increment financing. The League itself opposed the latter provision, not that we don't support our county partners, but the last thing we want are more doughnut holes. We've had that experience. We've been there, done that with sanitary improvement districts over a period of years, where you have cities instead of growing out in planned growth you have doughnut holes here and there. Because obviously for a developer, much cheaper, much cheaper to build outside than it is to build on the inside. And so basically that constitutional amendment was overwhelmingly defeated. And that's the last time, Senator, that that had been addressed. I do think it's important to look at issues relative to what are some things that cities can do with economic development. Back in 1989 and 1990, the League brought forward LR21CA, which didn't get advanced from the body, but then LR11CA did. And that became the constitutional foundation for LB840 plans. And LB840 was the first proposal that Governor Ben Nelson then had as his economic development piece, when he started out as Governor of the state of Nebraska. And that was a proposed constitutional amendment which was adopted by the voters overwhelmingly to say that the Legislature may

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authorize cities and villages to use local sources of revenue for economic or industrial projects or programs subject to a vote of the people. And then that was amended subsequently to say that you could also do some other things, it wasn't just property tax. It could be also sales tax, and I know we worked with you on that issue for a period of years. So LB840 is extremely important. LB1018 was a bill then that was passed for Sarpy County cities which became the centerpiece. And the Gretna mall, the Crossroads...I never get the right name. But the mall in Gretna, that has used LB840 plan, it has used LB1018, it has used TIF, all three very, very effectively. So is it time? I think it's always time to look at what we can do to update statutes, update the constitution. And I don't think that one simply tries to push the envelope to see how you can skirt a law. I don't think cities are in fact doing that. I think they're working very hard for the sustainability and the viability of their communities across the board. And we thank you for all the efforts that this committee has had over a period of years. [LR60]

SENATOR WAYNE: With that, I'm going to...all right, thank you. [LR60]

LYNN REX: Thank you very much. Thanks for your time. [LR60]

SENATOR WAYNE: No problem. Any other testifiers? You stood up at the wrong time. That concludes our hearing. Oh, letters for the record: Mark Fritz and our testifier Rick Kuckkahn from the city of Alliance. With that, that concludes our hearing on LR60. Thank you all for staying. [LR60]