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Urban Affairs Committee October 16, 2019
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HUNT: Good afternoon, everybody, and welcome to the Urban Affairs Committee. We have a little field trip today from the Capitol in Lincoln, so I'm so glad that you could all come and meet with us here on the beautiful Metro Community College campus. My name is Senator Megan Hunt and I represent the 8th District in midtown Omaha and I serve as Vice Chair of the Urban Affairs Committee. Our chair, Senator Justin Wayne, is returning from an out-of-state conference today and he will be returning and joining us shortly. We will start off having members of the committee and committee staff do self-introductions starting on my left with Senator Arch.

ARCH: Senator John Arch, District 14, Papillion-La Vista.

LOWE: John Lowe, District 37, Kearney, Gibbon, and Shelton.

CRAWFORD: Good afternoon, Senator Sue Crawford, District 45, which is Bellevue and eastern Sarpy County.

BRIESE: Tom Briese, District 41.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

CONNER KOZISEK: Conner Kozisek, committee clerk.

HUNT: And I also want to recognize other senators in the room. I see Senator Robert Hilkemann is here, Senator Rick Kolowski is here. I

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think that's all we've got today. But thank you, gentlemen, for being here. This afternoon we will be hearing three interim study resolutions and we'll be taking them up in the order listed on the sheet outside the room. On each of the tables in the back of the room, you will find blue testifier sheets. If you are planning to testify today, please fill one out and hand it to Conner here when you come up. This will help us keep an accurate record of the hearing. If you do not wish to testify, but you would like to record your presence at the hearing, please fill out a gold sheet in the back of the room. Also, I'd like to note the Nebraska Legislature's policy that all letters for the record must be received by the committee at 5:00 p.m. the day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask that if you have any handouts to please bring ten copies and give them to Conner. Testimony for each interim study will begin with the introducer's opening statement. After the opening statement, we will hear from any invited testifiers, after which we will take testimony from the public. Since these are interim study resolutions, we won't be hearing proponents, opponents, neutral. It'll just be come as you are and share your opinion. We ask that you each begin your testimony by giving us your first and last name and please spell them for the record so we get that right. Ordinarily, we use a four-minute light system in the Urban Affairs Committee, but our remote system does not come equipped with a light system. We will do our best to keep time

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for all testifiers. And if you see me trying to get your attention, that means that your time is up and I'd like you to wrap up your final thoughts. I would remind everybody, including senators, myself included, to please turn off your cell phones or put them on vibrate. And with that, we will begin today's hearing with LR140. And I would introduce-- invite, Senator Kolowski to come on up. Welcome, Senator.

KOLOWSKI: Thank you very much. Can this be moved? Thank you. Members of the Urban Affairs Committee, thank you for taking up this study resolution and for holding a hearing on it. This study is a result of research into homeowners associations in Nebraska when I introduced a bill to keep HOAs from banning solar energy systems. Homeowners who want to install solar energy systems are still the impetus behind my interest in this study. But it is no longer the only focus. Let me give you some basic information on homeowner associations, or HOAs, in Nebraska. Homeowner associations in Nebraska are required to register as a nonprofit corporation with the Secretary of State. I have some basic numbers from the Secretary of State business registration database accessed at their Web site, and initial search of the database shows around 930 nonprofit corporations with homeowner in the name. When filtered for active corporations, that number went down to around 700. Registrations do not identify nonprofit corporations as HOAs if the word homeowner is not in the official name. In statute, there are three separate chapters of statute that have a section that

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apply to homeowner associations, 18-3105 titled: Dissolved homeowners association; reinstatement; procedure; fee; Secretary of State; duties; effect of reinstatement, is in the statute chapter titled Cities and Villages; 39-1405 titled: Streets in unincorporated villages and sanitary and improvement districts; powers and duties of county or township authorities; liability for damages, is in the statute chapter titled Highways and Bridges; and the last one 52-2001 titled: Lien; foreclosure; notice; priority; costs and attorney's fees; homeowners association; furnish statement; restrictions on lien; payments to escrow account; use, is in the statute chapter about liens. Although it doesn't specify HOAs as-- in, in the Corporation Act in Chapter 21, it applies to HOAs when they register as a nonprofit corporation. Condominiums, in contrast, have their own, very own chapter of statute in Nebraska law, Chapter 76. This chapter, and its two full pages of subtitles in the General Index, encompasses 46 pages of statute that spells out responsibilities and legalities of all manner of things related to condominium associations, being a member of the condo association, the duties of the board, and anything that needs spelled out relating to the condominiums. Let me say clearly that I am not intending to amend the condominium law in any way on, or how other states have and how they've handled each always and solar energy. Twenty-six states have HOA statutes; 19 of those 26 disallow the prohibition of solar energy systems. Another four states have protective language for solar energy systems. As this research

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continues, I have to ask myself if it is time for Nebraska to consider, to consider a more comprehensive approach to homeowner associations. Expert testimony to follow will give us more information on the purposes of HOAs, their history and how they evolved, plus give us a peek at the model lot titled Uniform Common Interest Ownership Act. There will also be testimony that will tell you the experience of at least one homeowner and solar energy installer who worked to gain approval of their home-- local homeowners association. Hopefully, this information will shine some light on the topic for us. Pun intended. I will share with you that at this point my office has stated the process of drafting a comprehensive bill for homeowner associations and also an amendment to the current bill that focuses on solar energy systems will determine which direction to go before January. Thank you again for taking up this study resolution and learning about homeowner associations. Thank you very much.

HUNT: Thank you, Senator Kolowski. I want to invite Senator Hansen to introduce himself and Senator Wayne, and then I'll turn it over to our Chairman, Senator Wayne.

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

WAYNE: Justin Wayne, District 13, Omaha. All right. Any questions for Senator Kolowski? Seeing none, thank you for being here today.

KOLOWSKI: Thank you.

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WAYNE: And this is not a pro-- this is an interim study, so there's not proponents and opponents. But we asks testifiers to come up, state their name, and the correct spelling of their name. And, and we have some invited testimony. Dr. Daniel Scheller, please come up. Welcome to your Urban Affairs Committee.

DANIEL SCHELLER: Thank you. Go ahead and spell it? All right. Daniel Scheller, D-a-n-i-e-l S-c-h-e-l-l-e-r. Thank you for having me. I'm associate professor of Public Administration and Urban Studies at the University of Nebraska Omaha. I am not speaking on behalf of the university or the program, but based on the research that I've done over the years. Basically, the homeowners associations, they differ from neighborhood associations. And I have a handout for you that has the characteristics of each. Your neighborhood associations are, are, are voluntary. You don't have to join. You may join if you want to, pay a very small fee. And usually the fees go to beautification, neighborhood cleanups, neighborhood socials. Homeowners associations, by contrast, I describe them as the most micro-level form of governance in the United States. They are basically like many municipal governments at the neighborhood level. If you purchase a home within the jurisdiction of a homeowners association, you are required to pay the annual or monthly dues. There's-- you usually will also sign contracts, the CC&Rs, the Covenants, Conditions & Restrictions, which stipulate what you can and cannot do on your

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property in terms of building, in terms of fences, in terms of political signs, etcetera. The HOAs are usually set up by the developer beforehand once enough individuals have bought homes and the developer devolves authority to a board of directors and they enforce the covenants, conditions and restrictions in the neighborhood. The fees that homeowners pay, those fees usually go to the provision of some urban services, street lighting, street paving, neighborhood cleanup, street signs; amenities like pools, tennis courts, maybe even golf courses. As Senator Kolowski mentioned, they are considered nonprofit organizations. But with the, the, the research that I've done in Florida, they even in Florida and states like California go even further by saying that they are often considered private NPOs acting as corporations, because you engage in a contract when you buy a house in a homeowners association to abide by those conditions and covenants. The second handout that I provided is, is kind of a theory I developed in terms of how neighborhoods develop over time.

Neighborhood association neighborhoods tend to operate in these lower tiers. They're pretty much just trying to solve crime and maybe lobbying city or county governments against business encroachment, say a big box store comes in. Homeowners associations, in my opinion, tend to operate at tier 3 or higher. They're already formally organized. They have their own covenants and restrictions. They often are not lobbying city government from, from what I've seen, because all of the urban services, the amenities are being provided by the homeowners

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association. The homeowners association dues may be very small, like \$100 a month or they can go up into the thousands. It just depends upon what urban services and amenities they provide. Usually, and based upon research and interviews with homeowners associations, the reason for the dues and for the covenants, conditions and restrictions is usually in the name of the improvement of property values. They try to provide neighbors and homeowners and potential homebuyers a credible commitment that the neighborhood will remain stable, that a neighbor will not paint their house chartreuse or pink, that a neighbor will mow their lawn, and that the neighborhood property values will increase. Thank you.

WAYNE: Any questions from the committee? Senator Arch.

ARCH: Thank you. Just a quick one. How, how can covenants be changed? Can they be changed by the vote of the members of the HOA?

DANIEL SCHELLER: It depends. Sometimes it's usually the board of directors will get together and come up with a piece of legislation or a bill or amendment and the board of directors vote. Some, some HOAs will allow citizens to present the legislations. It really depends upon how powerful the, the association is. Sometimes it's just the board of directors can make a vote and change. Sometimes they take it to the membership.

ARCH: But if, but if the members, if the board,--

DANIEL SCHELLER: Um-hum.

ARCH: --whichever, feel that a particular covenant is too restrictive or they no longer want that particular covenant, they can, they have the legal ability to change that covenant.

DANIEL SCHELLER: Yes, to the best of my knowledge, yes.

ARCH: Thank you.

WAYNE: Any other questions from the committee? There was a recent Supreme Court case around painting of a color of a house. Can you shed light on that and what your takeaway is from that?

DANIEL SCHELLER: I'm actually not familiar with the actual case. Can you-- would you be able to kind of--

WAYNE: So I believe the case was around painting the house purple and they didn't want it to be purple and the homeowners association went all the way to the Supreme Court and I believe the Supreme Court sided with the individual homeowner.

DANIEL SCHELLER: Um-hum. So you get into some sticky situations because with homeowners associations, there's a tradeoff between individual freedoms and what you agree to in a contract. And it-- again, I apologize, I'm not, not familiar with that case, but my guess is that the Supreme Court decision was that it's a violation of individuals' First Amendment rights and that the HOA's position, my

guess, is that the homeowners signed a business contract saying that they would not paint their house a certain color. Does that answer--

WAYNE: I mean, it's pretty much in a nutshell. I was just wondering if you had any more thoughts on HOAs and as the city ordinance, or particularly as city ordinance, as you become annexed your HOA city or-- it's my understanding your HOA is pretty much meaning the restrictions are useless to city ordinance governance.

DANIEL SCHELLER: Yes, if the city law supersedes that, yes.

WAYNE: Any other questions from the committee?

M. HANSEN: I have a quick question.

WAYNE: OK. Senator Hansen.

M. HANSEN: Thank you, Senator Wayne. So, so kind of following that line of questioning, so it's my understanding in the Omaha area, a lot of new neighborhoods are established as sanitary improvement districts with HOAs. Is that correct?

DANIEL SCHELLER: I've only lived here two months, but I guess.

M. HANSEN: Well, I guess, I guess, and this may be something for maybe a future testifier to touch, but I was wondering more about that transition, whether or not our kind of structure of SIDs and how they're used in kind of the Omaha and metro--

DANIEL SCHELLER: Um-hum.

M. HANSEN: --related to HOAs and their creation.

DANIEL SCHELLER: If, if I understand correctly, the sanitary improvement district's residents would be-- agree it's kind of like a special district. They agree to tax themselves for purposes of sanitation and the city would not provide sanitation services out to those communities.

M. HANSEN: Sure.

DANIEL SCHELLER: Yeah, so there are-- there is a movement by some city-- cities, Las Vegas is one that comes to mind that requires new developers to-- when they're building neighborhoods to require some sort of HOAs. Now this is an issue in, in the desert southwest because land is so cheap and you have a lot of sprawl, right? And part of the reason why Las Vegas is requiring that is because it becomes very expensive to send out sewer lines. It becomes very expensive to send out electrical lines, etcetera. Your, your, your large economy of scales, urban services, and if the HOA can provide it, then at least their logic is let them provide it, it saves the city budget. Now on the other hand, to play devil's advocate, you have to ensure that that sanitation improvement district that they are taxing at the correct level to provide good quality sanitation. Does that answer--

M. HANSEN: Yes. No, no, thank you. And I guess I was maybe-- I appreciate that. I was getting at-- wondering if there were any sort of regional implications, because I know kind of traditionally sanitary improvement districts are more of an Omaha metro area tool than necessarily one that's used across the state.

DANIEL SCHELLER: Yeah, it's--

M. HANSEN: If you're new to the state [INAUDIBLE],--

DANIEL SCHELLER: Yes, [INAUDIBLE] and I apologize, I'm not able to answer that.

M. HANSEN: --so thank you very much--

DANIEL SCHELLER: Um-hum.

M. HANSEN: --for your testimony.

WAYNE: So let me try to give you a different question that--

DANIEL SCHELLER: OK.

WAYNE: --across the, across the country what do you see-- what is research showing regarding HOAs and the movement on particularly solar-- I know there was a one time when solar panels were these big things that sat on top of your roof--

DANIEL SCHELLER: Um-hum.

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WAYNE: --that maybe not everybody wanted, but that's not what it is today. Where, where do you see across the country this movement of HOAs allowing solar or other things at one time-- satellites a good example,--

DANIEL SCHELLER: Um-hum.

WAYNE: --our, our satellite network, right. You know, DISH used to be that ten-foot dish in your backyard,--

DANIEL SCHELLER: Exactly.

WAYNE: --but now it's a small thing on top of a roof. I mean, are courts moving away from or moving away towards the individual property owner because of technology or do you-- or is this something that maybe we shouldn't revisit and leave it at the local level?

DANIEL SCHELLER: Well, I, I think it is, it is something, and I'm not too familiar with, with court cases. But in terms of solar panels, I do know that a lot of HOAs have put restrictions in. The idea, to the best of my understanding and based upon the research, is that the solar panels are viewed, whether it's a correct view or an incorrect view as a little bit garish, not very nice. And so there's concern by HOAs that that will drive down property values of the owners and the neighbors. Does that--

WAYNE: Is there a movement away from that or, or, or is there still a pretty strong hold across the country that solar panels aren't the way to go?

DANIEL SCHELLER: From what I've seen, I think that the question becomes of solar panels, what do they look like and how effective are they? In the desert southwest, they seem to be a little bit more popular because of the sun, the number of days and hours of sunshine. When you get further north, the argument for solar panels from what I've seen isn't as strong as it, as it is in the Southwest. What you will see in terms of trends, HOAs are growing at almost an exponential rate and they continue to grow and people are buying properties and homes in HOAs and signing the contracts to agree to the, to the covenants and conditions. So in terms of the technology development, I'm not sure what the perception is about solar panels currently, but I understand that some HOAs are concerned about the looks and does it detract from the neighborhood for property values? Whether that's accurate or not, I, I, I don't know.

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

DANIEL SCHELLER: All right. Thank you.

WAYNE: The next invited testifier is Phoebe Neseth with Community Associations Institute.

PHOEBE NESETH: Good afternoon, and thank you members of the committee for inviting me to speak today. My name is Phoebe Neseth, P-h-o-e-b-e, last name is Neseth, N-e-s-e-t-h. I'm the senior manager of government and public affairs with the Community Associations Institute in Falls Church, Virginia. CAI's the only international membership organization dedicated to the community association model of homeownership. Since 1973, we've been working directly with state legislatures and the federal government to provide sensible public policy for the Community Association Housing Model. We provide education resources directly to homeowner leaders, homeowners association board members, community managers, homeowner volunteers, and association management firms. We currently have over 42,000 members and 64 chapters internationally and 36 states with legislative action committees who directly advocate and lobby within the states they represent. Today, I want to review with you the growth of the Community Association Housing Model, the national viewpoint of the Community Association Housing Model, statutory framework for the housing model that CAI supports and approves of, and current public policy that we support and promote on solar rights within community associations. Community associations have grown exponentially since the 1970s when we started tracking data in the industry. In 1970, there were about 10,000 community associations throughout the United States, and as of 2018 there were 347,000 thousand community associations in the country. And we're projecting that by the end of 2019, it will increase by another 4,000

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to be 351,000 community associations within the United States. And right now, an estimated 73.5 million homeowners in the United States live in some form of a community association. Of these hundreds of thousands of associations, about 54 to 60 percent of them are HOAs, 38 to 42 percent of them are condominiums, and about 2 to 4 percent are the cooperative association model. Currently, 25 to 27 percent of the United States housing is in a community association. This means one in four Americans and constituents live within a community association. Sixty-one percent of current housing that's being developed has been approved to be some form of a community association. Associations across the country directly deliver services that were once exclusively the responsibility of local municipalities and local government to control. These things include trash pickup, street paving, lighting, and snow removal. And this tends to be why over half of housing development that's currently approved is in a community association housing type model. Within your packet that I left for you guys, I have a sheet of paper that breaks down Nebraska's facts and figures on the current statistics of community associations within your state. Almost 100,000 of your residents live in a community association, and our foundation of community association research currently predicts that there are over 1,000 community associations within your state. Four thousand of your residents currently volunteer to serve on their HOA boards, and they provide over \$3.2 million in service directly to your residents, and this alleviates your

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municipalities of having to do this type of work. Homes in Nebraska in community association's are general-- genuinely-- generally valued at over 4 percent higher than other homes. And the Community Associates-- Community Associations Institute predicts that by 2040, over half of homeowners in America will live in a community association. That brings today's number from one in four Americans to one in two Americans in 20 years. Now I also have within your packet, CAI puts out every year a homeowner satisfaction survey. We survey homeowners across the country. And for the last 13 years, our numbers have pretty much been almost identical and very consistent, 85 percent of residents rate their overall association experience as positive or neutral. And 90 percent of these same residents say their association rules and covenants protect, protect and enhance their property values, which goes back to the increased property value that homes and community associations see over other homes and other properties. When it comes to statutory framework for our communities, the Community Associations Institute approves of and supports the Uniform Common Interest Ownership Act. UCIOA was created by the Uniform Law Commission to provide a model set of laws to govern condominiums, co-ops and homeowners associations in the United States. This model set of laws lays out how HOAs can be created, managed, and terminated. To date, nine states have adopted UCIOA in its entirety. Many other states have taken components of UCIOA that work for their state and have adopted those. CAI is happy to work with your committee and State

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Legislature to go through UCIOA and pick the components that are best suited for your state. When it comes to solar rights, CAI supports legislation which allows a community to adopt reasonable rules related to the use and installation of solar devices within their own communities. As noted earlier, there are 27 states that have some level of guidelines for how solar panels can be installed within community associations. However, many of these states allow for reasonable rules to be enacted by the association relating to prior authorization, placement, and size of these solar panels. There are two states in particular which CAI finds stands out in direct agreement with our public policy in that we tend to favor. I have them all in your packet for you. Arizona is the first state. If you look at section B of Arizona's solar energy and reasonable restrictions statute, you can see it follows our public policy to a tee. There's a carve out for associations to have reasonable rules regarding the placement of this infrastructure while still prohibiting an association from prohibiting these structures. The next state that we tend to show is framework language for other states when they're first addressing these issues is Virginia. And if you look at section A of Virginia's law, again, this is another statutory example that follows CAI's public policy. This one includes a carve out for reasonable rules concerning size, placement, and manner of solar energy devices. CAI and community associations by no means are against solar panels, we just want to leave the rules and reasonable restrictions up to each

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community as they understand what best suits each of their communities. Thank you for your time. I appreciate it.

WAYNE: Any questions from the committee? Seeing none, thank you for coming. This concludes our invited testimony at this point. We will open up to anybody from the general public who wish to testify. Come on up and state your name, spell your last name, and you will have four minutes.

KATHRYN HENRY: Hi.

WAYNE: Welcome to your Urban Affairs Committee.

KATHRYN HENRY: Thank you for having me. My name is Kathryn Henry. It's K-a-t--

WAYNE: Could you pull that mike a little closer--

KATHRYN HENRY: Maybe.

WAYNE: --or speak a little louder?

KATHRYN HENRY: It's Kathryn Henry, K-a-t-h-r-y-n, last name is Henry, H-e-n-r-y. I'm here to talk about what really is going on in these associations. They are not protecting values. I am a POA for my mother, who owns a condominium in Lincoln, Nebraska, at 4000 South 56th Street. The condition she is being forced to live in because the way the laws are written is un-- is undesirable. It's, it's

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ridiculous. I have contacted the city and been on the phone with the city inspector. They are unable to do anything the way laws are written at this time. What has happened is water from the lady above her has-- her air conditioner leaked. It ruined two bathrooms and a linen closet; mold got in there. She contacted the homeowner immediately. The homeowner refused to do anything, stating she did not have water. She's also \$8,000 behind in her homeowners association due-- being foreclosed on her property. So she chose to do nothing. Contacted the association, the association says, not my problem. The board of the-- Shirley Halpern is the board president. Contacted her, she said it wasn't her problem. She said to go back to the homeowner, said you have to deal with it. A month later, one month later, 30 days later, after my mother, who's in her 70s, has mold in her home, then they get somebody in there after we've gotten Paul Davis in to dry it out with a humidifier, the dehumidifier, and got it all dried out. They, they then decide that, yeah, we'll get a plumber in. They had the plumber go upstairs to her unit. Well, this time she shut off the air conditioner. Nothing we can do. We are stuck with over a \$2,000 bill now for damages because nobody can force her to pay this bill. The city inspector said they could have come in and done something and forced the management to take care of this had the laws been different. Because it is a homeowners association condominium in Lincoln, Nebraska they will do nothing. They also have a garage that leaks. These are the pictures from every time the garage leaks. The

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parking garage. And you can have these. They cannot fix them-- force them to fix it. The top of the garage has big gaping holes like this. They will not clean it off with the snow removal. They will not put ice melt down because it will ruin the garage. There is big holes, gapping holes in the top of the garage that are not being repaired. Also, this is their diving board. They will not fix it, saying they don't have to because the city-- the way the laws are written, the city cannot come and force them. This is the note they put up about their diving board. Stay off the diving board, it doesn't work. It was a handwritten note. So the property values are going down. The lawyer that was sitting on the board recently sold his property this week because he cannot get anything done with this board. There is-- the laws have to be changed to protect these homeowners. Nobody deserves to live in conditions like this. And people can't sell the properties right now because of the way the conditions are. I don't know if you want these, but--

WAYNE: Sure, you can leave them with Conner. I have just a follow-up question--

KATHRYN HENRY: OK.

WAYNE: --because our jurisdiction is also over building codes and this isn't quite the hearing for that. Have you talked to anybody in the city, city building code or building code official?

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KATHRYN HENRY: Yes, I have talked extensively with Lancaster County.

I've been on the-- I have met with Senator Geist's office, Heather, that's over there in Senator Geist's office. I looked at my paper over there. She is one that told me to come here and share my-- share this with you. At this time, Lancaster County is saying they can't do anything about it the way the codes are written. They said the HOA laws have to be changed first before the codes can be changed.

WAYNE: OK. After this hearing, I'll make sure that myself, or one of my staff will get your information because I'm not quite sure that's accurate. They still have to follow building code and if their building codes is not up to par, we'll have that conversation later [INAUDIBLE]. We'll have that conversation.

KATHRYN HENRY: OK, well, that's fine. I'm just giving you the information that I've been given. I-- this isn't something I just started yesterday. I've been battling this for four years since she's been in there.

WAYNE: We'll be happy to-- my office will be happy to look at it.

KATHRYN HENRY: OK.

WAYNE: Any questions from the committee?

KATHRYN HENRY: Does anybody else have any other questions?

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WAYNE: We'll make sure before you leave, Conner at the end will get your contact--

KATHRYN HENRY: Well, I've got my business card,--

WAYNE: OK.

KATHRYN HENRY: --I can just leave it, that's not a problem.

WAYNE: And we'll follow up with you this week or next week.

KATHRYN HENRY: OK.

WAYNE: Thank you. Any other public testimony?

LACY SMITH: Hi, my name is Lacy Smith, L-a-c-y, Smith, S-m-i-t-h. I'm here-- I live in northeast Lincoln. I'm a homeowner. We bought a home in Waterford Estates Homeowners Association this summer and within 30 days we had a neighbor put up a new fence and we did have some litter in our lawn from another neighbor. I contacted the HOA because I had run an HOA in the past and I knew that the HOA would know if the fencing was approved and would be able to take care of the litter. I was told that not only was it not in our covenants, but the gentleman running the HOA wasn't getting paid, so it wasn't his problem. You can't get paid to run an HOA. An HOA is a nonprofit organization. It turns out that our HOA was setup by the developer and is developer controlled and has a pseudo-slave contract to it. So they are given 100 votes for every piece of property they have. We are given one as

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homeowners. They control the board completely. They have no sell-through percentage and they intend to put a restaurant with public boat rental on the lake that is owned by the association. And so their majority concern is controlling homeowners' access to that lake. We have to pay \$100 a year if you want to kayak on the lake even. I found out after purchasing the home, we're not allowed to swim in the lake. Actually, if you're rich enough to have a home on the lake, you can swim in the lake. But we didn't know until after we bought the home that we were also part of the Lake Association and we're required to maintain and dredge the lake as well. They pay no dues, but we do all of the rest. So we-- I was referred to a lawyer who was also a board member who turned out not to be a board member, but just the lawyer for the developer. And she laid it out very clearly for me that our HOA was only created to control the lake and the common areas and that they have no intent on running it as a HOA. So they intended for the homeowners to pay for the nice lake and for them to get whatever tax breaks may come from it, but they intend to do nothing. I then contacted the Attorney General because the non-- Nebraska Nonprofit Corporation Act does sit in with the HOAs. The Attorney General is unable to help because homeowners associations are a mutual benefit corporation over which they have very limited authority. And the Attorney General is only authorized to provide legal advice to-- in the state of Nebraska to state agencies and certain elected officials. We then had to go the step of pursuing

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consumer fraud protections. And we have hired a lawyer. And even the lawyers we talked to did not know that the Nonprofit Corporation Act wasn't being enforced by the Attorney General. So far, I have contacted our HOA on creating an erosion control, which are all-- these are all things in the covenants that they have a duty to enforce and they have chosen not to enforce. They are not enforcing grading and erosion, construction time frames, and passage of dirt grade, fencing. They're not doing, they're not doing city requirements, exterior restrictions, construction vehicle-- vehicles and roll-off services, and nuance-- and nuisances. If you contact them, you're told to either call the police or see your neighbors. And if you've ever had to contact a local government to help with [INAUDIBLE] the street or run off or issues like that, there aren't house numbers on those houses and the city of Lincoln won't respond without a plot or a house number. So I am now out figuring it out with the-- I-- everything I can. So I'm pulling up the assessor site, figuring out what the parcel number is, sending them in parcel by parcel because our HOA has chosen not to defend it. Now, I did also find-- which I have included the marketing for Waterford Estates and they do say that the area has a heavily guarded covenant-- has heavily guarded covenants regarding elements of single family houses and landscaping. So they, they are marketing it as having these, but they are not maintaining the covenants in any way, shape, or form. They are also able to amend and they have chosen to amend and they don't do a vote of homeowners,

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which a lot of HOAs do do is a vote of total votes. So they have amended saying that they can, they can annex as much as they would like to continue their votes. So they may be in the majority forever. They also can hold onto rental properties, and holding onto rental properties there would continue their majority vote. One other thing they also have is that-- I can't remember what the other piece to it was, but they do have that, that control that we can't. And I know when I looked into Supreme Court cases, they kind of go both ways. And one case that didn't go in the homeowner's way more recently was that homeowners can't put up political yard signs. And if the HOA says you can't put it up, the Supreme Court has agreed with the HOA, your political yard sign can't even be up. So it does infringe on some First Amendment rights as long as you're-- as well as your homeowner quality of living.

WAYNE: Thank you for coming. Any questions from the committee? Senator Hunt.

HUNT: Thank you, Senator Wayne. Thank you, Lacy, for being here. I, I really started paying attention when you said that you can't put up political yard signs.

LACY SMITH: Yeah, thought you'd like that one. [LAUGHTER]

HUNT: Just kidding. I had a question, throughout your testimony you kind of talked about we. And are you talking about your family or are

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there more people in your neighborhood who have the same concerns that you do?

LACY SMITH: Well, two parts. They've given up. They've been there for a decade.

HUNT: They meaning your neighbors?

LACY SMITH: Neighbors.

HUNT: OK.

LACY SMITH: A lot of neighbors have given up. They've been-- they did organize in 2018 to get the HOA to start enforcing the motorhome guidelines. I've been kicked out of my-- a-- my community groups on-line because I'm asking the HOA to act as an HOA and acting-- doing that, I am in a really bad spot because my neighbors don't want an HOA. They bought homes with one. We bought a home with an HOA expecting an HOA. We expected that the fencing wouldn't be chain link except for neighbors are putting in chain link fencing and they're doing nothing about it. And they're saying, well, we put "may" in there. And so the developer may choose to pay attention to this and we may choose not to. So they're not policing our property values either.

HUNT: I see. Thank you very much.

LACY SMITH: Yep.

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

LACY SMITH: Yep.

WAYNE: Appreciate it.

LACY SMITH: I'll give you my big book. It does have the letter from the Attorney General in it.

HUNT: Thank you.

WAYNE: Is there any other testifiers from the public? Come on up. Welcome.

LAURA BAKER: Hello. My name is Laura Baker, L-a-u-r-a, Baker, B-a-k-e-r. First of all, thank you to members of the committee for allowing me to speak today. I'm here to give some-- tell my story of what our solar installation on our house and our interaction with our HOA. Our HOA was initially implemented in 1995. That's the year I graduated from Creighton University. Since then, I've become a physician assistant, went down to Phoenix, got my PA degree, and now volunteer with the Gretna Fire and Rescue. So I apologize for my pager going off, I forgot it was in my pocket. We wanted to install solar in our, in our yard. And we live in Cinnamon Acres and, and-- as the name implies, most, most lots are an acre or more surrounded by-- you know, plush trees. We don't have any sidewalks. There's no street lights.

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It's almost like you're in this little niche of a neighborhood in the wilderness. We wanted to do it kind of in the middle of the yard because that was an area that would, would create the best sunlight. When-- in looking at the covenants, it was unclear to us if there was actually a solar policy because they only addressed issues of satellite dishes-- you know, etcetera, outsource buildings. And if you did build a building because a lot people have a third garage or exterior garage or pool, then that was within a certain confines. And so off the-- unofficially, I asked my-- the HOA, who's a dad of my daughter's friend, and he said, well, we-- I think we need to escalate this. OK. So he said, well, we need to have-- you know, your committee, your plans, and we really need to look into this. Well, then they said, since they didn't have anything on task if we got approval from the two neighbors behind us, that that would-- they would go ahead and, and provide a variance to these, these things. Well, we got one of the two approvals. The person who did not want it approved actually has wind properties, not in our neighborhood, but in other neighborhoods. But he just didn't want to see a solar panel in his backyard, so he declined it. So at that point, we went back to the committee and said, what can we do to maybe try to make this more appealing? Because if it's-- you know, an eyesore, if that's what you're, you're thinking of. So we had offered to pay between \$5 and \$6,000 of additional landscaping around the solar panels. We met with the committee to, to show the thing. They wanted to have our, our

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landscape plans, we gave them that. They said they would take it under consideration because they were, they were pro-solar. They came back and denied our plans. At that point, in consultation with our private attorney, who we had to obtain, they looked through the bylaws and agreed that there was no solar plan on, on-- in the covenants. And in fact, there was other-- another neighbor in the neighborhood who is not next to ours that actually currently has solar. When we asked the committee why they didn't address that or tell us about that, that there was no response. Making a long story short, we have since put the, the solar-- moved it from the middle of the yard that we're-- in the yard to, to the top of the, the roof of our house since that was what another member in the neighborhood had done. By doing that, we incurred several thousand dollars of additional expenses as well as attorney fees. And I feel like it was just very restrictive on her ability to try to-- you know, help the community, help our environment, help our-- with this. The other thing with the-- in regards to the restriction of the HOA, after we had placed our solar panels on the roof, they sent out initiatives to try to change the bylaws and update them, which 1995 probably needed some adaptation. But specifically in there, they said that anything-- any changes to the original plans, color, anything to your house had to go through the architecture committee. So if you want to paint your house or you want to do anything-- so it was so loosely given, it obviously did not pass. In the meantime, we inclined how can we get on the board to

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maybe see could we-- you know, somehow go around this. And we found out that the five board members, the only way to get on to become a board member is if the existing board members vote the new vacancy into the board. So it's kind of a old boys group, old girls group, because there are some females on there, but unless you've been in this community for many, many years and they want you on the board, anybody new to the house is very restrictive. So I guess in conclusion, restrictive covenants on our solar costs us several thousand dollars more. And there is still no actual solar policy with the HOA that they're trying to enforce that there is. Thank you.

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

LAURA BAKER: Thank you.

JENNIFER CHARLESTON: Real, real quick. I apologize, I'm a Great Plains Renewables, the solar--

WAYNE: You have to state your name and, and--

JENNIFER CHARLESTON: I, I apologize. Jennifer, J-e-n-n-i-f-e-r, Charleston, C-h-a-r-l-e-s-t-o-n. So I'm just here on behalf for Laura to represent-- just, just to be here as the company that she chose to go with. And the biggest frustration for Laura, in addition to everything that she stated, is it took over a year for her to actually get it installed, not even up and running, because of all the, the

concerns with the HOA where she went above and beyond what she's, by state statute, required to do to make sure she would be in compliance with the HOA.

WAYNE: So you represent the company?

JENNIFER CHARLESTON: Yes.

WAYNE: How many other projects, roughly, do you have going around the Omaha area?

JENNIFER CHARLESTON: Currently?

WAYNE: Currently.

JENNIFER CHARLESTON: Ten.

WAYNE: How many of them also run into similar situations?

JENNIFER CHARLESTON: 75 percent.

WAYNE: And how does that hinder your growth of your business?

JENNIFER CHARLESTON: Temporarily, greatly.

WAYNE: And is it because you can't give clients definite answers on whether they can obtain solar for their house? Or is that part of the hang up, the uncertainty?

JENNIFER CHARLESTON: The, the hang up is definitely just a matter of having to go before the board and everything that Laura and other families have to go up against. They'd rather just say screw it and-- you know, keep doing what they're doing for whatever reason, for the reason that they wanted to go ahead and get solar.

WAYNE: Any other questions from the committee? Senator Lowe.

LOWE: Thank you, both, for coming today. Laura stated that it cost her several thousand dollars more to put the solar unit on, on top of her house. Is that typical that a land-based solar unit, unit is cheaper than one mounted on a roof?

JENNIFER CHARLESTON: Yes, it is. There's always several factors to that. Sometimes it's height of-- you know, roof for security for our workers that are putting-- installing it. Going ground mount, when you have the space like Laura's family did, it gives you-- it's more beneficial for your home and for the cost also because of the, the [INAUDIBLE] and all the technical details.

LOWE: OK. Thank you.

JENNIFER CHARLESTON: Um-hum.

WAYNE: Any other questions? Thank you for coming today. Thank you, both.

LAURA BAKER: Thank you.

WAYNE: Any other public testifiers? Seeing none, Senator Kolowski--

_____ : [INAUDIBLE].

WAYNE: Senator Kolowski, you can-- we can skip Dave, it's OK.

[LAUGHTER] No, go ahead, go ahead, Mr. Levy.

DAVID LEVY: Thank you. Make sure [INAUDIBLE] bring the sheet up there, I can't do it with the style that he did. [LAUGHTER] Good afternoon, Senators. David Levy, D-a-v-i-d L-e-v-y, Baird Holm Law Firm here on behalf of Energy Studio and Omaha by Design. Senator Kolowski, last year was kind enough to introduce LB621, which is in the Judiciary Committee. It's kind of funny talking to one committee about a bill that's in another committee. LB621, simply put, would prohibit the enforcement of homeowner association covenants that prohibit the placement of solar panels on, or in residential areas. And, and the theory there is that there are federal incentives for solar energy, there are incentives for residential, solar and state law. Solar is part of the new energy economy. And yet homeowners in, in areas in neighborhoods where covenants prohibit solar panels are essentially forced to choose, live in that neighborhood or participate in that new energy economy. That's a choice that, that people should not have to make. You know, a lot of homeowner association covenants that prohibit solar panels came about in the 1980s when solar panels were a lot

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bigger and a lot more obtrusive than they are now. Homeowner association covenants tend to kind of get copied and pasted. And so those covenants really are outdated. You heard about the difficulty in enforcing them or interpreting them. And so, you know, our client, Energy Studio, is not a solar installer, but rather a company that is interested in renewable energy and energy efficiency improvements to buildings, including homes, as well as commercial buildings. And they felt that it was important enough and heard from people who want to put solar panels on their roofs. They're very unobtrusive. They, they don't stick up a lot above the roofs anymore. But their homeowner association covenants prohibit them from doing that, which may have been a remnant from the 1980s or whatever the case might be. Just a couple of other points, Senator Arch, you asked earlier about how difficult it is to amend homeowner association covenants. And you heard from the one testifier about the 100 votes to 1. Typically, when all of the lots in a subdivision are sold, the developer no longer has that kind of control, although not always, but most often, at least in my experience, it is 100 percent concurrence of the owners of the lots and the subdivision, or nearly that to change the covenants. We just had a situation happen to be with a solar energy project, but there was a HOA development next door to it and we wanted to work out an agreement with them. The only way that they could change their covenants was to have the concurrence of eight of the nine lot owners there. So that's about 90 percent. That's a super, super majority. So

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it can be very difficult to-- I mean, you all know how hard it is to get an unanimous vote on things. It can be very difficult to modify HOA covenants. And just a few people, a small percentage of the owners in that neighborhood can prevent that from happening. Even if most of the people say, yeah, that prohibition on solar panels really is outdated and doesn't apply anymore, you can't change it. And again, back to my initial point, people are then forced to choose, do I get to participate in the new energy economy or, or live in this neighborhood? I think it's one thing to choose-- you know, if I live in this neighborhood, I, I can't put up a-- I don't know, a certain type of fence, right, that's, that's kind of an aesthetic choice. It's a-- I think, a less fundamental choice than do I participate in the new energy economy? Do I want to participate in relieving the impacts of burning coal and things like that? Do I want to have my own energy independence? You know, all of those kind of things. Again, there is an incentive in Nebraska law net metering program for homeowners who put on solar panels. They get to sell back their extra electricity, the utility. If I want to live in a certain neighborhood, I can't do that. That, that seems unjust and unfair. So with that, I'll stop and happy to answer any questions.

WAYNE: Senator Arch.

ARCH: Thank you. I've got a follow-up question. So, so if, if the covenants are silent, what authority does the homeowners association have of silence in regards to solar?

DAVID LEVY: It's a good question, and, and hard to answer, of course, for every covenant. But you heard from one of the testifiers about a, a set of covenants that had an architectural committee. And if you want to build something, really anything, you have to go get HOA approval. In my experience, that's a very common covenant restriction. And so my guess is that in almost all cases, you would have something like that. So even if the covenants didn't specifically address solar, they would effectively do so by something like that.

ARCH: Thank you.

DAVID LEVY: Um-hum. Thank you.

WAYNE: Senator, go ahead.

BRIESE: Thank you. And thank you for being here. What percent of HOA, HOA bylaws are silent on the solar issue? Any, any guess in Nebraska?

DAVID LEVY: I, I don't know. I-- like you said, I do know that it is very common that they prohibit solar panels. HOA covenants became very popular in kind of the 70s, 80s, kind of around the same time the residential solar came about. And so it was a very common thing and has kind of carried forward.

BRIESE: And what are-- what is the purpose of these covenants, covenants in general?

DAVID LEVY: You know-- I mean, their, their restrictions on land use. Right? In some sense, their private zoning. You know, HOAs-- it's kind of interesting, HOAs really have authority, typically, over HOA properties, streets, a lake, a little park, something like that. But then they tend to reach much farther into, for example, restricting architecture, political campaign science. I'm surprised that the outcome of that decision with that being political speech, design of homes, types of fences, lots of aesthetic things. There was a case in west Omaha somewhere, a big fight of a HOA, somebody wanted to put up a basketball hoop. So they're, they're-- you know, they're, they're pretty far reaching in many cases.

BRIESE: Fair to say some, if not many, buyers rely on these covenants in making their purchase and location decisions?

DAVID LEVY: Yes. And, and that's a fair point. And I'm glad you asked that, because I don't want to in any way mislead the committee. You know, LB621, we had a hearing in the Judiciary Committee. And, and one of the concerns of members of the committee, Senator Lathrop in particular, expressed this was that, well, what if you already bought that house in reliance on those covenants and then the Legislature essentially forces a change to those covenants? It's a fair question.

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One way to deal with that is to say that going forward, you could not impose that restriction in covenants. I think that weakens the impact of the legislation quite a bit. It's a fair question. I don't have a, a great answer for you. It's a balance, right, in, in what you do as legislators to allow people to do or, or not.

BRIESE: OK. Thank you.

DAVID LEVY: But again, I just, if I might. With solar panels the way they are now, that reliance even has changed. You know, the reliance might have been, yeah, I bought the home and I know that the person next to me can't put these giant clunky things on their roof, but I didn't necessarily care about that, that they couldn't put the much less obtrusive panels there now.

BRIESE: OK. Thank you.

WAYNE: Thank you. And thank you for making sure that we referenced Judiciary, although this is the right committee for this to be in.

[LAUGHTER] Throw that out there.

DAVID LEVY: I'm gonna leave that one alone. [LAUGHTER]

WAYNE: So unfair question, walk me through the idea of going forward, maybe we don't apply them. How, how would that look? How would that bill look? How would that in your vision, how, how would that work?

DAVID LEVY: How would a, a bill--

WAYNE: How do, how do we solve this issue?

DAVID LEVY: I think what you do is-- frankly, we-- LB621 is, is very broad in its prohibition. So perhaps a bill that prohibits covenants that there's a lot of prohibitions in here. But essentially, you prohibit covenants that prohibit sort of modern, low profile, low impact solar panels. So, so if an HOA wants to adopt covenants that prohibit solar panels in somebody's front yard. OK, fine. But if the solar panels are going to be on the roof and they're of a-- you know, less than a certain dimension off the roof or something like that, you wouldn't be able to prohibit those by covenant. I, I think there's some kind of guardrails on it that could be put on there that then helps to strike that balance between, again, letting people take advantage of these incentives that are in state law, letting people participate in the new energy economy, and, and letting HOAs and developers and neighbors kind of do their thing, too.

WAYNE: Typically, we only restrict contracts in the area in which they are illegal or we feel that the lender may be taking advantage of somebody regarding, let's say, interest rates. Other than that, what area can you point to where we, we limit individual parties from entering into a contract regarding what paint to use?

DAVID LEVY: I mean, there are, there are lots of limits in state law about what can be in a contract. For example, you and I could enter into a contract that says that if we have litigation over that contract and, and I win, you have to pay my attorney fees. That provision is unenforceable generally in Nebraska. So there are many restrictions. We can't contract for something illegal, of course, that doesn't really-- but there are, there are others like attorney fees. You know, especially with real estate and, and land use. We mandate that all of the parties, for example, to an ownership situation, husband and wife have to sign something for it to be enforceable as against that property. So there are lots of restrictions in state law as to what can be in a contract or what has to be in a contract.

WAYNE: Thank you. Any other questions? Seeing none, thank you for coming today.

DAVID LEVY: All right. Thank you.

WAYNE: Any other public testifiers? Seeing none, Senator Kolowski, you are not really closing, but Senator Kolowski. And as Senator Kolowski is coming up, we have one letter for the record, the Community Associations Institute.

KOLOWSKI: I want to thank the committee for its openness to have this discussion today. I think it's really important that we examine what's taken place over the decades of home building and all the rest that

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goes with that. In my own, in my own case, I live in a neighborhood-- we have-- we built a home there about 33 years ago. And the stipulations that we had and the homeowners association that we started off with no longer exists. It just kind of wore itself out. And people have just kind of let things happen in the neighborhood in a positive way that was common sense and without the, the binding of illegal consequences by having a homeowners association that we all signed off on or were a part of. Not having that, people have used good common sense and are doing the things they're doing along with the amount of technology that has changed. Senator Wayne alluded to that earlier and others have talked about it as well. But we have, we have gone through and are going through a time where a great deal of different things are taking place. The efficiency of the, of the units, either in wind or solar or whatever it might be that's coming up make that aspect for a home ownership and use much different than it was 20, 30, 35 years ago. In my own case, if I put solar panels on my home the way my house sits right now, you would not see them. They would not be on the front of the house in any way, shape, or form. But they would catch the sun on the backside of the house where the majority of the sun would, would dominate as far as the, the months of the year and the, the impact upon the collection of solar panels. That's just one example of what's taking place and how things are, are moving in this country at this time. If you've traveled, if you've been overseas, if you've seen wind turbines, the way they are adjusted

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in Europe, in Asia, in the Pacific area, in Australia and New Zealand, I've seen these in different places. And they're-- we're into different models, different generations of the, the different wind and solar possibilities that exist today. I think we need to be very careful and, and open up the door for the possibilities of having choice, having variety, and having some things that can happen that would make this-- these items and this type of energy consumption a path for the future. I'll just stop there. Thank you very much.

WAYNE: Thank you. Any questions for Senator Kolowski? Seeing none, thank you for coming today.

KOLOWSKI: Thank you.

WAYNE: And this concludes the LR140. We'll now turn to LR126, Senator Hunt. And how many testifiers do we have for LR126? You can raise your hand. One, two, three, four, maybe five. OK. Welcome, Senator Hunt. You may proceed, Senator Hunt.

HUNT: Thank you, Chairman Wayne and members of the committee. My name is Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I'm here today to present LR126, which is designed to identify ways to spark development and growth by building upon existing strengths in our cities. In particular, it asks the committee to examine three areas of urban development creating arts districts, taking steps toward equitable housing, and identifying ways to implement smart growth tools. When we

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talk about urban development, it's important to acknowledge the value of every stakeholder in the development process, especially individuals and families, and public and private organizations which cultivate the social character of local communities. This is also why we in the Legislature should not only consider what we can do for investors and businesses, but look beyond that at what we can do for residents exploring opportunities to make housing more affordable, providing sustainable transportation, and implementing smart growth tools to maintain environmentally and economically robust communities. An arts district or cultural district is defined as an urban area intended to create a critical mass of places of cultural consumption. So that could include art galleries, theaters, music venues, and public squares for community events and performances. All of these districts are unique to the character, community, and resources that are available locally. So the arts districts that you would see in the Benson neighborhood of my district might be different than the ones developing in Norfolk or Scottsbluff, but all of them are important to the development and value of their neighborhoods. We know that arts districts can have a significant impact on cities attracting businesses, tourists, and local residents to be a central part of the city and participate in the economies of these cities. And I want to know how we can encourage or incentivize those developments through policies. These districts can help revitalize neighborhoods and improve the quality of life for its residents. Arts and cultural

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districts can bring physical transformation and greater community and cultural cohesion. There are over 300 recognized cultural districts across the United States, but Nebraska is one of the few states that does not recognize any arts districts. We need to embrace the amazing grassroots artists and performers in our state for how much excitement, economic development opportunities, and cultural vibrancy they bring to neighborhoods across Nebraska. That's kind of what I'm focusing on today. But this interim study is broad because there are a lot of things that go into urban development. I want all the options on the table. And this is something that my office will continue to work on with stakeholders and any other senators who are interested in signing on to this work. I reached out to people in the public, private, and nonprofit sectors who are already leading on these issues in their communities so that we can look at the big picture before diving into the nuances of ensuring affordable housing, effective transportation options, and sustainable arts development in every step of urban development. This hearing is just the beginning of a study addressing a wide range of issues. I'm having a lot of fun working on this in my office because it's, it's one of those topics that isn't a life or death issue. So it's not like so urgent and emotional, but it is emotional for the people who are involved in these, in these projects because things like public transportation, smart growth, using technology to grow communities, sort of like what we just heard about with the changes in solar technology and energy and how that's

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changing neighborhoods, plus, of course, arts districts. When you talk about state and local government, some of this stuff is going on at just the hyper local level. And if we can tap in as policymakers to the things that neighborhood leaders are already working on and give them support to be more successful at that, I think that would make Nebraska more competitive among states in the country. And it would just be a great way for us as stewards of our constituents to show them that we care about what we're doing and we value that. I have four invited testifiers today who are working in various capacities to inspire and create change with community-based initiatives. Suzanne Wise from Nebraska Arts Council, Doug Zbylut with Nebraskans for the Arts, Caitlin Little with Benson First Friday, and Christian Gray on behalf of inCOMMON Community Development. Each of them brings a unique perspective to the conversation about urban development and how the Legislature can embrace the important work already being done in communities. I also have some written testimony that I distributed to all of you. Didn't get it and by yesterday, but these are other important community leaders from across Nebraska that couldn't make it here today. So I just want you to know this is important to our constituents. And I thank you for hearing this study.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you, Senator Hunt.

HUNT: Thank you.

WAYNE: The first testifier. I don't, I don't have a list of who it was, but that's OK. I was told, but I, I lost the list somewhere between here and there. Welcome to your Urban Affairs Committee.

DOUG ZBYLUT: Good afternoon, Chairman Wayne and members of Urban Affairs Committee. My name is Doug Zbylut, D-o-u-g Z-b-y-l-u-t. And on behalf of Nebraskans for the Arts, we want to share some information related to LR126 and potential tools for municipalities in Nebraska to use for economic development. As you explore urban development tools during this study, we encourage you to consider options where arts organizations can be one of the partners and assets. Especially, we'd like the committee to explore supporting creative placemaking initiatives. Creative placemaking is a growing concept around the country where the arts and culture partner with private sector businesses and community residents to create vibrant infrastructures and programming. In larger cities, many such hubs reflect the ethnic or historical character of a place and invite residents and visitors alike to visit, patronize and enjoy. In smaller towns, distinctive cultural centers and festivals revive emptying downtowns and attract regional visitors. So why look at creative placemaking? I think you see at all levels of government, there is a call for strategies and programs to create thriving communities. At the federal level, the National Endowment for the Arts operates a creative placemaking

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program called Our Town with the goals of increasing community attachment, improving the quality of life, and invigorating local economies. In the Blueprint Nebraska report released earlier this year, one of the major findings was that not all regions in the state have access to the same level of arts, entertainment, and recreation offerings, creating a barrier to retain top talent in Nebraska and for attracting new workers and families. This initiative proposed targeting state investment and other incentives to aid partnerships of the private sector, nonprofit organizations, and government in mapping, planning, and marketing their community, arts, entertainment, and recreation assets. And at the local level, we see creative placemaking plans such as what's included in the Lincoln Downtown Master Plan and in Omaha there's a developing People's Cultural Plan that are being developed to coordinate community development efforts. The connecting thread in all these efforts is the fundamental understanding that through creative placemaking, the arts and its partnering businesses can make substantial contributions to local economic development, livability, and be a magnet for worker attraction and retention. Creative placemaking also helps communities in capturing a higher share of state and local taxes as residents stay locally for their cultural entertainment and the retail shopping. We were at an OpenSky Institute conference a few weeks ago and we saw there are many, many factors: quality schools, affordable housing, reliable transportation. These are all blocks in constructing a strong

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foundation and making a community vibrant. Creative placemaking is one of those blocks that must be included. A recent Americans for the Arts study shows that there are now over 300 designated creative districts in the United States demonstrating that states are committing tools and resources to create these areas of creativity to help with community vitality and attract and retain employees and businesses. Nebraska must step up with support and strategies to compete with other states if we wish to meet our goal of growing the good life. To aid in the interim studies research, I've included an attachment with my testimony with links to resources and studies. I want to thank you for your time and consideration of this information. And just let you know that arts-- artists and arts organizations are willing and able to help our local communities craft a future of growth and prosperity for all Nebraskans.

WAYNE: Thank you. Any other questions from the committee? Seeing none, thank you for coming down today. Next, we have Suzanne Wise. Today's your lucky chance on the Price is Right. Come on down. [LAUGHTER]

_____ : Do it.

WAYNE: Usually if you bid a dollar, you win. Just so you know. Welcome to your Urban Affairs Committee.

SUZANNE WISE: Good afternoon, Chairman Wayne and members of the Urban Affairs Committee. I'm Suzanne Wise, S-u-z-a-n-n-e W-i-s-e. I'm the

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director of the Nebraska Arts Council, the only state agency not headquartered in Lincoln, although, I live in Lincoln. We are located in the historic Burlington Building on what was the Eugene Leahy Mall at 10th and Farnham adjacent to Omaha's Old Market district, which is Omaha's number two tourist attraction after the Henry Doorly Zoo. The Old Market is a fitting example from my remarks because it is an outstanding example of the concept of the type of create the community. While the Old Market properly consists primarily of retail shops and restaurants, over the past two decades, it has served as a magnet for revitalization of existing institutions such as the Durham Museum and the Orpheum Theater and new structures including the Holland Performing Arts Center and KANEKO. And I think just the recent Hamilton tour that came to Omaha, I suspect if Omaha Performing Arts did an economic development study of that economic impact to the city of Omaha, it would be off the charts. I think we're all grateful for the tremendous generosity of Omaha's philanthropic community that has made the area what it is. But my purpose today is examining how this success can be replicated in other urban neighborhoods in Nebraska cities, and what role we are currently playing in assisting the development of creative communities. As you've heard from Doug, the creative community concept has a national profile and there are numerous resources that offer how to advise evaluation tools and ideas on what is possible. States as desperate-- disparate as Texas and Massachusetts or Iowa and Montana have creative community legislation

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or other formal policies in place designed to foster cultural enterprise zones or creative districts. Of our \$2 million grant budget, approximately three quarters of it goes to nonprofit arts organizations that exist in what we could call and informally define creative district or more to the point, what could be considered an anchor for a creative district. So what's missing? Success factors for creative districts include a unique and authentic identity that highlights what is special about the district, strategic partnerships that have brokered as a result of a variety of resources available to be used, inclusive cultural and strategic planning that has been completed that articulates a vision for the district and the community at large, sustainable artist-- artisan live work spaces, and a local developer that understands the power of arts and culture in community and economic development. And finally, anchor institutions and special events that are in place and act as a cornerstone of the community in the district. Of the five factors I've mentioned through our grants, we've got the last one covered, thanks in part to your support of our agency. We also offer facilitation and strategic planning services that assist communities in discovering their identity and creating plans for project implementation. We do this work a lot, but often we're only dealing with the community's creative people. And in order for it to develop a successful plan, all sectors of a community's leadership needs to be part of the process. That can only happen if you employ a carrot at the end of the stick. In other words, some sort

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of an incentive to be like, for example, designated as a creative community, which costs practically nothing to implement or financial inducement such as a tax credit is required to spur the community into action. In addition, we, the Arts Council are not experts in developing sustainable housing for creatives or how to preserve historic structures that may exist in a proposed district. This type of expertise may also be-- need to be induced to participate in order for the creative community concept to be successful. Creative-based economic development is a proven strategy. The cool thing about it, is that each state I am familiar with, it has crafted its legislation or its rules or mandates to reflect that state's unique requirements and personality. I think it's time that Nebraska utilize our creative thinking to do the same. And I totally agree with what Senator Hunt expressed, which is this is just an opening conversation. The research, as Senator Hunt knows, because I send her quite a bit, is about this thick on creative communities and it includes so many different variations, it makes your head spin. And also, there's a number of evaluations. One in particular from the state of Texas, which I was impressed with, which acknowledges that to evaluate a creative community and its impact sometimes takes more than a decade to do, but they did it at a five-year mark. And the one that I looked at, and I was impressed with, was creative district in the city of Austin. It's in primarily an African-American neighborhood. And so the way they were able to evaluate success, because they couldn't do all

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of the factors, but one they could do, was to look at housing prices from the years that created district was in place. And what they found is that every year that the creative district was in place, the housing prices accelerated gradually, but they accelerated. So at the end of a five- year period, they were able to demonstrate that revenue back into the city of Austin had increased by several percentage points. So I liked that study because it didn't promise the moon and the stars, but yet it gave very deliberate and thoughtful data, which I think is useful to this process. So with that, I'm happy to answer any questions.

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

SUZANNE WISE: Thank you.

WAYNE: Next, we have Caitlin Little. Welcome to your Urban Affairs Committee.

CAITLIN LITTLE: Thank you for that awesome introduction. I'm Caitlin Little, C-a-i-t-l-i-n, and Little, L-i-t-t-l-e. I am here representing Benson First Friday-- well, we're actually called BFF Omaha now, but we were formerly Benson First Friday, which is an arts nonprofit that started about four years ago as a nonprofit, but seven years ago as a gallery walk in the Benson neighborhood. So they've been kind of talking about research, and we're kind of a living research project.

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So about seven years ago, if any of you have ever been to Benson, it was pretty rundown. There weren't a lot of businesses and lots of lots of empty bays between, what, say 58th and 63rd-ish. When we first were kind of in that space, about eight artists got together and decided we needed to bring some art to Benson. That's where we lived and that's where we worked and that's where we wanted to create a community space. So we got together and found an empty building that we were able to rent for a very, very cheap rate and split all of those costs and slowly started to raise money to renovate the space ourselves. So we learned how to-- you know, do electrical, do drywall, made friends with people who knew how to do those things. We decided to start an art walk thinking that not a whole lot would maybe come of it. But it turns out that's what the neighborhood really, really wanted. So we started working with all the local businesses that were there, finding ways for us to work in a symbiotic relationship so that we could kind of utilize a lot of the empty spaces, activate that space and find ways to drive business and folks into Benson. After about three years of doing that and a lot of renovation projects, we became a nonprofit. And ever since then, kind of started doing a lot more for the community, more than just the art walk. In the last few years, we have started youth programming, so we most-- actually 100 percent of all of our events that we have throughout the community and in Benson all have some sort of youth component to them. We most recently are-- this is our baby. We just launched a mobile gallery, which was an old semi

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truck, like a Mayflower truck that got donated to us. So because we're all home improvement pros now from redoing the galleries, we were able to take that and we've been taking the things that we have built in Benson and taking them to other neighborhoods. One of the things that we recognized was that if you give folks an opportunity to participate in the community, they will. Sometimes they don't know what that community is, so we really wanted to try to make a space for folks to explore, to bring in experiences and exposures that maybe people hadn't before to make arts accessible for everyone. So maybe if you've never gone to a gallery because you like don't get art or you're intimidated by art or no one has ever taken you to art, we wanted to make it a space for everyone to feel safe and welcome and to be able to do something different and potentially be inspired to do something different. As we brought in more folks, it was really, really interesting over-- you know, the last seven years. I'm sure if you've been to Benson recently, almost every bay, except, I think, three are completely filled. Over the last few years, not only-- you know, driving business-- like driving people to Benson has helped increase the businesses, but also the collaboration of the businesses back into the neighborhood. So we've worked with a lot of businesses doing public art. We work with Benson improvement district, at least I think that's what it's called, and also with local businesses to help us. We do a banner project every other year. If you walked through Benson right now through these beautiful banners that are all made by local

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artists that we have-- we've done this product every other year, along with the [INAUDIBLE] project where we have local artists make murals to activate all of the spaces in Benson to make it a vibrant community that looks beautiful, that people want to come to, that people want to stay in, they want to live in, they want to work in. So we really pride ourselves on using that, that space really, really wisely and getting other people to be part of that space as well. One of the other things that we started last year is a safety program, so through BFF, we have these pink safety buttons. We've been working also with Benson Out Back, which is a program that is trying to activate all of our alleyways to make it a safe and awesome place to live and work. So those are kind of the main things we've been doing. But over the last few years, we've really, really seen Benson grow and flourish into a real arts district. I think we were actually in a-- there was like a national article, we were like number five. So that's pretty cool.

Questions? Comments?

WAYNE: Thank you. Any questions? Senator Hunt.

HUNT: Thank you, Senator Wayne. I think that what you have all done in Benson without any-- you know, incentive from the government is exactly how neighborhoods should work. And it's exactly how communities should work. And I've seen your Mayflower truck like parked around town. And my daughter, who's nine, we saw it in-- like on South 13th Street, and she was like, oh, I want to go in that. I

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saw that at a festival and it was really fun. I want to see it again.

And we went in and it-- it's just a really great thing. Have you heard from any other neighborhoods in Omaha? Because I know on north 24th and 30th Street, there's a lot of like natural art scene popping up in Vinton Street and all over the city. Have you talked to leaders in those communities about partnerships together and how have your organizations helped support each other, I guess, in this kind of grassroots movement to support the arts?

CAITLIN LITTLE: Totally. We have collaboration and partnerships with a lot of nonprofits throughout the entire community. One of the things we recognized that there are lots of places that didn't have access to arts or at least some form of access to the arts, so one of the things we did was create this gallery that goes to all the different sort of neighborhoods that maybe don't have a thriving art scene in them and bring the art to them. So most recently, you said you just saw it on 13th Street, we were in Little Boho, we, we took our gallery down there. We were in north Omaha for native Omaha days. We are currently in works to work with museum of the Latino, hopefully, and getting the Mayflower Gallery in south Omaha. So we've been really trying to bridge the gap between those different communities and especially we've been-- we are friends with everyone who does other art things in other places. So like Vinton Street does second Friday now, which is really, really awesome. That is another sort of like natural art,

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organic space that has grown, too. They are on kind of a lot of empty bays and they like really, really revitalized that kind of little stretch of neighborhood making programming, and-- you know, if you go down there on second Friday, people are walking up and down the streets and going to those businesses and eating at those restaurants. And there's a little art store there now, which is really, really cool. So just kind of always reaching out to places where we think might want to do something with us. I think it's really important keeping that open. We understand that transportation is an issue in Omaha, in particular. So that's why we really wanted to go to other neighborhoods. All of the programming that we do in these neighborhoods is reflective of the neighborhoods that they're in. So the artists or the subject matter is that of which the neighborhood-- you know, has something to do with the neighborhood. So that was really, really important. The other thing we have been doing to, to, to bridge some other communities-- as we all know, the Old Market has first Friday as well, so we created a safe ride zTrip. We have a-- we partnered with them this last summer to have safe rides between our two-- our walks from Ted & Wally's to Ted & Wally's.

HUNT: Um-hum.

CAITLIN LITTLE: [INAUDIBLE].

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HUNT: So you, you mentioned how much Benson has changed in the last like 10 years, 20 years. And I remember how it was back then, too. How has the reception from business owners been who like, like you mentioned, like maybe they're not art people. Maybe it's like, this isn't why I went into business, I don't really care about this. But how has the reception from them been about the, the increasing artistic visibility of the neighborhood in terms of murals and stuff like that?

CAITLIN LITTLE: They love it. We have a membership program and a lot, if not all of the neighborhood businesses are part of our membership program, but they are super, super responsive to it. And I think it's because Benson is a neighborhood that has a lot of individual business owner operators instead of a-- like a development company that comes in and is like, OK, here's-- you know, your guy's style. And this is what you do. And we need a taco restaurant and we need a grocery store. I don't need this. So the folks that have come in there were already interested in being in those spaces and they continued to work together to make it a place that is gonna continue to drive business there. I-- anyone who's one of our members, and even if they're not-- you know, we know everybody by name. They know all of us. We've had lots and lots of really amazing partners. John Larkin, who owns Jakes, has been like a phenomenal support. If-- you know, we work with folks

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to find ways to beautify our neighborhoods. We work with ways to find it to be mutually beneficial. So--

HUNT: Thank you.

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

CAITLIN LITTLE: Thank you.

WAYNE: And next, we have Christian Gray. Welcome to your Urban Affairs Committee.

CHRISTIAN GRAY: Thank you very much. Good afternoon, Christian Gray, C-h-r-i-s-t-i-a-n G-r-a-y, representing inCOMMON Community Development where I am the executive director. I wanted a grander conversation today and I appreciate the beginning of this conversation in, in terms of exploration and equitable development. And I, I have a-- if you have a handout that I prepared today, a short time line on, on urbanist history, I won't go through it line by line because you're, I'm sure, very familiar, but I do want to highlight two key stops along the road of urbanist history. The first one being the mid to late 20th century, when there was rapid urban decay across the United States, where we abandoned, all but abandoned, and disinvested in urban communities. The second time line is the current time line of the late 20th century, early 21st century, where there's been a resurgence of the city. The interest in the city is being-- become

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popularized again and, and many individuals are interested in returning back to the city. The reason I mentioned those two pieces of the time line are: one, the abandonment of the urban communities back in the mid to late 20th century left behind largely communities of color and low income populations. Secondly, it's an important thing to remember and to recall that the-- this urbanist sort of time line was set forth, not by natural phenomenon, but by federal policies and by market practices. So I think that's important as we begin to look at equitable development and redevelopment of urban communities to, to remember where we've come from. Moving forward, I want to talk a little bit about the topic and the phenomenon of gentrification. Urban redevelopment, as we know it today, has often resulted in what is known as gentrification. There exists various degrees of gentrification, ranging from early stage gentrification, as we see in most mid-sized cities today, to super gentrification, which is essentially the total gentrification of an entire area such as in Brooklyn Heights, New York. It's also important to note that gentrification is, is a natural phenomenon, whereas earlier we were talking about unnatural phenomenons. It refers simply to market trends. The term has taken on a largely negative connotation over the last several decades. But as a standalone term, it is neither bad nor good. That said, the functional outcome can be positive, negative, or both. This is a necessary clarification to make prior to any meaningful dialog on the subject, I believe. I wanted to note a couple

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pros and cons of gentrification beginning with the pros. The pros include beautified and strengthen the housing stock, increased property values, vacant properties becoming occupied, economic development, increased availability of work force housing, increased tax bases, and reversal of central city decline. Some of the cons associated with gentrification include upward pressure on rental and housing prices, in other words, affordable housing, displacement of in-place residents and small businesses, loss of existing social and cultural capital, economic and social marginalization of low income and minority residents, and possible resentment in community conflict. In view of the pros and cons, the question is not how to deter urban redevelopment, but rather how to promote urban development in a way that capitalizes on the benefits while mitigating the negative consequences resulting when left unchecked. Essentially, as we look at urban revitalization, I think keeping history in check as well as understanding the different pros and cons of gentrification is important. With both these historical and present realities in mind, we're asking lawmakers, civic leaders, and private developers to partner with existing residents and stakeholders in utilizing equitable development strategies that respect the surrounding community and assure the social and economic benefits of development are experienced by new and old residents alike. I think this is a really important point in terms of as we're regenerating urban places, making sure that the existing communities are, are benefiting. So

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there's two, there's two suggestions we'd like to present. One is people centered redevelopment. In contrast to hyper pro-development models that promote the progress of the built environment as absolute. Redevelopment efforts should consider the value of people and cultures with the neighborhoods. Strong and successful communities are composed of both quality building stock and invested residents. As such, the values and opinions of residents should be sought prior and during projects that affect their neighborhood. Secondly, also proposing holistic and planned development or redevelopment. In contrast to siloed ad hoc endeavors, redevelopment efforts should follow and add value to a comprehensive neighborhood plan. Redevelopment projects, particularly large scale apartment and commercial buildings, do not result in autonomous standalone structures. They either fit in or contrast with the surrounding built natural and social environment. Redevelopment efforts should consider the full spectrum of a neighborhood or community, social, cultural, environmental, economic, and physical. This calls for a deeper consideration of the effect of development that balances short-term financial return with long-term community sustainability. We desire to help build and ultimately live in neighborhoods that are thoughtfully and proactively planned for both present and future generations. Our belief is that neighborhoods that promote holistic development maintain their value for the long run. So--

WAYNE: I need you to wrap up a little bit.

CHRISTIAN GRAY: Yes, that-- I hope that was within my five minutes. I went back and forth in terms of providing a larger context for redevelopment and talking more specifically about affordable housing and equitable development. So I included a supplement on affordable housing and equitable development for your review. Thank you.

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

HUNT: Thank you.

CHRISTIAN GRAY: Thank you very much.

WAYNE: Any other testifiers? Seeing none, that will close the hearing on LR155 and we will-- I'm sorry. LR126, and we will briefly turn to LR155. I'm just gonna stay up here due to time. Good afternoon, Vice Chair-- Chairwoman Hunt and members of the Urban Affairs Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent the 13th District, which is north Omaha, and northeast Douglas County. This interim study event examines issues faced by Nebraska municipalities that are bordered on another state, which emphasizes policy changes on the other state of the border effect on border municipalities. Nebraska borders are Colorado, Iowa, Kansas, Missouri, South Dakota and Wyoming. As noted in the committee memo on the map of your materials, there are actually 66 municipalities in Nebraska that are

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within a five-mile radius of our border, encompassing almost two-thirds of the state population. These border municipalities include-- I'm sorry, one-third. These border municipalities include our state's only city of metropolitan class Omaha and seven first-class cities and eight cities of the second class. There are a number of major policy issues that where Nebraska law differs from the neighboring states. Some examples include marijuana policy: Missouri has medical marijuana, Colorado has medical and recreational. Gambling: multiple states, notably Iowa, have legalized casino gambling and sports betting this year. Economic development incentives: other states have more economic development tools than we do as Nebraska states-- cities in Nebraska. Taxation: South Dakota does not have an income tax. Most neighboring states tax agricultural land differently than we do. Minimum wage: Nebraska, South Dakota and Colorado have higher minimum wage standards than federal. And motorcycle helmet laws: Iowa and South Dakota do not require helmets for those over 18. In August my, my office sent out letters to each of the municipalities within the five miles of the state border, inviting them to share their experiences. While we have both some letters that are formal, we've also had a lot of other conversations informally about issues that are affecting their community that they would like the Legislature to at least talk about and try to address. We have another hearing in South Dako-- South Sioux City, where these

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individuals will also come to testify. With that, I'll be happy to answer any questions. Senator-- Chair-- Chairwoman Hunt.

HUNT: Any questions from the committee? Seeing none, I would invite the first testifier. You want to take it?

WAYNE: First testifier, Mike-- yeah, Mike Newlin, come on up. And I think we have after that Jim Ristow, and then Greg Youell be ready. And at-- [INAUDIBLE] this Conner, we need to stay on the record for a minute because I have to go back to Senator Hunt's and read into the record the three letters that I left out. So we'll close this hearing and then go back to that one. Welcome to your Urban Affairs Committee.

MIKE NEWLIN: Thank you. My name is Mike Newlin, M-i-k-e N-e-w-i-l--l-i-n, excuse me. I'm the vice president of racing operations at Horsemen's Park and Lincoln Race Course. Lived in-- born and raised in Omaha, graduated from Benson High, attended Creighton University, and currently a resident in Papillion. I've worked in the gaming industry and particularly racing industry in six states over the past 33 years. Brief background on horse racing in Nebraska. We are a nonprofit. We are nonprofit entities. There is no corporate profits off of horse racing in Nebraska. The purpose of our business is to run live horse racing and support the breeding industry in the state. Nebraska was once home to one of the top racetracks in the country. Ak-Sar-Ben racetrack was a major economic driver for both the city of Omaha and

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rural Nebraska. There were thousands of jobs associated with horse racing at Ak-Sar-Ben. Today, Horsemen's Park employs about 80 people on a year-round basis and roughly 300 people when we run live racing days. Nebraska has five horse tracks in the state: Omaha, Lincoln, Grand Island, South Sioux City, and Columbus. In Nebraska, we currently run a total of 54 days with 9 of those days last year taking place in Omaha at Horsemen's Park. This state used to run upwards of 175 live racing days per year, with Ak-Sar-Ben running about 80 of those. I provided handouts illustrating the time line of gaming policies between Iowa and Nebraska and the impact it's had on Horsemen's Park. As you can see, Iowa's progressive gaming laws have had a tremendously negative effect on Horsemen's Park. Our customers, nearly all Nebraskans, have taken their gambling dollars to Iowa over the past 25 to 30 years. The Iowa Gaming Commission estimates that \$300 million is wagered by Nebraska residents at Iowa casinos on an annual basis. In just the first six weeks of sports betting, legalized sports betting in Iowa, Iowa casinos and Prairie Meadows Racetrack have had more than \$47 million in wagers processed through sports betting alone in Iowa. To give you some perspective on that number and to see what Nebraska is really missing out on, all racetracks in Nebraska combined last year wagered 60-- just over \$63 million. So in six weeks, the Iowa casinos and racetrack have wagered \$47 million. All of last year, the five racetracks in Nebraska together just barely over \$63 million. By the end of this month, Iowa sports betting alone

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will exceed what the five racetracks in Nebraska wagered in 2018 combined. The Nebraska Constitution allows for pari-mutuel wagering on horse racing and lotteries, but games of chance are prohibited. With only simulcasting live racing, it's extremely difficult for Horsemen's Park to compete for gambling dollars. There are so many options for players less than ten minutes away at the casinos in Council Bluffs. Additionally, Horsemen's Park is limited in what we can do for our customers in the terms of cash back and rewards programs. Generally, horse racing has been on a decline over the past 30 years because of the proliferation of casino gambling across the country. Casino gambling is more lucrative, it's fast-paced, there's no doubt. However, horse racing is still very popular. Live racing days at Horsemen's Park in Omaha have expanded over the past four years. Typically, Omaha ran about three days. The last two years, we ran nine days. I don't believe we'll be able to do that in the, in the foreseeable future because our business is, is down due to competition in Council Bluffs. But horse racing still has a following. We average at least 5,000 people every day for live racing. Kentucky Derby day, we average at least 10,000 people just at Horsemen's Park and another 5,000 in Lincoln. We manage both the Omaha facility and the Lincoln facility. Kentucky Derby day is huge. Live racing last year on Family Day, we had over 16,000 people and set a new record for Horsemen's Park as far as attendance. So live racing-- live horse racing still has a following. There's still a good love for it in, in Nebraska.

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Again, Ak-Sar-Ben was one of the best tracks in the country. We just don't have the revenue due to casino competition just minutes from our front door. Other states with casino gambling at racetracks have utilized proceeds from the casino gaming to fund live racing purses and support the breeding programs and create jobs within the industry. I'd be happy to answer any questions you may have. I did give you a handout that is kind of a time line of Iowa and Nebraska. Now I must mention that it's not only Iowa, it's every state that touches Nebraska had some form of casino gambling. Had we made some decisions back when we had one of the best racetracks in the country, we probably wouldn't have the competition that we have just steps from, from our, our borders. Be happy to answer any questions from the committee.

WAYNE: Any questions from the committee? So how does this also impact your overall food, events? You do more than just horse racing.

MIKE NEWLIN: We have-- in the past four years that I've been back, we have tried to diversify. We, we host Omaha Beer Fest on our infield now. We do car shows. We do concerts in the winter to try to make up for some of the lost revenue. Just since Iowa has opened sports betting, we're down 15 percent. And I think on my, on my slides here since 2000, we're down 55 percent in-- just at Horsemen's Park alone. And we know that the competition is, is literally-- and the addition of the Carter Lake casino, that hurt us by 10 percent right off the

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top as soon as they opened. So now we have four casinos with full-blown gaming and, and three out of the four currently, I believe, have sports betting. So we're down 15 percent just since August 15, when the, when the Council Bluffs casinos opened their, their sports betting. If we're gonna be in a situation where we're gonna have to eliminate positions, we're gonna lose jobs. I mean, you know, it's-- we're trying to get a ballot initiative going right now for, for casino gaming at the, at the racetracks-- licensed racetracks in the state of Nebraska. We're, we're doing the petition drive now hoping to get it on the ballot in 2020. Things are gonna be tough, if, if we can't get something done, and Omaha is being impacted the worst. In Omaha, Horsemen's Park has always been the, the, the money generator for the rest of the, the state. As far as Fonner Park purses, Columbus purses, they're subsidized from Omaha's revenue because we have the biggest metropolitan area. But-- you know, we're, we're, we're in trouble and there's no question about it.

WAYNE: So currently-- I mean, can't you bet on-line? I mean, can't you-- can I if I want to bet on the Kentucky Derby, I can just bet on my phone?

MIKE NEWLIN: Well, you're not supposed to be able to bet on-line. But there are out-of-state companies like TwinSpires and many on-line companies that will take Nebraska action, even though we can't do that. We-- you can, you can wager at the track. The way the law states

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is that the wagers must take place in the racetrack enclosure. We've gone to the Attorney General several times over the years. And, and we have companies that are taking millions of dollars in Nebraska resident wagers on horse racing that no one can stop them. And the law is pretty clear, but yet it still goes on and it's been going on. So that's a-- in addition to the casinos competition, we have on-line gaming that's, that's taking Nebraska residents that legally they should not be taking Nebraska residents. So that's another part of the puzzle that probably adds up to five to ten million a year out of our-- out of Nebraska racetracks' handle. So we're, we're playing a game with our hands tied behind our back and it, it seems to only get worse each year.

WAYNE: So out of the, say \$47 million without giving it to taxes, if that were \$47 million in horse racing here in Nebraska, what would that-- how does that translate to actual revenue for the state? What-- what's the dollar [INAUDIBLE]?

MIKE NEWLIN: That-- at \$47 million, that would be taxed at two and a half percent. Once you hit \$70 million, which again, that \$47 million is in 6 weeks. So I'm sure they're gonna hit \$70 million. The way the Nebraska statutes are, are outlined, one a track hits \$70 million, they go to a 4 percent tax rate on mutual handle on horse racing wagers. The first \$10 million, we do not pay taxes on the first \$10 million, but from \$10 million to \$70 million, we pay two and a half.

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After \$70 million, which we haven't hit \$70 million since Ak-Sar-Ben closed, after \$70 million, there's a 4 percent tax on horse racing handle, OK? When I say handle, that's amount wagered. Obviously of that amount wagered, winnings go back out to the, the public that wins the, the races.

WAYNE: So what happens over \$70 million?

MIKE NEWLIN: Over \$70 million, the tax rate goes to 4 percent.

WAYNE: Then was there another tax rate after that?

MIKE NEWLIN: No, I think that, that \$70 million's never been seen since Ak-Sar-Ben closed. So I don't think anybody's really looked at-- right now, all the-- like I said last year, all the tracks combined in the state handled \$63 million, just over \$63 million, so. Fonner Park, because they host the fair, I believe that they are tax exempt up to \$70 million, but Fonner Park only handles about maybe \$11 million a year. So Omaha handles the most. We han-- we'll handle about \$29 million this year. You know, as I mentioned in my notes, my slides, the-- when the Horseshoe had Bluffs Run, the greyhound track. I think everybody remembers that. The greyhound track went away, OK, they stopped running live dog racing. And for one year they stopped simulcasting as well. During that period of time, our revenue, our handle went up by six and a half percent. So that just goes to show the-- you know, the additional-- and that's just in horse racing. You

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know, the additional competition has a direct impact on-- and the amount that we were down that year is exactly almost exactly what William Hill and the reopening of, of Horseshoe simulcast did in horses. So it's a direct-- it comes directly out-- it's, it's from Nebraska residents going over there.

WAYNE: So based off of this market and the size of this market, what-- talking to your, your competitors across the country, what do they think a handle in Omaha would look like?

MIKE NEWLIN: If we had casinos?

WAYNE: Or just sports betting?

MIKE NEWLIN: I would be-- you know, I would-- you can only base it on what Iowa has done for maybe the first six months-- or first six weeks. But if-- they handle \$47 million, that's not even including October, which is a big football month. You know, I, I would guess-- you know, the total for sports betting might end up being \$200 million in Iowa this year, with probably half of that coming from directly in the casinos. Now in Iowa, if you're an Iowa resident and you're within the Iowa border, you can also bet on-line. So of that \$46 million-- \$47 million, that was bet in six weeks, half of that was bet on-line. The other half was bet at the casinos through the windows.

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WAYNE: And you could be in Nebraska as long as you drive to the airport.

MIKE NEWLIN: You have to be-- supposedly they have the geofence up that you have to-- yeah, you could be sitting--

WAYNE: Carter Lake though.

MIKE NEWLIN: --you could sit in the waiting lot in Carter Lake across from the airport or-- yeah. If you're in, if you're in the Iowa border, I believe that's where their geofence is set up that you can bet as long as you're in the Iowa border.

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

MIKE NEWLIN: Thank you.

WAYNE: Jim, I was looking for my list. I didn't know who was next. Drive safe, Senator Lowe. Welcome to your Urban Affairs Committee.

JIM RISTOW: Thank you. So Jim Ristow, R-i-s-t-o-w. I am the city administrator in Bellevue. I'll feed off the gambling side here. During the height of the floods, we thought we had kind of an in. We had mentioned to the Governor there was enough water in Bellevue that we felt we were on the Iowa side and could we just put a casino in there. [LAUGHTER] That went over like a lead balloon, but we tried. If water keeps coming, we may try it again. So when you look at a

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bordering state, I think, Senator Crawford, you're, you're very much aware of the impact that we have being-- having a large military population within our community. Probably one of the number one things we hear and I think this would go across all, all bordering states with it, but Iowa does not tax their military retirement. So when we watch somewhere in a neighborhood of 500 retirees exiting the military, the number one thing that sticks in their craw is the taxation of the retirement. So Iowa is a selective choice for them to move toward or another state. Sometimes it's not the amount of money, but it's the principle that it's a benefit that they can receive in another state. So what we do in turn is we lose that individual within our state. They'll move over to Iowa to get that benefit. And then they may be still working at Offutt in a civilian capacity or within the Nebraska network, but they're living across which then they're shopping and all their other patterns go to the Iowa side, so we lose a multiple side of the benefits. Along with that, when military people come in, they also do a pretty good job of studying what their, their differences are. And we'll hear that while property tax isn't a significant difference, but personal property tax on vehicles, that's another issue that kind of sticks in their craw because it is a, it is a significant difference between buying a new car and licensing it in Iowa. So it's just another motivation for them to cross the state line. The numbers that go out in droves-- I mean, or the numbers that go out, I couldn't identify, but we do hear that quite frequently. So

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that's probably the number one issue from a military perspective is what's the best state for them to reside in? And if they have that choice, Iowa, or if that's their, their stick, we could see 10 percent of our military people living across the state line on active duty and a larger portion of our retirees moving out to another state, whether it be Iowa or another state that offers that, but we hear that on a frequent basis. You know, using examples when you look at like what their-- at one point their gas tax was probably about 10 cents below ours. And I think we're a little bit closer in parallel. But I could never understand this, it would probably cost you more to drive across the river and fill your gas tank than it would to save that 10 cents a gallon. But again, it goes to the principle that their tax is less. So they'll go over there. But they're-- also they're shopping for others. Like we're all familiar when Iowa does the tax free back to school day. It's like mass exodus. And if you talk to our local retailers, they will tell you that their sales drop significantly. So again, it's another target for people to attract across the border. So what does that do to impact us? We're losing the sales tax on a regular basis. But we hear this from developers also that they feel that our community shops in Iowa. So for them to develop or build a retail outlet within our community, they think we're already shopping over there. So why build something in our, our community? So those have some, some significant impacts on us in that sense. If we're working on economic development, we have different incentives. And in our

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Highway 34 area, which is a light industrial target for us, Mills County, Pottawatomie County border right against us. And in some cases, you've been face-to-face with a developer that will tell you that the incentives across the river are a little bit better than ours. So it's how do you or what can you do to attract or retain them here? So those are issues that keep-- I've just said make it a little less competitive for us to either attract a business or retain a business or retain the population within being this close to it. So those are, from our perspective, probably the biggest things that we see. We look at-- they're not always bad players. So we do, we do have agreements with Iowa and one of them was at one point they had talked about putting wind farms up in Mills and Pottawatomie County, which are in our Offutt's flight pattern. So deals were brokered to keep that from happening so it wouldn't impact the flight pattern. So they're not always bad neighbors with us. But in other areas, it's a pretty vicious cycle for us. And it's really from the economic development side and then retaining the residents. So I would say those are our-- the biggest two issues that we see. And then again, it's the gambling. I think they mentioned Sportsbook. Our local Keno operators, which a portion of that comes back into our community development fund. But as soon as Sportsbook was being talked about, he approached us and had some concerns that he would see a dip in his local Keno sales. So what could we do to help him with that? So it's-- there keeping a targeted eye on it as far as what those entertainment

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dollars are. There's only so many dollars to go around. So if there's an opportunity for them to go across the river, that may be a \$20 bet that doesn't go into Keno today. So it's those little nuances that sometimes we-- I think, we have to think about how competitive we are. Casinos are another one, entertainment dollars. You'll see that we'll have a, a pretty large event in our community. And then at Ameristar-- what is-- Stir Cove, they'll have a, a bigger draw for something to go in, so our entertainment dollars drift over there. But along with that, they're in the casino. So what is the draw to keep them in our market? So these are all kind of pieces that kind of link together that keep a-- kind of keep a guarded eye on. But it is, it is an issue for us. So I'd say keeping it short and simple with you, those are probably the biggest drivers for us in Bellevue that don't keep us awake at night, but keep us worried about how, how we keep our growth going. So--

WAYNE: Thank you for coming today.

JIM RISTOW: Yep.

WAYNE: Any other questions from the committee? I do think it's important you brought up the, the, the smaller things where if you've got five people who want to watch a game, why not go over to Quaker's in Iowa and tipping five bucks and you can win a hundred or you can lose five bucks.

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JIM RISTOW: You know, back in the day when our license plates had the county's on them in the metropolitan area, it was easy to go into the casino and see how many 59 county, which was Sarpy, how many were outside of our community that were in the casino. But it's easy now if you go over there and look, it's still the metropolitan area, you can tell how much. And those are our entertainment dollars that are going across the river. And I'm with you where it's a slow trickle, but it has a pretty significant impact.

WAYNE: Absolutely. Well, thank you. Thank you for those words today.

JIM RISTOW: Thank you.

WAYNE: Thank you for coming. Next, we'll have Mr. Greg Youell. Thank you for coming.

GREG YUELL: Thank you. Good evening, Chairman Wayne, members of Urban Affairs Committee. My name is Greg, G-r-e-g, Youell, Y-o-u-e-l-l. I'm executive director at MAPA, the Metropolitan Area Planning Agency based in Omaha. We're the regional council of governments for Cass, Douglas, Sarpy, and Washington Counties in Nebraska. We also serve Pottawatomie and Mills Counties in Iowa. Not working on any gambling or marijuana projects to date. We do work on a number of other areas where we try and bring folks together. Our tagline is connect, plan, and thrive. The first of these words connect indicates that part of our mission is to facilitate cooperation and projects and mutual

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benefit between cities, counties, and other units of government throughout that bi-state district that we serve. Our organization convenes leaders, staff members, and stakeholders across many entities. And that interaction and networking takes place through our council of officials meetings, our board of directors, as well as committees with transportation, transit, regional planning through Heartland 2050 Project, which includes subcommittees working together on a variety of issues such as solid waste, affordable housing, and even local foods initiatives to name a few. MAPA's a proud member of NROC, the Nebraska Regional Officials Council. So if you look at the back of my testimony there, you have a map of the different development districts throughout the state of Nebraska. You can see MAPA there in the blue region covering the Greater Omaha Metro. In addition to MAPA, there's also SIMPCO, the Siouxland Interstate Metropolitan Planning Council, which is based in Sioux City, Iowa. So-- they also serve Dakota County. They're actually a Tri-State Region. So they have Nebraska, Iowa, and South Dakota. All of the other districts, while they're entirely in Nebraska, you can see every single district touches a boundary. So we're real familiar with boundary issues. Development districts assist communities with support for economic development, planning and technical assistance, grant writing and administration, housing assistance through programs for new construction and housing rehab. We also provide data and mapping expertise to our areas. We also serve at MAPA as the regional

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transportation planning entity or the MPO, as it's called in transportation jargon. Development districts have received state appropriations in recent years to assist communities in our respective districts, and we provide a unique resource for rural communities.

With this funding, MAPA has developed a housing program that was able to coordinate successfully with the city of Blair to utilize the state Rural Workforce Housing Program, or LB518, from a couple of years ago, to develop a revolving pool of funds that is being used currently for the construction of five new houses on the former Dana College campus. This year, MAPA will be utilizing the funding to assist communities with flood recovery work. We've been coordinating with Douglas County Emergency Management in the city of Plattsmouth, in particular. During the floods of 2019, bridges, interstates, and highways along the Missouri River corridor have been closed as you all are aware. It's resulted in severe effect on business and commute patterns.

Coincidentally, at the time of the flooding, MAPA was assisting the Bellevue Bridge Commission with a long-range study on the Bellevue toll bridge. Since the bridge was only closed for a short period and then reopened when many of the adjacent bridges further to the south were closed, traffic more than tripled along the toll-- at the toll bridge. And at its peak wait times to cross the bridge were approximately one hour during the rush hour. So this historic disaster showed firsthand the interconnection of the economies of both Nebraska and Iowa along the Missouri River, I-29, Highway 75 corridor. I heard

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similar stories that happened further south at Nebraska City, Rulo, and Brownville as life was severely disrupted when those connections were stopped. So boundaries, of course, are difficult to overcome, trying to stay on top of the intricacies between two states when it comes to projects in areas like economic development and transportation is not easy. States differ in how they utilize tools such as tax increment financing, tax credits, incentives, and, of course, different tax structures that have a large impact on our local economies. But from the macro perspective, each jurisdiction, while they're understandably concerned about their own growth and tax base, we advocate that we look at it as a unified region where growth on the Iowa side has a positive result for the Nebraska side and vice versa. Expanding this out even larger, we can see nationally that much of the growth in population and resources is going to the sun belt and coastal regions. Therefore, working together as the Midwest is essential, especially at the federal level. For this reason, MAPA and the Greater Omaha Chamber of Commerce have participated in the Heartland Civic Collaborative, which is an effort driven by business leaders from Kansas City, St. Louis, Omaha, and Des Moines to work together to leverage our strengths as the Heartland Region. So in conclusion, just want to reiterate that districts like ours help to fill the gap and to address some of these issues related to boundaries. Thank concludes my remarks. Thank you.

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WAYNE: Thank you for coming today. Any questions from the committee?

Seeing none, thank you. I think that concludes our invited testifiers.

We'll take anybody else except for Mrs. Rex. This time I might not get yelled at, so I think I'm OK.

LYNN REX: Senator Wayne, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We just want to underscore the real issues that municipalities that are border cities and villages are facing because certainly from an economic development standpoint, it comes down to tax increment financing. That is one of the major issues and differentials. We have got the most restrictive laws in the entire region-- certainly not in the country, but clearly our surrounding states. And so when South Sioux City is bidding against a city in Iowa, as in Sioux City, or you have Scottsbluff bidding against some of their cities in Wyoming and Colorado, those kinds of things really make a difference. And in addition, certainly with LB720, I hope that we can get that accomplished in the upcoming session. Otherwise, we will only join Texas, Texas, Alaska, and New Hampshire for not having incentives, and that's going to have a huge impact on our state. So what happens in the border cities really do matter because as the Chair pointed out, we have so much of our population that actually live in those border cities and villages. So with that, I'm happy to answer any questions you have. We appreciate your time and effort and

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being here today to talk about these important issues. And as with the other interim studies that you had today, we look forward to working with you.

WAYNE: Any questions from the committee? Seeing none,--

LYNN REX: Thank you.

WAYNE: --thank you for always being a resource. Any other public testifiers? Welcome to your Urban Affairs Committee.

KEVIN ANDERSEN: Thank you, Senator Wayne, members of the committee. Kevin Andersen, K-e-v-i-n A-n-d-e-r-s-e-n, here representing the city of Omaha, where I serve as deputy chief of staff for Economic Development and Development Services. As Senator Wayne mentioned in his opening remarks, this issue is, is broad in respect to the operations of, of local governance. So my comments will be brief and within my wheelhouse of economic development. The city works closely with the Greater Omaha Chamber of Commerce in our economic development activities. We consider ourselves a big partner in an organization that brings together six economic development organizations in both Nebraska and Iowa. Representing the Omaha-Council Bluffs Metropolitan Statistical Area with a population nearing one million, this partnership is able to promote an available work force more than twice the population of the city of Omaha. This collaboration truly allows the city of Omaha and other members of the partnership the ability to

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be the example of the old economic development cliché of a rising tide floating all boats. By its nature, the field of economic development is a competitive one. Oftentimes, when we work with the new to market prospective business or a site selector, they have already short listed a handful of competing sites, states, and cities. When looking at the Omaha area, these prospects are truly looking at the entirety of the metropolitan area. At this point, we find ourselves in the unique situation of promoting the metro to land the prospect and for the lack of a better term, competing within the metro to land the prospect on this side of the river. This process is also true of our existing businesses looking to relocate and/or expand. There are usually a number of site selection criteria that span elements relating to public policy and those outside the realm of state and local government. Location decisions can be made solely on site suitability or by incentive package and usually a combination of the two. The latter criteria is most subject to public policy. Tax structures, financial incentives, power rates, work force development programs are just a few examples of policies in which we promote and compare with our neighboring states. Locally, any differences between the two have an underlying advantage to create the ability to curate a package that fits the specific needs of the prospect to land them in the metro. However, there are a number of examples of Omaha and Nebraska losing out on prospects or existing businesses to nearby Council Bluffs in our example and competing states or neighboring

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states and other examples due to some of these policy comparisons. The proximity of Omaha to the state border comes with unique challenges and unique opportunities. In short of my very high level summary, it's, it's fair to say that local and state policy can have a tremendous effect on our work in economic development, though the implications vary with each specific project we face. On behalf of the city, I want to thank Senator Wayne and Urban Affairs Committee for exploring this issue, and will make myself available for questions this afternoon and in the future.

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

KEVIN ANDERSEN: Thank you.

WAYNE: Any other testifiers today? Going once, going twice. I'd like to read into the record for LR155, letters for the record for the city of Nebraska-- city of Nebraska City. And that'll close the hearing on LR155. I want to reopen the hearing on LR126 and add letters for the record, Spark CDI, and city of Lincoln. With that, that will conclude all of today's hearing. See you next week in Sioux City-- South Sioux City.