

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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[LB302 LR2CA]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, February 6, 2007, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB302 and LR2CA. Senators present: Mike Friend, Chairperson; Amanda McGill, Vice Chairperson; Steve Lathrop; Kent Rogert; Tom White. Senators absent: Abbie Cornett, and Ray Janssen.

SENATOR FRIEND: All right. I think we're ready to get started. We'll wait for some senators to come in. I know that it's a busy lunch hour. There's a lot of things going on. My name is Mike Friend. I am the Chair of the Urban Affairs Committee. I'm from northwest Omaha, District 10. I wanted to first introduce the committee members and staff. To my right is the Vice Chair of the Urban Affairs Committee, Amanda McGill is from Lincoln; and to her left, Bill Stadtwald is the legal counsel for the Urban Affairs Committee. To my left, Beth Dinneen is the committee clerk for the committee; Steve Lathrop, Senator Steve Lathrop, from Omaha; and to his left is Senator Kent Rogert from Tekamah. And all the people that have bills here are here right now and my Vice Chair is here, so we're going to get started. Like I said, others will straggle in at times and leave at times. Don't be offended if that's the case. They have a lot of bills going on in different committees, so there's sporadic attendance but the folks that are here are very interested in the testimony and the information being disseminated. So if I could ask you to turn the cell phones off, and I will do that myself because I've already gotten two calls since I got here, and...or at least put them silence for us, we would appreciate that. Those wishing to testify on a bill, a couple of housekeeping duties here, please fill out a green sheet there. You can find them on either side of the door, I believe, the front doors. If you would place that sheet into the box, before you testify, on the testifying table we would appreciate that. If you don't wish to testify but you'd like your name entered into the official record as being present at the hearing, please enter your name and information on the white sheet that can be found on the table by the door as well, and this list will be part of the official record of the hearing. However, if you want to be listed on the committee statement as a testifier at the hearing, you must complete a green sign-in sheet and actually testify, even if you just state your name and position on the bill. As you begin your testimony, and this is important--we've been reprimanded by the Clerk's Office and the transcribers--want to make sure you spell your name for the record, okay? And if you do not spell your name myself or Vice Chairman...Vice Chairperson McGill will stop you and make you spell that name for us, not to be mean, just that we know we'll get yelled at eventually if that doesn't happen. If you have any handout material, you can give it to the page. Our page today is...and every time we have an Urban Affairs Committee is Matt Pederson, Don Pederson's grandson. So if anybody was...so mind your P's and Q's. That's really the bottom line there. I'm just kidding. Matt is a guy that can help us a lot. And no vocal display of support or opposition to a bill. We would appreciate that, because that confuses the transcribers as well. With that, I believe I have the first bill, and it's LB302. Senator McGill, it's all yours.

Transcript Prepared By the Clerk of the Legislature  
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Urban Affairs Committee  
February 06, 2007

---

[LB302]

SENATOR MCGILL: Well, we'll open the hearing on LB302 with Senator Friend. [LB302]

SENATOR FRIEND: (Exhibit 1) Thank you, Madam Chairwoman and members of the Urban Affairs Committee. My name is Mike Friend, and that's spelled F-r-i-e-n-d. As I mentioned earlier, I represent northwest Omaha, District 10, in the Nebraska Legislature. LB302, a little bit of history as to why...as to why we're dealing with this subject matter right here. In 1981, the Legislature adopted legislation, excuse me, LB241 sponsored by Don Wesely of Lincoln. The bill proposed to actually restrict the ability of various zoning authorities to remove outdoor advertising displays without fully compensating their owners. It was common at the time for some jurisdictions to seek the removal of such signs based on an amortization schedule or the depreciated reproduction cost of the sign which presumed over a period of time that the original investment had more or less recovered its full use or it's been recovered through use. We're here now I think for three key reasons with this legislation. First, we're looking to extend or extend the explicit statutory prohibition on the use of an amortization schedule to metropolitan class cities, i.e., Omaha, or e.g., Omaha, and primary class cities, which would be Lincoln, and placing them in their specific statutory zoning authority. Following a little bit of general language in the bill that clarifies the law regarding nonconforming uses and authorizing these municipalities to provide for allowing nonconforming uses in their zoning codes, the bill specifically prohibits the valuation of rights and interests in advertising signs that constitute nonconforming uses, using amortization schedules. Secondly, it specifies that the current protection provided to owners of outdoor advertising signs, under the authority of first- and second-class cities and villages, extends to the assignees of the owner. Third, that it provides that the Department of Roads, the Nebraska Department of Roads, when acquiring or removing outdoor advertising signs or displays, must value them as a whole economic unit and may not separate out the various interests for valuation purposes. Finally, and I think this is probably the key point, it makes clear that the value of a sign includes all right, title, and leasehold and interest in connection with the sign or display that these interests are to be valued as a whole economic unit and not as separate interests, and it also specifically authorizes the alternative of relocation of the sign by the taking entity if the relocation is to a substantially comparable location on substantially comparable terms. Simply put, this is it; this is where it sits. A hypothetical is this: I have a sign. I am the owner of a particular billboard in a certain...well, let's take Omaha just quickly for an example, or Lincoln on O Street, right, you know, right down in one of the busier sections of town. There's value to that. And we're treating the value to that particular entity differently in first-class and second-cities than we are to metropolitan and primary class cities. That's one thing. Second thing, since there is value, we're looking to incorporate that value into that particular taking. I mean if Design by Omaha or anybody else want...the city of Omaha, any other subdivision or the state of Nebraska wants to go in and say, look, you know, obviously there's some issues here, this particular area

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

or this particular entity needs to be taken, you know, we're looking for...this bill hopefully is looking for the idea of just compensation for that particular taking. Now there are...there also, just as a word, a note to this particular legislation, the Department of Roads I know has worked with some folks in regard to, and I believe you have the amendment in front of you, some language that will possibly enhance or make this bill better or worse, as maybe some opponents might view it, but we think it makes the bill actually a little bit better and it conforms with some of the concerns, or at least addresses some of the concerns the Department of Roads had in regard to the legislation. That's my understanding. I know that there are some folks that are more than willing to speak to that amendment, and obviously to the rest of the legislation and how it applies to Lincoln and Omaha. So with that, I don't want to belabor it. I would be happy to answer any questions in regard to this legislation, at least from the surface. [LB302]

SENATOR MCGILL: Questions? Steve. [LB302]

SENATOR LATHROP: I do. You have indicated that...I think you said it's important because it will value the sign as a whole economic unit and not a separate interest. What's that mean? [LB302]

SENATOR FRIEND: Well, it's my understanding, based on the discussions that I've had with the people that have worked with this subject matter over the years, that what can be done or at least what can be communicated as to what will be done is that a certain subdivision will say, look, we're going to amortize this out; I mean, this sign just isn't...I mean, you've already gotten the value out of this sign that you were supposed to have gotten, and the city, you know, this isn't your, necessarily, in this particular instance for example, not...this isn't your property. The sign, you're leasing it. You've gotten the value out of it. You've gotten the business, you know, gain, if you will, out of it, the advertising gain out of it. We're going to amortize this out and have it over with. What I'm saying, I guess, Steve...or, excuse me, Senator Lathrop, with that comment is that if you've got something out on 45th and Dodge Street, there is a way to appraise that value. And if you appraise that value, what's that sign worth out there, what's that...what's that advertising location worth out there on 45th and Dodge, there is a way to figure that out and that's...and, to me, that's how you deal with any other type of entrepreneur or business owner, you know, under different types of circumstances--what is that business worth, what is that...how should that entrepreneur be paid for that particular...for that particular entity or the situation that he or she is in? So I guess that's what I meant by that, and I hope that answers the question. Right now... [LB302]

SENATOR LATHROP: I think there are people coming after you maybe I want to ask, because I've had a conversation with some of the proponents... [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

SENATOR FRIEND: Probably a good idea. [LB302]

SENATOR LATHROP: ...and it's prompted some thoughts and questions and maybe I'll just take it up with them. [LB302]

SENATOR FRIEND: Senator, probably a good idea, and I didn't mean to confuse the issue, but it's my understanding, just to put it as simply as I can, that you're not necessarily having to look at the appraised value or the approach that you take with a normal business owner or an entity of a little bit different nature. There's some value there and I don't know if we're addressing it in the proper manner. [LB302]

SENATOR LATHROP: Okay. [LB302]

SENATOR FRIEND: That's the point, so... [LB302]

SENATOR MCGILL: Other questions? Thank you, Senator. [LB302]

SENATOR FRIEND: You're welcome. [LB302]

SENATOR MCGILL: We'll take the first proponent on the bill. [LB302]

KEN BUNGER: Good afternoon. My name is Ken Bunger, an attorney representing Waitt. [LB302]

SENATOR MCGILL: Could you spell that? I'm sorry. [LB302]

KEN BUNGER: Huh? [LB302]

SENATOR MCGILL: Could you spell that, please? [LB302]

KEN BUNGER: Yeah. B-u-n-g-e-r, and I'm an attorney representing Waitt Outdoor Advertising. We're speaking in favor of the bill. The...just what my intention is to just briefly summarize what we believe that the bill does, why we're for it. We'll have several other people talking about the bill in different areas. So if you have any questions, I'll be glad to take them after I talk, and if not, I'll refer them to some of the other folks that will be coming up. The bill itself does really two things. It removes the ability of metropolitan class and primary class cities to use amortization as a regulatory taking. The...when I say that, I mean that an amortization is a way to get rid of a use that was legal when it was put in but becomes illegal, or nonconforming, when the zoning changes. As a city changes, as a city grows, a use that might have been proper when it went in is not allowed under the current zoning ordinances to be reconstructed. This is particularly important in signs, as signs are constructed in locations that don't change. Signs are constructed in locations where there is primary traffic going by on pieces of property that

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

don't have any other useful use, some corners, out lots if you will, but not for other uses. So when the use is not allowed through an amortization process, which is ordinances, that use is in fact taken by the public and it is our belief that that should be compensated. The amortization methodology is that you allow just in a broad base that, for instance, the city of Omaha has done in the year 2017 through an ordinance, which I probably helped draft (laugh) I think, the use of outdoor advertising in areas that are now nonconforming is eliminated and they in fact lose their value. The rest of the state in 1981 came under the policy that was passed by the Legislature of having to pay for the deprivation of property rights that this would cause. The city of Omaha was never given any enabling legislation on amortization as the city of Lincoln was, so the statutes are kind of a mess. One of the things that this bill does is make the statutes conform to each other. It brings the policy with regard to the city of Omaha and the city of Lincoln back to the same as the policy relates to second-, first-class cities, and villages. That's what the first half of the bill does. The second part of the bill simply allows the valuation of an outdoor advertising sign to be the same as in any other leasehold or property that is taken for the public use, and that's to be paid just compensation. That's the statutory standard and that's the constitutional standard. The language that Senator Lathrop just questioned about has been stricken in the amendment that's been presented to you and it has...and the Department of Roads, my understanding is from phone conversations that they've had with my colleagues that will be testifying is that they're no longer in opposition to the bill. The third part of this is...relates to the second part in that the language that was questioned again by Senator Lathrop is out of the bill, both in the general part of the statute that applies to valuing interests and also that it just values interests only for Department of Road projects. So it really relates to any taking of a sign. When it is taken, they have to pay just compensation. The city of Omaha is given the authority in this, the same authority that Lincoln presently has, which is to allow for other ways to get rid of nonconforming uses if they so choose or to regulate them. That language is not present in enabling legislation in the city of Omaha until this bill, so there is some benefit to that. Any questions? [LB302]

SENATOR MCGILL: Senator Lathrop. [LB302]

SENATOR LATHROP: I do. I'd like to ask you a few questions... [LB302]

KEN BUNGER: Sure. [LB302]

SENATOR LATHROP: ...just to understand the outdoor sign business, to start with, and then maybe I'll understand what the problem is when we take one away from you or a location. When you put a sign up in the first place, for example, with the city of Lincoln or within the city of Omaha, do you have to get a permit to do that? [LB302]

KEN BUNGER: Yes. [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

SENATOR LATHROP: And so the sign is there only because the city has allowed you to put it there, or given a permit for that purpose. [LB302]

KEN BUNGER: Yes, there has to be a building permit taken out and the building permit has to be in conformance with the zoning code in a district that allows for outdoor advertising signs. [LB302]

SENATOR LATHROP: But it's a little bit different than a building permit. We can get a building permit to make a house or a shed, but this is...this is... [LB302]

KEN BUNGER: It's a sign permit. [LB302]

SENATOR LATHROP: ...permission to put a sign up. [LB302]

KEN BUNGER: Yeah. [LB302]

SENATOR LATHROP: Right? [LB302]

KEN BUNGER: Yeah. [LB302]

SENATOR LATHROP: So the sign... [LB302]

KEN BUNGER: A sign erection permit, or whatever it is. [LB302]

SENATOR LATHROP: Okay. So the sign exists by virtue of the permission granted by the city. [LB302]

KEN BUNGER: Yeah. Right. [LB302]

SENATOR LATHROP: Okay. If you spend \$1,000 putting the sign up once you have the permit, is the value that you're trying to establish today with this bill...what would the city have to pay, the \$1,000, or does it have to pay because it's interrupted a stream of income that was creating? [LB302]

KEN BUNGER: The value of the sign is the value of the leasehold interest that the owner of the sign has. If they lease the land from...generally they're on leased land. The sign companies don't own land. So you're valuing really a leasehold interest. That leasehold interest if valued as any other leasehold interest is, and that's generally by the income created by that sign. And as you are probably well-aware, that's a subject of great discussion on each particular piece of property, given each particular circumstance. [LB302]

SENATOR LATHROP: And that was...that was really the point... [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

KEN BUNGER: That's one of the three methods... [LB302]

SENATOR LATHROP: ...I was trying to get at, and that is we can have a piece of real estate the size of this area out in front of the senators and that has virtually marginal value until you get the permit from the city and you can now make money with it. [LB302]

KEN BUNGER: Yes, if it's a location and, again, interesting about the sign business, which makes it a little different, is that signs are erected not on any particular place but there's very few places in town that really lend great value to having a billboard sign and command the type of rents that...and income that can make it worthwhile. [LB302]

SENATOR LATHROP: So what happens with this whole process is the city effectively is taking back its permission it granted when it gave the permit and what you want, by way of compensation, is what you would have gotten if the sign were allowed to stay there like any other business. [LB302]

KEN BUNGER: Right. Right. [LB302]

SENATOR LATHROP: Okay. I think I understand the business now. [LB302]

KEN BUNGER: All right. [LB302]

SENATOR LATHROP: Okay. Thanks. [LB302]

SENATOR MCGILL: Any other questions? Senator White. [LB302]

SENATOR WHITE: I have a series. Mr. Bunger, first, thank you for being here. How long has the amortization method been used? [LB302]

KEN BUNGER: In the city of Omaha, or in the city of... [LB302]

SENATOR WHITE: In the state, city of Omaha. [LB302]

KEN BUNGER: In the city of Omaha, which I am aware of, and I notice the city planning director is here so he can hasten to correct me, I believe that in the year 2002 there was passage of an ordinance that gave a 15-year amortization period to the outdoor advertising signs, and that if they were not in conformance by 2017, at their own expense, they would be forced to come into conformance. In other words, signs that existed in the city by mostly, I think, not my client but the other major sign operator, would in fact have to be taken down at their expense. Probably 20 percent of the signs that are existing would have to be removed. [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

SENATOR WHITE: So prior to 2002, what was the method? [LB302]

KEN BUNGER: There was no method. The method that was there was the ability of the city to go negotiate with the sign owners to come up with methodology to voluntarily enhance their sign, trade it out. I mean it was a case-by-case basis. That was my recollection on it. The planning director may add to that. But there was no formal amortization in place. [LB302]

SENATOR WHITE: One of the arguments that I have heard is that it is an unconstitutional method of taking, this amortization method. Are there any cases you're aware of that have so found? [LB302]

KEN BUNGER: In Nebraska, there's only one case and that allowed for amortization, in the case of dog kennels. And the... [LB302]

SENATOR WHITE: Well, how about on federal level? I mean... [LB302]

KEN BUNGER: We can present... [LB302]

SENATOR WHITE: ...an unconstitutional taking, is an issue of federal constitution law. [LB302]

KEN BUNGER: There are several...yeah, the states are split. As to federal cases, I guess I would have to get back to you on that. [LB302]

SENATOR WHITE: Why haven't you challenged this in federal court then? [LB302]

KEN BUNGER: One of the things that sign companies really don't want to do is litigate. They have spent a great deal of effort and time attempting to talk with municipalities to come up with a way to have both the public...both public concerns addressed. One is you want the city to look good. You want to be able to have outdoor advertising signs, I would think, because they're a valuable addition to the community for many reasons, to bring people to spend money, to stop, to get off the interstate. At the same time, you don't want to have signs that have been up for a very long time start to deteriorate and look poor. So there's been a great deal of discussion between the sign companies and the city of Omaha on how to arrive at a solution. Now it is apparent, from what I am told, that that solution is not quite there. The speaker after me, Ms. Haley's client has been in discussions with the city directly, so I would...I defer that question to her. [LB302]

SENATOR WHITE: And a related question, what you've just discussed, why is this not being handled locally? As I read the statute, it doesn't require the city to use this method. It merely allows it. Isn't that true? [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

KEN BUNGER: It's true. [LB302]

SENATOR WHITE: What is the history of negotiations with sign companies locally, and why aren't you handling on that level? I mean, basically, you could handle it in court if you think it's unconstitutional; you can handle it locally and the city can handle it. Why is it our problem? [LB302]

KEN BUNGER: Well, I think it's a...it was created in 1981. I think there's a state policy that essentially was put in place by the state and the...for state property and also municipalities that amortization was really not a proper method to essentially have a regulatory taking of property. That was not extended to primary and metropolitan class cities. I think to have a single state policy is of great value. The sign companies operate not just in Omaha, Lincoln. They operate throughout the state. If they cannot get enough income from the Omaha market, which is the single largest market in the region, they cannot operate in the rest of the state. So I think it's in the interest of the state to have a single policy. Whatever that policy is, I think that the city of Omaha and the rest of the state ought to both conform to that. This would...that's one thing. Secondly, when you make a very large investment in a sign and in a lease on a piece of property, generally like a 20-year lease, you want to have some comfort that the locality, which in this case the city of Omaha or the city of Lincoln would not simply be able to use zone regulation to take that lease; that you really need to go through a process where you would have to be fairly compensated. [LB302]

SENATOR WHITE: Well, I mean, I understand the interests of a statewide policy, but traditionally, in areas of physical appearance, the state has allowed enormous latitude for zoning and local control. Aren't we in that area here? [LB302]

KEN BUNGER: I don't think so. They have allowed for...well, the state has never really allowed for aesthetic zoning. That's...the state of Nebraska is one of the half dozen or so states that's kind of in the middle on that. Most states either allow for aesthetic zoning or not allow for aesthetic zoning. The policy in this state is a little unclear and whether or not the cities can, in fact, zone for that purpose. And that's essentially what signs are. They're aesthetic. It's the use of zoning power for purely aesthetic purposes. The...and that would be one of...that would be count number three in the complaint, I presume, but the question is, that's really a state policy. What you enable the municipalities to do under a zoning ordinance, they can zone for land use, they can zone for safety, they can do all those things that zoning is supposed to do. At where do you say that you can zone aesthetically but you can go beyond that and simply end up taking a lease? So I think the state does have power and should exercise it in setting those guidelines. Now, as city attorney for years, I am...will hasten to say that cities should be given the most flexibility they can, but I think that should in the context of a state policy and fairness. [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

SENATOR WHITE: Thank you. [LB302]

KEN BUNGER: Okay. [LB302]

SENATOR MCGILL: Any other questions? Thank you, Mr. Bunger. And the next proponent. [LB302]

AIMEE HALEY: [LB302]

SENATOR MCGILL: [LB302]

SENATOR WHITE: [LB302]

AIMEE HALEY: (Exhibits 2, 3) Good afternoon, Vice Chairman McGill, members of the committee. My name is Aimee Haley, A-i-m-e-e, last name is H-a-l-e-y. I'm with Fullenkamp, Doyle and Jobeun in Omaha. I'm here representing Lamar Outdoor, which is one of the largest sign owners of the state, and also Tim Holzfafer of Paxton, Nebraska, who is one of the smallest sign owners in the state, and they are both proponents of this bill. I would like to start off by trying to address additionally some of the questions of both Senator White and Senator Lathrop. First, Senator White, I was just made aware this morning of a cite of a case, 2006 case. The Illinois Supreme Court, in The City of Oakbrook Terrace v. Suburban Bank and Trust, I only have the title, I don't have the exact cite right now, but the Illinois Supreme Court affirmed an appellate ruling that struck down the amortization of billboards. I also don't know the specific basis on which that was handled. It could have been under the U.S. Constitution, their state constitution, or state statutes, or the Federal Highway Beautification Act. Also, there was a question you had regarding what efforts were made to handle this issue locally. Also, there was a question you had regarding what efforts were made to handle this issue locally. There was an effort to handle this in the context of Omaha by Design, which is currently in place in Omaha, which is addressing an overhaul of the zoning ordinance in respect to all sorts of different topics, one of which is signs. When the proposed ordinance first came out, it was supposed to put in place the concepts that had been adopted by the Omaha Urban Design Element. It stated however: Ban all billboards, basically, in all areas it was addressing. Okay? We went in and negotiated with Omaha by Design and the city planning department and pointed out that the Urban Design Element only said that new signs, new billboards, should not be allowed in areas of civic importance. Areas of civic importance have yet to be specifically established. We have since gotten that negotiated where we have...it's our understanding they're going to modify that ordinance to allow for that. We have also put on the table for the city to consider, they have a policy of reducing and improving the existing signs in these areas of civic importance. We have proposed such things as cap and replace, which means in order to get a new sign put up you have to remove an

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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existing sign; or consolidation, which is, say, take down several nonconforming signs and put up a new sign that's smaller, better, nicer looking. The city of Omaha has indicated they're not interested in those. In addition, we've tried to put amortization on the table within the last few months and also about a year ago, and they have indicated amortization is nonnegotiable. That is why we're here before you today. We have always thought it was illegal. We think it's illegal both under the U.S. Constitution, the Nebraska State Constitution; under current existing state statute, specifically in 69-1701; and according to the Federal Highway Beautification Act which requires the payment of cash compensation for the taking of any outdoor advertising sign on federal or state highways, okay, and would subject the state to a 10 percent penalty of federal highway funds if amortization is allowed to exist and signs are taken down because of it. So I hope that addresses your issue on local attempts to have that handled with the city of Omaha. The other issue was I believe you had asked a question on isn't this just a local issue and not a statewide issue, and if you look at the only case that is out there in Nebraska, which I believe is Wolf v. City of Omaha, I have copies here if you would like them, I'll pass them around. Hopefully I have enough. [LB302]

SENATOR MCGILL: The page will. [LB302]

AIMEE HALEY: Oh, I'm sorry. Thank you. Wolf v. City of Omaha was where the Supreme Court held that amortization of a dog kennel, and this was back from 1964 which I believe was a year before the Federal Highway Beautification Act was passed, but it said amortization of a dog kennel business was constitutional. And a dog kennel business in the city of Omaha, I would admit, is an issue of local concern and wouldn't impact the Federal Highway Beautification Act. But the issue of outdoor advertising, especially on the federal and state highways, is one of statewide concern, and the issue of the Highway Beautification Act and making sure the state and its political subdivisions are in compliance with the Highway Beautification Act is one of statewide concern. And there was a distinction made in that Wolf v. City of Omaha case, which said if it's one of local concern the city ordinances control, if it's one of statewide concern the state statutes control. And in this case it's...I would assert that it's one of statewide concern. I believe the state statutes currently prohibit amortization, but I believe there's a conflict, and there's some clarifications that is necessary, because of the fact that in 1981 the city of Lincoln was attempting to amortize and language was added to 19-904.01, which was a section that dealt with first-class, second-class cities, and villages. But it was because of the city of Lincoln, which was a primary class city at that time when that was passed, that that was included. There's also language that was included in 69-1701 that says when the state or any political subdivision uses their zoning authority to take a sign, they must value that sign without the use of any amortization schedule. So I believe there's existing policy and we are just asking for it to be clarified by including it in the other statutory schemes relating to cities of the metropolitan class and the primary class. We're also asking for language to be added to those statutes that allows those cities the right to put in place ordinances that encourage the elimination of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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nonconforming uses through reasonable means and with payment, if it's requiring removal without replacement or substitution. It also has language that allows the cities to pass ordinances allowing for replacement or substitution, such as the cap and replace ordinance that's currently in place in the city of Lincoln, which requires you to take a sign down before you can get a new permit to put one up, and prohibits the proliferation of new signs. So I hope that addresses your issue with respect to whether it was a local or a statewide issue. With respect to Senator Lathrop's question regarding the whole economic unit language, I have to apologize because the amendment to LB302 we just gave to Chairman Friend this morning and you should look at the version that you have that has the amendment attached on the top page. Behind it is the bill with that redacted, showing you what's been taken out, what's been added by that amendment, and I believe you had a copy of that given to you and otherwise I will hand copies of that. [LB302]

SENATOR LATHROP: I think we have one. [LB302]

AIMEE HALEY: Do you have a copy of that? Okay. The language regarding the whole economic unit was taken out. I spoke with the Department of Roads. They had concerns that that somehow would cause them to have to pay more than just compensation for the taking of a sign and any interest related to that sign, and that was not our intent at all. And so I spoke with the Department of Roads. The amendment is language that the Department of Roads and I put together to make sure that the change to those two last statutes in LB302, one of which is 69-1701, the only changes are to make sure that it's just payment for all of the right, title, leasehold, and interest related to the sign, and just compensation, fair market value, nothing more, nothing less. Going back to your question about the outdoor advertising business, the interests owned by these outdoor advertising sign companies and by my individual client, Tim Holzfafter, who has some signs out on the interstate between North Platte and Paxton, they consist of typically it's a leasehold interest. Sometimes it's an easement, but typically it's a leasehold, and then you have the sign and the permit to use off-premise advertising on the sign, which means it can advertise something that's not occurring on that specific parcel of property. Those three components make up their improved leasehold interest and that's what needs to be valued in a taking. With respect to your question, Senator Lathrop, regarding the permit and whether or not it's just the city of Omaha giving permission to a sign owner to put it up, that cost \$1,000, I have a case that talks about the issue of when permits that are granted basically go into vested rights, constitutionally protected vested rights. And that is when a permit is obtained for use that is then permissible under the zoning code, and either substantial liabilities are incurred, or substantial construction is undertaken prior to a change in the zoning ordinance. Then that owner of the permit and the person who put the use...put it to a use--and it's not just limited to signs, it's any use--they have a constitutionally protected right that can't be retroactively affected by a zoning ordinance, and that is exactly what the amortization provision the city of Omaha has attempts to do. It attempts to say you were legal before, you're

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

nonconforming now but we don't want to pay you so we'll give you so many years and then you need to go away and we're still not going to pay you. A little more to understand about the outdoor business is that these interests are bought and sold by sign companies all of the time. Okay? There's a value to them and they're based, when you're looking at a sales comparison model, they're based on generally a gross income multiplier. A sign company looks and says, that sign is generating \$10,000 a year in revenue; that's going to be worth so many years at \$10,000 a year to pay for it in order to buy it. Then you have the other two approaches to value, which an appraiser would look not only at the sales comparison approach but also at the income approach, which says what's the net operating income after you take out costs, such as paying for lighting on the sign, paying the leasehold or the lessor for the lease, that type of thing. And then you have the cost approach, which is looking at the depreciated reproduction cost of the sign, plus the bonus value of the lease. That is usually going to be the lower of the three approaches to value. It's usually not going to be appropriate when you're dealing with an income producing property. It all comes down to the fact that this amortization is taking property without compensation based on the fact that the city or whatever municipality or the state thinks it's too expensive to pay for the property right, which isn't an excuse to avoid constitutional requirements and avoid the requirements of federal and state law. And I would compare it to a commercial building. Now the only amortization that's being used that I'm aware of is respecting signs, but what if the city of Omaha and Omaha by Design all of a sudden decided that in certain areas they didn't like nonconforming commercial buildings and they wanted to amortize those? The commercial buildings have income. They're valued at a certain amount of money. They're increasing in value over time. And if the city were to say that a commercial property owner, after ten years of time, had to conform by demolishing their building and building something that conforms to the then-current zoning ordinance, I don't think you would think that was fair either. And so we would ask that you support LB302 and its amendment to ensure that not only is amortization not allowed; that the federal, state, and constitutional laws are followed; but also that fair market value is taken if any sign is taken. And I'm available for any questions. I would like to add one additional thing. It's our understanding the city of Omaha is here to oppose this bill. It's our understanding they are going to state that Lamar Outdoor, back when they passed amortization, agreed to remove all of their nonconforming signs without compensation, and that is not accurate. There is no such agreement. We are available for any questions you may have now on that issue or after you've heard the city of Omaha's presentation. [LB302]

SENATOR MCGILL: Any questions? Senator White. [LB302]

SENATOR WHITE: Yes, thank you. I have a series of questions. First of all, how long typically is a lease for one of these signs? [LB302]

AIMEE HALEY: It ranges. Sometimes they're month to month, year to year, but I'd say the standard now is 20 years. [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

SENATOR WHITE: Well, and you were given 15 years under this? [LB302]

AIMEE HALEY: Yes. [LB302]

SENATOR WHITE: Is that correct? [LB302]

AIMEE HALEY: Yes. [LB302]

SENATOR WHITE: Normally in a zoning situation, you have an expectation of reliance. The commercial builder, for example, has a set of zoning laws, but if then it's put in place and the law is changed, and material change occurs to the property, they're expected to obey. [LB302]

AIMEE HALEY: Correct. [LB302]

SENATOR WHITE: Okay. Now is the amount that the city is offering you or you're demanding from the city limited to the value of your leasehold, or are you demanding the right to regularly renew your leasehold into the future? [LB302]

AIMEE HALEY: When...let me first...okay, let me first address that, and then I'd like to address the issue in your example of the commercial builder. When you have an appraiser that goes in and does an appraisal of a leasehold interest--for example, I right now have a condemnation appeal that is pending that an appraiser has valued--they go in and they look at it and they look at whether or not it's month to month, whether or not it's year to year, whether or not it's 20 year, and the value, depending on the leasehold interest, fluctuates. If it's month to month it's not worth as much. If it's 20 years it's worth more. If it's an easement, which is the case in some instances, it's worth a lot more. It is not based on we have the expectation of renewal and so you have to pay us the value for 100 years into the future. No, not at all. [LB302]

SENATOR WHITE: So the sign companies are asking the city to pay them the value based on the length of their lease, no more. [LB302]

AIMEE HALEY: I believe... [LB302]

SENATOR WHITE: Is that what I understand? [LB302]

AIMEE HALEY: I believe based on the length of their lease plus possibly some factor, but not an infinite amount. Okay. And I apologize. I'm not an appraiser. I know enough about this, the appraising industry, to be dangerous, but it's my understanding they look at, for example, if you have...on this condemnation appeal that I have pending, I believe it's on a ten-year lease and I believe the yearly value of revenue may be between about

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

\$6,000 and \$10,000. The appraiser is valuing it at \$66,000,... [LB302]

SENATOR WHITE: Well, now... [LB302]

AIMEE HALEY: ...which would work out to be maybe about the ten years or maybe a little longer. [LB302]

SENATOR WHITE: But the city gave you notice in 2002 that by 2015 the game is over, right? That's what they claim. [LB302]

AIMEE HALEY: That is what the...that is what they claim, yes. [LB302]

SENATOR WHITE: So wouldn't that handle almost all of the value of your leases? [LB302]

AIMEE HALEY: Well, if you assume that it is legal to amortize. [LB302]

SENATOR WHITE: Well, I mean...anyway... [LB302]

AIMEE HALEY: It depends, because you enter into leases in different periods of time. [LB302]

SENATOR WHITE: But what you're saying is you have the right to continue to enter into leases knowing that after 2015 the city says no more. I mean, so the day before the 15th year you enter into a 100-year lease. They got to pay you 100 years worth? That's not quite cricket, is it, Counsel? [LB302]

AIMEE HALEY: Well, Senator, I would say that if you assume it's legal and they can amortize, then maybe they have allowed for the... [LB302]

SENATOR WHITE: The right to skin the city? [LB302]

AIMEE HALEY: ...the value. But you have to look at the issue of...compare it to a house that's nonconforming and would they... [LB302]

SENATOR WHITE: But what the difference is, the house that's not conforming is a fee, all right, almost always, and the commercial building is a fee. But you have an economic expectation based on a lease,... [LB302]

AIMEE HALEY: Correct. [LB302]

SENATOR WHITE: ...not a fee. And if I hear, you're saying, right, you have the right, the city can't say, look, when your lease is up you're done, okay, and they gave you 15

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

years, you're saying that's not fair, we have the right to renegotiate up to the 14th year end and then jam you going forward. [LB302]

AIMEE HALEY: Correct. We believe that we have the right to continue in our contracts, and if the landlord wants to renew the lease, to continue renewing the lease. And we believe it's... [LB302]

SENATOR WHITE: But you're not... [LB302]

AIMEE HALEY: ...that the city doesn't have the right to interfere with what would normally occur with respect to the contact. [LB302]

SENATOR WHITE: Even if they tell you going forward, guys, no more detrimental reliance, I mean now you're talking about taking away their right to future legislate, aren't you, really? You had a legitimate property expectation that is limited under the law to the length of your lease, but you're trying to game it to a different level, aren't you? [LB302]

AIMEE HALEY: Senator, I...respectfully, I don't believe so. I am not aware of a distinction in treatment of property rights between fee simple and leasehold interests. [LB302]

SENATOR WHITE: Oh, Counsel, think about it. Every time there's a condemnation the lessee gets the percentage value of the land based on their leasehold; the fee owner gets the rest. That happens and that has been a principle in the law of condemnation for a century. [LB302]

AIMEE HALEY: Correct, Senator, but what I am stating is I am not aware of a situation where it's okay for the city to say, in 15 years you have to remove your property rights without compensation even if they still have value. [LB302]

SENATOR WHITE: What they're telling us, just like they're telling a owner of fee land, look, you build a structure, you got a right to use it, okay, but when that's done you can't do it again. Here they're literally telling you, are they not, no more new leases beyond 15 years or any new runs for 15 years. [LB302]

AIMEE HALEY: I don't believe the amortization is the same. I don't believe it's apples to apples. [LB302]

SENATOR WHITE: Well, aren't we not talking amortization at that point. We're talking about whether or not you can contract in clear knowing violation of what the law is going to be, and then expect to be compensated for it? [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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AIMEE HALEY: Well, again, going back to whether it's legal. Let me, let me first address, though, you had the example of a commercial building being erected and the zoning ordinance changes regarding that, and if they go in then and make any material changes to it, they have to comply. There is a similar provision regarding signs that applies if that nonconforming sign is materially changed. For example, if it's removed more than 50 percent or more in the city of Omaha, it has to...it can't be re-erected. They lose their rights. If it becomes a nuisance for failure to maintain, they lose their rights. There are those legal limitations on outdoor advertising signs regardless of the length of the lease or whether it's an easement, that outdoor companies are required to comply with. But amortization is saying, we don't have to pay you to force you to get rid of a constitutionally protected property right. [LB302]

SENATOR WHITE: The constitution does not protect your property rights beyond the extents of your property rights. You have a leasehold interest. The constitution protects that to the extent you have a property right, which is limited, by definition, to the length of your lease. [LB302]

AIMEE HALEY: According to the City of Omaha v. Glissmann case, which I have here, it isn't limited to the length of the lease. It's limited to your rights as long as you have a lease. It doesn't state that you can't renew your lease. [LB302]

SENATOR WHITE: Does it say that you have to put value for a renewal or an assumed renewal? You're forcing the city to assume that you'll get to renew when you may not. [LB302]

AIMEE HALEY: And that goes back to the appraisal question, and I apologize, I can't answer that with more specificity. But is... [LB302]

SENATOR WHITE: But, but also, for example, if a tornado comes through, traditionally, blows down your sign, blows down your building, and you...that the city has changed its zoning, you don't have the right to reconstruct in the same situation you did before. You're asking the city to assume those things won't happen. [LB302]

AIMEE HALEY: No, and you are absolutely right. If a tornado comes through and knocks down a sign, you don't have the right to reconstruct and you don't have the right to compensation. [LB302]

SENATOR WHITE: One other question and honestly I'll leave you alone. Are you saying right now the city is trying to apply this to areas governed on state and federal highways? [LB302]

AIMEE HALEY: Yes, for example, Dodge Street. [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

SENATOR WHITE: Why don't you simply go get an injunction? [LB302]

AIMEE HALEY: We had hoped and we thought, because the Federal Highway Beautification Act, because of the state and federal constitutions, and the existing language in the state statutes, that this would be a more appropriate forum than litigating. [LB302]

SENATOR WHITE: Well, I mean if the city is not obeying existing laws, why on earth do you think they're going to obey us if we pass a new law? Isn't it incumbent on you to enforce your rights? I mean it's not our job here to say, oh, you know, they're not obeying that law so we'll pass a new one in the hopes they will. I mean that's not the Legislature's job. [LB302]

AIMEE HALEY: Senator, we certainly have looked at the litigation issue and, if required to, we would do that. [LB302]

SENATOR WHITE: Thank you. You've been really helpful and very well-informed, and I appreciate it. [LB302]

AIMEE HALEY: Thank you. [LB302]

SENATOR MCGILL: Senator Lathrop. [LB302]

SENATOR LATHROP: Maybe I want to ask a couple of questions to get to what I think are three different ways of valuing this. One is that if you...what the city wants to do, which is essentially say wrap it up in 15 years, take your equipment down and go on home and we're not going to pay you anything, right? [LB302]

AIMEE HALEY: Yes. [LB302]

SENATOR LATHROP: The other is to take that sign...what you'd like to see is to take the sign and say it is like any other business, it sits over Dodge Street or over some busy intersection along the interstate, and if you're going to take it from me, you need to pay me for the loss of the stream of income, value it as a going concern. [LB302]

AIMEE HALEY: It's basically...it's not akin to a business. It's an improved leasehold. It's a real estate interest. It's income-producing real estate, but... [LB302]

SENATOR LATHROP: Okay. [LB302]

AIMEE HALEY: ...basically stream of income is one of the components to value. An appraiser would look at all three methods and determine which one is the most appropriate for that particular property. [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

SENATOR LATHROP: Here's my...here's the point maybe I want to make, and it's a little bit different than Senator White's, and that is if you have a sign or if you're allowed to sell alcohol, you do either one because you've been given permission by the city of Omaha. Am I right? [LB302]

AIMEE HALEY: Yes. [LB302]

SENATOR LATHROP: And they can take that permission away? [LB302]

AIMEE HALEY: Not once it becomes a nonconforming right. If it's a conforming right, they can take it away. Typically it would be based on a violation of an ordinance, based on rules you have to follow. Once it becomes a nonconforming right, as long as you were legal when the zoning ordinances changed, you were protected from them retroactively coming back and trying to revoke your permit. [LB302]

SENATOR LATHROP: Okay. Maybe what I want to do is illustrate what I understand you're trying to get out of this, and that is as soon as the city gives you a permit the ground that you erect the sign on doesn't have a whole lot of value until the city gives you the permit. Once they give you the permit, they've just given you the license to develop a stream of income. And you're saying, now that I've developed this stream of income with your permission, don't take it back without paying me for the value of what you created by giving me permission in the first place. [LB302]

AIMEE HALEY: Yes. Once I have improved the leasehold and I have advertising revenue on it, yes, it's worth more than it was when it was just a bare plot of ground without anything on it. And it would depend, from location to location, whether or not it's more valuable or less valuable. And I don't know if I answered your question. [LB302]

SENATOR LATHROP: No, you did. [LB302]

AIMEE HALEY: Okay. [LB302]

SENATOR LATHROP: I think I know exactly what you're looking for out of the bill. [LB302]

AIMEE HALEY: Okay. [LB302]

SENATOR LATHROP: So thank you. [LB302]

SENATOR MCGILL: Any other questions? Seeing none, thank you for your testimony. [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

AIMEE HALEY: Thank you. [LB302]

SENATOR MCGILL: Any other proponents? None. Any opponents? [LB302]

BRAD LOVE: I'm (inaudible) opponent. [LB302]

SENATOR MCGILL: Okay. [LB302]

BRAD LOVE: My name is Brad Love, spelled B-r-a-d L-o-v-e, and I'm of Love Signs of Norfolk, Nebraska. I just want to make a few brief points here. You know, how good of a citizen, you know, the billboard industry is. We donate 10 percent of our billboard space to public service and nonprofit entities. Our industry is a travel aid to visitors to our states and communities, and it's one of the most cost-effective forms of advertising for small business. Our company has origins back to the 1920s in Nebraska and amortization would be devastating to our company and our 31 employees in outstate Nebraska. We're simply asking to be justly compensated for our property, plain and simple. Any questions? [LB302]

SENATOR MCGILL: Any questions for Mr. Love? [LB302]

BRAD LOVE: Thanks. [LB302]

SENATOR MCGILL: Senator White. [LB302]

SENATOR WHITE: Just a second, sir. [LB302]

SENATOR MCGILL: Oh, no, hold on. [LB302]

BRAD LOVE: Oh. [LB302]

SENATOR WHITE: You don't have signs in the metro area. Is that correct? [LB302]

BRAD LOVE: We do not. [LB302]

SENATOR WHITE: And the law doesn't apply to you now, correct? [LB302]

BRAD LOVE: It does not now, but it might. [LB302]

SENATOR WHITE: Well, but...I mean so...well, I mean it's...you're protected from amortization right now, correct? [LB302]

BRAD LOVE: Right. [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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SENATOR WHITE: So if we do nothing it doesn't threaten your business, correct?  
[LB302]

BRAD LOVE: Right. [LB302]

SENATOR WHITE: Okay. Thank you. [LB302]

BRAD LOVE: Thanks. [LB302]

SENATOR MCGILL: Any other opponents? [LB302]

MARTHA LEE HEYNE: Proponents. [LB302]

SENATOR MCGILL: Oh, you're proponent. Okay. [LB302]

MARTHA LEE HEYNE: As was Mr. Love. Good afternoon. My name is Martha Lee Heyne, M-a-r-t-h-a L-e-e H-e-y-n-e. I appreciate the opportunity to be here with the committee this afternoon and I appreciate your time. I'm here this afternoon as a representative of the Outdoor Advertising Association of Nebraska. As you know, the Outdoor Advertising Association of Nebraska is a group of people who makes their living in the sign industry, both on- and off-premise signs. We're a diverse group of folks. Ms. Haley mentioned the Holzfasters from Paxton up to a publicly owned company such as Lamar. Some of us are in mom-and-pop operations, and some of us work for these large companies, as I do at Lamar Outdoor in Lincoln, Nebraska. Some of us are in the beginning of our career. Certainly not me. I'd say I was in the middle. And Mr. Love didn't mention that he was here in 1981. I think he got an excuse from high school to be here to represent his family when this bill first passed. One thing that we all have in common is that we support our families and we base our futures on this industry. The Outdoor Advertising Association of Nebraska supports LB302, which we believe clarifies the current law. We're representing small business. The customers that we serve, the majority of our business, over 80 percent is actually local business. And we also represent the property owners that we lease from. Behind every billboard and every business sign is a family and a face. Billboards are vital to economic development and travel and tourism within the states. I know that I've often found myself in a community looking for the next Starbucks or Big Mac or certainly the next Super 8 to stay in, and I know that travelers in Nebraska are just the same. When Nebraska's current law was enacted in 1981, only 18 states had just compensation laws on their books. There are currently 44 states that have such laws now. And recently, just as recently as last year, one was passed in Kansas and in Colorado. I believe that this displays a continuing trend of upholding our federal constitution which states, in the Fifth Amendment, private property shall not be taken for public use without just compensation. We do not argue the right to regulate our business. We are very regulated now, both in small communities and in large, but we ask for the protection of our property rights and the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

protection of the rights of the folks that we lease from. Those of you who don't know me don't know that I'm the only member of my family that makes its living not in the ag industry. Several times in my lifetime acres of my dad's farm were taken for public use. When roads were widened or rerouted, our property was in the path. Not being too enthused about losing his land, my dad, the pain was eased for him when he received just compensation. We would expect no different treatment in our state, and we believe it is an accepted practice that the owners of private property must be compensated for the taking. I'm going to give you a little English lesson and, of course, you probably all know this. The amortization is never compensation. The root word of "amortization" is the Latin word which is "mort," which means death, which in this instance would be the death of our business. I ask you to carefully consider LB302, look at the amendments, and support it as we move forward. Thank you. And I would welcome your questions. [LB302]

SENATOR MCGILL: Any questions? None. Thank you very much for your testimony. [LB302]

MARTHA LEE HEYNE: Thank you. [LB302]

SENATOR MCGILL: Are there any other proponents? [LB302]

DOUGLAS NAEGELE: Well, my name is Douglas Naegele, and our family has been in the outdoor advertising business for three generations. [LB302]

SENATOR MCGILL: Could you spell your name? I'm sorry. [LB302]

DOUGLAS NAEGELE: I'm sorry. D-o-u-g-l-a-s, Naegele, N-a-e-g-e-l-e. As a matter of fact, quite some time ago all the billboards in Omaha and Lincoln had the Naegele family name on them and I guess what I'd like to say is that we are proponents of this bill, along with really wanting you to consider just compensation when you do take our property from us. We, as a family, have bought and sold a number of outdoor advertising companies, and that's the practice that continues and it's what perpetuates the business. It doesn't mean that at the end of a lease that that billboard has no value. It means that we can either renew the lease or, if the lease is...has some extended time to it, that it is possible then to sell that asset to someone else. So we really don't ask for anything more than the same treatment of any other legal taxpaying business--just fair and just compensation. Thank you. Does anyone have any questions for me? [LB302]

SENATOR MCGILL: Questions? Senator White. [LB302]

SENATOR WHITE: Do you have any signs in the Omaha area at this time? [LB302]

DOUGLAS NAEGELE: Not at this time. [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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SENATOR WHITE: And, of course, you can't sell a sign where a lease has ended when you're selling. [LB302]

DOUGLAS NAEGELE: True. [LB302]

SENATOR WHITE: Isn't that true? [LB302]

DOUGLAS NAEGELE: Yes. [LB302]

SENATOR WHITE: So it...at the expiration of the lease, it has no value. [LB302]

DOUGLAS NAEGELE: Right. [LB302]

SENATOR WHITE: Thank you. [LB302]

DOUGLAS NAEGELE: But the leases really don't expire like you might think. Each year possibly 5 to 10 percent, due to attrition, become renewable, and then the landowners typically are anxious to renew those leases. And that's why we've been able to have the business, like Mr. Love has had since 1920, because those leases are renewable, even though they're 10 years or 20 years or whatever they may be. [LB302]

SENATOR WHITE: Thank you. [LB302]

DOUGLAS NAEGELE: Thank you. [LB302]

SENATOR LATHROP: I do have a question for you. [LB302]

DOUGLAS NAEGELE: Yes, sir. [LB302]

SENATOR LATHROP: If you...if the lease comes up, what's a typical length for one of these leases, a sign lease? [LB302]

DOUGLAS NAEGELE: Well, as been stated before, the current trend is now 20 years. [LB302]

SENATOR LATHROP: Okay. So at the end of 20 years, if that's the current trend and you put a sign in, in '86, and now it's up, or '87... [LB302]

DOUGLAS NAEGELE: Yes. [LB302]

SENATOR LATHROP: ...and now it's up, and the landowner says, I want that thing out of my parking lot. He doesn't renew your lease. What do you get? You bring in the crane

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

and you take it down and you... [LB302]

DOUGLAS NAEGELE: That's correct. [LB302]

SENATOR LATHROP: That's correct. [LB302]

SENATOR LATHROP: ...you pack it up and you're finished. Is that it? [LB302]

DOUGLAS NAEGELE: But, you know, depending...zoning is usually not just spotty. Let's...what we could probably do is go right next door to that property owner and offer him the same set of circumstances that we offered to the existing property owner who declined to renew the lease. Because zoning, as you know, happens, you know, not in strips necessarily but in areas and neighborhoods. There's always a C1 for an area or a C2 or whatever it may be. [LB302]

SENATOR LATHROP: Well, what this... [LB302]

DOUGLAS NAEGELE: And we only erect this, you know, on commercial/industrially zoned pieces of property. [LB302]

SENATOR LATHROP: I... [LB302]

DOUGLAS NAEGELE: We can't really just put them anywhere. [LB302]

SENATOR LATHROP: I'm well aware of that. [LB302]

DOUGLAS NAEGELE: Right. [LB302]

SENATOR LATHROP: And the city wants you to put them in fewer places. [LB302]

DOUGLAS NAEGELE: That's correct. [LB302]

SENATOR LATHROP: And so what they've done is they've essentially said we're going to stop you from putting them in the next time your lease comes up. [LB302]

DOUGLAS NAEGELE: Yes. [LB302]

SENATOR LATHROP: Okay. [LB302]

SENATOR MCGILL: Senator White. [LB302]

SENATOR WHITE: I do have a follow-up question on that. [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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DOUGLAS NAEGELE: Certainly, Senator. [LB302]

SENATOR WHITE: So in the existing law as it is now in the city of Omaha, if that landowner said, I want it out of here, you would not have the right to go next door because the city said this area is off-limits. So you're right to go next door is gone already. Correct? [LB302]

DOUGLAS NAEGELE: That's been taken away. [LB302]

SENATOR WHITE: Thank you. [LB302]

SENATOR MCGILL: Thank you. Are there any other proponents? Any opponents? [LB302]

STEVE JENSEN: (Exhibit 4) Good afternoon. I'm Steve Jensen. I'm the planning director for the city of Omaha. That's S-t-e-v-e J-e-n-s-e-n, and I'm here this afternoon to speak in opposition to LB302. I have some photographs and some prepared text. I'm going to abbreviate my text just a little bit in the interest of time, but the photographs--I apologize, I just have one copy--the photographs give you an idea of some of the nonconforming signs and some of the signs in the city that we are hoping to eliminate over time. There's a lot to cover so I'm, I apologize, but I'm go to try and read through this because a lot of what you've heard I think is not quite accurate, and hopefully after I complete my testimony you'll understand. Although the proposed change outlined in LB302 may seem to be minor and even reasonable as written, it will severely hamper Omaha's ability to amend and implement its zoning ordinance, particularly with respect to controlling billboards. You've been told that this change in state law is needed to ensure that billboard companies are fairly compensated for the loss of a billboard. If the current law prevented them from being adequately compensated, I would agree that a change is needed. However, that's not the case. Rather, as I hope you'll understand after I explain, it's actually quite the reverse. Let me say up-front that the city's code is not now, nor has it ever been, designed to reduce the number of billboards or amount of billboard signage in the city overall, or to force billboard companies to reduce their signage and, in turn, their revenue. Rather, the effort the city started roughly 20 years ago has been to rearrange and improve the appearance of billboards within the city. To understand the importance of the statute being discussed today, I must first provide some background, so if you'll bear with me. Work on improving the appearance of Omaha's billboards began over 20 years ago with a series of meetings between the city and the local billboard companies. The various participants at the time agreed that this...that the city of Omaha didn't have regulations at the time about billboards, so the various participants at the time agreed that this lack of regulation had resulted in billboards that were visually cluttered and unattractive, and hopefully the photographs give you some examples of that. To improve this situation, the planning department proposed a series of changes to the city's zoning code that would make many signs

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Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

nonconforming, but that would also allow the signs to be relocated and improved over time. The resulting approach, which I think you've heard about today, is often called a cap and replace ordinance. It was supported by the billboard companies and added to the city code in 1987. This cap and replace approach required that to get a permit to erect a billboard the companies needed to first remove an existing sign. It ensured that the sign companies would be able to maintain the overall number of signs and/or total sign square footage as they work to relocate and improve the signs. The system worked very well for many years, and by the middle 1990s dozens of older, unattractive billboards had been removed in the city. Over the years the various local billboard companies had been purchased by Lamar, third largest billboard company in the country, and in the late 1990s a problem arose when another national billboard company, Waitt Outdoor Advertising, attempted to enter the Omaha market. Because Waitt had no inventory of older billboards to remove, they were hampered in their efforts to erect new billboards. As a result, Waitt and Lamar asked the city to drop the cap and replace ordinance. Instead, they asked to be allowed to erect new billboards without first removing one. Because state law allowed the city to pay a depreciated value to remove the signs, the city agreed to allow as many signs to be erected as could be made conforming, provided the companies agreed to bring the remaining nonconforming billboards into compliance by 2017, which by the way is 30 years, not just 5...or 15, I'm sorry, but 30 years after they were made nonconforming by the 1987 code. The code was changed to lift the cap in exchange for the removal of the nonconforming signs. Representatives of both Lamar and Waitt attended the Omaha City Council meeting in 2002 and testified in favor of the new code and its 2017 provision, and if you'd like, we could provide you with either a transcript or a tape of that testimony. As a result of the code change, since 2002 the two companies have erected over 100 new billboards. Today the city estimates that there are roughly 70 to 80 nonconforming billboards still in existence in the city. Had the cap and replace ordinance stayed in place, the companies would have only been allowed to erect 70 to 80 new billboards and would have been required to remove, without any monetary compensation, the 70 to 80 nonconforming signs as the new billboards were erected. As a result, the city today would have virtually no nonconforming billboards and 20 to 30 fewer billboards overall. Although the city knew that this approach could result in more total signs, it was agreed...we agreed to the compromise as a way to resolve the impasse, and because it would ensure that all signs would be brought into conformance by 2017. That brings us today's hearing. The only tool the city has to ensure that the nonconforming signs will be removed is the state law we're talking about today. The law, as it stands today, would allow the city, if necessary, to purchase the remaining nonconforming signs in 2017 at a depreciated value. Based on the fact that the companies have had...would have had 30 years in which to amortize the value of the signs and to bring the signs into conformance, the cost of the signs would be relatively small. This provision in state law was the foundation upon which the city agreed to change its zoning code in 2002 to allow the companies to erect new signs without removing nonconforming ones. Now that the companies have erected over 100 new signs, they're asking to eliminate the very

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

provision that would allow the city to force them to bring the remaining nonconforming signs into compliance. In short, the companies want to have their 100 new signs and keep all of the 70 to 80 nonconforming ones as well. The companies seek the benefit, but not the burden, of their bargain. If LB302 is passed as written, the billboards you are looking at in the photographs, along with dozens of similar ones, will never be removed unless the citizens of Omaha pay the companies what could amount to tens of millions of dollars to remove them. By seeking to change the state law, the billboard companies are attempting to renege on their 2002 agreement with the city and reap a windfall of over 70 to 80 additional billboards. In closing, I would ask the committee to think about the fact that the citizens of Omaha have twice negotiated in good faith with these large national billboard companies in an effort to improve the appearance of the city. They've allowed the companies to erect over 100 new billboards, 20 to 30 more than they would have been able to construct under the old cap and replace ordinance, and they've given the companies 30 years to amortize the value of the remaining nonconforming signs and bring them into compliance. Perhaps changes are needed to current statute. City of Omaha is willing to discuss possible changes to the current law provided it ensures that nonconforming billboards will be removed by 2017. So I guess I would close by saying the citizens of Omaha made a deal. We've upheld the end of the bargain, our end of the bargain, and I guess we ask that you reject LB302 as written and help Omaha citizens ensure that the billboard companies uphold their end of the bargain as well. Thank you. I'd be happy to answer any questions. [LB302]

SENATOR MCGILL: Any questions? [LB302]

SENATOR LATHROP: I do. [LB302]

SENATOR MCGILL: Senator Lathrop. [LB302]

SENATOR LATHROP: You guys give the permits. How come you can't just shut these people off and get your way with them? [LB302]

STEVE JENSEN: Well, the city...the city could if we were to change the code again and just say no more billboards, you have what you have and you're not allowed any more. [LB302]

SENATOR LATHROP: Or that to get another permit you got to take three of these little nonconforming... [LB302]

STEVE JENSEN: Our problem is we did that in 1987 and we did that for 15 years, and that was the way we handled it. In order to put up a new one, you had to take one down. And that worked except that when Lamar consolidated most all the signs in the city under one company, when a second company came in and didn't have any billboards to take down, they wouldn't be able to put up a new one. We tried to negotiate a fee, and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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that's in the kind of extended testimony that I passed out. We were unable to do that. What was going to happen was the fee that the...that Waitt Outdoor Advertising was willing to pay, they objected to any fee that was over about \$1,000. Consequently, we would have had to take down...or they would have had the opportunity to build and erect dozens of signs before one sign could be taken down. We wouldn't have the money to take down one, whereas Lamar would have had to take down one for every sign they put up. So we felt that wasn't really a fair way to go. So essentially what they asked us to do and the bargain they made was if you'll let us go ahead and erect the signs, we'll agree to take the signs down by 2017. That's what the ordinance says and that's what they testified in favor of. [LB302]

SENATOR LATHROP: Okay. Two questions that that brings up, and then I'll...then that's all I got for you. One is has anybody in the city addressed the constitutionality of the...of this approach? [LB302]

STEVE JENSEN: I... [LB302]

SENATOR LATHROP: We've heard some discussion that it's unconstitutional. Do you agree with that? [LB302]

STEVE JENSEN: Well, I think we'll have testimony from the city attorney's office and from others and I think we'll get at that. [LB302]

SENATOR LATHROP: Okay. [LB302]

STEVE JENSEN: So maybe they'd be better... [LB302]

SENATOR LATHROP: And you heard Ms. Haley say that they're going to get up after me and say that we had a deal, and it's not true. [LB302]

STEVE JENSEN: All I can tell you is that representatives from Waitt and Lamar met with the city. They came and testified in favor of the code. I can read the code language to you and you can see if they were confused by it. It says nonconforming signs: Within any zoning district, all off-premises advertising signs must fully comply with the provisions of this code by January 1, 2017. This requirement shall apply to all off-premises advertising signs, including such signs which are nonconforming, regardless of the date on which a sign became nonconforming. And they came and testified from both companies in favor of that code change. [LB302]

SENATOR LATHROP: Okay. That's all I have. [LB302]

SENATOR MCGILL: Senator White. [LB302]

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Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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SENATOR WHITE: Yes, sir, is the city applying this principle to areas on state or federal highways and, if so, why is that lawful? [LB302]

STEVE JENSEN: Well, again, we started with a cap and replace ordinance that covered all of our jurisdiction, which would have included property that is... [LB302]

SENATOR WHITE: First, is the city applying this to state and federal highways? [LB302]

STEVE JENSEN: We would. [LB302]

SENATOR WHITE: Are you? [LB302]

STEVE JENSEN: Yes. [LB302]

SENATOR WHITE: Why is that lawful and why is the city, not properly subject to an injunction ordering it to obey the law? [LB302]

STEVE JENSEN: I believe the city has the power to set standards for how billboards will be placed within... [LB302]

SENATOR WHITE: In violation of state law? [LB302]

STEVE JENSEN: ...within our jurisdiction. [LB302]

SENATOR WHITE: In violation of state law? [LB302]

STEVE JENSEN: Well, perhaps the city attorney's office will be better able to answer that, but I believe that we have the ability to have a zoning code that governs the placement of billboards adjacent to those state highways. [LB302]

SENATOR WHITE: Thank you. [LB302]

SENATOR MCGILL: Any other questions? Thank you for your testimony. Next opponent. [LB302]

ALAN THELEN: Good afternoon, committee members. My name is Alan Thelen. I'm with the Omaha City Attorney's Office. My name is spelled A-l-a-n T-h-e-l-e-n. I'm also appearing here this afternoon on behalf of the city of Omaha, which is opposed to LB302. Just like to add a couple of points very quickly. First of all, Omaha already has the power to phase out these nonconforming uses, and when I say nonconforming uses, we're referring to a use that is presently illegal under our zoning code, but was legal at some time in the past and there was an interceding zoning code change that resulted in it becoming illegal. So we do have that power now, as the Supreme Court

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Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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has acknowledged that power in the case Wolf v. City of Omaha that's been referenced earlier. An interesting thing in that Wolf case also was that the Supreme Court stated that zoning...city's local zoning is a matter of local concern as opposed to not being a matter of statewide concern. The LB302 here would seek to carve out an exception to that power for billboards and for outdoor advertising signs only. We view that as special legislation meant to benefit a special interest and we would submit that there's no reason or basis to say that billboards should get this special treatment. The consequences from this legislative bill would be if we can't phase out nonconforming billboards, it would be reasonable and logical to expect that we would see a proliferation of old deteriorating grandfathered billboards around the state. Secondly, my second point is that in cases where compensation is to be paid this legislative bill would change the terms of that compensation. At present, there is a definite and objective formula on the books in the present state law for determining that compensation, however, this legislative bill would move us into more of a vague open-ended situation in terms of the compensation. The present language can be seen at page 9 of the legislative bill; states that fair and reasonable market value shall be paid, and then it goes on to say that...it gets more specific in trying to pin down what fair and reasonable market value is, and in the language that's stricken through, which this LB would get rid of, it goes on to say that this value would be based on two things. The first thing would be depreciated reproduction cost, which is on line 20. Reproduction cost generally is meant the value of the materials and the labor in constructing the sign. It's been our experience that that's a pretty objective, pretty definite measure. So as a factor, that's a pretty objective factor. It also has the word "depreciated" in there. "Depreciated" would take into account the age of the sign, the condition of the sign in the value of the sign, which we think is only fair and is logical. However, this legislative bill would remove that aspect of depreciation. It would remove that as a factor in the value of the sign. The second factor in the present law that bears on the value is the Nebraska sign schedule. The Nebraska sign schedule, again, is an objective and clear-cut formula. It's on a one-page schedule. I've got a copy of it here. And the way the schedule works is it involves a formula that brings you to an estimated value of the sign, and it's based on a number of variables. It's based on square footage, the size and square footage. It's based on the type of illumination, the types of material that go into the sign. You plug in all these variables and you come out with a number. This legislative bill would, again, strike that factor out as a factor in the compensation calculation. We believe these changes would lead to more uncertainty in this area, more disputes, more lawsuits and, in particular, it would be unfair to take depreciation out of the picture on determining what the value of the sign is. Now, unless there are any further questions, I'll close by stating that we are in opposition to this legislative bill and thank you for your time. [LB302]

SENATOR MCGILL: Any questions? Senator White. [LB302]

SENATOR WHITE: Yes, thank you for coming, Mr. Thelen. First of all, the state has already carved out an area, Omaha, which is treated differently than the rest of the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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state. Why is that not special legislation? [LB302]

ALAN THELEN: I can't speak to that. I guess I don't know the reasons why the other cities were first placed in that category and Omaha wasn't. [LB302]

SENATOR WHITE: Then you would concede that if we harmonize the treatment of Omaha with the other cities, we're doing anything but giving special legislation. What we're doing is making uniform policy across the state. Are you saying that's violative of the state constitution? [LB302]

ALAN THELEN: Well, then we would have two different types of special legislation or special interests being served here: one on...as you mentioned, I agree with you, at the city level; and then on the other...on the other level the types of businesses that are being benefited by this legislative bill. [LB302]

SENATOR WHITE: What percentage of the nonconforming signs are owned by Lamar or Waitt or their successors? [LB302]

ALAN THELEN: I'm sorry, I don't know that. I'm sure that it's probably a majority, but I don't know. [LB302]

SENATOR WHITE: Can Lamar and Waitt negotiate away rights given to them under state and federal statutory law in exchange for rights greater than they would ordinarily have under city ordinance laws? And can such contracts be binding? [LB302]

ALAN THELEN: Negotiate with who? [LB302]

SENATOR WHITE: The city. For example, you've described the history here and the city has claimed that there was a series of negotiations in which the Lamar and Waitt negotiated certain rights, I assume under state and federal law, along Dodge and the other areas, and in exchange got rights greater than they would ordinarily enjoy in other areas of the city. One, can they do that; and two, is it binding on them later? [LB302]

ALAN THELEN: Negotiation in anticipation of legislation is an interesting subject, as I'm sure many of you deal with. I'm not so sure that negotiations are necessarily binding in the context of legislation, but they certainly do demonstrate good faith or the lack of good faith. [LB302]

SENATOR WHITE: Why is the city enforcing ordinances in violation of state and federal law, or is it? [LB302]

ALAN THELEN: I don't know the answer to that question. That's a question that's not been raised with the city of Omaha to this point, so it's something that we have not

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

researched. [LB302]

SENATOR WHITE: Well, it was raised here today. [LB302]

ALAN THELEN: Yes. [LB302]

SENATOR WHITE: Was it not? [LB302]

ALAN THELEN: Yes. [LB302]

SENATOR WHITE: Is the city's current procedure unconstitutional according to any state or federal cases that you have read on these or similar facts? [LB302]

ALAN THELEN: If you're asking for my opinion, no. [LB302]

SENATOR WHITE: Are there any cases that you're aware of that says this type of state or statutory and ordinance constructions are, in fact, unlawful taking? [LB302]

ALAN THELEN: Well, it's a matter of degree. There's the Penn Central case, the U.S. Supreme Court case, the Penn Central case, that indicates that it's a matter of degree. Zoning is permissible and is not a taking as long as it doesn't go too far. So it's a matter of degree. So it's a matter...it's a question of... [LB302]

SENATOR WHITE: I mean, Penn Central is so removed from this, you know that, that that's almost no guidance. Are you aware of any cases on these facts where courts have determined the constitutionality of such structures,... [LB302]

ALAN THELEN: No. [LB302]

SENATOR WHITE: ...legal structures? [LB302]

ALAN THELEN: No. [LB302]

SENATOR WHITE: Don't you think it might be a good thing if the courts tell people like myself what is or is not constitutional rather than asking me to decide? [LB302]

ALAN THELEN: Yes. I agree. [LB302]

SENATOR WHITE: Thank you. [LB302]

SENATOR MCGILL: Senator Lathrop. [LB302]

SENATOR LATHROP: I have a question. Yeah. You've directed us to a provision on

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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page 9 for determining the value that's paid when the sign is taken, and that's a fair and reasonable market value based upon a depreciated reproduction cost. That's not what we're doing in the city of Omaha right now, though, is it? We've basically said you have 15 years to use it up and then pull your sign up and leave? [LB302]

ALAN THELEN: Well, yes, and that raises the question of what will happen in 15 years. [LB302]

SENATOR LATHROP: That's maybe why they came down here, is because they want something to happen besides having to pull their sign up and leave. So is the city going to pay them according to the existing statute right now, which is the fair and reasonable value, taking into account the depreciated reproduction cost? [LB302]

ALAN THELEN: Yes, it's our expectation that if that language is on the books that we would have to abide by that. [LB302]

SENATOR LATHROP: So the concern that we heard expressed by the sign folks, which is the city isn't going to pay us anything, they just want us to leave in 2017, that's not what's going to happen, not...that's not what's going to take place in 2017? [LB302]

ALAN THELEN: Well, for one thing, they will...they will have their sign for 15 years and, as a matter of fact, it's as Mr. Jensen indicated, it's probably more like 30 years because I believe these nonconforming signs that we're talking about were in place before the change in 1987. So we would have that 30 years. And then in 2017, yes, we'd have to look at this statute and see what we owe them. [LB302]

SENATOR LATHROP: It's all I have. [LB302]

SENATOR MCGILL: All right. Thank you for your testimony. [LB302]

ALAN THELEN: Thank you. [LB302]

SENATOR MCGILL: Do we have any other opponents? [LB302]

DAVID LEVY: (Exhibit 5) Good afternoon, committee members. David Levy, D-a-v-i-d L-e-v-y, of Baird Holm Law Firm, opposing this bill on behalf of Omaha by Design. I have a prepared statement which I will not read, in the interest of time, but I would like to provide to you, and instead I would like to just hit a few points that I think are important, after listening to the other testimony this afternoon. First of all, I think it's critical to step back for a second and point out that what we are talking about here is signs that no longer conform to or comply with the law. We're not talking about signs that are fully compliant with the law, where the city says, you know what, you need to take down that sign tomorrow, we're sorry, you don't get anything for it. That's not what

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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we're talking about here. What we're talking about is signs that are no longer legal. They're no longer compliant with the law. The sign companies have had them up for years and have received their reasonable investment back, expectation in terms of revenue and profit from those signs, and cities, as a general matter, have the right to require uses to go away after a period of amortization. I think it's very important that this bill would only remove that amortization provision for outdoor advertising signs. So in terms of it being unequal or preferential treatment, it is absolutely preferential treatment for outdoor advertising signs. I think to a certain extent today the proponents of the bill have minimized the fair market value aspect of this. What they are essentially asking is that, regardless of the fact that the sign no longer complies with the law and that it's been up for, in some cases, 30 years or maybe more and they've received significant value and profit out of their investment, they're now being asked to pay for it as if there's this...they're now asking the taxpayers to pay for a future unreceived, unguaranteed income stream potentially ad infinitum. So by removing both an amortization type provision, or at least the concept of amortization, and the depreciation schedule, they're asking it to just be thrown wide open for the cities to have to pay and the taxpayers to have to pay some unknown sum that will create and result in a windfall to the billboard companies who have already received significant value for their investment. Two other points: You've heard the case Wolf v. City of Omaha mentioned today, and that city (sic) I think clearly establishes the concept in the state of Nebraska and established it 40 years ago, and it hasn't been changed since, that amortization is legal and is a legal tool for cities to use over time to revise and renew and improve themselves. But that case also says that it is not contemplated that preexisting nonconforming uses are to be perpetual. So the court expressly points out that even though a user may have erected either a sign or a commercial use or other use that was legal on the day they erected or began it, they don't have an expectation under the law that they get to do that forever. But by making it prohibitively expensive for billboards, outdoor advertising signs, to be removed, that's effectively what the sign companies are asking you to do in LB302. My last point as to the Highway Beautification Act and the issue of Dodge and other areas, I don't believe that the act applies in urban areas, areas that are subject to the zoning control of cities. I'm not positive about that. I've got the law here and, as you can see, it's quite thick and I was trying to look at it as I was sitting here. I didn't have a chance to make myself 100 percent comfortable with that, but that is my belief, is that there's an exception in that act that allows cities to regulate highways within their zoning jurisdiction. And with that, I don't have anything further, unless you have questions for me. And I thank you for your time. [LB302]

SENATOR MCGILL: Senator White. [LB302]

SENATOR WHITE: Are you stating that a nonconforming building owner can only get the amortized value of his structure rather than the fair market value, including it going forward? [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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DAVID LEVY: Yes. If you've got, let's say, an industrial use and it's a going industrial use and it was legally started, and the city rezones that area to a zoning classification that prohibits industrial uses, after an amortization period, in many cases 20 or 30 years, the city can say, okay, you've gotten your value out of it, you need to either change to a different...you need to change to a different use or cease that use that no longer complies with the zoning. I think that was precisely the case in Wolf with respect to the dog kennel. [LB302]

SENATOR WHITE: Well, do you have a federal case that says that comports with the federal taking clause? [LB302]

DAVID LEVY: I don't have one off the top of my head, although I know that the case from San Diego from about 1980, I believe it's Metromedia v. City of San Diego, may very well deal with that. [LB302]

SENATOR WHITE: Hasn't the Supreme Court tightened interpretations of that, for example, in the Hawaii case, on zoning as takings? [LB302]

DAVID LEVY: I don't know the facts or the holding of that case off the top of my head, but I do think that amortization is a legal concept that cities may use and do use all over the country today and have historically done so. [LB302]

SENATOR WHITE: Now Omaha by Design and the city could also file an action requesting a declaratory judgment so they can properly plan, could they not? [LB302]

DAVID LEVY: They could. I don't think that we're saying that they cannot properly plan. I think the difficulty is in implementing a plan or a zoning change down the road. But certainly the city could litigate this if it felt that were the right course. [LB302]

SENATOR WHITE: Well, I mean, you're basically coming to us, tell us, asking this legislative committee to decide what's constitutional. That's really not our job, is it? [LB302]

DAVID LEVY: Respectfully, Senator, I don't think that's what we're asking you to do. What we're asking you to do is to not pass this bill which we think makes it practically impossible for cities, only with respect to billboards, very importantly, to implement revised zoning ordinances going forward. [LB302]

SENATOR WHITE: Thank you. [LB302]

DAVID LEVY: Thank you. [LB302]

SENATOR MCGILL: Any other questions. Well, thank you for your testimony. [LB302]

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Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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DAVID LEVY: Thank you. [LB302]

SENATOR MCGILL: Any other opponents? [LB302]

CONNIE SPELLMAN: Good afternoon. I'm Connie Spellman, Connie, C-o-n-n-i-e, Spellman, S-p-e-l-l-m-a-n. I'm director of Omaha by Design. Our organization is a nonprofit organization dedicated to improving the physical face of Omaha through the use of urban design principles and citizen engagement. In 2003, Omaha by Design launched a 14-month collaborative process that resulted in the creation of the Urban Design Element--a strategic framework that established the city of Omaha's long-range policies, goals, and standards for physical development. Hundreds of interested citizens, along with a volunteer working committee, helped craft its content and its intent. Simply put, it's Omaha's vision for Omaha's future. In December 2004, the Omaha City Council adopted the Urban Design Element as a component of the city's master plan. Since that time Omaha officials and Omaha by Design have been working with consultants, a technical advisory group, to draft the implementation measures identified in the Urban Design Element. Our technical advisory committee and our working review committee have always had representation from the billboard industry. Two of the Urban Design Elements affect the billboard industry. The first calls for a halt of erection of new billboards in the areas of civic importance, and the second calls for increased efforts to beautify the highways/streetscape through additional landscaping. Throughout the entire Urban Design Element process, representatives of the billboard industry have had a seat at the table. Yet, despite our efforts to work through these issues collaboratively, we have been surprised, not once but twice, by the billboard industry's actions. Shortly after the implementation of the Urban Design Element, we learned, after the fact, that Lamar Outdoor Advertising had negotiated with the state of Nebraska to erect 18 new billboards along Interstate 80 within the city of Omaha, more than 1 per mile. Omaha citizens were really outraged by this move and when it became public, as evidenced by the hundreds of calls and e-mails that we received. This was not part of their vision for the future of Omaha. Our second cause of concern was the introduction of this bill. It seemed to coincide directly with the time that Omaha by Design and the city officials began meeting with representatives of the billboard industry to address their concern. At our initial meetings, we were asked by the billboard industry leaders if we wanted to, quote, put them out of business. Our answer was and remains a resounding no. After numerous meetings, we could only agree on the issue of no new billboards in the areas of civic importance, an issue that I must admit that the billboard industry agreed to when the Urban Design Element was adopted. However, we have agreed to continue meeting with the city and Omaha by Design and industry leaders to address the larger issue of reduce and improve billboards throughout the city of Omaha. One of the issues brought up during these meetings was to remove the 2017 deadline for the removal of nonconforming billboards. As you heard earlier, this deadline was agreed to in 2002 by the billboard industry leaders during their negotiations with the city,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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and it served as an extension of the previous 15-year deadline enacted in 1987. However, it was a point that neither the city officials nor Omaha by Design could agree to. Our position is twofold. We want to enforce the Urban Design Element's recommendation of the erection of no new billboards in the areas of civic importance, and we want the billboard industry to hold the 2017 deadline which they agreed to in 2002. LB302 would severely undermine redevelopment and beautification efforts in Nebraska cities which relate directly to economic growth and vitality. Currently, state statutes do provide tools for cities to remove nonconforming issues with reasonable compensation, or by allowing the owners to receive a reasonable return on their investment over time. As a committee, I would suggest that you consider one of three options: One, reject LB302 outright based on the merits of the testimony you've heard here this afternoon; two, table the matter to allow all parties to truly understand the amendment that was just made with DOR yesterday and the new amendment that Ms. Haley just passed out this morning that we have not had a chance to look at; or three, create a task force to study the issues and return in a year's time with a proposal that is agreeable to all parties. The Nebraska Chapter of the AIA, the American Institute for Architects, also stands in opposition to this bill, and Sara Kay, their executive director, is here to answer any questions that you may have at this time. That concludes my testimony, and I would be happy to take any questions if you had. [LB302]

SENATOR MCGILL: Any questions? Senator Lathrop. [LB302]

SENATOR LATHROP: I do have a question. We've had a number of people now talk about the fact that the billboard industry agreed to the 2017 deadline. Did they agree that they would have their signs out without compensation by then, or that they just have them out subject to being paid what they should receive for the signs they're going to remove? [LB302]

CONNIE SPELLMAN: Now, I'm not a lawyer and I don't have technical answers here (laugh)... [LB302]

SENATOR LATHROP: And I'm not...and I'm not putting it on you like you're a lawyer. [LB302]

CONNIE SPELLMAN: ...but the only...the only thing that I understand is what was read in this statute that talks about the 15-year time period for removal of nonconforming signs with some compensation for...the language that was there about structures. [LB302]

SENATOR LATHROP: Okay, so... [LB302]

CONNIE SPELLMAN: So there was some... [LB302]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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SENATOR LATHROP: ...they were going to remove them by 2017 and the...it was contemplated that they would be compensated something. [LB302]

CONNIE SPELLMAN: The way it says in the statute. [LB302]

SENATOR LATHROP: Okay. It's all I have. [LB302]

CONNIE SPELLMAN: Thank you. [LB302]

SENATOR MCGILL: Thank you. Any further opponents? [LB302]

GARY KRUMLAND: Senator McGill, members of the committee, my name is Gary Krumland, it's spelled G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in opposition to LB302. And because of the testimony that's gone on before, I'll just limit my testimony to basically the non-Lincoln and Omaha cities and villages. And as been pointed out, on page 7 the current law already provides that cities of second class, cities of the first class and villages do have authority to terminate nonconforming uses, but that does not apply under the current law to legally erected outdoor advertising signs, displays, devices. For those, a city cannot or a village cannot adopt an amortization schedule. However, they are affected by LB302 because of the change in how signs are valued. So if a city or village would like to have a nonconforming sign removed from an area where it is no longer conforming to the regulations, the value and the amount that would have to be paid changes. The current law provides, as you've heard, for the depreciated reproduction cost, and now it's the whole economic unit, the leasehold and all that. I know there's some, apparently, amendments been proposed. I haven't seen those. But we do have concerns about changing the rules for those cities who...to only method of doing it is to pay the cost. We know what...how to do that right now, but under the new language will probably be more expensive and we really don't know what that's going to do. So... [LB302]

SENATOR MCGILL: Thank you. Any questions? Seeing none, thank you for your testimony. Is anyone else here to speak in opposition? [LB302]

MARVIN KROUT: (Exhibit 6) Good afternoon. My name is Marvin Krout, M-a-r-v-i-n K-r-o-u-t. I'm the director of the Lincoln-Lancaster County Planning Department, Nebraska's second city, and I haven't brought a team along with me and I'm a little bit of a latecomer, too, both to the state and to this particular issue, which I think that the city administration just became acquainted with as of late last week. So we're still catching up to this issue. I will say that we're definitely in opposition to this bill. Our interpretation of state and federal law is a little bit different. Our approach has been a little bit different, and I'll try to explain the Lincoln situation to you. I think that Martha Lee and I have agreed and disagreed about every other time, and I think that the Lincoln ordinance does provide for places and times for off-site advertising, and as of recently now we've

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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agreed that off-site advertising can even change every ten seconds. Right? But we do have and are relying on an amortization provision in the sign code, and this is due to the fact that before I came to Lincoln, about six years ago, there was a significant public uproar about the sudden proliferation of billboards in the community based on the then existing regulations, and the concern was that that would have a negative appearance, a negative effect on the community's appearance and its potential, in terms of economic development, and that did result in new regulations that were adopted that are more limiting on where off-premise advertising can be located. And as a result of those regulations, there are a number of billboards in Lincoln that are nonconforming. The regulations do have a cap and replacement system, as you've discussed earlier this afternoon, but also have a provision that after a period of 20 years, from 2000, that there wouldn't be repermitting of billboards and that the nonconforming billboards would be removed because they've reached their amortization period. Lincoln has interpreted that the state and federal laws do preempt our authority with regard to the federal highway system and so I don't believe anyone in Lincoln is attempting or would be attempting in the future to try to impose the amortization on the billboards that are along the federal highway system. But at least half of our billboards are off of the federal highway system. They're on local streets. Majority of those signs are nonconforming and scheduled to be removed, and we believe it would be prohibitively expensive for the city to purchase them, particularly as the bill has been drafted without the amortization provisions. And in the meantime, as we continue to have street widening projects and other city projects in the community, the cost of purchasing billboards as a part of those city projects we believe would be much higher if this bill was passed. I think that our attorneys believe that amortization, which is about 80 years old in this state and others, is constitutional, would be upheld. We think that zoning should remain as an issue that's basically of local control and not preempted by state law except when there are rare instances of overriding statewide public interest. And we've accepted that the federal highway system is a part of that and that maybe alcohol sales is regulated at the state level and sexual offenders and maybe there's some other classes of people and property that are regulated, but generally we're in favor of keeping zoning as an area of local interest. Believe that municipalities zone land judiciously and try very hard to balance individual property rights with the community interests that come out in the community planning process. I can't speak to the specific provisions about valuing on billboards and the compensation process of our law office and property management people are just beginning to look at that issue. We know that there have been discussions with the state Roads Department. Not privy to the final amendments that have been submitted, but I suspect that even if they're acceptable to NDOR that they would have an impact on the city of Lincoln outside of the federal highway system. So I'll try to answer any questions you have. [LB302]

SENATOR MCGILL: Any questions? All right, seeing none...oh, Senator White. [LB302]

SENATOR WHITE: You're not really equating outdoor advertising with sexual predators,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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are you? [LB302]

MARVIN KROUT: No, I'm just saying that outdoor advertising generally isn't an area of overriding state interest that requires the state to intervene. [LB302]

SENATOR WHITE: Thank you. [LB302]

SENATOR MCGILL: I thank you for your testimony. [LB302]

MARVIN KROUT: Okay. [LB302]

SENATOR MCGILL: Any more here to testify in opposition? Anyone here with neutral testimony? All right. Seeing none, Senator Friend, would you like to close? [LB302]

SENATOR FRIEND: Can I get a hug? (Laughter) No, I'll have to wait till I get home. I wanted to apologize to Aimee Haley. I did, obviously, as she mentioned, I did receive the amendment that Senator Lathrop was discussing, you know, with Aimee earlier. I forgot to adjust my comments appropriately in the opening. It just didn't register while I was reading it. Of course that could be attributed to nerves, but you'd think I'd know better by now. Anyway, I wanted to throw that apology out there and certainly knew that it was an error after your discussion points. A couple of quick things: I think much of this discussion depends on the exchange between...and a brilliant exchange, by the way, between Senator White and Aimee Haley. Local control is an interesting point here, or whether the public policy...whether the appropriate public policy should deal with that, with that angle, that approach. I would submit...I would submit this, though. If the public policy that should provide some...should be that there should be some consistency provided statewide, then I would further submit that the state has already made statements of public policy in this regard, twice. The state has done it twice. In my opening, that the state, in Don Wesely's bill, 1981, that the state proposed to. We can't ignore this. I'm not an attorney and I'm not going to go down the road that 80 percent of these folks in here went down, but I'm a politician and I think...I think, from a public policy standpoint, that's going to hold some weight. Nineteen eighty-one, the proposition was to restrict the ability of various zoning authorities to remove outdoor advertising displays without fully compensating their owners. In 2000 Senator Chris Beutler of Lincoln introduced LB937 which sought to reverse the provisions of LB241 and specifically authorize the use of amortization schedules for the purpose of determining the value of the nonconforming sign and to end the nonconforming use. The legislation was killed in committee. Killed. That's what the politicians did, okay? Now here's what this politician could do. I could take all the opponents who came here, and by the way, it's quite interesting that the city of Omaha and virtually every other organization that lined up here, except for Omaha by Design, I received some e-mails so I'll give them credit, they say they're willing to discuss the possible changes to the law or something that would make it, you know, I guess evidently more palatable, which is okay with me.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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It's the first I heard of it, today. That's intriguing. And it's quite fascinating, too, since I dropped the bill in January 6. I live in northwest Omaha. It's not that hard to get a hold of me. I, you know, I know that they can find me if they need to. Not only that; one of the things that was pointed out is this could potentially cost the city tens of millions of dollars, interesting, considering the taxpayers pay the city of Omaha a lot...pay a lobbyist, the city of Omaha taxpayers pay a lobbyist to come down here and do the type of stuff that I'm talking about right here to alert me of those type of problems. That's intriguing as well. I would say finally this; that if we can't speak...if we don't come up with that conclusion that Senator White and Aimee Haley dealt with, then I think we can go back and do what Senator Beutler offered. If amortization is fine, let's go do it. But frankly, if it is a public policy and that we should provide it statewide, something is wrong here because we're treating cities in an inappropriate and inequitable manner. So I think that that's an important discussion point we'll probably deal with in Executive Session, and that's really all I had. Thanks. [LB302]

SENATOR MCGILL: Thank you. That will end our hearing on LB302. We're going to take a five-minute break before we start back with our next resolution. [LB302]

AT EASE

SENATOR FRIEND: Okay, let's get started on LR2CA. Senator Rogert, you are cleared to open. [LR2CA]

SENATOR ROGERT: Thank you, Mr. Chairman, members of the Urban Affairs Committee. My name is, for the record, Senator Kent Rogert. I represent the 16th Legislative District and I'm here today to introduce LR2CA, which is a constitutional amendment that removes the requirement that property be substandard and blighted in order to receive tax increment financing. For some background, economic development projects are used to create jobs and generate revenue, but they often require extensive studies on their environmental impact and the capacity for profit. These projects can be perceived as costly, long, and somewhat difficult as certain conditions must be met in order to take advantage of them. Inevitably, this has incited many individuals to find more ways to classify property as being blighted and substandard in order to redevelop or bring in business instead of utilizing a more suitable economic development opportunity. However this was not the intended purpose of the law as stated in Article VIII, Section 12 of the constitution. In short, it seems to have evolved into an economic development tool as opposed to a community blight remediation tool for which it was originally intended. In this way the constitutional law is being misapplied. I believe we should switch it and make it more of an economic-friendly tool. Currently, unnecessary annexations can occur because of a requirement that a property be within the city in order to be eligible for tax increment financing. In addition, ethanol plants, for example, would be typically located outside the city because of odors and traffic and noise, wouldn't be eligible. Ethanol plants generate great tax revenue and create additional

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

jobs for communities. It's unfortunate that they're not eligible to receive tax increment financing because of their location. LR2CA expands the authority to counties and also to cities beyond their boundaries. Cities and villages would be authorized within their own zoning jurisdictions, and the Legislature would have the authority to determine the restrictions on the extent of any county authority within the areas of city jurisdiction. LR2CA is a duplication of LR272CA last year, that passed through the Legislature and was placed on the November 2006 ballot as Amendment 6. Unfortunately, it was defeated, however I believe that this piece of legislation still merits access to the ballot, and I believe if we put this issue to the voters again with some commitment and from some of the folks behind me and a little bit of time to educate them on the subject, we would be successful. And at this point I'll answer or entertain any questions you have on the topic. [LR2CA]

SENATOR FRIEND: Thank you, Senator Rogert. Are there any questions from committee members for Senator Rogert? Seeing none, let's start with proponents of LR2CA; those in favor of it. [LR2CA]

MICHAEL NOLAN: (Exhibit 7) Senator Friend, members of the committee, my name is Michael Nolan. I'm the city administrator of Norfolk. You spell my last name N-o-l-a-n. I am testifying as a proponent of LR2CA. I just, in my handout, have given you what the concept would be if we can get the amendment passed and then in the next session come back with some proposals on the enabling legislation. The enabling legislation on the last occasion that we talked before the committee was called LB1234, and it was a proposal that the league staff and I negotiated with Senator Landis. It certainly wasn't the only set of ideas that could have been proposed for how this would be implemented in the community development law. But what we really did suggest was that this could have some legislative oversight or whatever process that the Legislature designated to determine what the appropriate amortization would be. I've done three or four tax increment financing projects that don't involve state properties where, in fact, the 15 years just doesn't function as well as it should. If you look at the map on my handout that kind of shows you where things are located at the Norfolk Regional Center campus, this building that we would be proposing as our pilot, which is the Patton Building, is one of the newest. It was actually built in 1939 when Franklin Roosevelt was president, but it still has a great deal of functionality to it. And we believe that building is refurbishable and perhaps two others are. The rest of the buildings, not counting where the Regional Center is currently programmed, are in very marginal condition; some of them built in the late 1800s. In fact, I think during my last testimony on this I said that I heard read Old Jules, and I discovered that there was some mention of the Norfolk Regional Center in that book. I don't know how old all of those buildings are but I asked one of the psychologists at the Norfolk Regional Center if Old Jules was a patient there, and he, tongue in cheek, looked me in the eye and said that he couldn't answer that question because of HIPAA regulations. So I'm assuming that maybe he must have been. He could have been in one of these old buildings that needed to be razed. But the fact of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

the matter is that this would give the Legislature what we think is a creative way to improve this property and put it back on the tax rolls. And nobody else in many, many, many years has queued up with any other ideas as to how to do a refurbishment of all of these state properties. So our interest in doing this is a shared one with the state, and we think that we've got a real estate developer and a contractor that would help us on this Patton Building to retrofit that building. We would come in with a pro forma based on the way you designed whatever the successor to LB1234 is, and basically prove to you, based on our pro forma analysis, how much beyond the 15 years would be needed to defray the cost of these unproductive segments of the old building to make it so that it could be usable. We've actually had some conversations between the contractor and a prospect that was interested in purchasing the building once we retrofit it. I would be happy to answer any questions if you have any. [LR2CA]

SENATOR FRIEND: Thank you, Mr. Nolan. Any questions from any committee members? Senator White. Sorry. [LR2CA]

SENATOR WHITE: Thank you. You know, under existing law, in order for the city of Omaha to do a project, they declared Warren Buffett's neighborhood as substandard and blighted? Do you think you have a shot at getting the voters to pass this, this time? [LR2CA]

MICHAEL NOLAN: Senator, I am just astounded that they didn't pass it the last time, and it makes enormous sense. And, quite honestly, there will be some people here from the ethanol groups who will talk about it today, but it was just like I think everybody just assumed it was going to pass, and so there was real effort put into it, and it competed for attention with 423 and all the other things that were on the ballot and I think that's why it got defeated. [LR2CA]

SENATOR FRIEND: Thank you. Are there any more questions from committee members for Mr. Nolan? Seeing none, thanks for the testimony. The next proponent. [LR2CA]

STEVE SORUM: Good afternoon, Mr. Chairman and members. My name is Steve Sorum, S-t-e-v-e S-o-r-u-m. I'm here on behalf of the Nebraska Ethanol Board to testify in favor of this proposal. This has become a very effective economic development tool notwithstanding the way it came into law. This bill or this proposal, we believe, streamlines the process, removes some of the hypocrisy about the blighted neighborhoods, and can make Nebraska continue to be very competitive with surrounding states. There are currently 12 operating plants in the state of Nebraska. Four of those have been TIFed. There are ten additional plants under construction and as many as five of those are likely to be TIFed. The larger group that will likely be impacted by this proposal would be the group that is comprised of about 35 different projects in various stages of development. It's certain, I believe, that not all of those

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Transcriber's Office

Urban Affairs Committee  
February 06, 2007

---

projects will be built. Some will. And it is for those people that we believe this would give Nebraska another tool, one very well suited to ethanol production because it tends to work very well in rural areas where ethanol plants tend to locate. So with that I would conclude my testimony by reiterating our support for this bill. [LR2CA]

SENATOR FRIEND: Thank you, Mr. Sorum. Are there any questions from committee members? Thanks for the testimony. Next proponent. [LR2CA]

GARY HEDMAN: (Exhibit 8) Senator Friend, members of the Urban Affairs Committee, this is my third year in a row, as Senator Friend knows, of testifying in front of you, and I will keep my comments very short and brief. Senator Rogert did a wonderful job of outlining many of the issues. I will only try to cover those that maybe he didn't. [LR2CA]

SENATOR FRIEND: Can you read your name...spell and read your name for us? [LR2CA]

GARY HEDMAN: Oh, I'm sorry. It's G-a-r-y, last name is H-e-d-m-a-n. [LR2CA]

SENATOR FRIEND: Thank you. [LR2CA]

GARY HEDMAN: One of the issues that he commented on was annexation. And annexation, of course, is something that can be contentious, but it also leads to significant school district problems. Some time back there was a bill passed that allowed noncontiguous annexation for agricultural processing facilities. And under those statutes we now have the city of Minden annexing land eight miles away and taking land away from a school district that far away with that activity. The core issue here is, is really tax increment financing and the fact that cities and villages, right down to the little town of Alda, which is less than 500 residents, has the power to do noncontiguous annexation and can offer tax increment financing while Hall County, one of the larger counties in the state, does not have that authority. And what this would do is give a county the same authority, leveling the playing field, as a city would. And so those are the key issues. A minor issue is the fact that, as he mentioned, TIF financing went from a redeveloping tool to an economic development tool. I work a lot in economic development and I can tell you it's the most significant tool we've got. And he's absolutely right. If someone has a choice of getting TIF by being annexed by a city or not by being in a county, they're going to go to the city and try to get that done, and those problems then occur. I've been in fights with Central City and some other communities over that very same issue. The primary reason I came here was we got it passed last year but why didn't it pass the voters. I believe it was basically a lack of education. I think I agree with the gentleman from Norfolk. We couldn't understand why anybody wouldn't vote for it, but I believe voters will vote against anything they don't understand and we didn't get enough education out. I did take some...I don't know how to really say it. We've got about the same percentage that Pete Ricketts got running for...(laugh)...and he spent a lot of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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money, so I'm not sure throwing a lot of money at this is the way to go. It's about 39 percent in favor. But I think one of the other issues that really needs to be communicated is that I think voters look at things like this and think they come from the petition process and they're from outstate special interest groups that are trying to get something approved by the voters. And if they don't understand it, they vote against it. I don't think they understand that they go through a committee process like this and through the Unicameral and that those senators that they have elected have examined the bill and believe it to be in the best interest of Nebraska. So all I can tell you is if you do pass this out of committee this year, I'll pledge to get together with many of these people that are here today and a number of groups, including economic development groups, county associations. I think the State Chamber of Commerce ought to be involved. And I also start talking to senators from the rural districts because they have an awful lot to gain. We have a lot of counties in this state that are losing population and this type of a constitutional amendment, if passed would be a great tool to help redevelop some of those counties that are losing population. That concludes my comments. I thank you for your time. I'd be glad to answer any questions. [LR2CA]

SENATOR FRIEND: Thank you, Mr. Hedman. Any questions from committee members? Gary, I remember, you were quite eloquent, you know, I believe it was last year or it was the year before when we were talking about skip annexation. [LR2CA]

GARY HEDMAN: Um-hum. [LR2CA]

SENATOR FRIEND: And I'm not...you know, it's not like I feel stunned or anything, but the last bill...one of the things that we communicated in the last bill about for an hour and a half, is that, you know, how you're treating, you know, maybe one area different than another from a public policy standpoint. One of the points you brought up, too, in your testimony at that time, if something like this isn't successful, I mean, if one thing or another happens to it, what can a committee like this or what can the Legislature do, do you think now, in the environment that you're in out there, to help from an economic development standpoint? I mean, we probably do enough to hinder it. I guess what I'm wondering is just...and I don't want you to...you know, that's a loaded, open-ended question, I guess, but. [LR2CA]

GARY HEDMAN: Well, I would be glad to comment on it. Tax increment financing on the ethanol plant that I have outside of Grand Island coming in, amounts to about \$6.5 million, \$7 million. That's how important it is. And if there is any way to give counties that authority, and we're not saying counties have to do. What we're saying is giving them the option to look at it and decide whether they want to do it or not. Is it in their best interest? Leave it at the local control level. I don't know if we can do that without a constitutional amendment, but that's the real heart issue right here. We've done a blighted and substandard study. I can tell you honestly, raise my hand and swear on the Bible, whatever, it's worthless. It's just a means to get to a desirable end. And so I could

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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live with that if I could get tax increment financing to be considered by county government in any way, that would solve this whole issue. [LR2CA]

SENATOR FRIEND: Thanks. Thanks, Gary. Any more questions for Mr. Hedman? Seeing none, thanks for coming in. The next proponent. If the...how many people wishing to testify in support and how many more I should say? If you guys could move up toward the front. I guess Walt has already taken his place. Welcome. [LR2CA]

LORAN SCHMIT: Good afternoon, Senator Friend, members of the committee. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I appear today on my own behalf. I will not read my prepared testimony. I will reaffirm what has been said here earlier. I agree with Senator White that you can declare any area in the state blighted if you choose to do so, and we've just about demonstrated that several times. We need not differentiate between the Governor's Mansion and a cornfield if we want to declare it blighted. So we ought to get rid of hypocrisy and use the TIF financing as an economic development tool and let it serve the entire state. I'd be glad to answer any questions. I could have represented the ethanol companies but I came here on my own behalf. I have a number of clients who have used TIF financing very successfully and there are a lot of those out there who will, I suppose, if it's available. That's all I have to say, Senator. [LR2CA]

SENATOR FRIEND: Thank you. [LR2CA]

SENATOR LATHROP: Can I ask just one question? [LR2CA]

SENATOR FRIEND: Sure. Senator Lathrop. [LR2CA]

SENATOR LATHROP: Here's the problem we're struggling with as a committee, I think I can speak. We have three resolutions now that have come through here. We're sitting on all three of them, trying to decide what to do with them because they've already had a shot at the ballot and all three of them were there through the last election cycle and were defeated. We're going to...if we take this out, we've got to get on the floor and say this is why we think it ought to get another shot. What do you think the answer to that is? I mean, at what point do we say, you people really didn't know what you were doing so we're going to put it out in front of you a second or a third or a fourth time. [LR2CA]

LORAN SCHMIT: Well, that's always a question that the committee has to make, has to decide. And I think that, as the previous witness testified, there was no organized effort for it. I don't think that you can spend enough money to pass that sort of an amendment. I think that there has to be impetus from the communities, from the counties to promote it, and I do think that when I spoke to people about it, most of them were not familiar with it. Unless you're involved, as is Mr. Nolan or from other people that have that particular problem, most of the people really don't understand TIF financing. And so I think that the question of spending the money is a serious one, of course, but in view of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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the fact that I think that there needs to be some recognition of the fact that at the present time we have a system that works because we bend the rules to make it work, and I don't like that. (Inaudible) and I think mostly that the counties, if the counties had it, I would really think we would have a lot better utilization of the idea. [LR2CA]

SENATOR FRIEND: Thank you. Are there any more questions for Mr. Schmit? Seeing none, thanks for the testimony. Next proponent. [LR2CA]

WALTER RADCLIFFE: Senator Friend and members of the committee, my name is Walter Radcliffe. I'm appearing before you as a registered lobbyist on behalf of the Nebraska Realtors and Homebuilders. My name is spelled R-a-d-c-l-i-f-f-e. Two points. First of all, and I really echo what Steve Sorum said. I mean, the homebuilders and the realtors support this really to remove the hypocrisy and fiction that attaches to the blighted and substandard. Senator Lathrop, your question is a very legitimate one, and one of the issues that I've heard raised relative to these various propositions is, coupled with the fact that it's been on the ballot is the cost of putting it on the ballot. And what I would suggest to the committee, if in fact these are ideas that the committee wants to advance and to consider, without consideration, (a) on the finance, and (b) with regards to the fact that it's been on, put them out. Move them over to Select File this year and then tell the groups who have appeared here in support that you would like to invite them to come back next year and to show you what they have done to organize, for lack of a better word, a campaign or an educational process or whatever you want to call it, to go out and present these issues to the people in the November '08 election. Those who come back and show to your satisfaction that they're serious that they'll follow through, I would suggest you take that to the floor and move the resolutions over and pass them. I think your point is a legitimate one. I think it needs to be addressed and I think the burden should be upon the supporters to come forward and show that. I'd be happy to answer...or, but I was going to say we should amend the constitution to comport with practice. [LR2CA]

SENATOR FRIEND: Thank you, Mr. Radcliffe. Are there any questions from committee members for Mr. Radcliffe? [LR2CA]

SENATOR LATHROP: I appreciate your remarks though. [LR2CA]

WALTER RADCLIFFE: Thank you. [LR2CA]

SENATOR FRIEND: Seeing none, thanks for the testimony. The next proponent. [LR2CA]

GARY KRUMLAND: Senator Friend, members of the committee, my name is Gary Krumland. It's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LR2CA. We did support both of the proposed

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Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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constitutional amendments last year that were combined into one. As was mentioned, Section 3 of LR2 regarding extended TIF payback time for state buildings was one that the league and the city of Norfolk and Senator Landis all worked together on, and we did support that. We also supported what was LR272CA, which is basically Section 1 of the bill for the reasons that have been stated. The current constitution provides that TIF and the blighted and substandard is an urban development tool, and there's been more and more pressure now to use it as an economic development tool, and it could be very helpful in small cities if it was done that way. There are attempts to do that now and there may be some question about whether some of those are appropriate, and this would take care of any question like that if this would pass. In response to the question about and get involved in the campaign and all that, we did support the constitutional amendment in November. However, the league committed virtually all its time and resources to fight Initiative 423. The league's dues are from cities and villages. We do not use dues income for that because we consider that public money, and public money can't be used to support or oppose a ballot issue. So we used other income and we've pretty much depleted all our reserves in fighting Initiative 423. So we did not put any time or effort into that. And basically I...I mean, we would be happy to sit down to talk about a plan of education stuff, but I can't make a commitment that we would have money available to put into a campaign. But if we can work with other groups on education, we would be happy to do that. I'd be happy to answer any questions.  
[LR2CA]

SENATOR FRIEND: Thank you, Mr. Krumland. Any questions from committee members? Seeing none, thanks for the testimony. Any more proponents in support? Any opposition to this resolution? Any opponents? In neutral capacity? I think Mr. Erickson is here and he has waited patiently for the last...I told him 2 o'clock he might have some show time available. I apologize, Mr. Erickson, but he... [LR2CA]

NEAL ERICKSON: I was upstairs watching. I came down later, so. [LR2CA]

SENATOR FRIEND: Okay, good. Thank you. Welcome. This is neutral testimony.  
[LR2CA]

NEAL ERICKSON: Senator Friend, members of the committee, for the record my name is Neal Erickson. It's E-r-i-c-k-s-o-n, Deputy Secretary of State for Election, here on this resolution in a neutral capacity to answer questions that I think I guess you might have regarding the cost of elections. And I don't know what format you want to use with this, and I can give a general description of how we compute costs or what cost factors go in or... [LR2CA]

SENATOR FRIEND: Well, thank you, Mr. Erickson. I think I would like to maybe quickly open it up to questions from the committee if that would be a little easier format, Neal.  
[LR2CA]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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NEAL ERICKSON: That would be fine. [LR2CA]

SENATOR FRIEND: Senator Lathrop, did you have some points? [LR2CA]

SENATOR LATHROP: Sure. Can you just go through for us what the costs are of putting something on a ballot? [LR2CA]

NEAL ERICKSON: Okay. Well, probably the first large cost and the one that we see, and LB88 is a claims bill that has our major cost in it, is anytime you put a constitutional amendment or initiative on the ballot it's required by the constitution to be published in newspapers in the three consecutive weeks prior to the election. For a constitutional amendment that is placed on by the Legislature, a constitutional amendment is required to be published in at least one newspaper in each county in the three weeks prior. By statute, initiatives are required to be published in every newspaper three weeks prior to the election. By habit, for at least as long as I have been doing this, these papers are designated by the Governor. The Governor has designated all legal newspapers within the state for that publication. So, it's kind of hard to figure the cost of them because it's dependent on the length, it's a legal notice, so it's dependent on the length of the notice itself. This year we had a bill for \$1.2 million. The major portion of that was the referendum on LB126 that was approximately 85 pages long. [LR2CA]

SENATOR LATHROP: Yeah, we know. I mean, all three of the things that are sitting in the committee today are were on the ballot last time. Can you...are you able to break that out to tell us? Or maybe you can just give us an average for something like what we're talking about. [LR2CA]

NEAL ERICKSON: And this would be kind of an educated estimate on some of these things, like I said, just depending on the length of the provision. You know, if you're amending a larger or a longer constitutional section it may cost more, but I think as an average you're probably talking around \$50,000 per, to accomplish that publication. [LR2CA]

SENATOR LATHROP: Per resolution [LR2CA]

NEAL ERICKSON: Per resolution. [LR2CA]

SENATOR LATHROP Okay. Are there any other expenses associated with it from the Secretary of State's point of view or the state of Nebraska's point of view? [LR2CA]

NEAL ERICKSON: Well, the other item is, and this is why the counties for a long time have suggested that maybe the state should pay for some of the constitutional amendments that are out there, the way we bill elections is that we bill political

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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subdivisions based on an inches basis. It's prorated. We take the entire cost of the election; we figure out how much is a political subdivision. Let's say the ballot is 100 inches long. The city of Omaha is using 15 inches of that; they're paying 15 percent--0.15 of that cost. The one thing the counties do not recover is they don't recover for state offices, federal offices, or the constitutional amendments. So as you add more constitutional amendments on there, it reduces the amount of revenue they get back. If you added 15 inches of constitutional amendments, it takes that ballot from 100 to 115 inches. The city of Omaha is only going to be paying 15/115 as opposed to 15 percent. So there is a little bit of a factor there. You know, people...you know, through this discussion we've been asked, well, how much does it cost to add one constitutional amendment? Well, that's a tough one. But what if it forces a second page? You know, yeah, that's going to cost an additional probably about 30, 35 cents per voter. On the other hand, was it the constitutional amendment that caused the second page or was it the eight candidates in the public power district that caused the second page? So sometimes those are hard to distinguish. [LR2CA]

SENATOR LATHROP: Okay. [LR2CA]

SENATOR FRIEND: Neal, what if we eliminate the public power district? (Laugh) Never mind (inaudible). Are there any more...? I'm in a foul mood right now. [LR2CA]

NEAL ERICKSON: That's actually been a serious question sometimes. [LR2CA]

SENATOR FRIEND: Are there any more questions from committee...? I'm not in a foul mood; I'm just... [LR2CA]

SENATOR WHITE: Just all I can say, is heart failure across the lobby just occurred. (Laugh) [LR2CA]

SENATOR FRIEND: They have to...I've got a sense of humor. Okay, so, Neal, this is more an esoteric question. I mean, when you...do you think, from...and I know you're not...I don't want you to speak for John Gale or I guess, in general, ideologically, but, I mean, there's a huge...my view, and I think the committee is trying to sort some of this out, my view is there's a significant difference between given the voters on a ballot an initiative like gambling. I mean, something like that's black and white. You either want casino gambling or you don't, and if you're confused by that, then you better sort that out before you go into the voting booth. Now, we have three initiatives in this committee right now that we can all read, walk out of here, try to communicate to somebody else, and they're going to get confused by that. So what...I guess, what...I guess my question is then, the responsibility is different, wouldn't you say, for issues like that, depending on what we feel about them than it is for a slam dunk, like I've got one on a bicameral thing. I mean, that's not hard to figure out either. You either hate that or you like it. I guess I'd like your view on that. [LR2CA]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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NEAL ERICKSON: Well, if I understand what you're saying, Senator, certainly, and this is something within our office we've talked about is...and particularly with some of these constitutional amendments, they can be rather technical in nature. We don't do a particularly good job of educating the public. What we rely on is that newspaper, of that legal newspaper publication three times prior to the election. And just publishing the ballot statement and the text of it doesn't provide a whole lot of explanation. On the other hand, our hands are a little bit tied because, as a governmental body and one that's conducting elections, we're not...we walk a very fine line in terms of providing basic information and making sure it's not biased one way or the other because that's not our role. You know, we've kind of struggled with this. We do put out a pamphlet for initiatives; not for constitutional amendments the Legislature puts on, but for initiatives that provides the tax, provides the ballot language, and provides a very short argument, both pro and con. You know, does it get used extensively? Not as much as I would hope, but we do have that available on our Web site and we do produce them and distribute them to the counties. You know, could we do that for constitutional amendments? I suppose so. One thing we rely heavily on is there was a gentleman at the University in the Department of Ag, or the agricultural education, that would produce arguments for and against all these, and because it was in the University, had a little more leeway to go into a little more detail than we currently do. But, we certainly recognize that education on any of these issues, from a governmental standpoint is minimal at best, and we would certainly like to improve it somehow. We just don't have a real good idea on how to do that. [LR2CA]

SENATOR FRIEND: Thanks. And we see there any more questions right now for Neal. Thanks for waiting and coming down. I don't see any more questions, but we'll probably... [LR2CA]

NEAL ERICKSON: No problem. If you do have some questions, I mean I'm here as a resource so feel free to get in contact. [LR2CA]

SENATOR FRIEND: We may accost you later. Thank you. [LR2CA]

NEAL ERICKSON: Okay. Thanks. [LR2CA]

SENATOR FRIEND: Thanks for the testimony. [LR2CA]

SENATOR LATHROP: Appreciate it. [LR2CA]

SENATOR FRIEND: Any more neutral testimony? [LR2CA]

KEN BUNGER: Very briefly, Ken Bunger, 17445 Arbor Street. This year I'm not representing anyone on this issue; I did last year. There are a couple points... [LR2CA]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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SENATOR FRIEND: Ken, can you spell your last name again? Sorry. [LR2CA]

KEN BUNGER: B-u-n-g-e-r. [LR2CA]

SENATOR FRIEND: Thank you. [LR2CA]

KEN BUNGER: I'm an attorney, used to be a city attorney in Omaha that was heavily involved in tax increment financing, including Mr. Buffett's home. The reason that we did that was because it was under a different act. It was under the Redevelopment Act that the Legislature passed under the common name of the Micron act. We redefine blight and substandard by legislation to include broad economic interests of a city not being able to attract very large international or national businesses. It was obviously never challenged in court, so whether or not that could be done or not. I think the lesson from that though is when you tried to exercise it, just the very word blight and substandard doesn't really reflect what the municipality or, possibly if the bill passes, that the county was trying to do. So, if nothing else it would allow the Legislature to exercise their judgment to go back and redefine the community development act or pass an entirely different act, as many states have done, that would still have the ability to tap tax increment financing for urban development and redevelopment and economic development projects. Missouri has an interesting set of statutes. You have blight and substandard, you have economic development, you have historic preservation, all making use of tax increment financing, if you will, for different purposes. The reason that you can't do that as a Legislature is the constitutional prohibition that's in the constitution about allowing government to subsidize private works, if you will. This tax increment financing and the redevelopment authority in the constitution now is an exception to that rule. Many states' constitutions do not prohibit that broad government subsidization and leave it up to the legislatures to handle it. What we're trying to do, as well, and maybe I'm going beyond neutral here, but as part of this amendment as it is suggested is to remove that restriction to allow the Legislature to stay up with the times, keep up with your neighbors, if you will, and legislate in the area of economic development. As everyone knows, maybe it's not a good thing but economic development is a constant contest between adjoining states and in some cases around the world to get new headquarters, new industries, ethanol being a great example of a start-up industry that didn't exist a few years ago in any substantial degree. So the Legislature, at that level, could be very flexible every few years to provide those economic incentives that work or don't work. If you have a constitutional prohibition, that really ties, I think, the hands of the Legislature. Those are some, I think, facts that probably ought to be considered by the committee, as well. [LR2CA]

SENATOR FRIEND: Thank you, Mr. Bunger. Are there any questions from...? They're tired. [LR2CA]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Urban Affairs Committee  
February 06, 2007

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KEN BUNGER: Okay. Thank you. [LR2CA]

SENATOR FRIEND: Thank you, Mr. Bunger. Any more neutral testimony? Senator Rogert to close. [LR2CA]

SENATOR ROBERT: Very quickly. I want to thank everybody for their testimony today and your patience, and I know we are all ready to be get out of here. Just some notes that I took that I see there are reasons why that I brought this forward. And Mr. Schmit's comments on bending the rules to make things work is exactly why I picked this up because that's what we've been doing for a long time. If we're going to have a constitutional amendment that's supposed to be there as a remediation tool for nasty looking things in our communities and let's use it that way, I believe it can be used very effectively as an economic development tool, which is what we've been using it as anyway. So changing a little bit of language to create that is a good idea. The other portions of the bill that gives some clarity and some power back to the counties is probably a good idea beings we are changing the actual intent of the law, or the amendment. And I guess I will pledge myself to make sure that I keep these guys to their word that they're going to help educate people and get these things out. And I do appreciate Walt's comments and this may not be a bad idea--you know, lay it over. We've got a year and a half before it hits the ballot, and if it gets to the point a year from now where we don't think we're going to get it done, we get it off there. So with that I will stop talking and call it a day. [LR2CA]

SENATOR FRIEND: Thank you. Any questions for Senator Rogert? Seeing none, that will close the hearing on LR2CA and the hearings for the day. [LR2CA]

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Urban Affairs Committee  
February 06, 2007

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Disposition of Bills:

LB302 - Held in committee.

LR2CA - Advanced to General File, as amended.

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Chairperson

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Committee Clerk