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Urban Affairs Committee
October 26, 2011

[LR209]

The Committee on Urban Affairs met at 9:00 a.m. on Wednesday, October 26, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR209. Senators present: Amanda McGill, Chairperson; Colby Coash, Vice Chairperson; Tanya Cook; Paul Schumacher, and Jim Smith. Senators absent: Bob Krist and Brad Ashford.

SENATOR MCGILL: All right. I'm Senator Amanda McGill and welcome to the legislative resolution hearing on LR209. To my right is Senator Colby Coash from Lincoln; Laurie Holman, who is our research analyst; Paul Schumacher from Columbus; and then Jim Smith from Papillion. Thank you for joining us and this is a relatively normal process. We're not going to use the lights or anything and you don't need to fill out the forms. But coming out of this hearing, we do plan on looking at ways to...any ways to have a smoother and more holistic adoption of codes. So make sure if you aren't somebody that's been talking to Laurie in my office that you get in touch with her for further communication in the future. And then with that, we will have Laurie go ahead and open on this resolution. And please turn off your cell phones or silence them. Thank you.

[LR209]

LAURIE HOLMAN: (Exhibit 1) Good morning, Senator McGill and members of the committee. For the record, my name is Laurie Holman. That's spelled Holman and I'm here to introduce LR209. LR209 was introduced to study the various building codes utilized by the state of Nebraska including but not limited to the state building code, the plumbing code, the state electrical code, and the Nebraska energy code for the purpose of working towards the development of a consistent long-term policy for code adoption and enforcement in our state. Currently, only the state electrical code has a council or body of experts that oversees the adoption and enforcement of that code. No other state codes that we utilize have any sort of expertise that advises the Legislature during the adoption process. This resolution was drafted with several purposes. First was to

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Transcriber's Office
Rough Draft

Urban Affairs Committee
October 26, 2011

examine our current method of code adoption and amendment by political subdivisions. There are several people who will be testifying today regarding code adoption at the municipal level. There are representatives here from the cities of Lincoln and Omaha, as well as smaller cities and counties, who will be able to address the manner in which they deal with codes and inspection in their cities and to help us have a more clear understanding of how these things are addressed throughout our state. Second, we've been looking at other states' methods and policies on code adoption. I've contacted several states surrounding Nebraska and I'm working with the Legislative Research Office to obtain additional information and look at what policies and statutes are working for our neighbors. For example, Iowa has the most comprehensive building code adoption process. They have a...in the office of the fire marshal they have a building code commission with a commissioner who advises the legislature on their code adoption process, which is something that I think is working very well for them. I didn't bring all of that information today in an effort to save paper and not, you know, unload a whole lot of information on you this early in the morning. So if you want that information, I'd be happy to provide it for you. Third, our current method of code adoption in Nebraska and any potential issues with unconstitutional delegation of legislative authority that remains in statute was another issue that I've been working on. This was addressed originally last year in Senator Gloor's bill, LB546. And in working with the Revisor of Statutes Office there may still be some problematic language that we need to address based on the case law that we've been working with. Fourth, an important issue that we need to address is the compatibility of the International Energy Conservation Code and the International Residential Code. The question that's come out with respect to this issue is whether we would be in compliance with the requirements under the federal ARRA law and I passed out...I had a paper passed out. There are three requirements under ARRA that are listed about two-thirds of the way down the page. The first two we are in compliance with because we adopted the International Energy Code last year. And thanks to Senator Cook, we are now in compliance with two of those. The third one, which is...let me read it here so I don't misquote it: achieving 90 percent compliance in new and renovated residential and commercial building space by

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Transcriber's Office
Rough Draft

Urban Affairs Committee
October 26, 2011

the year 2017. That...in order to achieve that we have to be enforcing the correct code, and right now the International Residential Code has a Chapter 11 with energy compliance that does not...that would not meet that requirement. So we need to be focusing on enforcing the code that Senator Cook's bill adopted last year. The Energy Office is currently doing a study on that and their report will be issued in two to three months from now. But they are working to move forward with recommending the correct code that we need to enforce in the state. According to David Karmol, vice president of Federal and External Affairs for the International Code Council, he stated: The requirements of the 2009 IRC are less stringent than those in the 2009 IECC, which is the International Energy Code. If the Nebraska building officials enforce the IECC requirements, then the state should be able to reach the 90 percent compliance with the 2009 IECC that the Governor's letter pledged to reach. If they allow builders to comply with the less stringent requirements of Chapter 11 of the IRC, then it is unlikely that Nebraska will reach the 90 percent compliance with the 2009 IECC. Also according to the Nebraska Energy Office, the Chapter 11 that's currently in the IRC that doesn't meet the ARRA standards is probably not going to be included in the 2012 International Residential Code. So that's something that we could actually look at removing from the code, if the body chose to do so. The overall purpose of this interim study is the development of a consistent long-term policy for dealing with code adoption. And that's, hopefully, what will come out of this hearing. If you have any questions, I'd be happy to answer them, but the experts who are here to testify I'm sure will be able to do a far better job with that than I would. [LR209]

SENATOR MCGILL: Senator Schumacher. [LR209]

LAURIE HOLMAN: Yes. [LR209]

SENATOR SCHUMACHER: And I've just got one kind of question. Can you put in context for us, you know, you say we're in compliance. I assume that must be some...that rule...law that the Congress adopted under the commerce clause or

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

Urban Affairs Committee
October 26, 2011

because they tied it to some free money. [LR209]

LAURIE HOLMAN: Yes. [LR209]

SENATOR SCHUMACHER: And we promised, in exchange for free money, we would do something. [LR209]

LAURIE HOLMAN: Yes. [LR209]

SENATOR SCHUMACHER: How do we...I guess, if you can, give me just a little bit of an overview of how it is that we have to do anything under the international, whatever, code. [LR209]

LAURIE HOLMAN: The International Code is the code that was...that has the standard that is in the American Reinvestment Act that the Governor pledged we would meet those standards within eight years of receipt of the \$30 million that we got from the state...or from the federal government. The International Code is the one that has been chosen to be adopted throughout...well, throughout Nebraska, but most states in the country are doing so. It's not...if I understand your question right, it's not an international law. It's the International Code Council has created this body of codes and that's what we've chosen to adopt. And that's what the federal government is recommending our standards be raised to the most current edition, which is the 2009 edition, in order to be...as improving our energy efficiency levels throughout the state. [LR209]

SENATOR SCHUMACHER: So basically what happened, we took...we hooked ourselves on this deal by taking \$30 million of free money. [LR209]

LAURIE HOLMAN: Yes. [LR209]

SENATOR SCHUMACHER: And now we've got to do whatever we said we'd do to get

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

Urban Affairs Committee
October 26, 2011

\$30 million of free money. [LR209]

LAURIE HOLMAN: Yes. [LR209]

SENATOR SCHUMACHER: Okay. Thank you. [LR209]

LAURIE HOLMAN: You're welcome. Anyone else? [LR209]

SENATOR MCGILL: All right. Thanks, Laurie. [LR209]

LAURIE HOLMAN: Thank you. [LR209]

SENATOR MCGILL: Like she said, many...there are many issues that came out of the hearings last year on this sprinkler code and we had a lot of trouble figuring out what cities could or could not do or counties or local areas with the building codes. So this is our chance to figure out what the process is everywhere and to try to make a more uniform process. So with that, we hope to hear from as many people as possible in this room today. Hopefully, still concisely, so we're not listening to one person for 30 minutes. (Laugh) But to share thoughts and ideas with us on the current process and maybe how the process could be structured in a better way so that we as senators aren't picking apart the building code every year or two, and making decisions like we did on the sprinklers with other things that perhaps we're not as knowledgeable about. So with that, the floor is open. [LR209]

FRED HOKE: Good morning. [LR209]

SENATOR MCGILL: Good morning. [LR209]

FRED HOKE: (Exhibit 2) Senator McGill and committee members, I appreciate the opportunity to speak today about the codes that we are using in the city of Lincoln. And

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

Urban Affairs Committee
October 26, 2011

my name is Fred Hoke, H-o-k-e. I serve as the director of Building and Safety for the city and also the manager of the Development Services Center. And my testimony today is going to just describe the city's building codes and the adoption updating process. That will give you some background in terms of how Lincoln puts that process together. As you know, Lincoln has under its Home Rule Charter operated its own building code administration for over 40 years. The city of Lincoln implements and enforces its own building codes and it cannot go below the standards set by the state of Nebraska. The building codes help ensure the public's health, safety, and promotes the general welfare within the community. Each decision about what the building standard to adopt is a policy decision, one that brings with it costs and benefits that must be enacted by elected officials. Ultimately, it's a decision that's made by the city council and the mayor in the city of Lincoln. The city of Lincoln bases its code upon the bottom line requirements of state statute, regular code updates from the International Code Council, and the local building standard desires. The mayor through an executive order has created a task force for each of the codes; that would be electrical, fire, mechanical, building, so forth. The individuals who serve on that committee are representatives of their respective building industries which gives necessary credibility to the professional recommendations of each task force. Members are reappointed or replaced by the mayor as their terms expire. Section chiefs recommend replacement members to the director of Building and Safety and that is sent then to the mayor for approval or denial. Each task force is expected to consider feasibility, cost, and appropriateness for Lincoln's building codes with each potential code change. It's a time-consuming process. It takes anywhere from eight to twelve meetings and could last several months in deliberations over each of those code councils. The Code Study Committee also is appointed by the mayor through an executive order and it includes both building's industry representatives as well as at-large members. So we really have two groups of individuals, both appointed by the mayor. One group is a task force which represents the professionals in that particular section, and the other is a Code Study Committee that is a larger representation of at-large members, including some members of the section that is under adoption. So we get two opportunities to take a look at codes: one,

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

Urban Affairs Committee
October 26, 2011

the practitioners in the field who are using that particular section, that code; and those who represent a broader spectrum of the community who then take a look at their recommendations and ultimately make a final recommendation which is the final code that they're proposing to be adopted. There's a detailed record of the minutes of the meeting, the deliberations in the meetings. We want policymakers to be well aware of the conversations that went on in those Code Study Committees. And then once that is adopted, once the study committee adopts that, all of those code requirements go up to the city law department for codification, and then they go to the city council who holds a public hearing for each of the building codes for adoption, change, or amendment. Although this process is one of significant community and industry involvement, it does not formulate code or code policy. The city council and the mayor still must act and put into place any policy decisions. So that's one of the points I want to make today. The folks who serve on these Code Study Committees do not make policy, which is in line with the state law. Elected officials are the ones who assure that that becomes the proper code through the city council and the mayor. We believe that the present local approach to adopting code changes is a strong example of why local control makes good sense. People affected by these policies are involved directly in proposing the policies. Costs benefits and opportunities of new building codes are widely discussed, analyzed, and recommended in a manner that assures all voices are heard and that policymakers will act. You have, in front of you, a copy of my comments. I condensed those in the interest of time. But I have with us four of our chief inspectors. Bob Siemsen is here, who is a chief plumbing inspector. He's also the past president of the International Plumbing Association organization. Ed Bergstraesser is the chief electrical inspector and also was elected in 2003 by the Governor to serve as a member of the State Electrical Board. Mel Goddard is here, he is the chief building inspector for Lincoln; and Merle Scott, chief mechanical inspector, and would be open to any questions that you might have for me or them. [LR209]

SENATOR MCGILL: Questions from the committee? I have a couple. You know, the reason we're here is that the state used to just automatically adopt the state building

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

Urban Affairs Committee
October 26, 2011

code. And now we as legislators have to vote on it. We're now the elected officials on this level. And so my big concern is that we don't have a task force or commission advising us on what should or should not be in the state code. I don't want to take local control away in terms of adding to the code, things like that. But do you think it seems reasonable that we should have some sort of commission or task force that's helping us even pass that basic state code? Or is that just doubling up on all the work? [LR209]

FRED HOKE: I guess I would recommend that whatever you do, you're getting lots of input from all of the cities of all sizes throughout the state. Obviously, I can speak for Lincoln. We have a process that's worked for over 40 years. Everything is vetted completely. We involve the industry and we involve private citizens. Every code change requires some outlay of money and it has an economic impact. Obviously, we want to be sure that every citizen in this state is safe, that any code is put in place to assure their safety. But all of those new codes that come along have an economic impact. Sometimes the makers of the product are the ones who are most inclined to want to be behind that. And I think as you representing the state of Nebraska, I would hope that you would get as much input as possible from as broad a range of individuals as possible. Look at the economic impact and what we're trying to do in the community and in the state in order to further development, commercial and residential, and at the same time, balance that with what's prudent in terms of public safety. [LR209]

SENATOR MCGILL: My other question was, just how often it is that on the local level then they decide, the mayor, city council, everybody decide to add to the state building code. Is that something that regularly happens? [LR209]

FRED HOKE: It's on a cycle, normally a three-year cycle, and each of the codes go through that vetting with that task force and the study committee. [LR209]

SENATOR MCGILL: Okay. Yeah, but like your testimony said, the state...or the code is the minimum, but do you actually add into it much? [LR209]

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

Urban Affairs Committee
October 26, 2011

FRED HOKE: We can go beyond that. Yes, yes. [LR209]

SENATOR MCGILL: Yeah, I'm just curious to know how much it changes. [LR209]

FRED HOKE: If you're asking for specific examples, I'm sure our section chiefs could give you that. But, yes, we do have the latitude to go beyond it. We cannot go below it. [LR209]

SENATOR MCGILL: Okay. [LR209]

FRED HOKE: Correct. [LR209]

SENATOR MCGILL: All right, thank you very much. Senator Coash has a question now. [LR209]

SENATOR COASH: Thank you, Mr. Hoke. I want to follow up on Senator McGill's question. In your experience, is it a...when Lincoln decides to go to a higher standard with one of these codes, do you find that to be kind of the exception or the norm, or do you find that typically the city will adopt the minimum standard or...? I'm trying to get a sense of how frequent municipalities, Lincoln, for example, tends to go above the state minimum that we pass here as opposed to saying the bar has been raised by the Legislature, we'll just raise it that far and not go any further. [LR209]

FRED HOKE: Any standard is a minimum. There would have to be compelling reasons to go beyond what the minimum would be. It would be something that our task force or our section chiefs have taken a look at and felt that it was necessary to go beyond that. I would suggest, however, that we always have a juxtaposition with the Home Builders Association and some of the trade associations in the community who immediately want to know what the economic impact of that is going to be. And as you know, commercial

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

Urban Affairs Committee
October 26, 2011

building, in Lincoln at least, is doing quite well. Residential is not. Other than apartment units, the...we are not seeing a lot of growth in single family homes in Lincoln. So anything that we would put that goes beyond the minimum code has a consequence that we need to consider when we do that. [LR209]

SENATOR COASH: Yeah, but in general, do you raise the standard locally more often than not or do you typically...? [LR209]

FRED HOKE: Probably less often than not. [LR209]

SENATOR COASH: Okay, that's what I was trying to figure out. Thank you. [LR209]

SENATOR MCGILL: All right. Well, thank you. [LR209]

FRED HOKE: Thank you. [LR209]

SENATOR MCGILL: Senator Cook has joined us from Omaha. Thank you, Senator. And next testifier. [LR209]

MIKE DENNIS: I'm Mike Dennis from the Real Estate Owners and Managers Association. I'm president. The organization has been around for 44 years. We specialize in safe, clean, affordable housing for everybody. The point that I would like to make today is that I do not encourage additional regulation. Actually, it becomes sometimes more encumbered if there is a good program in place. However, we do have glitches in the city of Lincoln that prevent us probably from doing as much as we could do. We recently passed the International Maintenance Code. Somehow this was developed for all property in the city of Lincoln. It was by choice, enforced only in residential property. So, you know, we had the fire at the XXX building at 10th and O. Personally I believe that we probably could do a better job of inspecting commercial structures. We continue to see a decline in maintenance on commercial buildings due to

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

Urban Affairs Committee
October 26, 2011

the fact that they did not adopt this code for everybody as it was written. And we need to probably do better, but I think as a whole this community does a very good job with building and safety. Obviously, our organization receives inspections at least once a year on everything we own and sometimes more often. We work hand-in-glove with Building and Safety. I'm a longtime friend. I'm also past state chair of the American Society for Quality in the state of Nebraska and have served on various federal committees to develop rules, regulations, and I served as a liaison on various circumstances and we continue to move quickly when needed. However, I do think that, you know, I appreciate the work you did on the fire sprinklers. And the reason I say that I appreciate it, typically the residential units were probably kind of sidelined for now and commercial units have a little higher standard now, and, you know, sororities and fraternities will be sprinkled. That's wonderful. Thank you. So there is something to be said for everything we do. And what I would like to do though, is to encourage everybody here to be sure you have...if you set this committee up, to have a wonderful representation from not only the trades but from the industry, which is going to pick up the cost, I guess, is what I'm saying. And we're always concerned about costs. And did you know, I bought two hot water heaters about three weeks ago and the city of Lincoln requires that we have a licensed plumber install hot water heaters. The cost was \$750 per hot water heater. This week there was one that we needed but not quite so quickly. It could be put on a list and the plumber could pick it up within a few days. That hot water heater cost \$650. But I have a question. I think that most of us could probably benefit from having a system that would permit us to take a permit out to have it inspected and install a hot water heater by a person that has experience to the point of dealing with things safely. And, you know, sometimes it's a little hard to purchase the plumber's expertise. And I know that certainly in the city it would encourage taking permits when a hot water heater is installed. If the average homeowner, the average person could go down and say, hey, we're going to take out a permit and we're going to install a hot water heater; I'm going to have it inspected. So, you know, there's good things and bad things, and I'd like to thank you for taking time for this, and if there are any questions I will try to answer. [LR209]

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

Urban Affairs Committee
October 26, 2011

SENATOR MCGILL: Any questions? Senator Schumacher. [LR209]

SENATOR SCHUMACHER: How do you see the diversity of the state really? I mean, you talked about \$750 to install a water heater which that would pretty much blow the stack off of anybody west of Highway 81 for sure,... [LR209]

MIKE DENNIS: Yes. [LR209]

SENATOR SCHUMACHER: ...where they will just go out and connect the 220 and connect the pipe and they've got a water heater going. [LR209]

MIKE DENNIS: Yes. [LR209]

SENATOR SCHUMACHER: So how do we deal with the fact that we, you know, we've got higher standards that probably are needed when you have dense populations like in Lincoln or Omaha, and really we're, you know, the rancher or the farmer knows how to cut a pipe and knows how to thread it in and connect 220 to it. How do we reconcile those two worlds? [LR209]

MIKE DENNIS: It's very difficult. And the point is that it is not a matter of wanting to do the wrong thing, it is a matter, particularly with a hot water heater. Nobody wants to get up to a cold shower. So, consequently, it's pretty likely that the...my better half would suggest that I call a plumber and get somebody to take care of it. But out in the rest of the outstate Nebraska, I suspect that they may take a trip to the local supply house, get them a hot water heater, and get it installed shortly. While I do not support doing it with safety issues not being addressed, I do support having the ability to take out a permit and having the village, if indeed, or the city, if indeed they have plumbing inspectors, to inspect it. And, you know, that's the other side of this one. We're probably most aware of Lincoln and Omaha, Grand Island, Kearney, the bigger cities where the codes would

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

Urban Affairs Committee
October 26, 2011

be enforced, and so we need to try to include them if indeed we look at things like this. And certainly, you know, we've come a long ways, I guess, that we no longer draw back gray low water septic drainage into the local creek or drainage area, so, you know, we're coming along, but we could do better. And yet, as I say, that everybody in the city of Lincoln can indeed benefit from cost savings and also perhaps getting things done rather quickly. Sometimes it's a little bit difficult to get hot water heaters installed on football weekend, Super Bowl weekend, and things of this nature. Thank you very much, and if there's any other questions, I'll try to answer. [LR209]

SENATOR SCHUMACHER: Thank you. [LR209]

SENATOR MCGILL: I don't see any. Thank you very much for coming. [LR209]

MIKE DURST: (Exhibit 3) Senator McGill, committee. Mike Durst, I guess representing Mike Durst. I come here to kind of discuss some of the four initial questions that were asked on this LR209. And, of course, I was a...worked in the Building Division for 20 years. I was an inspector and a codes enforcer so I understand where codes are made and how they're designed. I also served as State Fire Marshal for eight years, so I developed a lot of codes and passed a lot of codes. And the two things that we have to look at and when it comes to safety codes is we've got two different groups, the ICC on one side and we've got the NFPA on the other side. And depending on what state you're in and where you're at, you're going to enforce different ones. Of course a lot of the fire officials are more inclined to go with the NFPA, which is the National Fire Protection Association, and a lot of codes officials are more apt to go towards the ICC, which is developed as a more codes-oriented group. And if you look across the United States, there's a whole lot more building officials than there are fire officials, so you're going to see the ICC probably being adopted a little more. As we look at the newer model codes, and I put this in my testimony, they're adopted on all levels and I think Mr. Hoke made a good example of how they do it in Lincoln. It's done that way on most...you know, on most officials. In the state of Nebraska the same thing is done. If

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

Urban Affairs Committee
October 26, 2011

you want to...they adopt the Life Safety Code and then they adopt a lot of the codes that go with it, 133 different codes. I don't think you want them all up here going one by one. It goes anything on how to install a new tent, how to install a tank, how to inspect propane. It goes on and on, 133 codes. And any city can actually adopt...they can be more stringent, but they have to at least come up to the Life Safety Code which we have. Presently they're using the 2000 Life Safety Code. And the Nebraska State Building Code, according to their Web page is using the 2003--and once again we're in 2011. So a little bit behind there. Cities can be more restrictive, of course, and they can be less. Most city and building officials use various years and editions of international plumbing, housing, electrical codes, whatever they feel their city needs. To change this, a lot of times on a state level especially, you'll have an interested group come in whether it be the propane people or the anhydrous people, they'll come in and say, you're in the '96 code. We've had a lot of technology since then. We have different shutoffs, we have different things we need to do. We need to move to a newer code. You're call this user committee together. They'll sit down and go through the whole code and then they're all adopted under rules and regs in the State Fire Marshal's Office. The initial state Life Safety Code back in probably the '70s or '80s was adopted by the state. Any updates have been adopted through rules and regulations in the Fire Marshal's Office where...set up by a committee such as yourself, sits there and you can bring up anything you want, things that you don't like, things that you want to amend. Of course, when you start amending things in a code, that's something we have to think about when we start amending, especially the life safety provisions in the code. When you start amending those, all of a sudden you become responsible and liable. And I wouldn't want to take anything, any life safety parts out of a code because all of a sudden if we have a fire and we as a group decided that there was something we wanted to take out of the code and waive it, all of a sudden you're going to have an attorney sitting there saying, the smartest people in the world sit down and they developed this code, it's been adopted in 26 or 27 states; how is it that a small group either in Lincoln, Omaha, or any other city or the state feels that you can amend this and take the life safety portions out of it? So that was one thing that I would not recommend anybody does.

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

Urban Affairs Committee
October 26, 2011

Number two on the list was, I just made a short call to some other states and most of them are home rule states. You can see Colorado, Missouri, Kansas, and Iowa are all home rule states. They adopt their own as Mr. Hoke said. They do a very good job of doing it. Wyoming, of course, has their....there's a brief summary of what they do, Montana, North Dakota, and South Dakota. Utah, I worked in that area for a while and they have a state building advisory code, a state building fire prevention code. But they sit down and figure out what the code is going to be; everybody has to go by it. So there's some different ways that they work. And one thing we have to remember, it's all codes are minimum codes, and they're developed by national committees made up of private industry as well as codes officials, and they...it takes a lot of time. If you want to put something into a code, it's going to take you two or three years. If it's a life safety item, you have to have four or five people die before they'll adopt it. And the other thing we need to remember is architectural codes. Architects are probably ten years ahead of building plans. And I worked in the plans division...or not in the plans division but in the fire division with the city when they first came...an architect came in with an atrium. And we had no idea of what to do with it because it wasn't covered in the Life Safety Code and it wasn't covered in the uniform codes. And we had to go back and look at it and more or less put together a performance code on how to build it. The same thing goes for the first Walmart that was a super Walmart. Did not apply to any codes. You couldn't have that much square footage in a mercantile in Lincoln, Nebraska, and we had to write a waiver because of new technology that has come in that will protect a building that size. And now you see them getting bigger and bigger, the big box stores and the Walmarts. But you have to remember, you have to update these codes because of technology and what people want to do, and it's something needs to be done. I believe that it needs to be done on a local level. The state could have some minimum codes but for every locale to come in here to the state Legislature and say, I want to do this, or I want this admitted, I think you're going up a slippery slope. A good way...we talked about committees here and I believe that would be something to get anytime you have somebody come in, is to get a round table. This is probably not the best forum of interested individuals, the people who have to enforce the code, the people who want to

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

Urban Affairs Committee
October 26, 2011

change the code, and sit down as a group and discuss it like they do on a city level. So bearing that, we started looking at the last two items on there. I'm not real sure. I looked at Clemens v. Harvey. It had something to do with discrimination. I just shook my head on that. And normally on the ICC codes when they were discussing it and our legal counsel said that, the ICC...and I was on an ICC, a member for years and a member of a Life Safety Code committee for years, and normally if you've got two codes and they're the same year of the code, they're going to try and get them together. If it's not done this year on the two codes, probably next year it will because people complained about it. But normally that's why when you adopt a set of codes you try to get the same year so they'll all be compatible. And with that, I'll entertain any questions. [LR209]

SENATOR MCGILL: Questions? Senator Schumacher. [LR209]

SENATOR SCHUMACHER: You cited that there could be liability if a city tinkers with the code. Do you have any specific examples for us where cities were held liable because they've tinkered with the codes? [LR209]

MIKE DURST: We can...I could probably...I don't have any with me today but it's happened on several occasions. And when you start dealing into it, all of a sudden you know you have a group of attorneys; they're just waiting for an opportunity like that. And that's what I would think about when I did...if I was going to waive an option, and I did, I waived the option to have bigger stores, we figured in modern technology, but... [LR209]

SENATOR SCHUMACHER: If you could produce when you get the chance... [LR209]

MIKE DURST: Okay. [LR209]

SENATOR SCHUMACHER: ...you know, half a dozen or so examples of where cities were held liable for...or building inspectors held liable for tinkering with the code. I'd be curious to see those. [LR209]

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Transcriber's Office
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Urban Affairs Committee
October 26, 2011

MIKE DURST: Okay. [LR209]

SENATOR SCHUMACHER: Thank you. [LR209]

MIKE DURST: We'll get something out to you. Anything else? [LR209]

SENATOR MCGILL: Well, I have a quick question. You said that oftentimes...well, first of all there are a bunch of codes that we don't necessarily address on our level but local municipalities choose to adopt. And then when we do see...have hearings and pass codes it's often because of some sort of interest group wants an updated code on the state level. At what point...why do they not just go to the...are they not content with the local decisions being made on those codes? Why do they even come to the state? Do we need the state to be passing certain building codes? How do we differentiate that? [LR209]

MIKE DURST: Well, that's a tough decision there. I mean, on...there's six major cities or seven that actually go by the Fire Marshal's regulations. And the rest of them, if you have a building department, they adopt the building code, but some cities don't even have them. And as to whether they come here for advice is up to the person that's interested in it. But when you stick with an older code, the problem you run into is that on a 2000 code you call up and say, I'd like to buy one. Well, they're no longer in publication. So it's always good to move into newer codes because a lot of the older codes they...you know they make a bunch of them when they make them, but then after a period of years they quit publishing them. [LR209]

SENATOR MCGILL: So is it fair to say that essentially we're then passing the codes for all those areas besides the six or seven major cities? [LR209]

MIKE DURST: Yeah. [LR209]

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Transcriber's Office
Rough Draft

Urban Affairs Committee
October 26, 2011

SENATOR MCGILL: So that's...I would think that that's where the majority of our energy, our thoughts should go, knowing that Omaha and Lincoln, Norfolk probably, Grand Island have the ability to... [LR209]

MIKE DURST: Bellevue, Beatrice. [LR209]

SENATOR MCGILL: ...to dive deeper themselves. [LR209]

MIKE DURST: Yeah. [LR209]

SENATOR MCGILL: Okay. That's helpful to me. Senator Schumacher. [LR209]

SENATOR SCHUMACHER: Well, then a follow-up off of that. So if we're passing codes for the rest of the state rather than the ten or so big communities, who enforces these codes in a town of 300 people in western Nebraska? [LR209]

MIKE DURST: You're probably going to get the State Fire Marshal. [LR209]

SENATOR SCHUMACHER: Does the State Fire Marshal routinely inspect new construction? [LR209]

MIKE DURST: They do. You need to submit plans for new construction...not houses. They don't do any houses. They're out of housing altogether. But they...you submit plans for any commercial building to the Fire Marshal's Office. They review the plans and send them back to you, and then they do an inspection upon completion. [LR209]

SENATOR SCHUMACHER: So houses aren't...no inspection plan. Farms, ranches, no inspection plan. Are we just in an academic exercise here? [LR209]

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Transcriber's Office
Rough Draft

Urban Affairs Committee
October 26, 2011

MIKE DURST: More than likely, yeah. [LR209]

SENATOR SCHUMACHER: All right. That's what I thought. [LR209]

MIKE DURST: Hey, we're in the west. [LR209]

SENATOR MCGILL: Any other questions? Well, thank you very much for sharing your expertise. [LR209]

MIKE DURST: Thank you. [LR209]

JAY DAVIS: Good morning, Senator McGill and members of the Urban Affairs council. My name is Jay Davis. I'm the chief building inspector for the city of Omaha. I've been with the city of Omaha for 15 years, the last 12 of those I've been the chief building inspector. Prior to that I got to dabble in design with a few architectural firms and have been working in codes for an awful long time. I had notes put together this morning. I just threw them all out the window. We're going to kind of start simple here. Our process as far as Omaha and adoption is very similar to Lincoln. We do it by committee. We do it on a six-year cycle versus a three-year cycle. And we choose for the building codes, in particular, to use the International Building Code series, the International Residential Code. But I kind of want...and there's some bigger horses behind me by the way that have a much deeper understanding of the code process and the development, but I want to kind of touch a little bit on where we stand today. In 2000, the first published code of the International Code Council came out, and what they did was they took all the bodies that we've worked with across the country, which at one time there were three to five, and I think there was actually five at one time, and brought them all into one unified code system. What they did was they created a building code for commercial; a building code for residential; and then they put a whole series of codes with that, the mechanical code; the electrical code is really one that's kind of stayed separate to a point; the plumbing codes, and different codes so that if you went in and

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

Urban Affairs Committee
October 26, 2011

adopted one whole body of codes, then you could use that, theoretically, with minor amendments for your local conditions. The problem that we have, or the problem that I see is simply, and it was just brought up a minute ago, is if we adopt this body of codes and we make amendments to those body of codes, in Omaha, Lincoln, Grand Island, Hastings, Kearney, all the cities that have jurisdictions, it's very easy because we have inspectors who inspect that work. Those inspectors are trained in the code and have an understanding of the code so that when they go out we're working with the contractors, hopefully as a team, although sometimes I don't think contractors would agree with that, but we work as a team to get the project done in a very effective and cost-efficient manner, and still keeping in mind that public safety is the most important part of what we do. Whether it's our code or whether it's the Fire Marshal's code, our whole goal is to get down to where any structure that you live, work, or play in is really safe to be there. I like to sleep at night. I don't like to think about something I may have made a decision on in the field that could affect somebody's life. That's just not what our job is about. We try not to do that. So what happens is, if the state adopts, let's say in this case the 2009 IRC, we know that the state made an amendment to that code for the sprinkler system. As Mike just alluded to, that's a slippery slope because if something happens, which fortunately in Nebraska, in general, we've been very lucky and very good. We haven't had anything like that happen that's been caused, at least that I know of, by something that a building official did wrong. So in this case we've adopted the 2009. I obviously understand why the people wanted the sprinkler system out, and quite honestly, I'm glad it kind of happened here, so when we adopt 2012 in Omaha I have a different way to approach it. But part of that requires in the code, as it has been for years, that there's an alternative method created to make up for at least some of the security you're losing. And if a good attorney gets hold of that, if that happens, Mike's right, he's going to say, what we're you guys thinking? Why did you make this house less safe than it should have been by the minimum code standard? So it is a very dangerous slope. My own opinion is...and actually Rick Cunningham who is our director, and actually I'm assisting Rick kind of right now while we wait for a superintendent, has suggested if need be I know that the city of Omaha would certainly volunteer to work on a committee to help

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

Urban Affairs Committee
October 26, 2011

overview codes as we go forward. But again, that oversight and that understanding has to come from the entire community. We have to have building officials. We have to have code inspectors. We have to have fire people, and we have to have people from the building community. The one thing that we hear constantly, and I think every building official sitting behind me right now would agree with this, that we always hear it's all about money. But you know what? I watch people trip over dollars to pick up a dime on a daily basis. And as long as they're doing that, they're only thinking of one thing: You know, how can I do this cheaper and still meet the minimum code? Well, keeping in mind it's a minimum code, but when my inspectors go out and they can't even meet the minimum code, then we get a little nervous in our job. If we were to try to do this statewide, the Electrical Division is really one that has, other than the State Fire Marshal, has people who go out on a daily basis and do inspections throughout the state. If you want to truly enforce the code, which is a major part of what codes are about, then you would have to have, most likely, a building department who would have inspectors across the state to do the same thing. A difficult task, difficult times. We understand. Even in Omaha we're suffering right now with the inability to get...because our building is down and we're semi-funded by our building, we don't have the ability to add the inspectors necessarily that we need. We're asking our inspectors up there to do more and more for less and less. The good thing is, at least in Omaha, I'll speak for myself and my group, we have as far as I'm concerned, the best inspectors in the state. I'm probably getting some looks from behind but that's the way I feel. I think that given the circumstances that we work with on a daily basis, and the builders that we work with, we do an excellent job. And that's true of everybody out here. Don't get me wrong, the guys behind me, we're kind of friends in a roundabout way, but it's true. We all have to deal with it some day, and we all catch the same heat whether it's from a councilman, whether it's from the mayor, whether it's from, you know, senators or whatever. You're catching the heat, we catch the heat back--why are we doing this, why should we do this? So to cut it a little bit short, I think that if you want to proceed to adopt state code, which is...that's not wrong, there's actually provisions for that. And if you want to make amendments to the code, then you're right, you need to have a committee of people

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Transcriber's Office
Rough Draft

Urban Affairs Committee
October 26, 2011

who actually understand how the codes are written. You know, my wife reads novels, and I read code books. There's something fundamentally wrong with that according to my wife. [LR209]

SENATOR MCGILL: True. (Laugh) [LR209]

JAY DAVIS: Yes. But to me, you know putting buildings together and the safety aspect of what I do is more important really than reading a novel. I'll have time down the road to read novels, I'm sure. Well, never say that, but I'm hoping down the road to read novels. So with that being said, if you have any additional questions I'd certainly be happy to answer them for you. [LR209]

SENATOR MCGILL: Any questions? Senator Schumacher. [LR209]

SENATOR SCHUMACHER: When we took the requirement for sprinkler systems out of the code, one thing, the sprinkler systems weren't required, if I remember right, in that code for the most dangerous of all residences and that's the mobile homes and modular homes and things like that. I mean, why not? [LR209]

JAY DAVIS: That's a really tough question, and it's only a tough question because there's some people who will tell you that how the sprinkler system ended up in the residential code is flawed anyway. That's a series of accusatory remarks that I really don't have factual data for. What I can say is that what we're starting to see happen is the materials that we now use to construct a single family residence, and commercial buildings for that matter, although commercial has had fire sprinkler for years. It's not something new. It's been since actually the '70s or '80s when I actually first came in. But the materials that we use to construct homes now are different. We don't have the luxury of going to a lumberyard and buying a 2x12 anymore. We have to buy...a lot of builders choose to use an engineered product. We call them I-joists. They're actually nothing more than a piece of three-eighths-inch OS board between two pieces of 2x2

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

Urban Affairs Committee
October 26, 2011

lumber, kind of. I mean that's just putting it in...but what's happened is, they've discovered during burn tests...in Chicago, fire has done a lot of tests on this, that people in the building, if a fire starts in the basement and that's not protected, people in that structure have about 8 minutes to get out. Under the commercial code we try to keep everybody for 20 minutes minimum. We prefer an hour, but 20 minutes are minimum. So they put the fire sprinkler in to say, look, if a fire starts in the basement, hopefully it will put that out or it should put that out if it's designed properly and installed properly before it has a chance to get to that structure and cause it to collapse or fail. There are trade-offs for that. You know, if we don't put a sprinkler system in, okay, let's go back and get that 20 minutes we were just talking about in a commercial building, which we do with drywall products, insulation products. There's many ways to make a trade-off assembly. Is that going to protect the contents of the structure? No. The sprinkler system will take care of the contents of the structure, but we're looking at the safety of the individuals who are in the home, and quite honestly, the safety of the firefighters who enter the home afterwards. You know, if they're not aware of the construction type and all of a sudden they go in and that floor is not there any longer, they don't know that until they hit the front door. So it's not just a matter of the individuals who is our first concern, the unprotected people, it's also the firefighters who while they're protected with their gear and water and anything they got to go in there with, if that structure is not there and stands a potential for collapse, it's a very dangerous situation for everybody involved. You know, we have that happen in older houses, surprisingly. And unfortunately in Omaha, we've had several deaths in older homes. The one thing that we've discovered is that most of the time the house still stands. The old wood was wonderful. It took longer to burn. It's terrible to try to cut. You can't do anything with it. The unfortunate part is that sometimes when a fire kills somebody, it's because of what's in the house. You know, what do they have for furniture, what do they have for things on the wall? And most fires, obviously, or unfortunately, start with overloaded electrical circuits or candles. Candles are a huge problem in the industry. But we can't control that. So the point we can control is, how do we build the structure to help protect the individuals on the inside, so. [LR209]

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

Urban Affairs Committee
October 26, 2011

SENATOR SCHUMACHER: Thank you. [LR209]

SENATOR MCGILL: Other questions? Well, thank you very much. I know last year I did vote to remove the sprinkler systems from the code but I felt very uncomfortable without us having expertise at our level, so thank you very much. [LR209]

JAY DAVIS: You bet. Thank you. [LR209]

BILL SCHWEITZER: Good morning. [LR209]

SENATOR MCGILL: Good morning. [LR209]

BILL SCHWEITZER: My name is Bill Schweitzer. I'm a north-central regional manager for the International Association of Plumbing and Mechanical Officials. I take care of four states, Nebraska being one of them, Iowa, Missouri, and Kansas. The codes that you're looking at trying to adopt, should be, and I'm not talking just cities--statewide. One of the problems that we found in Iowa was that everybody outside the jurisdiction, anybody can do the work. Doesn't matter if you're licensed, doesn't matter if you know anything. And the person paying the price for that is the consumer, the people that vote you into office. Those people are paying twice because they have somebody come by and say, oh, yeah, I'm a plumber, I'm mechanical, I can do electrical work. They come out and do this work and they do it wrong, it still doesn't work, so they finally hire a contractor to come out and he does it right. Now they've paid for it twice. And that's the reason why the state of Iowa passed their state licensing law and their codes. And the State Fire Marshal's Office, they have...they take care of the building code, but the state plumbing and mechanical board and the state electrical board do the plumbing, mechanical, and electrical for the state of Iowa. And that is basically set up as the committee members on that determine what codes to be used because they have the experts out in the field, they have contractors, they have journeymen, they have

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

Urban Affairs Committee
October 26, 2011

masters. It's through the health department. Everybody that they have on that board are experts in their field so that they know what takes place, what goes on, and what should happen. Now it was mentioned that somebody had to pay \$750 to have a water heater installed. I only ask you one thing: Go on the Internet and just type in water heater explosions. That's all you have to do and you will see why that they should be done by licensed contractors. But most cities that I work with make an amendment that says a homeowner that owns his home and lives in it can do anything in their home that they wish provided they get permits to do it, which is fair game. That's not a problem. It's just getting the permits to do it to make sure it's done properly, because a water heater in your house is like having two pounds of dynamite. If it's not installed properly it definitely will kill you. The Fremont, Kearney, Grand Island, Lincoln, Omaha, all of these people have codes that are adopted and are enforced, and your code is only as good as the enforcement behind it. Right now, the state of Nebraska has the 1993 ANSI 840 code based off of the Uniform Plumbing Code. That is your plumbing code for the state of Nebraska. I tried to get that updated here a few months ago. That kind of just fell by the wayside. We tried to just update the 2009 UPC, which to be real truthful with you, doesn't mean anything. You have the code on statute but nobody is inspecting, nobody is enforcing, nobody is doing anything. So what good is it? If you decide to go with codes, then you need to look at going with state inspectors. That's what Iowa is doing. They've got state electrical inspectors that anything that is done is inspected. And there is no work that is required a permit in the state of Iowa to any plumbing, mechanical, electrical work, you have to be licensed to do that. You can't have, oh, yeah, John down here, he knows how to do this work, I'll just have him come up and do it and then you're the one that ends up paying for it. I mean, if you...and I know all of you have probably been in that situation before with things happening, improper installations. I've got a young man in Lawrence, Kansas, that is blind, 60 percent deaf, doesn't speak and walk very well because of a mistake a plumber made and he didn't get inspections done. He also wasn't licensed in the installation that he was doing for medical gas. And that's one thing about the Uniform Plumbing Code, it has all those provisions and as the Fire Marshal said, they work with NFPA, our codes are pretty much based off of NFPA. We

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Transcriber's Office
Rough Draft

Urban Affairs Committee
October 26, 2011

work with NFPA constantly making sure everything is dated properly and everything is in agreement with what they're doing. And we have the medical gas in our code. It's very...actually it's more stringent than NFPA is but we require permits. So anything that's been done has to be inspected. All documentation has to be given to the city or whoever is issuing the permit in the occupancy permit. Before they can move into that building they have to have all that documentation on board. But it's important to have codes. I mean, I've got some people south of Wichita outside the jurisdiction, brand new home built. Had a housewarming party, had several people over. They're all out on the deck enjoying the home. The deck collapsed. Killed one, injured several others. And it's...I mean, this happens because it wasn't properly installed. And it's not that your contractors are bad contractors. You've got a lot of contractors out there that are really good but you've got a lot of contractors out there that maybe haven't looked at a code book for the last 20 years, or they were taught how to do this and maybe they were taught wrong. Same way with plumbers, electricians. I mean, it all depends on how they do it, especially small communities. I mean, small communities everybody is a contractor. And how many contractors do you have when you have a hailstorm? Everybody is a roofer, right? And you end up paying a price for that. That's why codes are so important and it's there to protect the consumer and to make sure that they do things properly. The state of Kansas has passed legislation, I think it's what you have, that no city can require sprinklers to be installed. You can put them in if you want. And that's where that was at in the International Building Code was in the appendices before they moved it up to the body of the code. So you had that choice. You could put them in or not. Now you don't have that choice. It's in the code, unless there's legislative moves to say you can't do that. So those are some of the things that I look at. I'm also working with Missouri on state licensing and state codes, and the same thing will be coming up in Kansas. But South Dakota, North Dakota--statewide codes. Uniform codes are adopted there. Wyoming and Idaho, same thing. So it's...you know it's an up and coming thing. Everybody is doing this because they know that they need that protection out there. We don't have it. We don't have it here in Nebraska. We don't have it in Kansas. We don't have it in Missouri. And if you go to the Lake of the Ozarks, don't get

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Transcriber's Office
Rough Draft

Urban Affairs Committee
October 26, 2011

in the water because it's contaminated. (Laughter) [LR209]

SENATOR MCGILL: And just for...to note for everyone, a week from Friday we're going to talk more specifically about the plumbing code as well in that piece of legislation that is before us. But are there any questions for Bill? Thank you very much for coming today. [LR209]

BILL SCHWEITZER: Thank you. [LR209]

JOHN JOHNSON: Good morning. [LR209]

SENATOR MCGILL: Good morning. [LR209]

JOHN JOHNSON: (Exhibit 4) My name is John Johnson and I am the planner and zoning administrator for Pierce and Madison Counties and I also do four second-class cities in Madison County and a village. And I'm the immediate past president of the NACO planning and zoning affiliate and also currently a vice president for Nebraska Planning and Zoning Association. And talking with NACO they felt that there would be some type of outstate representation and I know that there's been several questions about that. And I've passed out, not so much a transcript of what I'm going to tell you, but basically some bullet points and things that I think you'll find important. First of all, just some facts out there is about 84 counties in the state of Nebraska are currently under zoning and are zoned. And most of those counties have not adopted building codes nor do they have building officials. There are a few of the counties that have, such as Sarpy and Saunders, Washington, Douglas, Lancaster, Cass, but there's also some western counties that have done that, Keith County, Scotts Bluff County. I'm not...I never got an official answer back from Lincoln County but I think they do. And in the case of Scotts Bluff and Lincoln County, for instance, their planning departments and code enforcement departments are combined between either Scottsbluff and North Platte so they take care of the county and the city much like Lancaster County does.

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

Urban Affairs Committee
October 26, 2011

One thing that might be of interest to you, in 2010, Hall County no longer...voted to no longer enforce building codes. This is in Hall County, not the city of Grand Island, just Hall County, or require building permits, but do require zoning permits. And I'm going to talk a little bit about the difference between a zoning permit and a building permit. A zoning permit is issued by a zoning enforcement officer such as myself, and that basically is saying that the structure you wish to build or you wish to have is allowed under the zoning regulations. And when we do that, we're not concerned with codes. Currently, under the state code, every building, and I'll get to the exemption in a minute, that is built is supposed to be built under state codes. Whether or not it is, a lot of the testimony has talked about unlicensed contractors and so on, we see that a lot. But they are supposed to be built to the current adopted code. We do not enforce any type of building codes unless occasionally there are some provisions that are written into zoning regulations. For instance, egress windows is very common. Footings and foundations is very common. I have recommended to some areas that sprinkler systems, particularly for residential, be written into zoning codes simply because of either fire response time or roads. For instance, I did some work with Knox County and recommended up there that they do it along Lewis and Clark Lake because some of the roads to the residences up there are not...cannot be traveled at high speed by fire equipment and may not be even traveled by fire equipment. So not only would that help control the fire until the fire truck could get there but also could reduce the insurance rates that the homeowner is paying. A building permit, even though our zoning permits are often called building permits, a building permit is issued to build something to code. And if you have not adopted codes, you cannot under statute issue a building permit. So I can't issue anything because I'm not a building inspector, that's called a building permit. I do have one of my jurisdictions with the city of Madison that I issue, sign-off on, a final permit. The city of Madison has contracted with the city of Norfolk who comes in and does all of the inspections and follow-up work. The keys with the zoning permit is the zoning permit must be consistent with the allowed land use in a particular zoning district. A building permit must be consistent with the adopted building codes. Current practices, we have probably west of 81, north of Highway 30, and probably south of

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

Urban Affairs Committee
October 26, 2011

Highway 2, buildings in that west part of the state, probably 85 percent of those buildings are not subject to building codes, period. And those are buildings on farms and which this has been done by statute and also as part of the Supreme Court case. I have the exact case noted on this handout I gave. It's what we call the Holt County vs. Premium Farms case of 2002 where the Supreme Court said that agricultural buildings are not subject to building codes, but they are subject to zoning. And so I can issue a zoning permit to a dairy barn, but if we enforce codes, I could not issue a building permit to the same. And that's why you need to know the difference between a zoning permit and a building permit. And neither...if one is built within the extraterritorial zoning jurisdiction in the city of Norfolk in my area or any of the other cities, they cannot require a farm building to be built to code either. As long as it's on a defined farm which is 20 acres producing \$1,000 or more of revenue, and I always tell a guy we're talking revenue--not profit, just revenue--and that makes it a farm. So the other thing...a few other things I just want to cover real quick that again in outstate Nebraska you're going to find that almost all the counties with zoning, the cities, quite a few cities, and most villages, particularly cities of the second class and villages will have planning and zoning, but they have not adopted building codes nor do they have a building inspector. In my area we have talked and looked at several times about adopting building codes and getting a building inspector. Now keep in mind that my jurisdiction already through and interlocal agreement is Madison County and Pierce County, and all the cities and villages in Madison County, not naming Norfolk, and then I also get...if we would do building permits in order to make it enough to cover the cost of a building inspector--I've done a little bit of research--we would probably have to add Boone County along with the city of Albion and Petersburg; Stanton County along with the city of Stanton and possibly the village of Pilger; all the cities that do zoning in Pierce County, which is three cities and a village in Pierce County, to at least have enough permits. Now between my two counties, none of the cities or villages, I issue about 165 permits every year. Eighty-five to 90 percent of those are ag structures--everything from grain bins to dairy buildings to hog buildings, machine sheds. They're not subject to code. And so the rest is either a building on an acreage, a garage, a shed, or a new home. Those would be

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

Urban Affairs Committee
October 26, 2011

subject to codes. The ironic thing, even though we can't enforce building codes on ag structures, is most of the ag buildings in one way or another are engineered and designed. Animal livestock buildings and most machine sheds and things like that, they're engineered and designed and that same design is sold across the country. So they're all designed and usually built to code, whereas the one exception you'll find on some farms, there are chicken coops or a guy building a building out of used lumber and used tin and that type of thing, and they're usually smaller. And I can attest, I've done that with my chicken coops, so. But most of your bigger buildings are going to be done to code even though they're not required to in the state of Nebraska. Just a couple other things. Building permits typically are issued any time there's anything done on a building or structure. For instance, we've heard with the city of Lincoln they issue permits for hot water heaters. They issue...other entities will issue permits to reroof, to put in new windows, to put in a wall as part of remodeling. Zoning permits are typically issued when the footprint of the structure changes. In other words, I don't care if you're spending \$45,000 on replacement windows for your home, but if you're going to spend \$210 to expand your deck, I require a permit for that, not for the windows, because you're expanding the footprint and increasing the land use as residential with a deck, for example. It could be closer to the road so we enforce some setbacks and so on. So that is also a big difference between zoning permits and building permits. I would kind of echo the sentiments of several of the people that testified before me. If you do choose to adopt a statewide code, it should be enforced by statewide inspectors. You could have areas in Nebraska that a lot of the...I'm one of the few county zoning administrators. There's only a few of us that are actually full-time, and Madison and Pierce County had to go together to do that. And so you're going to have in the county and second-class city and village areas, you're going to typically find your zoning administrator is either someone that's just doing it as a part-time job and has no other role with the entity, or they are also sometimes the fire chief. They might be on a county level and they might be a weed superintendent. They could drive a maintainer for the roads department, highway superintendent, emergency manager, work for the assessor's office, the register of deeds, and in the city that typically...in a smaller town

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

Urban Affairs Committee
October 26, 2011

you might have two or three people in the Department of Public Works and if it isn't done by the city clerk, it's done by them. And so it would be something else that would be added on to their list. And again, sending these folks to become licensed building inspectors and expect them to do two or three inspections a year in some areas, or even less in others, and maintaining that license, it's going to be awful expensive. Plus they're not going to have the practical experience that the bigger areas currently have, the state-hired and appointed building inspector, currently like the electrical program. There's also been talk, maybe not so much in the testimony today, but self-policing, turning in reports. Currently, Title 124 which is part of DEQ's requirements for septic systems and that type of thing, whenever a septic tank is installed it's supposed to be installed to code. The contractor is supposed to be a licensed contractor and submit reports. I believe the reports and so on are being submitted. I believe for the most part it's done by licensed contractors, but I'm not 100 percent convinced that all of them are done to code. So if you self-police some of this stuff through the contractors, you still have to have spot-checks and stuff and make sure people are doing it the way they're supposed to. So that pretty much is the things I wanted to talk about. You do have more information in a little bit more detail of what I talked about on the handout I gave you. I'd be happy to answer any questions. [LR209]

SENATOR MCGILL: Thank you, John. This is exactly the kind of information we need because we easily hear from Omaha and Lincoln, and we're glad that you came out here and shared with us what it's like for greater Nebraska. Are there questions? [LR209]

SENATOR SCHUMACHER: In the bulk of the counties and the towns under 1,000, certainly 500 in population, things are getting along pretty well. What, by creating an additional level of state inspection and additional hoops for the folks in those smaller communities and out in the county to go through, what really do we have to gain and at what cost? [LR209]

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Transcriber's Office
Rough Draft

Urban Affairs Committee
October 26, 2011

JOHN JOHNSON: Well, I can't speak to what the cost is. I do know that from...as a department manager looking at possibly adding building to me, it's not cost-efficient, like I stated, without adding a lot more jurisdictions. Currently, the main things that you're going to find in most small towns and out, it's not new construction. In Madison County, we kind of...like with Newman Grove, the last four or five years they've had their first new home permits in 15-20 years. The city of Madison hasn't had a permit for a new home for almost 20 years. The city of Tilden has done, in the last three years, has done about a dozen. Battle Creek has done a few. So in our county it kind of migrates around the county. Actually Meadow Grove, which is a village of right around 300, has done...probably averaged one a year for the last five years. But as far as someone wanting to put in replacement windows and have to have an inspector come out and inspect them and so on and so forth, and it's probably not going to gain a lot. I think some of the more dangerous things like hot water heaters and things that...and I don't know what you determine as dangerous or not dangerous, but hot water heaters, electrical systems, things that can go boom, I think might be a good place to start to inspect those things, and then things that might affect other folks in a way that zoning can't control, whereas you...zoning can control building too close to your neighbor to keep a fire from jumping, but some of the things that could happen that zoning can't control would be, I guess, kind of like a fuse-type thing where you have something that could explode close to something that could be a fuel source that could carry over to a neighbor or something like that. Whereas, under the restrictions we have with zoning we can't really enforce that, but a building inspector could. And I apologize I can't come up with a better example. [LR209]

SENATOR MCGILL: That's okay. [LR209]

JOHN JOHNSON: But no, I...for most projects I don't think it would be cost-effective. [LR209]

SENATOR MCGILL: Yeah, we certainly don't want to be inspecting windows, like you

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

Urban Affairs Committee
October 26, 2011

said. (Laugh) That's for sure. Any other questions? All right, thank you very much.
[LR209]

JOHN JOHNSON: Thank you. [LR209]

SENATOR MCGILL: How many more folks do we have who would like to plan on
testifying? A couple more? All right. [LR209]

STEVE NORDHUES: Good morning, Senator. [LR209]

SENATOR MCGILL: Good morning. [LR209]

STEVE NORDHUES: My name is Steve Nordhues. Do you need the spelling on that,
or...? [LR209]

SENATOR MCGILL: Yes, please. [LR209]

STEVE NORDHUES: Steve, S-t-e-v-e, Nordhues, N-o-r-d-h-u-e-s. I'm here today
representing the Nebraska Code Officials Association. I probably could have been a
little bit better prepared. I wasn't quite sure how this was all working out here. So I'm just
going to look at the legislative resolution and the four items that you had identified there.
You know, number one is asking about the current method of adoption. And I think what
we have now actually works pretty well. I think there could be some more
communication from the state side when senators are going to be introducing these
bills. I think our last legislative session was a pretty good example of what should not be
happening. I was down here testifying in opposition to a couple of bills and the senators
had no idea that I was going to be here in testifying in opposition. So I think the thing to
have is a board or a committee that is, you know, like a subcommittee of Urban Affairs
or whatever the main committee is going to be that's overseeing the building codes, in
which we could meet with folks from the Fire Marshal's Office, State Electrical Board,

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

Urban Affairs Committee
October 26, 2011

the contractors, the Nebraska State Home Builders Association, the AGC, ABC, representatives for the mechanical folks, just to get a broad section of people that can sit down and talk these things through before we start proposing bills to make them law. It just...like I say, the last session I don't think that worked very well. As an example, the Nebraska Energy Office did a very good job. They put together a committee of about a dozen people or so, had a state senator involved, I think it was Senator Cook, was relaying information to her so she knew where we were at with some of the items. We didn't all agree on everything, but by the time we were done with the process we had something that we could have proposed in front of this committee and went forward with it. And I think that's probably the way to do it rather than what we have in the past. As far as a state building permit program or inspection program, I don't think you guys can do it, quite frankly. The electrical inspectors don't get out in a timely manner the way it is now at times. That's one of the biggest complaints. One of the biggest assets for the city of Norfolk is that we have an electrical inspector that can be out within typically the same day as a call, no later than the next day. And I think even the state electrical inspectors would admit to the fact that they can't always get out that quickly. I've heard of waits up to two weeks on projects. So I don't think it's practical to think that the state is going to hire the force to go out there and handle every county in Nebraska. The city of Norfolk, we contract out to several communities to do inspections: Battle Creek, Madison, Stanton, we're doing some for the city of Wayne right now. Meadow Grove, Hadar, Winside, and we go as needed to those communities. They call us when they need us and we go out. We charge them an hourly wage as well as a mileage, and so those are not a huge ongoing expense for those to have the personnel. They get our expertise and they get it at a very reasonable rate when you look at what the total expenditure was at the end of the year. I don't know, I think that's basically where I'm at with what I had to comment today. If you have any questions, I would love to answer them. I do better in that format anyway. [LR209]

SENATOR MCGILL: Me too. I have a quick question because I was writing and didn't entirely hear that last that you talked about with the small villages around you. You

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

Urban Affairs Committee
October 26, 2011

contract with them to provide inspection or...? [LR209]

STEVE NORDHUES: Inspections, whatever they call us for. [LR209]

SENATOR MCGILL: Okay. [LR209]

STEVE NORDHUES: We do property maintenance for them. We do not do electrical. That's delegated through the state so they still do that. If it's a commercial project, the State Fire Marshal still does review for life safety issues. But we do the structural, we do the plumbing, we do the mechanical, and that seems to have worked pretty well for those communities. And quite frankly, we have other communities contacting us at this point that would take us farther north almost in every direction. Albion has talked to us. Wausa has talked to us. It just depends. Now it depends on how far we actually want to go, so. [LR209]

SENATOR MCGILL: So they're interested in having inspectors or things looked at for, you know,...? [LR209]

STEVE NORDHUES: Sure. Yeah. It's the economics of it. They all will readily admit they can't hire somebody to do that [LR209]

SENATOR MCGILL: Oh, no. [LR209]

STEVE NORDHUES: And there aren't many counties that are out there that don't already have it that can probably get that in their budget to do that, but they might be able to reach out and touch those communities that already have inspectors and see if they're interested in doing it. You might get counties that will combine resources and maybe you'll have a three- or four- or five-county area that would combine resources to hire the individuals that they need. [LR209]

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

Urban Affairs Committee
October 26, 2011

SENATOR MCGILL: All right. Are there other questions? Well, thank you very much for coming. [LR209]

STEVE NORDHUES: Okay. Thank you. [LR209]

SENATOR MCGILL: Hi. [LR209]

DAVE HUMLICEK: Good morning. My name is Dave Humlicek, H-u-m-l-i-c-e-k. I'm from the Columbus area. I'm a builder, also I'm a first VP for Nebraska State Home Builders Association. I feel for you all. You guys have got a tough nut to crack. I was here when we were trying to go through, I think it was LB456 or LB546, with the sprinklers. I was against. All my customers that we built for the last 30 years always have the choice of a sprinkler system or any other code or improvement above the codes that they have. The system you have now is a good system. The locals can upgrade. I also own an insulation company that pretty much travels, you know, Columbus, probably east all the way up into Iowa, and there are upgrades in the codes in different areas. Norfolk, I know has, you know, an R44 in attics, where Columbus is 40. So, you know, we see a lot of that, you know, upgrades above the standards. As far as rural Nebraska, I haven't taken out a permit in probably four or five years. We've been outside of the city limits of Columbus, but, you know, we always built to the state building code. I mean I thought there is a code that was put in place. I'm not proud of it, but we've been sued twice, once with a construction company, and that was because the insurance company didn't want to pay for a roof. We won that battle. That was based off the code. Got sued in Omaha and that was a fire and that was a shared responsibility for everybody. But in both lawsuits they always went back to what code was in place at that time. So I think we have a system that is in place that works well, and as far as, you know, the water heaters and things like that, yeah, I think a professional should do it, but trying to take that responsibility or take that option from a homeowner I think is going to almost be impossible, and, you know, the same thing with building a house. You know, right now a homeowner can build its own house. Don't really agree with it but, you know, that's just

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Transcriber's Office
Rough Draft

Urban Affairs Committee
October 26, 2011

how it is. It's just the next guy that's in line maybe two years down the road that could be bumped so. I agree with Steve Nordhues on I'm trying to get state inspections across the state. I think that would be a pretty tough nut to crack, but I would look forward to it really. You know, it would be just because of the fact that it would take the responsibility or some of the responsibility off of my shoulders to have it inspected. The subdivision that we're working in now, the south side of Columbus about three miles, they actually hired an inspector to come out and inspect the projects. No problems. So these small little subdivisions or things like that, they have the opportunity to do that. It all comes down to money and their responsibility to do it. As far as problems, I think a lot of it comes back on the builder himself, the integrity. I mean, he's either going to follow the code or he's not going to follow the code out there but there's that mechanism that's in place for the homeowner to find remedy on that, so. Any questions? [LR209]

SENATOR MCGILL: Senator Schumacher. [LR209]

DAVE HUMLICEK: Yes, Paul. [LR209]

SENATOR SCHUMACHER: You just mentioned that on the subdivision you're working outside of Columbus now, they hired an inspector. Who is "they?" [LR209]

DAVE HUMLICEK: That subdivision, that lake subdivision, that's Lake Ocone. [LR209]

SENATOR SCHUMACHER: So it's the developer hired. [LR209]

DAVE HUMLICEK: Yes. [LR209]

SENATOR SCHUMACHER: Okay. [LR209]

DAVE HUMLICEK: Yeah. That association, yeah, is part of that. [LR209]

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

Urban Affairs Committee
October 26, 2011

SENATOR SCHUMACHER: Thank you. [LR209]

SENATOR MCGILL: All right. No other questions. Thank you for bringing your perspective as the builder. [LR209]

DAVE HUMLICEK: You bet. Thank you. [LR209]

SENATOR MCGILL: It's very important. Next, I know there are just a couple more. [LR209]

MICHAEL BENKER: Good morning. [LR209]

SENATOR MCGILL: Good morning. [LR209]

MICHAEL BENKER: My name is Mike Benker, B-e-n-k-e-r, and I grew up in a small town of about 1,500 in central Nebraska. My dad was a builder and currently is. My brother works for him. I graduated from the university with a civil engineering degree. Have been a builder/remodeler in the Lincoln area and the surrounding communities for about 12 years. More recently have taken a position with the Home Builders Association of Lincoln. And so I've been involved in the process for quite some time. I have sat on the task force for the city of Lincoln for their IRC code review. I currently sit on that, also their code study committee, and so I'm very familiar. I appreciate Fred Hoke's comments this morning. They were very thorough. You have heard a lot of comments this morning that range from commercial to residential to ag buildings to various municipalities, sizes, acreages, rural. I would encourage you to ask questions or follow up if you're not sure how some of the testimony fits into the context because it can be very confusing. I have also sat on the planning commission for the village of Greenwood, which is just east of Lincoln, for quite a few years. I am currently their zoning administrator and building inspector. And we do contract with the county for our code inspections and so I'm familiar with that process also. I'm primarily here this

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

Urban Affairs Committee
October 26, 2011

morning for your benefit bringing my knowledge and experience here to answer any questions that you may have. With the various things, the homeowner does have the ability to do a lot of tasks themselves. I think that's important to point out. As Fred Hoke had mentioned, with all the process and reviews and industry information, ultimately the mayor and the city council have a responsibility and they represent the entire community that they're from, and similarly the Governor and the Legislature do the same thing for the state of Nebraska. I think that's a very important thing to keep intact. It gives concerned citizens and various groups an opportunity to bring forward information that could be very critical and very important in all of our futures. It is about safety and I think differentiating between the IRC and IBC and various things, are important. With that, I'll answer any questions that you have, and I'm available as a resource in the future if you have any questions also. [LR209]

SENATOR MCGILL: Thank you very much, Mike. Any questions? No. Thank you for being here. [LR209]

JAMES HARPER: Good morning, Senator McGill, committee. [LR209]

SENATOR MCGILL: Good morning. [LR209]

JAMES HARPER: My name is Jim Harper. I'm from Grand Island, Nebraska, and I am retired. I used to be the plan review engineer for the city of Omaha. And I think just about everything has been said that needs to be said at this point, but one thing that I think Senator Schumacher mentioned was, is this an academic discussion? And it probably is, and to that extent I guess I'm going to maybe talk along those lines. First off, I think if you look over our statutes, it's pretty clear that codes have always had their basis and been adopted locally. It's been a function of local government for a long time. It goes back into the 1800s, early 1900s. We have references in statutes about adopting...cities adopting codes and laws as to building construction. So I would encourage you to keep that in mind as you formulate your policy. Another thing, I think

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

Urban Affairs Committee
October 26, 2011

the path we've been going down is to encourage local adoption of codes. And to that extent, whatever the state can do to encourage that, I think you should do. And I think our statutes kind of reflect that in the Building Construction Act and also the laws concerning the Energy Office. Something I think you need to keep in mind also is we want to make sure that these are minimum standards set by the state and not maximum and minimum standards. We have traditionally always allowed communities to go over and above what the minimums of the state are. The city of Omaha did that on the energy code four or five years back. They have a much more rigorous energy code than the state mandated, and we felt we could do that. As far as your role, I guess you really need to figure out if the state should have all control, some control, or no control of building construction, the aspects of building construction, and to decide if it is the role of the state to encourage local adoption of codes but not require them. And that's kind of where we're at right now, and that falls into your role. As far as needs, I think you need to decide if there is a benefit to the state by adopting codes at the local level of government. I think you need to consider the regulatory needs and desires of communities on topics not mentioned in statute, like codes that help cities achieve green goals or codes for mechanical systems. And when I was with the city of Omaha we were working quite vigorously on sustainability. And there's no mention in state law anywhere about adopting a green code or that cities can adopt it. And I think we need to keep that in mind in policies so we leave those avenues open to cities. Some legal things you may want to consider is decide on whether decisions by a public official should be appealable to an appeals board. Normally they are. And taking that another step further, decide if local appeals boards' decisions should have standing on state codes where there is delegated authority. I don't think that exists now but it's something to think about. A lot of pros and cons in that, but something to consider. Again decide if state codes are minimums or minimums and maximums for cities. In other words, can cities...can local governments impose higher requirements than the state. And I think that gets maybe back to that unconstitutional delegation of authority question a little bit, my understanding of it. [LR209]

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

Urban Affairs Committee
October 26, 2011

SENATOR MCGILL: Yeah, we just used to automatically adopt a new code and now we have to actually vote on it. And our understanding from last year, just for the record, is that a local municipality can add or subtract from a state code, which is to me a red flag that it should at the very least be a minimum... [LR209]

JAMES HARPER: Right. [LR209]

SENATOR MCGILL: ...which I think is a bill we'll likely introduce next year. [LR209]

JAMES HARPER: Okay. [LR209]

SENATOR MCGILL: But yeah. [LR209]

JAMES HARPER: Okay. Then I won't go any further with that. Kind of an organizational thing you may want to consider is, and this would be huge to do, but if you could locate all the model codes adopted by the state in a separate chapter of the statutes, then refer to them generically when you pass a law, like you wouldn't refer to the...you'd say, the state electrical code in whatever bill you're working on, but then the actual code would be in a separate chapter like NFPA 70. And I think that would help you when you do code updates and make it easier for readers, certainly, to be able to find all the codes we have in statutes, because we've got everything. We've got elevator codes and codes for natural gas and building codes and energy, you know that. So an organizational thing. I think any construction codes should be heard by the same committee. That makes sense to me. I think we go all over the place on that, and I don't know what the machinery of state government is in that regard. [LR209]

SENATOR MCGILL: Yeah. Electric doesn't come to us. [LR209]

JAMES HARPER: Exactly. And it seems to me like it should be Urban Affairs, that's logical to me. But whoever it is, it should always be the same if it's a code-related issue,

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

Urban Affairs Committee
October 26, 2011

and I think that would provide some consistency. I think you need to decide on whether...a policy should decide on whether state and local law should stay current with respect to codes. If you look in the statute, there's some pretty old codes referenced in the statutes, one of them being accessibility, quite honestly. And we've got some references to the 1979 Uniform Building Code for high-rise buildings and things like that, that are a little bit dated. So it seems like a policy should be that we stay current, at least to me. Something else you may want to consider is state incentives for education of inspectors of local jurisdictions. I know that's getting out there, but codes are all about training, and you're really no better than...the inspector is no better than the training they receive. And it just never changes, or I mean it's always changing. It's hard to keep up with and municipalities don't have a lot of ways of funding training, and I know the state doesn't either, but, you know, that needs to be kept in mind. Let's see. Consider state incentives for cities to adopt model codes. And along that previous thing I mentioned, you may want to consider policies that allow for fees and surcharges that can be used not only to defray the direct costs of inspection and plan review, but also for staff training and technology. And where I'm going with that is like automated permitting systems for computers, software, things to keep up technologywise because we're really being pushed in that direction to automate, and we've just got to have some kind of way of paying for that, and we would probably do it with our fees right now but maybe it's a little bit unclear whether we should be or not. I think we can. But something to...those are things to consider. [LR209]

SENATOR MCGILL: Yeah. Yeah, those are all really great ideas. Thank you. [LR209]

JAMES HARPER: Okay. [LR209]

SENATOR MCGILL: Are there any other questions? No. Thank you very much. [LR209]

JAMES HARPER: Thank you. [LR209]

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

Urban Affairs Committee
October 26, 2011

SENATOR MCGILL: Was there anyone else left? Oh, one more reluctant testifier.
(Laugh) [LR209]

SHANE CLAUSEN: Senator McGill and the rest of the committee, my name is Shane Clausen. I'm from Norfolk, Nebraska. I'm a builder. I'm also on the city council there and I've also built homes out in Sidney, Nebraska, so I've built across the state. So I guess what I'm here basically to talk about, I do agree with Steve. We have a great...Steve Nordhues, he's the building inspector in Norfolk. We have a great work relationship in Norfolk as far as the builders go and how we look at codes and what codes are important to our community. But each community is different, so I do think it's important as you work through this and as you sit down and think about the committee, maybe there will be a subcommittee of some sort that addresses current codes and how we're going to accept codes. But I do think, and I know sometimes when I'm talking with building inspectors, when I talk about the economic feasibility of certain things that are enforced and, you know, with housing and residential construction, it comes out like kind of a dirty word, but it's true. You know, in Norfolk, Nebraska, we're looking at 24 homes or dwellings this year, where in '06 we did 119. So there's a tremendous...our industry is down and I just would caution as with this committee that we don't kick the industry. We try to kick-start the industry, you know. And so I would say as you set this up it would be very beneficial to have somebody on there that does look at the economic impact at everything that comes along. [LR209]

SENATOR MCGILL: Absolutely. [LR209]

SHANE CLAUSEN: So otherwise I'm agreeing with what's going on today, so thank you very much. [LR209]

SENATOR MCGILL: Thank you very much. [LR209]

SHANE CLAUSEN: Are there any questions or anything? [LR209]

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Transcriber's Office
Rough Draft

Urban Affairs Committee
October 26, 2011

SENATOR MCGILL: Questions for the city councilman? No. [LR209]

SHANE CLAUSEN: Okay, I'll get out of here. [LR209]

SENATOR MCGILL: And thank you. Short and sweet. We like that. Anyone else? Going once, going twice. All right, thank you all for coming today. [LR209]