

Transcript Prepared by Clerk of the Legislature Transcribers Office
Urban Affairs Committee January 26, 2021
Rough Draft

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WAYNE: Good morning and welcome to the Urban Affairs Committee. My name is Justin Wayne, I represent Legislative District 13, which is north Omaha and northeast Douglas County. And I serve as Chair of Urban Affairs Committee. We will start off by having members and committee staff do self-introduction, starting on the right with Senator Blood.

BLOOD: Good morning. My name is Senator Carol Blood and I represent District 3, which is western Bellevue and southeastern Papillion, Nebraska.

BRIESE: Good morning. I'm Tom Briese, I represent District 41.

HUNT: Hello, I'm Megan Hunt, and I represent District 8 in midtown Omaha.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

ARCH: Senator John Arch, I represent District 14, which is Papillion, La Vista in Sarpy County.

ANGENITA PIERRE-LOUIS: Angenita Pierre-Louis, committee clerk.

WAYNE: Also assisting us is our committee pages, Izabel Reynolds from Lincoln, studying history and political science and minor in criminal justice; and Tom Luka--

THOMAS LUKASZEWICZ: Lukaszewicz.

WAYNE: Lukaszewicz from Omaha, studying political science, minor in national security studies. Thank you for being here today. Due to the ongoing COVID pan, pandemic, the Legislature has adopted additional safety protocols that apply to all committee hearings, which are posted outside. Due to social distance requirements, seating in the room, hearing room is limited. We ask that you only enter the room when necessary for you to attend your bill hearing. The bills will be taken up in the order posted outside the hearing room and list, and the list will be updated after each hearing to identify which bills is currently being heard. The committee will pause between each bill to allow time for public to move in or out of the hearing room. We request that everyone utilize the identified entrance and exit doors to the hearing room. The entrance door is on the left side of the

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room, the exit door is on the right side of the room. We request that you wear a mask or a face covering while in the hearing room. Testifiers may remove their mask during testimony to assist the committee members and transcribers to clearly hear and understand the testimony. Pages will sanitize the front table and the chairs between testifiers. In the event that the hearing reaches seating capacity or is near capacity, the entrance door will be monitored by the Sergeant At Arms who will allow people to enter the room based upon the seat availability. Don't think we have that problem this morning. Persons waiting outside the hearing room are asked to observe social assistance and wear masks or a face covering while waiting in the hall. We ask that you please limit, if possible, all handouts. This afternoon--

HUNT: Morning.

TREVOR FITZGERALD: I'll fix that one.

WAYNE: Trevor, that's my fault. This morning we will be hearing bills-- we will be hearing three bills and we'll be taking them in order listed outside or-- on the table near the entrance you will find blue testifier sheets. If you are planning to testify, please fill out and hand one of those to Angenita to my left when you come up. This will keep the record accurate and the hearing accurate. Please note that if you wish to have your position listed on the committee statement for a particular bill, you must testify in that position during that bill hearing. If you do not wish to testify or you would like your record record-- your position recorded on the record, please fill out the gold sheet near the entrance. Also, I would note the Legislature policy is that all letters for the record must be received prior to the committee hearing by noon the day prior to the hearing. Any handout submitted by testifiers will be included as part of the record as exhibits. We ask-- we would also ask if you have any handouts, please bring 10 copies and give them to Angenita and we'll pass them out with the pages. Testimony for each bill will be in-- the introducer's opening statement. After the opening statement, we will hear from supporters of the bill, then we'll hear from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will be given the opportunity to make a closing statement, if they wish to do so. We ask that you begin your testimony by stating and spelling your first and last name for the record. We will be using the four light-- four-minute light system today. When

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you begin your testimony, the light on the table will be green, one minute will be yellow, and the red light will ask you to wrap up your final thoughts. I would remind everyone, including senators, to please turn off your cell phones or put them on vibrate. And with that, we will begin today's hearing with LB163, which is the Urban Affairs technical bill. Trevor, you can just stay here, there's nobody here.

TREVOR FITZGERALD: I feel like I should practice.

WAYNE: Oh, jeez.

TREVOR FITZGERALD: Welcome to your Urban Affairs Committee, Trevor.

TREVOR FITZGERALD: Thank you. Changing afternoon to morning. Good morning, Chairman Wayne and members of the Urban Affairs Committee. For the record, my name is-- I'm gonna take this off. For the record, my name is Trevor Fitzgerald, T-r-e-v-o-r F-i-t-z-g-e-r-a-l-d, and I'm introducing LB163 on behalf of the committee. In 2015, the Urban Affairs Committee began a multiyear effort to update and modernize statutes governing the various classes of municipalities. Over the past few years, the committee has introduced bills to update statutes governing cities of the first class in Chapter 16; cities of the second class and villages in Chapter 17; some, but not all, classes of municipalities in Chapter 19; and cities of the primary class in Chapter 15. In 2020, the committee introduced LR370, an interim study to examine statutes in Chapter 18 that govern all classes of municipalities. LB163 is the work product of the LR370 interim study and would amend sections of statute in Chapter 18 to make a variety of cleanup changes. Because LB163 amends more than 200 separate sections, I will not review each individual change contained in the bill. A section-by-section summary is contained in your materials, and the changes can largely be grouped into 11 different categories. First, the bill changes and corrects terminology. For example, changing governing body to city council, municipality to city, primary class city to city of the primary class. Second, the bill changes subject verb agreement in a number of places, i.e. singular to plural and vice versa. Third, the bill clarifies references to cities' corporate limits and extraterritorial zoning jurisdiction or ETJ. Currently, statutes refer to the ETJ in several different ways. Some use the term extraterritorial zoning jurisdiction, some use just zoning jurisdiction, and some others use a lengthy reference to all property located within a three-mile radius or two-mile radius or a one-mile

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radius of city limits. Similar to how past cleanup bills have handled this issue, LB163 would change all references to the ETJ to use the term extraterritorial zoning jurisdiction. And I will note for the respective classes of municipalities, the term extraterritorial zoning jurisdiction is defined in each of those classes. Fourth, the bill clarifies references to legal newspapers. As the committee has found with previous cleanup bills, various sections of statute refer to newspapers used for legal notices in different ways: located in the city, published in the city, of general circulation of the city. Additionally, some statutes specify that notice must be published in a legal newspaper, while others just specify a newspaper. LB163 would use the same phrasing in all cases: published for period X in a legal newspaper in or of general circulation in the city. The bill uses the term legal newspaper since there is an existing statutory definition of legal newspaper. And according to the Nebraska Press Association, every newspaper in the state of Nebraska currently meets that definition. Fifth, the bill corrects references to various city and village officials, clearly identifying the city council, village board of trustees, etcetera. I would also note that Sections 13 through 23 of the bill amend statutes dealing with public utilities, and a number of those sections also reference the metropolitan utilities district, or MUD. So the bill likewise corrects references to the MUD board in a number of places. Sixth, the bill corrects gender references, typically, typically replacing his with his or her. Seventh, eighth and ninth, the bill corrects internal statutory references, eliminates a number of run-on sentences and harmonizes references to other statutory sections within Chapter 18. Tenth, the bill clarifies provisions related to municipal initiatives and referenda. The statutes governing the initiative and referendum process at the local level were adopted in 1982 and appear to have not been substantively updated since 1984. LB163 would actually name these statutes the Municipal Initiative and Referendum Act, and also make several small changes that were requested by the Secretary of State's Office to help bring these statutes more in line with the Election Act. Finally, LB163 replaces or eliminates antiquated, obsolete or unnecessary language in a number of places. As returning committee members may recall, past cleanup bills eliminated a number of antiquated and archaic terms, including mule and oxen teams, telegraph poles and hitching posts and rails. I will note that most of the changes in LB163 of this type are mostly to modernize language. I would be remiss, however, if I didn't mention that this bill does eliminate

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usage of the term night soils throughout the statutes governing municipal sewer systems. I think it's one of my all-time favorite antiquated terms that we've gotten rid of. Lastly, as introduced, the bill would outright repeal the Municipal Infrastructure Redevelopment Fund Act, which provided a mechanism for cities to fund infrastructure projects through bonds secured through state funding from cigarette tax revenues. The authority to issue bonds under the act actually expired in 2009, making the act obsolete. However, after the bill was introduced, Senator Brandt introduced LB600, which would reactivate the act to provide cities a mechanism to finance broadband infrastructure. As a result, committee members should have received a copy of AM9 and your materials, which would strike the outright repeal of the Municipal Infrastructure Redevelopment Fund Act. In addition, AM9 makes one additional change at the request of the Secretary of State's Office. Section 174 of the bill currently contains specific notice language to be published by municipalities in the event of a municipal initiative or referendum. But the language did not account for the fact that, one, a special election could take place entirely by mail under current law; and two, that the election that could occur in a different time zone because it refers to the Central Time Zone. Because there is no similar notice language specified for other elections under the Elections Act, AM9 would simply strike the specific notice language while leaving the requirement that the notice be published similar to other elections. Prior to the introduction of LB163, the bill was reviewed by the League of Nebraska municipalities, various city and village officials, the metropolitan utilities district and the Secretary of State's Office. I will note there was a comment received and it was also emailed to Senator Wayne and myself just this morning, Section 45 of the bill, which is on page 33, updates Section 18-602, which deals with how grade crossing projects over railroads would be affected by federal law. It's a section of statute that has not been updated since at least the 1940s. So our office did work with the Nebraska Department of Transportation, as well as U.S. Senator Deb Fischer's office to correct the federal statutory reference, which was quite a tricky find to make because it referred to the 1950s highway funding bill in original statute. But anyway, so the comment suggested that the addition of the words "within the boundaries of a municipality" on lines 27 and 28 would be inappropriate. On my interpretation, I don't think that's correct. This is a section that occurs in Chapter 18 of statute, and by its nature, Chapter 18 only applies to municipalities. I believe there

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should be a similar section of statute that would apply to counties, which is the concern that the commenter raised. After the hearing, I, I will work with parties to confirm that that similar section for counties does exist still. I, I think it likely that it would. In the event that it doesn't, the committee may at some point, either prior to advancing the bill or after advancing on General File, need to do an amendment so that similar authority for counties still exists. So because the key of that section is that a certain grade crossing projects have to follow federal law on regarding railroad crossings. So this is normally the time of my testimony where I comment that there are several individuals here behind me to testify. That is not the case this morning. However, I will note that the committee members should have received a letter of support for LB163 from the League of Municipalities as part of the record. With that, I would be happy to answer any questions.

WAYNE: Any questions?

TREVOR FITZGERALD: Nobody wants to know more about night soils?

WAYNE: Yeah, I just Googled it. Senator Hansen.

M. HANSEN: Sorry. I was going to ask him to define night soils in the--

TREVOR FITZGERALD: I actually did do that in a footnote in my testimony.

WAYNE: Of course, Trevor.

TREVOR FITZGERALD: Night soil is a historically used euphemism for human excrement collected from cesspools, privies, pail closets, pit latrines, privy middens, which I had to check, privy middens is another term for outhouses, and septic tanks. And we probably struck it from about 20 different sections of statute.

WAYNE: Any other questions? Seeing none, will you stay around for closing?

TREVOR FITZGERALD: If needed.

WAYNE: Next, we have all-- all those in favor, say aye. Next we have those in support. Seeing none, any in opposition that would like to

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testify? Seeing none, anyone in the neutral capacity like to testify?
Seeing none, would you like to close?

TREVOR FITZGERALD: I will waive closing.

WAYNE: Legal counsel waives closing. There is a letter for the record, LB163 in support from the League of Municipalities. And with that, that will close the hearing on LB163. Now moving to the Urban Affairs Committee LB162. Mr. Fitzgerald, you're-- welcome to your Urban Affairs.

TREVOR FITZGERALD: Good morning, Chairman Wayne and members of the Urban Affairs Committee. Again, for the record, my name is Trevor Fitzgerald, T-r-e-v-o-r F-i-t-z-g-e-r-a-l-d, and I'm introducing LB162 on behalf of the committee. Again, as committee members are aware, in 2015, the Urban Affairs Committee began a multiyear effort to update and modernize statutes governing the various classes of municipalities. During the process of updating and modernizing these statutes, it was discovered that the process by which territory is disconnected from the corporate limits of municipalities varied greatly. Currently, procedures for disconnection from cities of the first class differ greatly from procedures for-- procedures for disconnection from cities of the second class and villages, while no procedure currently exists for disconnection for cities of the metropolitan class or cities of the primary class. In order to examine this issue in 2018, the committee introduced LR409, an interim study to examine issues related to the disconnection of territory from municipalities. As part of the interim study, committee staff worked with the League of Nebraska Municipalities to determine if any municipalities had recently utilized the disconnection statutes. As best as could be determined in 2018, only two cities have actually used the process in recent years, the city of Fremont and the city of Springfield. Following the LR409 interim study, in 2019, the Urban Affairs Committee introduced LB197, which would have established a uniform procedure for the disconnection of territory from municipalities that mirrors the current process utilized by cities of the first class. The bill would have also changed terminology from disconnection to detachment. LB197 was held by the committee after unexpected complications arose in the bill's public hearing and the committee introduced another interim study, LR119, to continue examining the disconnection detachment issue. LB197 was not advanced by the committee in 2020 due to other committee priorities, and

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probably COVID played a role too. LB162 is essentially a reintroduction of the provisions of LB197, but contains several changes to reflect other changes in statute that have been enacted since 2019. If you compare the two current processes for disconnection in statute, the one currently used by cities of the first class just seems to make more sense. It basically involves the property owner making a request to the city council that the property be detached from the corporate limits. The current process for cities of the second class and villages, on the other hand, is much more cumbersome, involves property owners filing a petition in district court with the city and village having to respond, and a trial taking place if the city or village does not consent to the request. When the city of Springfield, which is a city of the second class, went through their disconnection case a number of years ago, it took more than six months to process, even though it was something where everybody agreed that the disconnection needed to take place, whereas the process currently for cities in the first class could be done in a number of weeks. I will go ahead, since there's no one else here to testify, unless somebody snuck in behind me, the change between LB197 and LB162, which is before you. So last session the Legislature passed LB1003. We turned LB1003 into a committee priority bill that was something of an omnibus bill. There were something like nine bills in there. But the primary bill, LB1003, was designed to allow a process for a city or village that had been devastated by a natural disaster to annex noncontiguous territory. It was the village of Winslow was the primary village that had identified that problem. When we wrote that new section of law, we provided that in the event that city annexes noncontiguous territory and then doesn't actually move this city to the new territory, we required them to initiate disconnection so that they didn't just hold onto this noncontiguous area. But when we did so, we hadn't realized that there was no process for the city itself to initiate disconnection in current statute. I missed that one. So subsection (2) of the new language in LB162 provides that the city may initiate disconnection on its own for just that kind of an instance. So with that, committee members should have received letters on the record from the League of Municipalities and the city of Lincoln. I guess I will note the, because there is no one here behind me to testify-- to testify, despite there being no opposition from municipalities on LB197 two years ago, the city of Omaha and the city of Lincoln now are both opposed to LB162 and have requested that they-- the bill be amended so that there is no process for

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disconnection from a city of the primary or metro class. So I would be happy to answer any questions that committee members might have at this time.

WAYNE: Any questions for legal counsel? Senator Blood.

BLOOD: I just, I'm confused. Are we allowed to ask staff questions now? Or do we ask you the question?

TREVOR FITZGERALD: I can take it.

WAYNE: In this case, you can ask as a technical.

BLOOD: OK, so, and that was originally the question I had. And you started to answer that. So are we going to honor what Lincoln and Omaha had requested?

TREVOR FITZGERALD: That, that is a decision for the committee to make, I'd say.

WAYNE: We are, we could talk about it in exec to--

BLOOD: OK.

WAYNE: -- how the committee wants to proceed. Yeah, we'll just talk about it today in exec.

BLOOD: Thank you.

TREVOR FITZGERALD: Yeah. And I, and I apologize, I forgot to note, because it just happened this morning, we did receive a written testimony during the period for written testimony this morning on LB162. It was neutral testimony from the Nebraska Association of County Officials. They had requested that we make a technical cleanup. Under the-- under both current law and the new language in LB162, on the event of detachment from corporate limits, the city or village clerk is supposed to file a certified copy of the order of detachment with the register of deeds. NACO has requested that we also add a reference to either the county election commissioner or county clerk, as the case may be.

WAYNE: Any other questions? Senator, Senator Briese followed by Senator Arch.

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BRIESE: Thank you, Chairman Wayne. And thank you, Trevor, for all of this. You indicate here that REA is probably going to testify in opposition. Obviously, they aren't here, but what would be the basis of their opposition here?

TREVOR FITZGERALD: They-- we hadn't had any indication either way if they were going to be testifying in opposition this year. So the-- and I had to look up some of the old transcripts to remember. So, so LB197 was originally opposed by the Rural Electric Association due to concerns about the potential impact of detachment on the service territory of electric utilities. So under current law, when a municipality annexes new territory, a municipally owned utility, so if the city has a utility base in the city, they have the right to acquire distribution facilities and customers in the newly annexed area from the current electric utility. Usually it's a rural electric that, that provides outside city limits. But the right to acquire the facilities and customers is waived if not exercised within one year of the annexation. The concerns raised during that hearing was that a municipality could potentially utilize the detachment procedure to effectively deannex territory on which the right to acquire those, that service territory had expired, the customers and the facilities, then reannex the same territory and effectively get another bite at the apple to acquire that territory. It was noted during the-- what was the second interim study on this issue, LR119, at the LR119 hearing, that that issue is an issue that exists not just on the provisions of this new language, but on current law. It's not necessarily an opposition to the new language so much as it is an opposition to the current law. And the necessary changes to address that particular issue lie outside of the jurisdiction of the Urban Affairs Committee, it's within the jurisdiction of Natural Resources. So it wouldn't really be appropriate for the committee to make that change as part of this bill because we'd be going so far out of our wheelhouse.

BRIESE: OK. Kind of likely we might hear from them at some point here?

TREVOR FITZGERALD: It's possible. I know, I know that they testified at the interim study in 2019, but we hadn't heard from them since this bill was introduced. So I don't know if it's still as pressing of an issue or who knows.

BRIESE: Thank you.

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WAYNE: Senator Arch.

ARCH: This might be a question for Senator Wayne, I'm not sure. But can you back up and help clarify who's, who has submitted proponent, who has submitted opponent, who-- what positions have been taken on this?

TREVOR FITZGERALD: So the only testimony that-- or the only letters for the record that have been received, because we have been-- we received a letter in opposition from the city of Lincoln and we received a letter in the neutral capacity from the League of Nebraska Municipalities. I will note that historically the League, if one or more of their members decide to oppose the bill, even though the other, the League membership generally supports it, League position is typically to testify neutral. So and we did receive a letter in a neutral capacity during the written testimony this morning from the Nebraska Association of County Officials, and they simply asked that we add the reference to county clerks and election commissioners.

WAYNE: So with that, I see some city officials walking in from Omaha. But with that, the reason this was a technical bill is because for two years there hasn't been any opposition except for the ERAs. And the ERAs have come to the conclusion that the ERA issue is a current issue, not necessarily a new issue by this bill. So there was no reason for me as Chair to think there would be any opposition this year. And it wasn't until the last week the city of Omaha and the city of Lincoln decided they didn't want-- they wanted to speak up for the first time. So that's kind of how this whole problem started. But for two years we've been working on this and there's been no opposition.

TREVOR FITZGERALD: Technically three years, Senator.

WAYNE: Three years, you're right. So with that, any other questions for legal counsel?

TREVOR FITZGERALD: Senator Arch.

WAYNE: Go ahead, Senator Arch.

ARCH: Thank you. So if we don't pass this, will we be in limbo on this disconnection issue? With the bill that we passed last year--

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TREVOR FITZGERALD: Oh, that's a good question. Potentially, because we, we did provide that if a city of the second class or a village annexes noncontiguous territory and if they do not move to the new site within, I think it's five years, but I'd have to double-check that particular language. Now, obviously, we've got a couple of years before that five-year window would, would run out for the village of Winslow specifically. But it, it is kind of a weird situation where we mandate in statute that they disconnect, but they technically don't have the authority to disconnect.

ARCH: OK, thank you.

WAYNE: Any other questions? Seeing none, thank you for your testimony. We will start with those who are in support of LB162. Not everybody get up at once. Seeing none, we will move to those in opposition. I'm glad you made it down.

JENNIFER TAYLOR: I didn't think my timing would be quite that impeccable.

WAYNE: Welcome to your Urban Affairs Committee.

JENNIFER TAYLOR: No. OK, it was a fun drive. Good morning. My name is Jennifer Taylor, J-e-n-n-i-f-e-r T-a-y-l-o-r, and I'm a senior city attorney with the city of Omaha. First, please let me extend my apologies. I understand that this is, this-- although I understand recently this bill has been before this committee before, was presented two years ago, LB192 [SIC], I believe. To the extent that, much to our chagrin, we either misread, misunderstood or completely missed the implications of this bill, we did. And we apologize. So we-- I understand the purpose behind the bill and I understand the intent that the committee has in, in trying to move it forward. We simply want to suggest or point out some concerns that the city of Omaha particularly, and I believe the city of Lincoln shares, that could arise from this specific bill being done the way-- being introduced the way it is as it applies to the city of Omaha. Generally, the city of Omaha undertakes some sort of annexation on a relatively regular basis. The city of Omaha expands its boundaries as it's allowed to by law, does so in a very kind of measured in its particular way, goes through an analysis of police and fire and safety, snow removal, etcetera, how we provide city services, expands its boundaries. And I think initially our concern is if we had a

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situation in place where people could or properties could at some point in time request to be detached from the city, it could cause problems with us as to how we provide those services, whether we provide those services, how that, that addresses our, our general provision of those, those types of things. And then more specifically, we've looked at it in the past. To give you some background, I went through and looked through kind of our, our past requests and some of the issues we've had on this before. We've had people come, actually went back and looked. In 2010, we had a developer ask to be detached from the city. That's the only time I could find in the last 20 years where the request had been made to us. We ended up going through all of our research, looked at some case law and determined, obviously, that we did not have the power to allow a piece of property to detach or deannex from the city. That hasn't happened since then. We've had requests for people, we've actually had requests for property to be annexed into the city. But we haven't had any requests to be detached from the city. And both of those instances were dealing with financing. So for the city of Omaha, when we annex, we annexed generally an SID. An SID has been fully developed, it's been fully-- the infrastructure is complete, all the financing is done. It is then annexed into the city. So unlike smaller communities where sometimes being detached is beneficial, I understand for, I think, Winslow and Wisner, it's beneficial to be detached from financing perspective. For most of, most of the property that's been incorporated into the city of Omaha, it's been fully infrastructure serviced, developed. Oftentimes it's been developed with bond funding, either SID bond funding or city bond funding that also would be a little bit of a challenge, I think, if we were to unincorporate a section of the city that has been either serviced or built out with bond financing. So when we have whatever is inside the city limits in the city of Omaha in particular, that has all been developed. In order to-- the only reason I can think of that anyone would particularly want to, from a large piece of property perspective, detach from the city would be to incorporate as an SID in order to finance, in order to develop that property. Since we don't have large swaths of kind of undeveloped property within the city of Omaha city limits, that's unlikely to happen. The only thing you might consider that that would be similar would be West Farm and the Boys Town, where the West Farm development detached from the city, or the village of Boys Town developed an SID in order to develop that property and will eventually be annexed into the city of Omaha. So mainly it's a financing mechanism, I think, but

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practically for the city of Omaha-- and I'm sorry, I see my time is up.

WAYNE: You're fine, we have so many testifiers.

JENNIFER TAYLOR: It's a bit, I was-- I drove all the way down here. And it, really the city of Omaha's concern is practically speaking, to have one-off unincorporated properties detached from the city of Omaha is really, for the most part, impractical and probably unworkable from a provision of city services standpoint. I appreciate that the city would have to reject-- or entertain and approve or reject any such request. But then if the request is in its own right moot when it comes before the city council, it essentially becomes a process where we're going to have to reject every one that comes before us anyway. I think it looks to be a process that could be more difficult for us to administer than it really would have any potential benefit. And again, I would point out to the committee, we've, we've only had one request, that was in 2010. And at that point in time, actually, a bill was drafted and suggested in order to address the request to detach from the city of Omaha for that developer. That bill was set up as being an ordinance that would have been put forth by the city council, not by the property owner. And eventually that bill went nowhere because, again, the city of Omaha had significant concerns about the long-term implications of trying to manage properties kind of coming and going from within its boundaries. I'm happy to answer any questions.

WAYNE: Any questions from the committee? Senator Arch.

ARCH: OK, just so I understand, you would prefer not to have a process available. That's, that's really the base, basic message.

JENNIFER TAYLOR: That is really the basis. We would prefer not to have the process available. We would specifically prefer not to have this process available, because this process is property-owner-driven. Even the one in 2010 would have been city-council-driven, which is still somewhat problematic. I think, because we go through such an effort when we expand our boundaries to make sure that we can provide services, that to then retract those boundaries in kind of any sort of one-off basis could be problematic overall. I can even go back to there was a case in 1972 when the city of Omaha annexed the city of Millard, which, if anyone remembers back to them, was somewhat controversial. And there was an effort to request the city pass an

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ordinance to deannex Millard after the annexation was complete. And Justice White actually, in his opinion, said the city of Omaha has no authority to deannex or detach property and that, although that authority exists for smaller cities. Which makes sense that the Legislature, even in 1921, when it passed the act for cities of the metropolitan class, specifically didn't give the cities of the metropolitan class that authority because detachment from a city of the metropolitan class is a different situation than detachment from a city of the first class, particularly because of size and provision of services.

ARCH: Thank you.

JENNIFER TAYLOR: You're welcome.

WAYNE: Do you remember which bill number that might have been in 2010?

JENNIFER TAYLOR: It was a draft bill. I don't. But the bill-- I don't have the bill number, but what the bill was was for an act relating to the detachment of a territory from the corporate limits of a city of the metropolitan class. And the text was: The city council of a city with the metropolitan class made by ordinance detached from the corporate limits of such city, such lands, lots, tracks, streets or highways as may be deemed proper. Certified copy of such ordinance shall be filed by the city clerk in the office of the register of deeds. But that was a city, the city council would have had to bring that request. So it would have been city-council-driven.

WAYNE: Any other questions from the committee? I have a question. So in my area, we have a lot of area that is outside of the city limits up in, up in the northeast Douglas County. Part of the reason this bill is interesting to me is because they don't have any control over whether the city takes over them or not, and there's nothing they can really do. So why not allow them to have a process in which the city council can approve or disapprove whether they could be a part of the city of Omaha. And the reason I say that is-- I'm gonna give you a background. Further "norther" in my district, I have OPS. And quite honestly, in Douglas County, I have a lot of Fort Calhoun. I literally have block by block that are different because at the time, in the 60s and 70s, they went block by block and asked, which school district do you want to be a part of, and actually which county you want to be a part of. And then the county got smart and just went across a straight

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line. But so there is, at least from the Omaha Public Schools' perspective, this opportunity for a landowner to at least have a dialogue. But in the city of Omaha annexing process, there isn't really a-- the property owner has no rights. It's the city of Omaha takes over or not. So do you-- why not give the property owner at least the opportunity to work through a process to not be a part of Omaha?

JENNIFER TAYLOR: The-- I would say two things. One, there is actually a public hearing process, both at the planning board at the city council level when annexation occurs. So if you object to being annexed, you do have multiple places in which you can be heard before the public by, because the annexation has to occur through an ordinance, and you have manners and method to object to that. And it happens relatively regularly. Annexation for the city of Omaha generally occurs west, it doesn't occur north as much as it, it could. There is a process by state statute in which a property owner, provided that it is contiguous and complies with the annexation statutes, can request to be annexed. And that's actually what we did with the Avenue One development in 196th and Dodge-- 192nd and Dodge about a year and a half ago, two years ago. They requested to become part of the city limits so that they could take advantage of potentially some city transportation bonds to put in some street infrastructure. So there is a, there is a path forward for a landowner that meets the criteria to request to be annexed. And I'd be happy to help anyone put that together, if that's something they would like to do if they're outside the city limits.

WAYNE: And then there was-- we had a conversation with the SIDs off and on. And we know that there is, I don't want to say better funding, but more funding available for SID. And when I look at my district, particularly around the airport, I think that's primed to become an SID for development purposes. Without having a process in there to disconnect, that may never happen. And again, this can only happen with the, with the city council's approval. So it's not, it's not like we're, we're telling the property owner they can go ahead and do it. The city council still has to work to disapprove it. So we're actually giving the city more tools in the toolbox to manage their property owners. And it's the city of Omaha's position that we don't want more tools in the toolbox?

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JENNIFER TAYLOR: It's not that we don't want more tools in the toolbox. It's that we would prefer to have-- it's that we are concerned about if you have-- let's just say you annex 10,000 people in one year in one annexation package. And if there are 400 lots that would apply in this situation, each one of those 400, should they be disgruntled about being annexed, even though there was a public hearing in which they were able to be heard and it was able to be discussed, if one off of those each one of those property owners along those lot lines along the edge of the city were to request to be detached, then either the city has to hear all of those and reject them all or the city has to be one-off somebody is unhappy about how they're getting police service. Or one day somebody got their trash missed and now they want to be detached. There are some concerns about how that then applies. So that if you have a set boundary and you're, and you, you make that set boundary because, you know, you can provide police, fire, snow, garbage and all the city services that we provide to those boundaries, all of a sudden that boundary then steps in half a block or you take a parcel out or you move something out of here. That becomes a challenge, not only to provide the city services to remove it, but also then it, it has some, it provides some concerns about how that boundary exists. In your situation, if that's, if, if the desire is to allow large swaths of undeveloped land, which there aren't many of officially in, Senator Wayne, your district, to detach from the cities in order to create an SID, I think that is an avenue possibly worth pursuing. But I don't think-- I think we have unintended consequences with this bill that for the one situation that you're trying to accomplish and achieve, to find some relief for you, we unintentionally create a number of problems. The only other thing I would say is that we-- I would want to spend some more time looking at, if the intent was to find an undeveloped land to detach and incorporate as an SID, I think we would need to look at making sure that there aren't any financing IRS issues with that kind of detachment. Again, we did look at it back in 2010, one of our concerns with the 2010 bill was if there was GO bond funding that was used to put in any sort of infrastructure to service that detached portion of, of city prop-- or of that's inside the city. Once it's detached, does that cause any problems with our bond funding.

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

JENNIFER TAYLOR: Thank you.

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WAYNE: Are you here all day? We've got other bills you can-- you're the only testifier, so we're going to--

JENNIFER TAYLOR: If you'd like me to talk about any of the other bills today, I'd be happy to. I actually will be here this afternoon on LB25.

WAYNE: Thank you. Any other in op-- any testimony in opposition? Seeing none, anybody in a neutral testifier, testimony, providing testimony in a neutral position? Seeing none, legal counsel, do you want to close?

TREVOR FITZGERALD: Unless committee members have questions for me, I will waive close.

WAYNE: Legal counsel waives closing. I also want to note that there is a new-- the letters for the record are neutral, League of Municipalities; opposition, city of Lincoln; and neutral testimony from NACO for LB162. And that closes the hearing on LB162. We will open our hearing on LB159. Mr. Fitzgerald, you are-- technically you are a doctor. I always wanted to start using that for--

TREVOR FITZGERALD: I don't know anybody with a JD that calls themselves doctor.

WAYNE: I know, I was trying to--

TREVOR FITZGERALD: And I won't start.

WAYNE: -- but, OK. LB159, you may open.

TREVOR FITZGERALD: Good morning, Chairman Wayne and members of the Urban Affairs Committee. Again, for the record, my name is Trevor Fitzgerald, T-r-e-v-o-r F-i-t-z-g-e-r-a-l-d, and I'm introducing LB159 on behalf of the committee. As committee members are aware, because I keep telling you, in 2015, the Urban Affairs Committee began a multiyear effort to update and modernize statutes governing the various class of municipalities. Last year, during the process of updating and modernizing statutes governing cities of the primary class, the city of Lincoln noted that the statutes that provide for the printing or publishing of all city ordinances in book or pamphlet form did not also provide for printing or publish or-- publishing ordinances in electronic form. At the city's request, that change was

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incorporated into LB799, which was amended to LB1003, one of the committee's two committee priority bills last session. LB159 would simply make the same change that would be made, that was made last session for cities of the primary class in sections of statute that provide for the printing or publishing of city or village ordinances for all other classes of municipality. A number of cities and villages currently publish their ordinances online, in addition to maintaining them in book or pamphlet form, so this is a fairly simple change. I had originally expected there would be a number of individuals behind me to testify, including the League of Municipalities. I would note that we did get a letter of support from the League of Municipalities and I believe several others, but I'll let Senator Wayne read those into the record at that time. I'd be happy to answer any questions the committee might have.

WAYNE: Any questions from the committee? Seeing none, thank you. We'll start with those proponents, any proponents would like to testify. Seeing none, any opponents? Any opponents? Seeing none, anyone testifying in the neutral capacity? OK, would you like to waive closing? Mr. Fitzgerald waives closing and with that, that will-- oh, we have letters of support. The Platte Institute for Economic Research, and letters of support, the League of Municipalities. With that, that will close the hearing on LB159. I would entertain a motion to go into exec.

HUNT: Motion to go into exec.

WAYNE: There's a motion by Senator Hunt. Is there a second?

BRIESE: Second.

WAYNE: Would you turn off the mikes?

[BREAK]

WAYNE: And welcome to your Urban Affairs Committee. My name is Justin Wayne, and I represent Legislative District 13, which is north Omaha and northeast Douglas County, and I serve as the Chair of the Urban Affairs Committee. We'll start off by having members introduce themselves, including with committee staff self-introduction, starting with my right. Senator Blood.

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BLOOD: Well, good afternoon. My name is Senator Carol Blood and I represent District 3, which is western Bellevue and southeastern Papillion, Nebraska.

TREVOR FITZGERALD: Trevor Fitzgerald, committee legal counsel.

WAYNE: Justin-- I already introduced myself.

M. HANSEN: Picking me up. Matt Hansen, District 26 in northeast Lincoln.

ARCH: John Arch, District 14: Papillion, La Vista in Sarpy County.

ANGENITA PIERRE-LOUIS: Angenita Pierre-Louis, committee clerk.

WAYNE: And also assisting us are our committee pages, Noah Boger from Omaha, who is a political science major at UNL; and Samuel Sweeney from Omaha, who is a political science major from UNL. Just bear with me, we have to do this COVID reading here. Due to COVID, the COVID pandemic, the Legislature has adopted additional safety protocols that apply to all committee hearings which are posted outside. Due to social distancing requirements, seating in the room is limited. We do ask that you only enter the room when necessary for you to attend the bill hearing in-- attend the bill that's hearing in progress. The bills will be taken up in the order posted outside of the hearing room, and the list will be updated after each hearing to identify which bills are currently being heard. The committee will pause between each bill to allow the public time to move in and move out of the hearing room. We request that everyone utilize the identified entrance and exit doors into the hearing room. The entrance door is to the left-hand side of the room, the exit door is on the right-hand side of the room. We request that you wear a mask or a face covering while, while in the hearing room. Testifiers may remove their mask during the testimony to assist the committee members and transcribers to understand the testimony. Pages will use sanit-- will sanitize the front of the table and the chairs in between testifiers. In the event that the hearing room reaches capacity or near capacity, the entrance door will be monitored by the Sergeant At Arms, who will allow people to enter the room based upon seating availability. Persons waiting outside the hearing room are asked to observe social distancing, wear a mask or a face covering while waiting in the hallway. We ask that you please limit or, if possible, eliminate handouts and email them

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instead. This afternoon we will be hearing three bills and we will be taking them up in the order listed outside of the room. On each of the tables in the back of the room will be a blue testifier sheet. If you are planning to testify today, please fill out, fill out and hand it to Angenita when you come up. Please, this helps us keep the record accurate for the hearing. Please note if you wish to have your bill position listed on the committee statement for a particular bill, you must identify-- you must testify during that particular bill and during that particular part of the hearing. If you do not wish to testify, but would like your record to be recorded and your position to be recorded on the record, please fill out the gold sheet in the back of the room. Also, I would like to note that the Legislature's policy is that all letters for the record must be received by the committee by noon the day prior to the hearing. Any handout submitted by the testifiers will be included as part of the record as an exhibit. We ask if you have any handouts, please bring them, bring ten copies and give them to the page. If you need additional copies, the page will make more. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, you will hear from supporters of the bill, then you will hear from those who are in opposition of the bill, followed by the, those speaking in neutral capacity. The introducer of the bill will be given the opportunity to make closing statements, if they wish to do so. We ask that you begin your testimony by giving your first and last name, spelling both for the record. We will be using the four-minute vote system. When your testimony begins, the light on the table will be green. With one minute left, it will turn yellow. And then when the light is red, please wrap up your final thoughts. I will remind everyone, including the senators, to please turn off your cell phones or put them on vibrate. And with that, I will-- we will begin the hearing with LB25. And Senator Hansen, will you do the hearing while I'm-- and I'm, just for COVID, I'm not going to go down there. That way you don't have to clean it off every time. I'll keep it short and sweet. So we will open on LB25 and I will just allow you to [INAUDIBLE]. That thing doesn't work. This little slider doesn't work.

M. HANSEN: All right, thank you, Senator Wayne. You're welcome to open on LB25.

WAYNE: Good afternoon, Senator, Senator Hansen and members of the Urban Affairs Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent the Legislative District 13, which is north

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Omaha and northeast Douglas County. LB25 is designed to implement the provisions of the Amendment 2, which were approved by the voters in the November general election with just over 61 percent of the vote. As committee members may recall, Amendment 2 was placed on the ballot by this Legislature through the adoption of LR14CA, which was a committee priority resolution in 2019. LB25, authorized by the voters, would extend the maximum length of time for repayment of TIF-related indebtedness from the current 15-year limitation to a 20-year limitation if more than one half of the property in the project area is designated as extremely blighted. While committee members should already be familiar with the reasoning behind both the constitutional amendment of the bill and the bill, I want to stress that the reasons why implementing this change is so important to the community that I represent and others like Lincoln. In Omaha and Lincoln there are a handful-- and a handful of other areas throughout the community, there are pockets of the cities that undoubtedly meet the current definition of substandard and blighted for the purposes of TIF. But I've struggled to attract-- attract developers to rebuild and revitalize those neighborhoods. By allowing a longer TIF repayment period in those areas of extreme blight, LB25 would help incentivize those, the use of TIF where it is, where it is needed. Since the passage of Amendment 2, multiple developers have reached out to the city of Omaha to inquire about the possibility of using the extremely blighted provisions to build affordable housing in the city. As currently defined in our community development law, an extremely blighted area is a substandard, substandard and blighted area which the average rate of unemployment in the area during the period covered by the most recent decennial census, census is at least 200 percent of the average unemployment rate in the state during the same period and the average poverty rate in the area exceeds 20 percent for the total federal census tract or tracts or federal census block group or block groups in the area. A series of map showing the areas around the state that could potentially meet the current definition of extremely blighted is included in your material. Currently, both the city of Omaha and city of Lincoln have designated areas as extremely blighted that would be eligible for longer repayment period just as soon as the legislation to implement goes into effect. In light of the fact that multiple developers have already started to work on new affordable housing projects in Omaha and elsewhere, LB25 contains an emergency clause. I want to thank the committee for their help in placing LR14CA on the ballot and ask for your help one more time so we can get these

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provisions across the finish line. A number of individuals behind me or in front of me here will be happy to testify and help also answer any questions. And with that, I will answer any questions.

M. HANSEN: All right, thank you, Senator Wayne. Are there questions? Senator Arch.

ARCH: Thank you. I've got a question. In the material that we were provided, VIII-12, Section VIII-12, is, is the constitutional amendment that was approved, is that the sentence that begins at the, at the end of that first paragraph: Cities and villages make a pledge any taxes?

WAYNE: What page are you on, sir?

ARCH: Well, it's-- yes, yes.

TREVOR FITZGERALD: If I, If I could, Senator, the, the new language begins basically for line from the bottom, where it says, comma "except that the Legislature may allow cities and villages to pledge such taxes for period not to exceed twenty years".

ARCH: OK, so it doesn't start with "Cities," but it starts with "except that."

TREVOR FITZGERALD: Yeah.

ARCH: OK, OK.

TREVOR FITZGERALD: Yeah, the 15 years from the beginning of the sentence was existing language before we amended.

ARCH: All right. Thank you.

M. HANSEN: Thank you, Senator. Any other questions?

WAYNE: For the record, that was legal counsel Fitzgerald for transcribers. Although we sound alike, we're not much alike. Thank you.

M. HANSEN: Thank you, Senator Wayne. Seeing no further questions, we'll invite up our first proponent for LB25.

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JENNIFER TAYLOR: Good afternoon, again, as opposed to this morning. My name is Jennifer Taylor, J-e-n-n-i-f-e-r T-a-y-l-o-r, and I am a senior city attorney for the city of Omaha here on behalf of the city of Omaha. Good morn-- or good afternoon, senators, and thank you for your time today. We are happy to be here today in support of LB25. The city would like to extend its great appreciation and thanks to Senator Wayne for the time, effort and extensive work he has done to bring this bill forward, to bring the constitutional amendment forward, to get it passed. It will go a long way into helping certain areas that, although are declared substandard and blighted, that TIF is intended to benefit, still don't quite seem to be attractive enough or they're able to be developed by developers under the current term. And I say this because oftentimes there are sections of our city where they are designated as substandard and blighted, they now meet the qualifications of extremely blighted, and the issue becomes once a developer takes a project forward, they acquire the property, then they have to go through everything to either rehabilitate, develop the property. Oftentimes in older areas of Omaha in particular, this will include areas that need sidewalk repair, street infrastructure, sewer repair, utilities, new utilities, new sewers, all of these things that need to be that-- built into the project that makes it even more expensive than any other traditional, even a traditional TIF project. So when those costs become so cost-prohibitive that you just can't make a reasonable rate of return with a 15-year TIF term, this actually will enable those projects to have a slightly longer repayment term. They'll be able to borrow a little bit more money and oftentimes this will be, hopefully, the additional amount that they need to kind of get over that gap, to fill that gap so that that project now makes sense. Senator Wayne is correct, we have had a number of developers in both north and south Omaha that have approached the city looking to develop areas that have been difficult to develop previously because of infrastructure problems or environmental issues that they can now address. Also looking to develop affordable housing, which might not be as profitable long-term, but with the additional repayment from the additional five years of the tax increment financing can make the project actually profitable. So I think we are all very excited and looking forward to the opportunities of the additional time, the repayment time that the additional term will allow and that the additional projects that we hope will be brought to bear because of this. I'm happy to answer any questions.

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M. HANSEN: Thank you for your testimony. Other questions for committee members? Seeing none, thank you for being here.

JENNIFER TAYLOR: Thank you.

M. HANSEN: With that, we'll invite up any other proponents for LB25.

DAN MARVIN: Good afternoon, I'm Dan Marvin, D-a-n M-a-r-v-i-n, I'm the director of urban development for the city of Lincoln. I'm here on behalf of the city of Lincoln to speak as a proponent for LB25. I think specifically what we see as, as a benefit by adopting a 20-year TIF goes to how we will be able to partner with other funding streams to build out more affordable housing. I will be talking later on some of the other bills, but we've gone through an action plan on affordable housing and what we found is that the city of Lincoln has over the last 10 to 15 years not been able to do tax credit projects, which are typically the tool that developers use to build, to build affordable housing. Nine percent tax credits are priority based, and there is a process by which you go about applying for those. And our report has found that Lincoln has failed to be able to capture nine percent tax credits. The alternative is a four percent tax credit. And there have been a number of enhancements that have been made on the four percent tax credits through NIFA, through the federal government. And we believe that partnering in extremely blighted areas with four percent tax credit is something that the city of Lincoln can apply for, well, or the developers can apply for. The, the project can, can happen and we can close the financing gaps and build more affordable housing in different parts of the city. Be happy to answer any questions.

M. HANSEN: Thank you. Are there questions from committee? Seeing none, thank you for your testimony.

DAN MARVIN: Thank you.

M. HANSEN: All right, with that, are there any other proponents for LB25. Seeing none, is there anybody wishing to testify opposed to LB25? Seeing none, is there anybody who wishes to testify neutral on LB25? Seeing none, Senator Wayne, would you like to close? Senator Wayne waives closing. Before we wrap up, I'll note we had three letters as on-- excuse me, three letters for the record, all in support: the greater Omaha Chamber of Commerce, the League of Nebraska

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Municipalities and the city of Omaha. With that, we'll close the hearing on LB25.

TREVOR FITZGERALD: Also, Senator, I apologize, we did have neutral written testimony on LB25 from the Nebraska Association of Counties.

M. HANSEN: Thank you, Mr. Fitzgerald. And with that neutral testimony, we will close the hearing on LB25 and I will turn the hearing back over to Senator Wayne.

WAYNE: Thank you. Thank you, Senator Hansen. We're still working out the 8:30 to 9:30, the drop-off testimony that we just are now implementing. Next will open the hearing on-- [INAUDIBLE] Senator Hansen is here. Do you want to do yours?

M. HANSEN: Is that OK with the notice stuff outside?

WAYNE: I mean, yeah, it says 1:30. I just know she's in a hearing, so I don't know how, how engaged she is right now. We'll stand at ease. True.

TREVOR FITZGERALD: Sorry.

Normally we would hop around, but with the COVID, I'm trying to stay consistent. If we have big hearings we, I want to keep the same order. Welcome to your Urban Affairs, Senator Walz.

WALZ: Thank you.

WAYNE: We will open on LB99.

WALZ: Take a breath. Good afternoon, Chairman Wayne and members of the Urban Affairs Committee. For the record, my name is Lynne Wall, L-y-n-n-e W-a-l-z, and I proudly represent Legislative District 15. LB99 is a bill relating to the limitations on blighted areas. There is currently a limit on the amount of area that cities are able to designate as blighted. Cities of the metropolitan, primary or first class are limited to 35 percent, cities of the second class to 50 percent and villages to 100 percent. This includes both designations of blighted and extremely blighted. LB99 would exempt areas declared extremely blighted from those percentage limited-- limitations. I have provided a map of Nebraska detailing areas throughout the state that could potentially be designated as extremely blighted. As you can see,

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the issue this bill seeks to solve is so far a problem exclusive to the cities of the first class. I'd like to refer you specifically to the Fremont map. We have a significant area eligible to be designated as extremely blighted due to several factors. The most concerning and urgent is the area that was decimated by the flood in March of 2019. Without this bill, the area's designation as extremely blighted would bump the city's percentage from 29 percent, where we sit now, to 34 percent. Unfortunately, this limits any opportunity for Fremont's growth. Currently, if a developer were to approach us, we would not have the ability to apply this designation to these areas and therefore the city would lose out on potential economic development, development opportunities. This puts Fremont in a difficult position. But we are not only-- we are not the only municipality currently facing this issue or the only one that will face it in the future. Currently, cities like South Sioux City, Kearney, Scottsbluff and Grand Island all sit in the high 20s or low 30s, relatively close to that 35 percent limit. We are lucky in Fremont to have exponential growth as seen with the addition of thousands of jobs in recent years, in part because of the building the Lincoln Premium Poultry plant. This plant has created over 1,100 jobs for people in Fremont, Omaha and surrounding areas and brings in \$1.2 billion in economic active, activity each year, which is around 1 percent of Nebraska's GDP. It was only possible because the land it was built on is a floodplain, and blighting it allowed the developer to raise their buildings out of it. We are hopeful for even more opportunities, development and progress in the future with this tool, and not only in our tool belt, but also for other rural communities in pursuit of expansion as well. We hope the committee will help us with that expansion and support this bill. With that, I would be happy to try and answer any questions that you might have.

WAYNE: Thank you. Thank you for the introduction. Any questions for the committee? Seeing none, thank you for being with here. Will you stay for closing? Are you--

WALZ: Yeah.

WAYNE: OK.

WALZ: I may waive it.

WAYNE: Any proponents? Welcome to your Urban Affairs.

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DAN MARVIN: Good afternoon, Dan Marvin, D-a-n M-a-r-v-i-n, city of Lincoln director of urban development. I'm here to speak in favor of of this bill because Lincoln was an early adopter of using LB86, Senator Wayne's bill, and within LB86 it used the extremely blighted language. We provided-- we went that route not knowing whether the 20-year TIF was ever going to be something that was going to be adopted. We did it because we wanted to be able to provide homeowners of owner-occupieds the ability to access a \$5,000 tax credit for the purchase of their home. We also did it because nonprofits like CenterPoint would be able to get additional points or incentives to, towards their funding for their projects as well. Neither of these are specifically TIF or, or what normally people consider are reasons why you would blight things. And then last year, because we moved forward with those areas and in January we looked around the city and we thought, well, there's some other places that we would like to be able to have homeowners to be able to get a \$5,000 tax credit. And we had to ask the question, does a homeowner in Belmont deserve-- is less deserving of a \$5,000 tax credit than a homeowner in Havelock? And we had to answer the question no. So we are going to pursue blighting and extremely blighting those areas so that those homeowners in all parts of the community where they likely would be extremely blighted, will be able to access a tax credit to be able to get that home. But that will count against the city's interests also being able to preserve areas so that we can have future development. Just as a side note, the city of Lincoln isn't anywhere near our cap and likely will never touch our cap. We're currently at about 16 percent, cap is at 35 percent. The city continues to grow. So it's, it's a numerator, denominator thing that will constantly change. But it's not likely that we will, even with as us adding Belmont and the other areas we're perceiving to do to, to accomplish the goal of the tax credit for homeowners in those areas, it's not likely that we'll ever get to the 35 percent issue. But to me, it's, it's a fairness issue. And the fairness issue being the rationale for why you do a blight is usually not to take advantage of a tax credit, but yet embedded within the extremely blighted areas is tax credit. And we would like to be able to expand the areas that we do so that homeowners in all parts of Lincoln can take advantage of the \$5,000 tax credit. I'll answer any questions.

WAYNE: Any questions from the committee? Seeing none, thank you for being here today. Next proponent. Seeing none, we will move on to

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opponents. Any opponents? Seeing none, we will move on to neutral testifiers, anybody in the neutral capacity. Seeing none, Senator Walz. Senator Walz waives closing. We have two letters of support. One is from the League of Municipalities, the other one is from the city of Fremont. And with that, that will close the hearing on LB99. Next, we have LB44, LB44, Senator Matt Hansen. Welcome to your Urban Affairs Committee.

M. HANSEN: Thank you. I believe I also have LB444, so it's fun for my office, too. All right, good afternoon, Chairman Wayne and fellow members of the Urban Affairs Committee. My name is Matt Hansen, for the record, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 in northeast Lincoln. I'm here today to introduce LB44, which would allow cities to adopt affordable housing action plans required under last year's LB866 as part of their existing comprehensive development plan required under current law. Last year, Senator Wayne introduced and we passed LB866, which adopts the Municipal Density and Missing Middle Housing Act. Among other things, this act requires cities of at least 20,000 residents to draft and adopt an affordable housing action plan that outlines goals for greater access to affordable housing. Cities of populations from at least 20,000, but under 50,000 residents, must adopt their plans by January 1, 2024; and cities of populations of 50,000 or more must adopt their plans by January 1, 2023. Since the passage of LB866, city officials have reached out to committee members and staff asking whether this new affordable housing action plan could be included within a city's existing long-range comprehensive plan already required under state law. This seems like a commonsense solution that will help cities meet the deadline while still completing all components of the affordable housing action plan. This would, of course, only apply to cities who already plan to update their comprehensive plans within the next three years, but I still think it's important to give them this added flexibility. With that, that's basically what the bill does. I'd be happy to take any questions.

WAYNE: Any questions for Senator Hansen. Seeing none, will you be around for closing?

M. HANSEN: Probably.

WAYNE: OK. First up, we will have proponents. Any proponents? Welcome to your Urban Affairs Committee. How are you doing today, sir?

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MIKE NIKOLAS: Just another day in paradise. My name is Mike Nikolas, I'm with the missing middle housing group. My name is Mike Nikolas, I've lived in Omaha for over 30 years. In 2000, I purchased a small acreage in Ponca Hills.

WAYNE: Excuse me, sir. I'm sorry. Can you spell your name just for the record, they have it correctly?

MIKE NIKOLAS: M-i-k-e N-i-k-o-l-a-s.

WAYNE: Thank you. Go ahead, sorry.

MIKE NIKOLAS: My name is Mike Nikolas, I've lived in Omaha for over 30 years. In 2000, I purchased a small acreage in Ponca Hills, a neighborhood outside the city limits, but within the three-mile limit. The property had a house and a garage that was in condemnation. I spent two years rehabbing the garage to bring it up to code. Exhibit 1. The city stated that there had never been a permit pulled for the structure. A neighbor estimated the structure had been built around 1960. While rehabbing the structure, I began to think of my mother living alone in my hometown and thought the structure would make a suitable apartment for her in her declining years. She was 82 in 2002. I was informed by the code enforcement officer, Scott Benson, that I had been working with, that two residences were not allowed on a single family-owned property and I should look at rezoning or getting a lot split. Both suggestions struck me as overly burdensome, so I began researching zoning code and stumbled upon 55-763. In 2003, I wrote a letter to Mayor Fahey concerning the code. He referred me to Robert Peters, planning director. Robert Peters, exhibit 2, on September 24, 2003, responded saying that I would need to file a petition signed by at least three of my neighbors. The planning board would then review the special use application and, if approved by them, it would go to a vote of the city council. After much study and conference with friends, I approached zoning planner Tom Blair, March 11, 2004, with a mutual friend, Barry Larson, a previous planning board member. Tom explained that 55-763 had been enacted around 1985, and was meant for neighborhoods to adopt. No neighborhood had ever adopted it, and he estimated there were over 380 used in Omaha. But nobody cares unless you want to build one. He suggested I do a lot split. After about an hour of discussion, we left Tom's office. In the hallway outside of his office, we ran into code enforcement officer Scott Benson, who I dealt with for over two years concerning the

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structure. I had recorded the conversation with Tom Blair for future reference, and a recorder was still running as we encountered Officer Benson. Benson again told me to do a rezoning or a lot split. He stated, exhibit 3, the city won't change. They just won't. If you can get it done, great. But oh, boy, you'll spend so much money trying to get it done, Mike. It's not worth it. In May of 2005, I submitted for a special use ADU permit with the planning department. On June 15, the planning department issued their recommendation report, exhibit 4. They recommended denial. They stated, I only had three signatures from my neighbors, which was less than 50 percent. They said that my application was that I would like the ADU as a home for my 85-year-old mother, but I did not meet the owner-occupied requirement because I did not live on site. Lastly, they stated the ADU structure garage was larger than a 1930-built residence that occupied the acreage. The planning board hearing was held on July 6, 2005. Exhibit 5. I supplied each planning board member with a 2000 study conducted jointly by the AARP and the APA, which called for loosening ADU development restrictions. I gave my best college try to the board, pointing out the discrepancy in what Robert Peters had told me about the number of people required to approve and how the planning department was applying interior space requirements to a detached garage situation.

WAYNE: Excuse me.

MIKE NIKOLAS: After I finished and the board asked for opponents to the project--

WAYNE: Mr. Nikolas, we're at, we're at time, but I'm sure somebody is going to ask you a question to allow you to finish.

MIKE NIKOLAS: Sure.

WAYNE: So I just want to be consistent. Any questions from the committee? You have anything else you want to say? Go ahead.

MIKE NIKOLAS: Keep reading?

WAYNE: Yes.

MIKE NIKOLAS: After I finished and the board asked for opponents to the project, code enforcement officer Scott Benson stepped up to the podium. He stated that he had received a call from OPPD and was informed that a stolen electrical meter had been installed into this

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structure. My jaw hit the floor. The board quickly moved to deny the request. This then became a several-year battle in federal court against the city and Scott Benson, which would end up in the Eighth Circuit Court of Appeals. Code enforcement officers have qualified immunity in one must prove malice on their part, which makes it too easy to say I made a mistake. Exhibit 6. The best comment that summed up the issue came from the Chief Justice of the Court of Appeals. These planning department land use schemes are all about revenue. Here we are over 15 years later. My mother lived with me from 2003 until her passing in 2008. She never experienced the abundance of wildlife that exists in Ponca Hills. Instead, just getting to look out the window of my home in north central Omaha. I still own the acreage and I have removed the primary residence and have plans to build a multigenerational living environment on the acreage. I met with city planning in December for a preapplication meeting, meeting to discuss the property. I was informed that nothing had changed and I would have to go through the ADU permitting process or do a subdivision to create two lots. I asked if I could do as my neighbor did back in 2003. She built two residences on a single-resident parcel and called the second residence an art studio. Exhibit 7. It is complete with kitchens, baths and even an in-ground swimming pool. The quick answer was no. For the last 20-plus years, Omaha Code Enforcement has run roughshod over Omaha residents. In 2002, the Metro Omaha Properties Association [SIC] sued the Omaha Code Enforcement and won a consent decree. The abuses paused and then picked up and MOPOA sued the city again in 2013, exhibit 8. This lawsuit created policies and procedures for code enforcement officers to follow. Most of the old guard is gone, retired, fired or permitted to resign. But what about the culture that developed this train wreck? Scott Benson summed it up on March 11, 2004. The city won't change. Some years ago, I attended an ACLU banquet in Lincoln. An attorney was awarded for his outstanding work in winning appeals. He stated the secret to his success was that he only asked for a little change in his appeals. I'm here today before you with the middle missing housing group to ask you for a little change. That being LB44. The State Legislature delegates the power to zone to local governments. LBA [SIC] will not create monumental changes in our cities. Studies have shown that it will affect less than two percent of the residences in metropolitan studies. LB44 will create additional affordable housing. It will allow one to age in the community and care for the family. Respectfully,
Mike Nikolas.

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WAYNE: Thank you. Any questions for Mr. Nikolas?

MIKE NIKOLAS: Thank you.

WAYNE: Seeing none, thank you for coming down today. Any other proponents? Welcome back to your Urban Affairs.

DAN MARVIN: I promise this will be the last time I come before you today. My name is Dan Marvin, D-a-n M-a-r-v-i-n, I'm with the city of Lincoln. I'm in the urban development department, I'm the director there. We're in support of Mr. Hansen-- or Senator Hansen's bill, LB44, we're supportive of affordable housing. And we feel like Lincoln has been kind of a test case in this journey that I think the rest of the state will be on. In 2018, then Mayor Beutler put together a group that was going to put out an RFP for a study of Lincoln's affordable housing. That RFP was put together and then launched in early 2019. We had an election in 2019 and Mayor Leirion Gaylor Baird won that election and we selected RDG Planning to be the consultant on that. And we began a series of meetings with all different types of people to do an assessment of Lincoln's housing needs. And I will give a plug to RDG, which is an Omaha firm. But they did a wonderful job because they interviewed people and they asked groups specific to that group particular questions that would impact them. So to home builders, realtors, they would ask the realtors group, they'd say, what's selling in the Lincoln market? To the home builders, they would say, what costs are you facing? And then they had student groups and they'd say to the student groups, what's going to keep you in Lincoln? So they, they took all of this information by meeting lots of different groups, seniors groups, what are you looking for as you age? What are you going to, what kind of product is, is going to suit you as you age so that you can have, you can retire in Lincoln? And that data is what we used to build our affordable housing action plan. And that plan then moved forward through a process to the planning commission and to the city council. We had prior to that, we had open meetings. We were hit with COVID, so don't really need to go into all of that. We planned a number of public meetings, but to my astonishment, we were really early on this. But we did Zoom meetings. We had some Zoom meetings with 90 participants inside the Zoom meeting. So I think you can do this in the digital age, you can get meaningful documents that can then be folded in as a subarea plan with the way we're doing it in Lincoln. As a subarea plan then gets folded into our comp plan and, more than just creating a plan, you create goals that you can do. So

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the mayor, when she did her state of the city address, she announced a goal of 5,000 new or rehabbed homes that are affordable by 2030. And I'll take any questions.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

DAN MARVIN: Thank you.

WAYNE: Next proponent. Welcome back to your Urban Affairs Committee.

JENNIFER TAYLOR: Good afternoon, senators. Jennifer Taylor, J-e-n-n-i-f-e-r T-a-y-l-o-r, and I also promise this will be the last time I testified before you today. I'll be brief. I-- the city of Omaha is very supportive of this bill as to how we proceed with our affordable housing action plan and something we are currently in the process of, of working on. We are working, the planning department, the city council, the mayor's office. We've also solicited additional outside input from various different organizations around the city. It is actually something that I wanted to make clear to this committee and to Senator Wayne that has become very high priority with the city of Omaha. We're working diligently on that. This bill will allow communities to either fold that plan into their comp plan or to put a standalone plan. Either one works, but I think having options is, is helpful. So we appreciate the bill being brought. To just one other brief point, the city has also recently adopted a transportation-oriented district zoning overlay, which will allow ADUs and various other types of small housing to be folded into some of the more urban areas of our city, which actually will go forward-- towards hopefully assisting some of the affordable housing goals that we will have in our plan, as well as the expansion of tax increment financing and other avenues that we are exploring in a way to ensure that we bring affordable and good housing to not only the urban core, but all areas of our community. So I'm happy to answer any questions you may have.

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

JENNIFER TAYLOR: Thank you very much.

WAYNE: Drive safe back to Omaha.

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JENNIFER TAYLOR: Have a good afternoon.

WAYNE: Any other proponents? Seeing none, we will switch to opponents. Any opponents? Seeing none, we will-- any neutral testifiers? Neutral testimony. Seeing none, Senator Hansen, you are free to close.

M. HANSEN: Thank you. And I will close just briefly. So just broadly, I'm really appreciative of all the conversation we have from the three proponents, including Mr. Nikolas, about kind of the need and the desire for affordable housing. I think his story about just trying to give what I understand as an accessible dwelling unit, ADU, mother-in-law suite, whatever you want to call it on his property, and the long process he had to walk through is kind of some of the broader things we're looking at in terms of affordable housing. You know, it shouldn't be that complex. You know, I understand it should-- there's some hoops you might need to jump through, but it shouldn't be, you know, multiple years of litigation over converting a garage. And I'm really appreciative to hear both the city and Lincoln and the city of Omaha and some of their efforts on affordable housing. This committee will have many bills this year looking at affordable housing and other options, including some I'm bringing. So I'm excited to talk to it about that time. Just closing and reframing this specific bill, and I want to close with this because we've gotten a comment or question about it, is very much just frankly reducing paperwork. It's saying that the reporting requirements between two separate plans can be combined. And that's fundamentally what we're trying to do with LB44 and easy enough. So with that, I would be happy to take any questions.

WAYNE: Any questions from the committee? Seeing none, we have letters of support from the Platte Institute of Economic Research, the League of Municipalities and the AARP in support. With that, that will close the hearing on LB44. That will close our hearings for the day.