

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Urban Affairs Committee January 25, 2022

**HUNT:** Good afternoon and welcome to the Urban Affairs Committee. I'm Senator Megan Hunt, and I represent the 8th District, which includes the neighborhoods of Dundee and Benson and Keystone in midtown Omaha. I serve as Vice Chair of the Urban Affairs Committee. And Chairman Justin Wayne isn't with us today, but he should be joining us later. We'll start off by having members of the committee do a self-introduction, starting on my right with Senator Blood.

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

**HUNT:** Go ahead.

**BRIESE:** Senator Tom Briese, represent District 41.

**TREVOR FITZGERALD:** Trevor Fitzgerald, committee legal counsel.

**LOWE:** John Lowe, District 37, which is the southeast half of Buffalo County.

**ANGENITA PIERRE-LOUIS:** I'm Angenita Pierre-Louis, committee clerk.

**HUNT:** And also joining the com-- the committee are our pages, Ritsa Giannakas, from Lincoln, who's a political science and econ major at UNL, and Kennedy Rittscher, from Lincoln, who is a political science major at UNL also. In light of the ongoing COVID-19 pandemic, we respectfully request that you wear a mask or face covering while in the hearing room. Testifiers can remove their mask during testimony in order to assist transcribers in understanding the testimony. This afternoon, we will be hearing four bills and we will be taking them in the order listed outside the room. On the table near the entrance, you will find blue testifier sheets. If you're planning to testify today, please fill out one and hand it to Angenita when you come up. This will help us keep an accurate record of the hearing. 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 the bill's hearing. If you do not wish to testify, but would like to record your position on a bill, please fill out the gold sheet near the entrance. Also, I would note the Legislature's policy that all letters for the record must be received via the online comments portal by the committee by noon the day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask that if you do have any handouts, that you please bring ten copies and give them to a page. If you need additional copies, the page can help you make them. Testimony for each

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bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters of the bill, then from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. We ask that you begin your testimony by giving us your first and last name and please spell them for the record. We will be using a four-minute light system today. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning, and when the red light comes on, we will ask you to wrap up your final thoughts. I will also remind everybody, including senators, to please turn off your phone; any noise-making type of thing, make sure that that's set to vibrate. And with that said, we'll begin our hearing with LB695, introduced by Senator Blood. Also, Senator Arch, if you'd like to introduce yourself.

**ARCH:** John Arch, District 14, Papillion, La Vista, and Sarpy County. Thank you.

**HUNT:** Welcome, Senator Blood.

**BLOOD:** Thank you. So good afternoon, Vice Chair Hunt, fellow senators, friends all. My name is Senator Carol Blood, spelled C-a-r-o-l B, as in "Boy," -l-o-o-d, as in "dog," and I represent District 3, which is western Bellevue and eastern Papillion, Nebraska. Thank you for the opportunity to bring forward LB695 to your esteemed committee. I bring forward this bill as just one of the puzzle pieces needed to rectify the wrongs done to the citizens of Mead, Nebraska. If you haven't heard of the situation in Mead brought on by AltEn, an ethanol plant using tens of thousands of tons of corn seed treated with pesticides to create biofuel, I urge you to become familiar with it. So the intent of LB695 is to prohibit municipalities, counties and other community development agencies from granting a conditional use permit, also called a CUP, or tax increment financing, known as TIF, to any developer delinquent in the payment of real property taxes. It requires any RFPs by a community redevelopment authority or a community development agency to state that no redevelopment contract will be entered into with a developer who is delinquent in the payment of any real property taxes owed to the city. I've also brought forward an amendment to make the language more consistent, which I've passed around. The language will be added on page 5 after line 7. AltEn was enabled by the Nebraska Department of Environment and Energy, as a result of their constipated response to the crisis, to pollute the soil, air, and water of the surrounding areas of their facility with toxic chemicals due to a slowed response. This has caused devastating

effects to the people, animals and pollinators that call it home. We need to continue to put into place specific guardrails to prevent ne'er-do-wells like AltEn from taking advantage of corporate welfare offered by our state when they aren't willing to be good stewards and pay the property taxes that any citizen or business is expected to pay. Though this issue was brought to my attention by Mead, I believe these same circumstances can happen in any part of our great state. In fact, it even happens by those who claim to have Nebraska's best interest in mind, like those in the current gubernatorial race. This bill is necessary to prevent situations like what happened with AltEn. This ethanol plant owed \$518,000 in back payments of real property taxes to Saunders County, yet was granted a CUP that ultimately led to the crisis which is still occurring today. To add salt to the wound, Nebraska Department of Economic Development also awarded AltEn over \$200,000 CARES fund dollars. So I argue that when entering into redevelopment contract with a developer, especially when giving them funds, we need to know that they are at least responsible enough to pay their property taxes, and I see this as a bare minimum, really. Why would we want to enter into business with someone who isn't considerate enough to pay us back their due diligence before asking for more? That sounds like bad business to me, and it shouldn't be encouraged. It's as simple as that. So it's no secret that Nebraska has issues with high property taxes, right, Senator Briese? And the problem is exacerbated by the folks who do not pay them. If we want to keep property taxes down, we must make sure the funds are current. In no universe should we be supporting people not paying their property taxes, and we definitely should not be giving them permission for new developments and to spend the taxpayers' money for more failed businesses. While drafting this bill, all I could think about was Wimpy from Popeye, who would say, I would gladly pay you on Tuesday for a hamburger today, and Tuesday never came, by the way. So lastly, I would like to say that, should we have organizations come out against this as an anti-business bill, I would ask, what is their version of a pro-business bill? In Nebraska, we don't have to look far to find a long list of people who have taken advantage of state and federal dollars while ignoring the most basic statutes as to how to be good stewards as a business owner here in our fine state. Some of these same people are first to accuse income-challenged residents for being dependent on the system and taking SNAP to feed their families, although we know that three-fourths-- a fourth or more of those families have parents that are working one to two jobs. We aren't helping them get out of that cycle of poverty because we are too busy shaming them. When talking about unemployment, we hear ignorant people say things like, "Bobby needs to get off his parents couch and get to

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work," yet we will know in Nebraska-- we all know in Nebraska you can't keep unemployment unless you are actively looking for a job and you work with a job counselor. So for many people in our body, we seem to have two sets of rules: one for the wealthy and one for the rest of our citizens. Explain to me how this is ethically right. And remember, too, that we also have very-- we are very generous with our tax incentives for Nebraska businesses. So I'm aware that some local government entities may feel this is government overreach. But I'll remind all that we are a Dillon's Rule state, and local government exercises the powers that we as a state body legislate to them. We aren't passing down an unfunded mandate or telling them not to grow. We are asking them to help us keep property taxes at bay to ensure that everyone pays their fair share. Now I have met with the League of Municipalities early this morning and I am open to amendments to address any concerns. At this juncture, we all know that bills are fluid and usually open to change. So I'm asking you that you quickly vote this out of committee to ensure that bad stewards can no longer take advantage of the current system, and so that nothing like what happened in Mead can happen again. But it will happen if we don't do something about it. Thank you.

**HUNT:** Thank you, Senator Blood. Any questions for Senator Blood? Seeing none, thank you for your introduction.

**BLOOD:** And I will stay for my closing.

**HUNT:** I would invite up the first proponent for LB695. Welcome.

**AL DAVIS:** Good afternoon, Senator Hunt, members of the committee. I appreciate your time today. Just give me a minute to get organized here. That probably is the most important thing first. There we go. Can't-- can't do it without the paper in front of me. My name is Al Davis, A-l D-a-v-i-s, and I'm here today as the registered lobbyist for the 3,000 members of the Nebraska chapter of the Sierra Club in support of LB695. And I'm going to give you a little bit of rehash about what Senator Blood said earlier, but I just think it's important for we-- for us to lay the groundwork for what went on at Mead and how this all came to hap-- to fruition. Senator Blood's LB695 is a direct result of the investigative work done by members of the Nebraska Sierra Club and the Perivallon Group, which is a local advocacy group focused on the environmental disaster known as the AltEn ethanol plant at Mead, Nebraska. The company encompassed multiple operations on the site, operating under varying names as limited liability corporations. The city of Mead offered tax increment financing to the company decades ago when the first plant was constructed and was known

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as E3 biofuels. The associated feedlot, known as Mead Cattle Company, was an in-- integral part of the package as manure from the feedlot produced methane, which the plant burned in the manufacture of ethanol. Shortly after opening, a digester exploded on the site and the plant took bankruptcy, reemerging somewhat later under the same ownership and with an all-- with a new name, AltEn. Mead Cattle Company remained a part of the AltEn complex, but the plant embarked on a new endeavor using seeds coated with pesticides and fungicides as the basis for the ethanol produced. Traditional ethanol leaves byproduct, which is a nutritious feed, but the byproduct of ethanol production using treated seeds produced a toxic mix which may not be fed to livestock. Investigative work associated with the plant revealed that AltEn had hundreds of thousands of dollars in property taxes outstanding, as well as hundreds of thousands of mechanic's liens against the property. In mid-summer, a quick sale of the Mead Cattle Company property was conducted, removing the only significant item of value from creditors and leaving the Shell of AltEn on its own. However, the conditional use permit associated with Mead Cattle Company had expired in 2017, leaving them unable to continue operation. Saunders County approved the new CUP, which facilitated the sale of the feedlot, despite knowing that this removed the only valuable asset remaining there. The objective here is to protect assets and protect taxpayers from unscrupulous individuals who polluted the soil, groundwater, surface water, killed insects, birds and mammals, and sickened individuals in and around Mead. No company should be able to walk out of the state with millions in proceeds while leaving behind a mess which will cost over 10 to 100 times the value of that sale. Thank you. I would like to also share one other piece of information. When we were doing our work, we looked-- we did find that Mead Cattle-- or that AltEn had applied for Advantage funds in 2015. As to what happened to those, I don't know, but they did ask for more money there, so it's been a significant problem for the state and will continue to be, so thank you.

**HUNT:** Thank you, Mr. Davis. Any questions from the committee? Senator Briese.

**BRIESE:** Thank you, Vice Chair Hunt. Thank you for your testimony here today. Perhaps I could have asked Senator Blood the same question, but any other examples of TIF being used in this way or CUPs being granted in this way by individuals--

**AL DAVIS:** This is the only one that I know about, Senator.

**BRIESE:** OK. OK.

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**AL DAVIS:** You know, the conditional use permit, obviously, is a need for a company to get going. But when you've got essentially half a million dollars in back taxes, you kind of wonder why--

**BRIESE:** Sure.

**AL DAVIS:** --what you're going to do, so.

**BRIESE:** Thank you.

**AL DAVIS:** Thank you.

**BRIESE:** Thank you.

**HUNT:** Thank you so much. Any other questions? Seeing none, thanks for your testimony today.

**AL DAVIS:** Thank you.

**HUNT:** Any other proponents of LB695? Welcome.

**BETH BAZYN FERRELL:** Thank you. Good afternoon, Vice Chair Hunt, members of the Committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials and I'm appearing in support of this bill, especially the broad sort of policy concept that this bill presents, the fact that taxes need to be collected. NACO believes that, as far as a broad public policy, if economic benefits are being granted through tools like conditional use permits and TIF, the entities that are receiving those benefits should be demonstrating that they have a commitment to the local community. Property taxes are local. They support local government and local functions, counties, cities and schools. Having delinquent property taxes does not show that commitment. And I'd like to share with you a couple of highlights from our discussion about the bill. They're more on the technical end of things, but if, if this is something that you think that needs to be addressed, we'd be happy to work with Senator Blood on those. For example, we talked about, should this apply just to conditional use permits of TIF? Should this be expanded to other kinds of permits? Is that appropriate, if someone pulls a permit for a house, to expand it that far? And I don't think that our folks were really interested in maybe pushing that far, but it was sort of the discussion of how far does it go. We also talked about the tax collection process of it. A lot of times in redevelopment projects, parcels are split or platted or somehow subdivided, and the parcel number doesn't always necessarily track to the new parcel very well. And so if this would

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move forward, we'd probably need to look at how that process works. Property taxes are collected in arrears, and one of the things that we in our association have talked about over the years is there's a difference between when taxes are due and when they become delinquent, and we think delinquency is appropriate here, but that may also be something to consider as part of the bigger picture. Again, our policy is to look at the, the broad picture that property taxes need to be collected. Therefore, I'm here in support. I'd be happy to answer questions.

**HUNT:** Thank you, Ms. Bazyn Ferrell. Any questions from the committee? Senator Briese.

**BRIESE:** Thank you, Vice Chair, and thank you for being here. Any other examples where this would have been applicable you're aware of?

**BETH BAZYN FERRELL:** I'm not aware of any.

**BRIESE:** OK, thank you.

**HUNT:** Any other questions? Seeing none, thanks for being here today. Any other proponents for LB695? Seeing none, any opponents? Seeing none, is there anybody who wishes to testify in the neutral capacity? Welcome.

**CHRISTY ABRAHAM:** Hi, Senator Hunt--

**HUNT:** Hi.

**CHRISTY ABRAHAM:** --and members of the Urban Affairs Committee. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m. I'm here representing the League of Nebraska Municipalities, and we would just like to thank Senator Blood for bringing this issue forward. Like NACO, the League feels that this-- this is good tax policy and the intent is good, and we certainly appreciate the sentiment that if a municipality is going to give what I'm going to call a benefit to a property owner, such as a conditional use permit or TIF, that they should have the commitment to their community to pay their property taxes before that benefit is given. As you have heard the League say many, many times, and I will say to you again this afternoon, we love local control, so there may be circumstances where you want to give the local governing body a little bit of flexibility to allow them to issue a permit or a TIF contract, even if the property taxes are not paid. I'm thinking of examples of if someone is disputing their property tax and that is on appeal somehow or if there's been some sort of administrative error or where they paid, but there was an error, and so they actually owe

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more. There may be examples where we would like to give the local governing body a little bit more control over those circumstances. So Senator Blood was gracious enough to meet with us this morning. She is receptive to us bringing an amendment. We will work on that as fast as we possibly can and get that to Senator Blood and the committee for your consideration. Thank you. I'll be happy to answer any questions.

**HUNT:** Thank you so much. Any questions? Seeing none, thanks for being here today.

**CHRISTY ABRAHAM:** Great. Thank you so much. And I know you didn't ask, Senator Briese, but I did want to mention there was a situation in Omaha where this wasn't exactly the situation, but there was a property developer who was looking to have TIF and he had paid the property taxes on the TIF property, but on a separate parcel he had not, and so there was some concern about that. So that's the only other example I can come up with. So thank you.

**BRIESE:** Thank you.

**LOWE:** I have another question.

**CHRISTY ABRAHAM:** Oh, sorry.

**HUNT:** Oh, now we've got questions.

**CHRISTY ABRAHAM:** Yeah, I should not have said anything. I should have gone back to my little seat.

**HUNT:** Senator Lowe.

**LOWE:** Well--

**ARCH:** Probably the same question.

**LOWE:** --the same question. What happens if you owe taxes in another state or something and disputing there or just confusion going on?

**CHRISTY ABRAHAM:** Right, I think that's a-- I think that's a great question. I'm not sure how like a local zoning administrator is going to know if you owe taxes in Iowa. I think they're most likely to know if you owe taxes on the property that they're dealing with; you know, if you're asking for the conditional use permit on that parcel, they would likely know that. But whether you own something in another state and owed property taxes, I think that would be hard for them to know that information.



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**LOWE:** All right. Thank you.

**HUNT:** Any questions? Senator Arch.

**ARCH:** Slightly different. So what happens to-- what happens to-- I mean, these are just stressed pieces of property for TIF and, I mean, they, they need redevelopment. Do you ever get into the situation where back taxes are owed? And does the, does the developer assume that responsibility? So again, we're not talking about taxes owed by that developer while they owned the property, but we're talking about back taxes. Do they inherit that, have to clean that up while they're in the middle of TIF financing, all of that?

**CHRISTY ABRAHAM:** That's a great question, Senator Arch. And my assumption is that, yes, they would, that before a developer would want to redevelop a property and put lots of assets into it, they would want to make sure that title is absolutely clear. And so they're going to pay all-- any back taxes or any special assessments that might be due on that property, so they know their title is clear and clean and-- and they've got it before they start building things on it.

**ARCH:** Yeah, or perhaps it could be in dispute that-- I mean, that, that issue with the previous owner could still be a dispute and could be, could be in a lawsuit. But anyway, that may be a different, a different situation where it really isn't the responsibility or that isn't clear that it's the new developer's responsibility, but there are back taxes owed.

**CHRISTY ABRAHAM:** Sure, and I-- and I think that's why the League would like just a little bit of flexibility for the local governing body just to sort of make those determinations when they felt it was necessary.

**ARCH:** OK. Thank you.

**CHRISTY ABRAHAM:** OK. Thank you.

**HUNT:** Thank you.

**CHRISTY ABRAHAM:** Thank you.

**HUNT:** Thank you so much, Ms. Abraham. Anyone else testifying neutral? Seeing none, Senator Blood, you're invited up to close.

**BLOOD:** Thank you, Vice Chair Hunt. So I want to address a couple of the questions. Senator Lowe, it's not my intent to police what's going on in other states with this bill. I worry about Nebraskans getting their due diligence. That's my only concern with this bill. And so I-- I don't see it as an overreach in other states because it is not written in that fashion. Senator Arch, as you know, and I'm going to use this as an example, when I was on the City Council in Bellevue, I actually had a bill passed in the Legislature because the layers of ownership are so confusing when it comes to state statute and Nebraska law. In fact, what happened was state statute was written in a way that the cities were the last one on the list to get past-due fees and taxes. We've since changed that, which is a great thing. But we know that with TIF, they're going to go to a financial institution, and that is part of the job as a financial institution, to see if indeed there is something going on with the layers of ownership, but we also know that-- excuse me, it's so dry in here-- we also know that when you buy property, it is your responsibility to go through the information to see if there is anything that's in dispute, to see if there's anything, because we've seen it happen multiple times when I was in the council in Bellevue, where somebody bought a property only to find out that the taxes were in arrears and they were now stuck with those taxes. So that's kind of like when you buy a used car and you don't do your due diligence and have a mechanic look at it. So, I mean, we do have to come to a certain level where the consumer is the person responsible for those issues. But I will say, though, that as I've said in the opening and as you've just heard from the League, is that I do think that there's room for us to make sure that we address the issue if somebody is disputing something. But I want to make sure that we don't make that a loophole, right? We, we talk about property taxes all the time in this body and we talk more about how we're going to give corporations breaks than we do about the bread and butter we're-- what happens at the-- the local level. We know that when the local level can't collect property taxes, it affects the people who are actually paying their property taxes, right? Because services can't be completed, because roads can't be plowed, because that money's not in their budget. And we know with every campaign cycle that there are people running for office that are in arrears or have been in arrears in their property taxes and are still receiving CARES funds and every-- other types of handouts. Corporate welfare, we like to call it, right? So we can't be oblivious to the fact that this is going on and we need to do something about it and we need to protect our local government. We are constantly putting unfunded and underfunded mandates on their shoulders and saying, you know, I know we took away your-- your funding in 2011 and we promised to bring it

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back, but of course we never did, and now here's some more unfunded and underfunded mandates and, oh, and by the way, here's some people who don't want to pay their property taxes and under state statute there's not a whole lot you can do about it. I think that's bad government, and I think we can do better, and so I'm looking to you to actually have the same enthusiasm for this bill as I do and help me get it out because I think it's worthy of debate.

**HUNT:** Thank you, Senator Blood. Any questions? Seeing none, we do have a letter for the record on LB695, opposition from Larry Bolinger.

**BLOOD:** Yes, he sent that to my office as well.

**HUNT:** And that's all I have on LB695, so we'll close the hearing on that and open the hearing on-- oh, thank you-- on LB796, which is an Urban Affairs Committee bill, and all the rest of them are.

**TREVOR FITZGERALD:** Good afternoon, Vice Chairwoman Hunt and members of the Urban Affairs Committee. 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 LB796 on behalf of the committee. In 2018, the Legislature passed LB874, which was the product of the Urban Affairs Committee-- Committee's 2017 interim study that examined issues related to the use of tax increment financing, or TIF, that were raised in the December 2016 report issued by the Auditor of Public Accounts. That report was issued following the Auditor's review of 22 projects by Nebraska municipalities that utilized TIF. When LB874 was passed, it represented the most significant changes to Nebraska's TIF statutes since 1997. Among the changes included in LB874 was a new requirement that each municipality which utilizes TIF provide an annual report to their governing body on active TIF projects within the municipality. Copies of this report must also be provided to the governing body of each county, school district, community college area, educational service unit, and natural resources district whose property taxes are affected by TIF projects within the municipality. LB796 would add an additional reporting requirement to the annual report on active TIF projects to the governing body of the municipality and is designed to address an issue that came to light when the State Auditor's Office released an audit of TIF projects in the city of Benkelman last March. As laid out in the Auditor's report, a copy of which is included in your materials, there was a TIF project in Benkelman where the Community Redevelopment Authority, or CRA, had been using TIF funds to pay for various items unrelated to TIF-- to the TIF project, including the CRA coordinator's salary, gift cards to local businesses, and at least two other projects that were wholly unrelated to the underlying

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TIF project. LB796 would require that the annual report on TIF projects-- sorry, on active TIF projects to the governing body of the municipality also include the amount of outstanding indebtedness related to each active TIF project and an estimated date by which such indebtedness is expected to be paid in full. In the case of the Benkelman project, the payment of unrelated expenses led to the TIF bonds not being repaid when they should have been; so had LB796 been in place, the issue likely would have been discovered much sooner. Several individuals are behind me to testify, including a representative from the Auditor's Office and the League of Municipalities, but I would be happy to answer any questions the committee may have at this time.

**HUNT:** Any questions from the committee members? I have a question. I'm looking at this city of Benkelman TIF project thing and the unrelated expenses. Is this an outlier?

**TREVOR FITZGERALD:** I think it is absolutely fair to, to, to classify this particular TIF project as an outlier. I know when the Auditor's Office-- and the Auditor's Office can give much more detail than I can. But when the Auditor's Office did their audit in 2016, they-- you know, they identified a number of issues and-- and the situation in Benkelman is one where there were-- there were changes that were made to the law in 2018, and, and the City of Benkelman kind of didn't follow some of those changes. So I, I, I think it's, it's something that where this is not something that I think is commonplace, is fair to say, so certainly, certainly, our office was fairly surprised when the audit came out in March, and, and we followed up with the Auditor's Office after the report came out.

**HUNT:** OK. Thank you, Mr. Fitzgerald. Any other questions? Seeing none, thanks for your opening. I would invite up the first proponent of LB796.

**HUNT:** Welcome.

**CRAIG KUBICEK:** Thank you. Good afternoon, Urban Affairs Committee. For the record, my name is Craig Kubicek, C-r-a-i-g K-u-b-i-c-e-k, and I am the deputy auditor for the Auditor of Public Accounts. Also with me today is Russ Karpisek, who is our office legislative liaison, and today we come in support of LB796. Just in a general nature, our office promotes transparency, and I think that's kind of what LB796 does. The more transparent we can be with TIF, the better. As Trevor mentioned, we have unfortunately had some past dealings with TIF as far as issues that we've uncovered. He mentioned the 2016 letter that

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outlines several projects that included missing documentation, revolving loan programs, and, as you mentioned in the Benkelman case, excess ad valorem taxes paid in addition to the debt. In late 2020, our office contracted with Dundy County to handle the Benkelman and look at three projects within the city of Benkelman. I think Dundy County had some concerns that they have been paying them, for one specific project, over a million dollars, and when does that money stop, at what point? Is it fifteen years or is it when the debt's paid off? And so when we got in there, we noted the project started in 2011. You know, they had three projects, but there's main-- the main one project that was the big, the big piece. So it was a \$700,000 project at 4 percent for 15 years. Based on the amount that the county had paid them, we analyzed that it was over \$500,000 in excess ad valorem taxes that were used for other CRA expenses that Trevor mentioned, gift cards, CRA coordinator salary. And according to statute, we believe that those monies should have been used to pay down the debt and not to be used to-- as a CRA, Community Development Authority, slush fund. In June of 2021, I presented at the League of Municipalities conference, and I did that on do's and don'ts of tax increment financing. And I kind of went through some case studies as far as having them, you know, cities and village representatives, to recalculate what the debt should be and those-- some examples. And I got several emails and calls after that, saying, I have no idea what I owe, I have no idea what our amortization schedule is, I have no idea what the county has paid in ad valorem taxes. One of those examples was the city of Madison, who reached out to me, and they had similar issues with the city of Benkelman, not to that extent of dollars involved. It was more in the \$50,000 to \$60,000 of overpayments, but similar issues where the CRA was using those funds for what they called "bucket" TIF. And I told them and the city, I said, will you provide me guidance on bucket TIF, because I don't, I don't see that in statute or any of the other, you know, rules regarding TIF. And so they could not provide such, and so in September of 2021, the CRA returned those funds that were in excess. We've also tested TIF in several cities, villages that we do. If we do their audit and they have TIF, we're going to, you know, look at those at that time. So based on that work, we've always recommended that the city and villages have some-- a piece of the pie. Even if there's a CRA involved, they should be looking and get the amortization schedules to determine, OK, is these, these payments-- is-- the debt should be paid off or not, and where does that stand? So I think with LB786, I think that it'll help cities and counties keep an eye out for excess and making sure those funds stop if it, if it should stop before the 15 years. So thank you for the time today. I know there was a question.

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Senator Hunt, if you want to ask that same question, I can answer it at that same time. I have just a little bit of information on that, so thank you.

**HUNT:** Thank you, Mr. Kubicek. I, I would ask you that same question--

**CRAIG KUBICEK:** OK.

**HUNT:** --like do you think the Benkelman project was an outlier in terms of what you see across the state?

**CRAIG KUBICEK:** I think as far as the dollar amount, it was an outlier. It's, it's-- seems odd that you would be allowed to have over \$500,000 in excess ad valorem taxes. Just the size of that, I think, stands as an outlier. But as-- as we've noted in the 2016 letter, the Benkelman case, the questions that I was getting from other, you know, municipalities and then the Madison case, much smaller dollars, but I think there is some risk there that, you know, there's others out there, just based on the information that I was getting and the information that we've looked at.

**HUNT:** Cool. Any other questions from the committee? Seeing none, thank you for being here today.

**CRAIG KUBICEK:** Yep. Thank you.

**HUNT:** Any other proponents of LB796? Welcome. And Senator Matt Hansen is joining us, if you want to introduce yourself, Senator.

**M. HANSEN:** Yes. Matt Hansen, District 26 in Lincoln. Thank you.

**HUNT:** Thank you. Welcome back.

**CHRISTY ABRAHAM:** Thank you, Senator Hunt and members of the Urban Affairs Committee. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m. I'm here representing the League of Nebraska Municipalities, and we want to thank the Urban Affairs Committee for introducing this bill. Kind of tough to follow the Auditor, but we would also like to say that we really appreciate the transparency that these reports to the city councils and village boards have provided. As your legal counsel told you, that came into being a couple of years ago, and so now, every year, the city councils and village boards are getting all this information about their TIF projects. And I think that's really helpful for them to sort of see where their active TIF projects are, what's happening, what's going on. And we're certainly supportive of adding this additional piece of information to ensure a

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situation like Benkelman doesn't occur again. We would like to work with your legal counsel and the committee on some of the language on this bill. There's some question about the word "indebtedness." Does that mean all indebtedness of the project or just the TIF indebtedness? So we might like to provide as much clarity as possible in the language. There is a representative from Omaha that will also be testifying, and they may have some additional concerns they'd like to raise with you. But in general, we are very supportive of this. We support transparency and we certainly appreciate all the efforts that the Auditor does to help our cities to make sure they're doing TIF correctly. I'm happy to take any questions you might have.

**HUNT:** Thank you, Ms. Abraham. Any questions from the committee? Seeing none today, thank you for being here.

**CHRISTY ABRAHAM:** Thank you so much.

**HUNT:** Any other proponents of LB796? Seeing none, any opponents? Seeing none, anybody wishing to testify neutral? Come on up. Welcome.

**BRIDGET HADLEY:** Good afternoon, members of the Urban Affairs Committee and Vice President Hunt. Bridget Hadley, spelled B-r-i-d-g-e-t, Hadley, H-a-d-l-e-y. And I have a statement prepared, but I appreciated the comments that have come before me and just thought I would add that I am actually the person in Omaha who has the privilege of preparing that report, that annual report, so I do have some thoughts. I do agree, as Christy Abraham said, having that report, even though it's quite a task, is good. And I suspected it was coming so that there could be transparency and accountability, so, I mean, I think it is a great idea. So the city of Omaha takes a neutral position on LB796. Omaha agrees with providing the indebtedness-- sorry, it's easier for me to read this way-- providing the indebtedness of active TIF projects based on the previous year end date, since the city of Omaha finance department already prepares this information. And when I discovered that I thought, phew, no more extra work for me. However, talking-- in talking with the city of Omaha finance department, Omaha would recommend modified language to this portion of the bill that reads as follows: and an estimated maturity date based on the TIF term of the redevelopment project by which such indebtedness is expected to pay-- to be paid in full. That is the, the language that I'd like to suggest modifications. Reporting the estimated maturity date, which is based on assumptions that do change, makes the information meaningless. Most of our projects are 15 years out, and I believe I heard the State Auditor say that there is an amortization schedule, and our finance department does prepare one, an

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amortization schedule, for all of our TIF projects. I would add that what would be more meaningful and relevant is to know which redevelopment projects will pay off or mature in the current year or year of the annual report and the following year. The city of Omaha is fairly certain of the redevelopment projects that will pay off or mature in the current year. So, for example, this year that I'm preparing the annual report, the finance department already has a really good idea of the projects that will pay off in 2022 and, thus, they will know also, have a pretty good idea of what's going to pay off in the following year. Omaha also, again, has that pretty good idea, so predicting beyond that time frame becomes unreliable because of uncontrollable factors, such as assessed value, valuations of the real estate assigned by the Douglas County that are subject to change every year, market conditions that are not always stable or predictable, levy rate changes, changes in business decisions and etcetera. Any of these factors can change the amount of TIF or excess ad valorem that is generated and, thus, when the TIF redevelopment note will pay off or mature. If knowing with some assurance the indebtedness that will pay off or mature and flow to the taxing jurisdictions is the goal, then providing indebtedness of redevelopment projects that will pay off or mature in the current year and the following year seems more pertinent. That concludes my comment, and I'm here for any questions.

**HUNT:** Thank you, Ms. Hadley. Are there any questions from the committee? Seeing none, you shared some-- we'll, we'll reach out to you. The committee will reach out to you, but you shared some language that was something you thought would help improve the bill. Can you share what that was again?

**BRIDGET HADLEY:** Let's see. So I said that it might be more meaningful or relevant to know which redevelopment projects will pay off or mature in the current year that that annual report is prepared and then the following year.

**HUNT:** OK.

**BRIDGET HADLEY:** And I'm saying because we know that the TIF-- the excess ad valorem is based on, you know, the, the valuation that's assigned by the county and by the levy rate. Those are two main things that'll affect the valuation, thus the amount of TIF that's generated. Of course, there are all those other conditions and factors that we can't control, so we figure that at least two years out might be the best time period to focus on if you really wanted to know, you know, what's really going to pay off and flow to the taxing jurisdictions.



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**HUNT:** OK, thanks. Was there language that you actually wrote in your testimony or did I mishear that?

**BRIDGET HADLEY:** There is and--

**HUNT:** Can you say that again? Sorry.

**BRIDGET HADLEY:** That's OK.

**HUNT:** We're good.

**BRIDGET HADLEY:** I would add that what would be more meaningful and relevant is to know which redevelopment projects will pay off or mature in the current year, and then I said, in parentheses, year of the annual report, parentheses closed, and the following year.

**HUNT:** OK. OK, thank you so much for being here today.

**BRIDGET HADLEY:** You're welcome.

**HUNT:** And thank you for the work you do for Omaha and Nebraska.

**BRIDGET HADLEY:** And thank you for your time.

**HUNT:** We appreciate it. Anyone else here wishing to testify in the neutral capacity? Seeing none, Trevor, do you want to close?

**TREVOR FITZGERALD:** If committee members have questions; otherwise, I will waive closing.

**HUNT:** Are there any questions from committee members? Seeing none, Mr. Fitzgerald waives closing on LB796, and we will move to LB797, another Urban Affairs Committee bill.

**TREVOR FITZGERALD:** Good afternoon, Vice Chairwoman Hunt 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 LB797 on behalf of the committee. LB797 would create a process in the Community Development Law for the removal of a substandard and blighted area designation or the removal of an extremely blighted area designation, something our office has been colloquially referring to as "unblighting." During the 2021 Interim, the committee held interim study hearings on a series of interim study resolutions related to the Community Development Law, including LR126, which was an interim study designed to look at the unblighting issue. Historically, there have been a small number of instances in which municipalities have removed

a blighted designation, but under current law there's actually not a process in statute to do so. While some city attorneys could potentially argue that a city can undo something they have the authority in statute to do, Nebraska has traditionally been a Dillon's Rule state. The principle of Dillon's Rule basically holds that local governments can only exercise powers that are either: (1) expressly granted to the state; (2) necessarily and fairly implied from that grant of power; or (3) crucial to the existence of local government. As the committee heard at the interim study, those cities which purport to have removed a blighted designation, did so by simply repealing the resolution that created the blight designation. LB797 would provide express authority for municipalities to remove a blight designation upon a simple finding that the area was no longer substandard and blighted or extremely blighted, as the case may be, and declaring as such with a new resolution. Because tax increment financing projects can last up to 15 years, or 20 years in the case of an extremely blighted area, LB797 also provides that removal of a blight designation would not affect the validity of any redevelopment plan or redevelopment project approved prior to the removal of the designation, or any bond redevelopment contract agreement related to such redevelopment project or redevelopment plan. I will note, the committee has received several questions regarding the requirement of a, quote unquote, finding that the area is no longer substandard and blighted. The language in the bill was explicitly written so as to be simp-- as simple as possible for municipalities. While the initial process of designating an area as substandard and blighted includes a formal study and analysis, the unblighting process under LB797 would not require the same level of analysis. In many cases, I-- I think it could be as easy as the city just declaring this area is obviously no longer blighted. Several individuals are behind me to testify, including the League of Municipalities, but I would be happy to answer any questions the committee may have at this time.

**HUNT:** Thank you, Mr. Fitzgerald. Any questions from the committee? Seems pretty straightforward to me. Thank you so much for your open. First proponent on LB797. Welcome.

**ERIC GERRARD:** Thank you. Vice Chairwoman Hunt, members of the Urban Affairs Committee, my name is Eric Gerrard; that's E-r-i-c, last name is G-e-r-r-a-r-d, and I'm here in support of LB797 for the city of Lincoln. Committee counsel for the Urban Affairs Committee did a really nice job laying out the purpose of the bill, why it's a good idea, and I think the city of Lincoln just wants to step up and say we agree clarifying the process that, that we as a city should undergo when we're removing the substandard and blights is a good idea. I can

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think of three practical times that this could happen. There are probably more, and I'm guessing your committee counsel is well situated to, to tell you those. The first, the, the whole reason for tax increment financing is redevelopment, and I think there are probably certain times where a neighborhood or an area in town is certainly redeveloped and no longer substandard and blighted. And so I think that's a good time for a city in a sense to, to celebrate that or, or make the community-- make, make it known. And so to remove that designation, I can see that being a good time to do that. Second, the city of Lincoln, we aren't close to the percentage. So for a city of the primary class, I believe metro class and first-class cities, you can go up to 35 percent of your community could be substandard and blighted. We aren't anywhere close to that, but if we ever were, we'd have to look, I think, at portions of the city of Lincoln that, that we'd want to remove that designation. So that would be another reason I think this is good to have a process in place. The third, third one I thought of, and this admittedly isn't as good, but every once in a while at the city of Lincoln, we get calls saying, yeah, I don't live in an extremely blighted neighborhood or this, this isn't substandard and blighted. We, we try to explain to them there's actually a benefit that comes along with that. But if a constituent is, is adamant enough, then perhaps this would, this would be a reason we may use that. The, the one point I wanted to raise, and committee counsel, Trevor, reiterated this point multiple times, I-- we did receive the same question from our city law team: What-- how do you define "finding" within, within the bill? I think Trevor laid it out that it is a simple declaration, a simple finding, but I think the concern was to make sure it's not a strenuous study or a study that takes months. I think that was clear, probably through the legislative intent, but if there is-- if there are meetings to clarify that, I guess, the city of Lincoln would, would like to be a part of those. So with that, I'd reiterate my support, city of Lincoln's support for LB797, and try to answer any questions that you may have. Thank you.

**HUNT:** Thank you, Mr. Gerrard. Any questions from the committee? Seeing none, thank you for being here today.

**ERIC GERRARD:** Thank you.

**HUNT:** Any other proponents for LB797? Welcome back.

**CHRISTY ABRAHAM:** Thank you, Senator Hunt and members of the Urban Affairs Committee. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m, here representing the League of Nebraska Municipalities. I don't want to be repetitive. Certainly, Mr.

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Fitzgerald and Mr. Gerrard have expressed the concerns that the League has about this bill. We're really supportive of this. You'd be surprised, the number of times I have heard from communities who have said, we're going to "unblight" something. And my question is, oh, are you now, like under what authority under the Community Development Law are you doing that? And as you might imagine, there's kind of a split among city attorneys about whether they've had the authority to do this or not. So we're very grateful that this committee has come up with a process so they can do it and they know how to do it. And the, the situations that I can think of where a community has "deblighted" and area is the one that Mr. Gerrard mentioned, and that is they're up close to their cap of blighted and substandard areas, they're up to that 35 percent and so they want to deblight something so they can move on to another area of town. So, again, very grateful for this committee. We also would like to work with the legal counsel on maybe just a few cleanup areas to make sure we know exactly what the process is, and, and we'd be happy to do that. So thank you so much for your time on this bill.

**HUNT:** Thank you, Ms. Abraham. Any questions from the committee? Seeing none, thanks for being here.

**CHRISTY ABRAHAM:** Thank you.

**HUNT:** Anybody else wishing to testify on LB797 as a proponent? Opponents? Seeing none, neutral? Welcome back.

**BRIDGET HADLEY:** Afternoon again. Thank you for this opportunity. And correction, it's Vice Chairperson Hunt.

**HUNT:** All good.

**BRIDGET HADLEY:** Get it right this time. So Bridget Hadley, B-r-i-d-g-e-t, Hadley, H-a-d-l-e-y. So the city of Omaha has no real concerns, except that if both LB797 and LB798 were passed, there could be conflict between those two bills and LB836. Thus, the city of Omaha is neutral with the request that the bills be consolidated for consistency and clarity in accordance with conversations with the Nebraska League of Cities [SIC], so agreement and understanding the concerns, but remaining neutral with just some clarity and, and con-- consistency.

**HUNT:** OK, thank you, Ms. Hadley. Any questions from the committee? Seeing none, thanks for being here today. Anyone else wishing to

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testify neutral on LB797? Seeing none, are there any questions from the Committee for Mr. Fitzgerald? Would you like to close?

**TREVOR FITZGERALD:** I waive.

**HUNT:** Mr. Fitzgerald waives closing. And we'll move on to our final bill, LB798, which is another committee bill. Also, Chairman Wayne has joined us, if you want to--

**WAYNE:** Rock and roll.

**HUNT:** --introduce yourself.

**WAYNE:** No, you're good.

**HUNT:** All right.

**WAYNE:** You're rockin' and rollin'.

**HUNT:** Just saying, for the record, you know, who's here.

**WAYNE:** I'm only an hour late.

**TREVOR FITZGERALD:** Good afternoon, Chairman Wayne, Vice Chairwoman Hunt, and members of the Urban Affairs Committee. For the record, again, 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 LB798 on behalf of the committee. During the 2021 Interim, the committee held interim study hearings on a series of resolutions related to the Community Development Law. One issue that came up during multiple hearings this fall was an unusual quirk in the definition of "extremely blighted area" under the Community Development Law. And I will apologize. My, my testimony on this one's a little bit longer than the last two. So under the Community Development Law, an extremely blighted area is defined as an area that's already a substandard and blighted area and in which two criteria exist. The first is the average rate of unemployment in the area during the period covered by the most recent decennial census or American Community Survey five-year estimate is at least 200 percent the-- of the average rate of unemployment in the state during the same period. The second criteria is the average poverty rate in the area exceeds 20 percent for the Federal Census tract or tracts or Federal Census block group or block groups in the area. The issue that was identified over the interim deals with the first of those two criteria. Because the Census Bureau, a number of years ago, they, they no longer gather unemployment data during the decennial census, so that information is only available as part of the American Community

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Survey, which happens annually but is averaged over a five-year period. So as a result, the unemployment rate criteria for the designation of an extremely blighted area can be what is best described as a floating average. It means an area can meet the definition of "extremely blighted area" for unemployment purposes in one year, but not meet it ne-- the next year due to the five-year average shifting. As the committee heard over the interim, some cities have been reluctant to declare eligible areas as extremely blighted areas because of the uncertainty surrounding the floating average. In fact, at the hearing on LR126, the city of Grand Island testified that it was their opinion that, based off the current definition, extremely blighted areas needed to be confirmed based off the new five-year average every single year, which I don't think was the intention of the Legislature when we created the definition of "extremely blighted." LB798 seeks to address the issue of shifting av-- the shifting average by providing that, notwithstanding any other provision of law, the designation of an area as an extremely blighted area pursuant to the Community Development Law shall be valid for a period of 25 years from the effective date of the resolution declaring the area to be an extremely blighted area. This would ensure that once the designation has been made, the city would not need to reexamine the unemployment data until and unless the city sought to extend the designation for an additional 25-year period. Several individuals are behind me to testify, including the League of Municipalities, but I would, of course, be happy to answer any questions the committee may have at this time.

**HUNT:** Thank you, Mr. Fitzgerald. Any questions from the committee? Seeing none, thanks for your introduction. We welcome the first proponent of LB798.

**CHRISTY ABRAHAM:** Thank you, Senator Hunt and members of the Urban Affairs Committee. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m, here representing the League of Nebraska Municipalities. Your legal counsel is so wonderful, you really don't need me. I, I really don't need to say anything. He explained very well why we are so grateful to have this bill. That five-year rolling average has caused some communities some hesitation, so we're very grateful that in this bill there is a certainty towards the designation that it's going to be 25 years. Our only request is that this bill, when you start talking about these bills and possibly packaging them, that we look how this can be integrated into the bill. We just heard LB797 about how you unblight. We just want to make sure that this 25 years isn't something that's absolutely set in stone, that if a community realizes that they have redeveloped this area and

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the designation of extremely blighted is not necessary anymore, it doesn't-- they don't have to wait that 25 years, that they will be able to unblight it before that period. So just probably a small tweak. We would just love to work with this committee to make sure that those two bills work well together. I'm happy to answer any questions you might have.

**HUNT:** Thank you, Ms. Abraham. Any questions from the committee? Seeing none, thanks for being here today.

**CHRISTY ABRAHAM:** Thank you so much.

**HUNT:** Next proponent of LB798? Seeing none, anyone opponents of LB7-- LB798? Seeing none, anyone here to testify in the neutral capacity? Seeing none, we have a letter of support for LB798 from Kasey Ogle with Nebraska Appleseed. Do any committee members have questions for Mr. Fitzgerald? Seeing none, would you like to close? Mr. Fitzgerald waives closing. And with that, I'll close the hearing on LB798 and this Urban Affairs Committee hearing.