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Urban Affairs Committee February 8, 2022  
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**WAYNE:** I'll have my opening. Well, let's see, after four years, I can remember this. Welcome to your Urban Affairs Committee. I am Justin Wayne. I'm Chairman of Urban Affairs. I represent Legislative District 13, which is north Omaha and northeast Douglas County. We'll start off by doing self-introductions of senators and staff, starting with my right, Senator Briese.

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

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

**ARCH:** John Arch, Senator from District 14, Papillion, La Vista and Sarpy.

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

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

**WAYNE:** Thank you. And also assisting us today is our committee clerks. And since I don't have your names in front of me.

**TREVOR FITZGERALD:** Pages.

**WAYNE:** Committee clerks-- committee pages, so he messed up already. What is your name?

**KENNEDY RITTSCHER:** Kennedy.

**WAYNE:** And your last name?

**KENNEDY RITTSCHER:** Rittscher.

**WAYNE:** Rittscher and--

**RITSA GIANNAKAS:** Ritsa Giannakas.

**WAYNE:** They're both at UNL, I believe studying political science and one is studying economics and one is studying something else-- just political science. Oh, in light of COVID pandemic, we respectfully request that you wear your mask or face coverings while in the hearing room. Testifiers may remove their mask during testimony so committee members can hear, and transcribers can clearly hear and understand the testimony. This afternoon, we'll be hearing four bills. We'll be taking them in the order of-- five bills. We'll be taking them in the order listed outside of the room, on the table. In the near entrance,

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Rough Draft

you will find a blue testifiers sheet. If you are planning on testifying today, please fill out one and hand it to Angenita when you come up so we can keep our records accurate. Please note if you wish to have your position listed on the committee statement for a particular bill, you must testify during that position of the bill hearing. If you do not wish to testify, but would like your position recorded on the bill, please fill out a gold sheet in the entrance also. Also, I'd like to note that it's Legislature policy that all letters-- letters must be received to be recorded for the record, must be received via online comments portal by the committee, noon, prior day to the hearing, except for on days like holidays, we'll allow it to come in today. Any handout submitted by testifiers will be also included in part of the record as exhibits. If you have any handouts, please bring 10 copies. If you don't hand them to the page before you testify, so when you come to testify, we know what you're referencing. Testimony for each bill will begin with the introducer's opening statement, followed by the supporters of the bills, then oppositions, followed by those speaking in a neutral capacity. The introducer will have the option of closing if they choose to do so. We ask that you spell your first and last name for the hearing so the transcribers can have it correctly. We'll be using the four-minute light system. What that means is it will be on green, and then one minute it will turn to yellow, and at the red mark, or red light, we ask you to wrap up your thoughts. Like to remind everybody to turn off their cell phones or vibrate them. And with that, we will start with LB17. We'll be starting with LB713. Senator Flood, welcome to your Urban Affairs Committee, the best committee in the Legislature.

**FLOOD:** Thank you, Chairman Wayne, and members of the committee. My name is Mike Flood, F-l-o-o-d, and I'm the state senator for District 19, representing Madison and southern Pierce County. I'm here to introduce LB713, which prohibits the use of Tax Increment Financing, also known as TIF, for the construction and renovation of casinos. I'll start off by saying that I don't disagree that Nebraska communities have a vested interest in seeing rundown, economically disadvantaged areas improved and redeveloped. That's the goal of the TIF incentive to attract private development to substandard and blighted areas where such redevelopment wouldn't otherwise happen. However, using TIF to subsidize the construction of multimillion dollar casinos on the backs of Nebraska taxpayers is just plain wrong, and it should be illegal. When the voters authorized gambling in November of 2020, they made clear that they expect property tax relief from this new source of revenue. Measure 431 clearly stated that funds

collected from the gaming tax be distributed to the property tax cash-- or credit cash fund. This measure passed with over 620,000 votes, 32,000 votes more than the measure authorizing games of chance under our Constitution. When municipal leaders started ignoring the letter and spirit of our Community Development Law to subsidize casinos, they also dilute TIF's ability to create positive change in the community. State statutes limit the number of acres cities can designate as blighted and substandard for the purposes of providing TIF. Every acre designated for a casino project is one less acre that can be designated in a truly blighted area to bring about positive redevelopment in a struggling neighborhood. By allowing casinos to use TIF, we are hurting one of our state's best tools for bringing new opportunities investments to places that desperately need them. This bill is straightforward. It prohibits the use of Tax Increment Financing as described in Nebraska Revised Statute 18-2147 from being used for the construction or redevelopment of a casino. As I understand it, the committee has been provided with AM1819, an amendment providing two key changes. First, it includes an emergency clause for this bill to take effect upon passage and approval. Second, it clarifies the activities prohibited under this bill are the construction or renovation of casinos or licensed racetrack enclosures. Reasonable people can disagree about whether casinos will be a positive or negative force in Nebraska communities, but whatever your views are in gambling, we should all agree that casinos have no place taking millions of dollars in property tax subsidies for their development. It's not what the voters want. It's not what the Legislature intended. And I think one very important point as it relates to this bill is that there should be a but for analysis done by every city when it comes to deciding whether or not to use TIF. And I think the voters have very clearly indicated that they wanted casinos next to horse tracks. If you are operating a horse track, there is no but for analysis, you're going to get a casino, very likely, under the statutory and constitutional scheme that's currently in place. And so when I argue about not using TIF, it really goes to this "but for" analysis. And I think you are absolutely subverting the will of the voters by not making these casinos pay their property tax bill to the taxpayers, to the political subdivisions and instead reassigning it to making it a better looking casino. Las Vegas can afford to pay for a remodeling of a street or a parking lot, or the public improvements that are connected with TIF. Take the write-off on the property taxes and make them pay their share. So I would also say, as it relates to Omaha, the city of Omaha passed this under the statutes at the time. I am not trying to go back and rewrite TIF prior

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to their vote. I don't think that would be fair. Now it's up to the committee ultimately as to how you want to handle the city of Omaha, but I am OK with an amendment that recognizes that going forward, this won't be the law. But Omaha moved swiftly and they granted TIF to the amount of \$17 million for a project in the city of Omaha and I'm not-- it's not my intent to go back and stop that. Thank you, Mr. Chairman.

**WAYNE:** Senator Blood.

**BLOOD:** Thank you, Chairman Wayne. How are you today, Senator Flood?

**FLOOD:** I am good, Senator Blood.

**BLOOD:** I have a couple questions for you.

**FLOOD:** I have a couple of answers.

**BLOOD:** So can you explain to me why you think it's appropriate for us to tell local government how to do business when we've pretty clearly already put in a statute what TIF is for and how it's to be used?

**FLOOD:** Well, I just-- as I explained in my testimony, I do not believe that the "but for" analysis is-- when it's applied here that it clearly doesn't work. We don't need to incentivize anybody to build a casino in Lincoln because the Constitution is-- been changed by the voters to allow for a casino next to a horse track. And that casino is going to happen regardless of whether or not there's TIF or not.

**BLOOD:** But for the property in Bellevue that wants to do a horse track and a casino, that property has been without anything built on it for decades. It would pass the "but for" tests, for tests. So my concern that I'm hearing based on what you said is that we're assuming that everybody who wants to-- to build a casino next to a racetrack that it's not going to pass the "but for" test. And I don't have a crystal ball, so I don't know how we can know that because we don't necessarily know what's going on with that piece of property that they're going to build on. And I think that's a local government issue and so that's one of the things I'm questioning. The other thing is I look at past history in Nebraska, in that they should pay their past new property taxes. I think that's very true. There's a senator in our body right now, they re-up their TIF. They're-- they're not poor people. They, you know, I see people taking advantage of TIF that are actually elected officials. I look at the AltEn plant who is half a million dollars behind in property taxes, but yet the state gave them hundreds of thousands of dollars in CARES funds. I think we want to be

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careful. And my concern isn't that because I know that we're going to probably have people testify that it's all about the gambling. I-- I'm guessing today. My concern is local control. It's already in state statute and I-- I'm not hearing anything compelling yet that tells me that it needs to be amended. And if we're going to stop-- start worrying about TIF and property taxes, isn't it hypocritical when we ignore other issues when it comes to property taxes in Nebraska, like giving people CARES money when they're-- they're behind on their property taxes?

**FLOOD:** Which of those questions would you like me to answer?

**BLOOD:** All at once.

**FLOOD:** Okay.

**BLOOD:** It was a long question. I apologize for that, but I'm thinking out loud.

**FLOOD:** No, it's OK. Well, I think the best argument I have, and it is my job to be an advocate and to inspire you to vote for this bill, and I think the greatest argument I have is if you look at what happened in 2004, voters over-- overwhelmingly said no to casinos in Nebraska and horse tracks.

**BLOOD:** In 2004.

**FLOOD:** In 2004. And I asked myself, well, what changed between 2004 and 2020? And I think when you look at the language in the 2020 ballot initiative, it said that the revenue-- a portion of the state tax revenue would go to property tax relief. And I think you could argue that a voter said, I'm going to support this because it will reduce my property taxes. And if that is true, which I believe it is, why would we exempt the horse tracks last casino from paying their own property taxes and instead let them redevelop? Like, I think that if it's about property tax relief, if this happens in Bellevue, if it happens in Columbus, if it happens in Ogallala, wherever it happens, think about the benefit that the police department could have more calls. There will be more rescue calls. There will be more street department needs. The county will have more needs. Schools will have an increase in their number of people that are working or living in the community. Those political subdivisions should be able to enjoy the increase in property taxes to be able to provide the services that a casino is going to want and letting them off from paying their property taxes to

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instead reinvest in their property, it doesn't seem like it's in sync with what the voters wanted. That would be my best argument.

**BLOOD:** So based on those answers, I have one more question then.

**FLOOD:** OK.

**BLOOD:** And it's a two part question. Big surprise. So you make it sound like when they use TIF, they're never going to pay property taxes, but that's not true, correct?

**FLOOD:** Can you repeat that?

**BLOOD:** You made it sound in that sentence like if we give them TIF-- TIF, they won't be paying any property taxes, but that's not true, is it? It's a small window of time.

**FLOOD:** Well, for 15 years.

**BLOOD:** OK. I want to make sure that that's clear on the record. And then when somebody gives TIF to a new development, aren't they required to have a public hearing?

**FLOOD:** Oh, yes.

**BLOOD:** So all of these concerns that you have, be it schools, be it first responders, be it streets, whatever, then people have the opportunity to say, we don't want to give this company-- this organization TIF. Isn't that true?

**FLOOD:** I'm not taking issue with the-- I think it's a policy issue. It's not a process issue for me. I obviously support TIF statutes. I support the use of TIF in-- where appropriate. I think just as a matter of policy, we shouldn't allow municipalities to grant this type of financing to casinos because I think the reason we have casinos coming in Nebraska is that people wanted property tax relief. And at a very base level, we should make them pay their property taxes because that was, I think, the number one reason that this got voted in in the first place.

**BLOOD:** Do you have data that shows that or is that just your opinion?

**FLOOD:** That's my opinion of what the voters voted on in 2020.

**BLOOD:** Fair enough. Thank you.

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**FLOOD:** Thank you.

**WAYNE:** Any questions from the committee. I thought I saw--

**BRIESE:** I'm good, thanks.

**WAYNE:** Seeing none, thank you. Are you going to stay for closing?

**FLOOD:** Sure.

**WAYNE:** So next, we'll start with proponents, proponents of the bill. Welcome back. Well, you're usually in General Affairs. Welcome to Urban Affairs.

**PAT LOONTJER:** Well, you looked familiar. I'm Pat Loontjer, L-o-o-n-t-j-e-r. I live at 12213 Westwood Lane in Omaha, and I'm representing Gambling With The Good Life. Gambling With The Good Life fought the good fight 25 years. We're truly a grassroots organization and we were opposed to any form of expanded gambling. And we won for 25 years until somebody came along and spent seven million on the campaign and convinced the voters that it was related to property tax. And I agree with-- with Senator Flood that that was what the majority thought that they were signing when they signed the petitions and when they-- when they voted. And that's unfortunate because right now we're going to be faced with at least six casinos because there was six existing racetracks when it was put in. That's not the case because many, many more cities are now saying, you know, we really love horses. We don't understand why we never had a horse track before, but we certainly want one now. And oh, by coincidence, we'd be allowed to have a casino sitting next to it. So I know there's a-- there's a whole wave coming, and I think it's going to be unfortunate for the state because we're jumping into something that we've never done before. And I really, you know, our big thing is to have a moratorium because we really need to study this issue and see how it's going to affect the six cities that are going to have these casinos before we add another six or eight or how many other ones. But today, when we're talking about the TIF, I wanted to emphasize that under the Nebraska Community Development Law, among the mandatory statutory criteria for approval, it says that the development project in the plan would not be economically feasible without the use of the Tax Increment Financing. That's a huge step that they need to overcome. Any casino that's coming in and asking for-- for TIF money is not poor, is not low on funding, is not something that needs subsidizing by the taxpayer. Just the opposite as Senator Flood mentioned, it was sold to

the public as property tax relief. Then how can you come back with your hand out the next day and say, oh, by the way, you know, we would like you to subsidize the building of our casino. So I don't believe they fit under that. It's not a project that would not exist if TIF didn't come in and save them. So I'm hoping that-- that you will support Senator Flood's proposal and then limit this, what I consider an abuse of-- of the TIF.

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

**PAT LOONTJER:** Thank you.

**WAYNE:** Next proponent. Next proponent. We do have letters of support from John Dinkel and Nate Grasz from the Nebraska Family Alliance. Next, we'll turn to opposition. Anybody testifying in opposition? Welcome to Urban Affairs. I'm glad you're not just opposing all of my bills this year.

**CHRISTY ABRAHAM:** Senator Wayne, it pains us to oppose any bills in your committee, particularly you and Senator Flood. 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 I'm going to say something that I know will not shock you or Senator Flood, we are proponents of local control, and we do feel that this bill does limit the local control of communities who may decide that they want to use TIF for a casino or a racetrack. We certainly appreciate that TIF gives communities a lot of discretion on how to use TIF, and obviously this isn't going to be right for every community, but for a community where it may fit and they do feel that they want to have it, we believe that they should be given that ability to do it. The second thing I want to make sure is clear on the record is, if a casino is given TIF, that casino pays property taxes from the very beginning, from day one, from all through the 15 years of the TIF project, that casino is paying property taxes. What happens to those property taxes, and I apologize, I use my hands too much, but as you know, there's a baseline and whatever that property is valued before that casino goes up, those political subdivisions get that property tax amount for that entire 15 years. What happens when the casino pays their property taxes is, the increased value in the property so when the casino goes up, it's worth more using increment in the amount of the property taxes. That is what is given to the casino to help offset some of their expenses. And I know this committee knows all of this. You know TIF as well or better than I do, I just wanted to make that clear on the record. And the



other thing I want to make sure I make clear is, TIF can only be used for public uses. TIF can't be used to buy slot machines in the casino. That's just not what's going to happen. The TIF law is very clear about what TIF funds can be used for, and it's for things like public infrastructure. Its for sewer, it's for water, it's for widening streets to make sure that the traffic flow works when the casino goes in. It's all for public purposes. That's the only thing that TIF can be used for. The only other thing I wanted to mention about this bill, and we certainly appreciate Senator Flood, and we understand that there is an amendment, I just wanted to mention there may be some unintended consequences with the language in green copy. As you'll notice, it talks about division of taxes can't be allowed if a redevelopment plan includes a redevelopment project relating to a casino. I think about some communities is, they may have their entire downtown TIFed in a redevelopment plan, and the casino might only be one part of that plan. And the way this is written, we think it could affect everything that's in the plan, whether or not it is casino. I-- gosh, I got the yellow light. I never get the yellow light, so I'm going to stop talking. Thank you for your time. I'm happy to answer any questions, and it goes without saying, always happy to work with this committee and Senator Flood on language and see if something might be able to be worked out. Thank you.

**WAYNE:** Any questions from this committee? Senator Briese.

**BRIESE:** Thank you, Chairman Wayne, and thanks for your testimony here today, and--

**CHRISTY ABRAHAM:** Sure.

**BRIESE:** --I don't disagree with you on the statement regarding local control and the need for local control. But do you think a casino that's like been proposed in various places here needs TIF financing to be economically feasible or to develop?

**CHRISTY ABRAHAM:** No, I really appreciate that question, Senator Briese, and I will tell you this. The city of Omaha law department is topnotch, and they clearly have gone through all the checklist to make sure that the TIF project is-- is consistent with the Community Development Law. What little I know about the Omaha project is what that TIF funds are going to be used for are really some really critical infrastructure projects that have been needed for a long time in Omaha. And with this project, they're sort of making the casino say, look, you want TIF, you're going to have to do all this public

infrastructure for us. So I think they have met the "but for" test. I think they've, you know, like I said, checked all the boxes. I'm not saying that that's going to be true in every community. I'm very positive that each committee that looks at this, if it doesn't meet the "but for" test, then they shouldn't do TIF. They just shouldn't do it because it doesn't meet the criteria.

**BRIESE:** Yeah. Well, thank you for that. I really have a difficult time concluding that any casino project could meet the "but for" test. But I'd be interested in hearing further explanation on that, maybe other testifiers.

**CHRISTY ABRAHAM:** Right. We'd be-- we'd be glad to get more information for you, Senator Briese. We appreciate it. You're kind of the expert on all things casino, so we want to help you out.

**BRIESE:** Well, I won't go that far, but thank you.

**WAYNE:** Any other questions from the committee? Senator Blood.

**BLOOD:** Thank you, Chairman Wayne. Can you briefly run through some of the things that people actually have an arm in municipalities in Nebraska as far as tools to incentivize people to build in their areas? Because outside of really Omaha and Lincoln, a lot of municipalities don't have a lot of choices. Can you kind of run down if you know?

**CHRISTY ABRAHAM:** I appreciate that Senator Blood. TIF is obviously a huge economic development tool for municipalities, and I'm always surprised every year that the TIF report that comes out from the Department of Revenue, and I'm always surprised that even small villages use TIF. It's-- it's very widely used. I would say the other one that a lot of communities use is, again, you've heard this a lot, the LB840 funds. That's a great-- again using local funds to help qualifying businesses come into their community and set up. So that's-- that's another one that I think is very important.

**BLOOD:** And then community betterment due to keno dollars or some of it, depending on the project, can sometimes be used.

**CHRISTY ABRAHAM:** Sure, sure, sure. And I don't know that keno is as widespread as TIF, but certainly that's-- yeah, that's a great use of funds as well.

**BLOOD:** But even then, not a lot of choices, I would say.

**CHRISTY ABRAHAM:** For community betterment?

**BLOOD:** For tools that are in the toolbox for municipalities, especially to you, to try and generate growth within the communities.

**CHRISTY ABRAHAM:** Certainly, I would count TIF and LB840 as sort of our big-- our big (INAUDIBLE).

**BLOOD:** I would agree too. No, I agree.

**CHRISTY ABRAHAM:** Yeah.

**BLOOD:** And then I'm going to say this again. So the public is invited to every TIF hearing, are they not? There's notification sent out, so people aren't in favor of it, especially the schools. Schools usually the ones that people think would oppose something like this because it takes away from the funding then, but the schools rarely come out against it?

**CHRISTY ABRAHAM:** We have found in the distant past, Senator Blood, long ago.

**BLOOD:** No way, yeah.

**CHRISTY ABRAHAM:** Twenty-some years ago, there-- there have been situations where let's say like a huge apartment complex was built, and then the schools were kind of like, hey, you could have maybe talked to us. We have found that most-- most of the time, the city is working with the schools and other political subdivisions kind of behind the scenes before it even starts to make sure that they are OK. But definitely, as this committee remembers with LB874, we put a lot of transparency into TIF. You know, school districts are getting a report every year about this is what's happening with TIF. They're getting notices. And certainly, if anyone including a political subdivision has a concern, there are, I believe, four hearings. Public hearings that need to be had before a TIF project can be approved. So lots of opportunity for people to come in.

**BLOOD:** Thank you.

**CHRISTY ABRAHAM:** Thank you.

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

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**CHRISTY ABRAHAM:** Thank you.

**WAYNE:** Any other opponents? Any other opponents? Seeing none. We have one opposition letter from Deb Carter-- from Cartier, from the Nebraska Economic Development Association. Next, we'll move to neutral testimony. Is there any neutral testimony? Seeing none, Senator Flood, you're welcome to close.

**FLOOD:** Thank you, Mr. Chair. To follow up, I do have an amendment that I'll pass out that I believe addresses Christy Abraham's concern as it relates to the technical language. I'm not from Omaha. The Chairman is, several of you are, but I wanted to add that this summer, this last summer, the city of Omaha approved \$17.5 million in TIF incentives. Nearly 8 percent of the total project cost for the development of the Ho-Chunk tribe's casino, or the Ho-Chunk incorporates \$220 million WarHorse Omaha Casino. And I did look at the TIF application and under review in the TIF application was the statement that they were expecting incomes of over \$45 million each year beginning in the casino second year of operation. Even with that profit, the Omaha City Council still made the choice to state that without TIF, the return on investment would be unacceptably low. This redevelopment project would not occur without TIF, end quote. You know, the city of Omaha's planning department concurred, pasting these statements from the TIF application into its own analysis. The planning department's recommendation to provide TIF was approved by the Omaha City Council by a vote of six to one, and I got that from the application that's before the Omaha City Council. You cannot tell me that revenues of \$45 million would not allow this casino to pay for the infrastructure needed to make it work. These are very profitable enterprises., And I-- for that reason, you know, I am not here today to want to go back and rewrite the city of Omaha's deal. I think they did it under the statutes that existed at that time. I did have the emergency clause. So with that, thank you for your time and I'm done.

**WAYNE:** Any questions from the committee?

**FLOOD:** Thank you very much.

**WAYNE:** Thank you. We'll get your priorities out-- bill out today for (INAUDIBLE). For anybody who doesn't know, that's how I got my first year priority bill was Murante did that to me and the papers went out and said, before you even got out of the hearing, that Justin's prioritizing his voting bill. That will close the hearing on LB713.

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Now we'll turn to LB1060. Senator Briese, welcome back to Urban Affairs.

**BRIESE:** Thank you. Good afternoon, Chairman Wayne and members of the committee. My name is Tom Briese, T-o-m B-r-i-e-s-e. represent the 41st District. I'm here to present LB1060 regarding Tax Increment Financing, and it's probably a timely place to be talking about this bill after just discussing the use of TIF to help develop casinos. I think what I'm talking about here fits with some of the concerns raised at the last hearing. Nebraska voters approved the concept of TIF in '78 by adopting Article VIII, Section 12 to the Nebraska Constitution. Legislature passed enabling legislation to the Community Development Law in '79. Final authority to prove-- to approve a TIF project rests with the governing board of the local government. The current statutes governing TIF use in Nebraska lay out a groundwork of requirements to be followed in approving a TIF project. One statute, 18-2116 requires a finding by the governing body that, one, the develop-- redevelopment project and the plan would not be economically feasible without the use of Tax Increment Financing. And that, two, it would not occur in the community redevelopment area without the use of TIF. This requirement is commonly referred to as a but for or causation requirement. And this causation requirement is what this bill addresses. Four years ago, the committee and the Legislature passed a bill that had a requirement that these findings be documented in writing. However, I believe that more clarity and transparency is needed when local governments are justifying the use of TIF. There is a concern founded or unfounded, depending on your perspective, that this causation requirement is too often only given lip service. In other words, a concern that causation is found when in reality, it doesn't exist. I belief-- a belief that in too many cases, the project would take place even without the use of TIF, in which case TIF would needlessly siphon away property tax dollars. And this belief-- this concern is in how TIF is handed out really is reinforced by the discussion we had on Senator Flood's bill. We have to ask ourselves, is TIF necessary for the construction of these casinos? Does the economic viability of these casinos hinge on whether they get TIF? Clearly, the intent of the statute is that TIF should be used only where the project is not feasible without its use and where the project would not occur without the use of TIF. This bill will help us to adhere to the intent of the TIF statutes that would do so in two ways. First, on page 2, it would amend Section 18-2116 by requiring that the written findings required in 1BI, and II are supported by clear and convincing evidence include an analysis of the return on

investment with and without TIF, all of which must then be supported by at least two affidavits from experts in the field of public finance describing their reasoning. Second, the bill on page 4 would amend Section 18-2142 or one, by requiring that in any action brought within 30 days involving the enforceability of an agreement using TIF, the city village or authority must prove by clear and convincing evidence that the causation requirements have been met. Now, let me be clear. I consider myself a supporter of Tax Increment Financing. Countless economic development officials across my district have stressed to me the importance of TIF, and I agree with them. But I also understand the concerns of those who point to the 60 to \$70 million of property-- of property tax base dedicated towards TIF. It is my belief that it is-- that if it is TIF that makes a project feasible and the project would not occur without TIF, then that TIF project is a win for our taxpayers and concerns over the lost tax base really are unfounded. But with that in mind, the intent of this legislation is twofold. First, LB1060 will help to ensure that we adhere to the intent of our Community Development Law. In doing so, it will help protect our taxpayers by ensuring that TIF projects are a win for local taxpayers. But second, perhaps most importantly, in doing so, it will help diffuse concerns that our Community Development Law is not being used appropriately. I like the language of the bill, but if folks coming after me or if the committee have suggestions for improvements, I certainly would be willing to entertain those ideas. And I'd ask for your support of this bill. With that, I'd be happy to try to answer any questions.

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

**LOWE:** Thank you, Chairman Wayne and Senator Briese. You've worked a lot on the horse track casino gambling portion of General Affairs. Would you say that the property around the horse track has been probably made more valuable due to the gambling and probably wouldn't need to financing?

**BRIESE:** I think that would be a fair conclusion that the property would be made more valuable.

**LOWE:** So probably it wouldn't be in need of TIF.

**BRIESE:** I just think there's enough profit potential and actual profit accruing to these casinos that I just have a difficult time understanding how TIF would be necessary in the development of those casino properties.

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**LOWE:** And my guess is that something will be built on that property, no matter if there is TIF or not. Would you say so?

**BRIESE:** Correct. I would assume that, yes.

**LOWE:** OK, thank you.

**WAYNE:** Any questions from the committee? Senator Blood.

**BLOOD:** Thank you, Chairman Wayne. Senator Briese, I'm confused. Are you moving this forward because of the casinos?

**BRIESE:** The casinos really are what prompted me to introduce this at this point. But-- but it's not solely because of the casinos. I think that we typically often give lip service to the but for requirement that we currently have in statute. And I think we have to ensure that folks are following the requirements of the statute that are following the requirements of the but for provisions and not just casinos, certainly. I think casino-- to me, casinos would seem to be the poster children for this bill.

**BLOOD:** So if I heard your opening correctly, I mean, your concern is for the taxpayers.

**BRIESE:** Sure.

**BLOOD:** But yet we just had a bill that didn't get voted-- that you didn't vote for, I should say. In reference to a big company, would receive TIF, who was a half a million dollars behind in their taxes, and we had a bill that said that the municipalities had the ability to say, you can't have a CUP unless you have your past property taxes paid. Can you tell me the difference between those two?

**BRIESE:** Well, I'm not here to relitigate that bill. What we're talking about--

**BLOOD:** I'm asking you (INAUDIBLE) I'm confused between the two.

**BRIESE:** I'm here to talk about LB1060. Like I said earlier, if we adhere to the but for requirement provisions and requirements in the TIF statutes, our taxpayers win. If TIF makes it economically feasible, if because of TIF, that development occurs because of TIF, you know, it meets the causation requirement and then our taxpayers do win.

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Urban Affairs Committee February 8, 2022  
Rough Draft

**BLOOD:** So you don't think the municipalities have the ability to know if the (INAUDIBLE) , that's where I'm getting confused.

**BRIESE:** Yeah, that's what I said earlier about local control. Yeah, I believe in local control, but I-- this bill would simply put into place a few more requirements to ensure that we are meeting-- that those locals are meeting the but for tests that the-- excuse me, that the project actually does meet the but for test. Because again, as I said earlier, I think too often we give lip service to that test and ignore the requirements of it.

**BLOOD:** Having served at the municipal level, I just-- I don't see that. And I just-- I question if this is a little bit of an overreach trying to pander to a specific demographic and that's my concern, but I'm going to listen and see what everybody has to say today.

**BRIESE:** I would take issue with the suggestion of pandering-- pandering to a demographic other than I think it's just good legislation to ensure that these projects are a win for our taxpayers, our property taxpayers in particular, and that we adhere to those requirements to help ensure that happens.

**BLOOD:** Fair enough.

**WAYNE:** Any other questions from the committee? Seeing none, thank you. We'll open this up to proponents, proponents of LB1016. They had me fooled, I wasn't sure if they're coming up to testify. Any proponents? Seeing no proponents, any opponents?

**DAVID LEVY:** That group that got up and left had me fooled too. Wasn't sure what to do. Excuse me. Good afternoon, Chairman Wayne and members of the committee. David Levy, D-a-v-i-d L-e-v-y, member of Baird Holm law firm testifying today respectfully in opposition to LB1016 on behalf of the Nebraska Economic Developers Association and the Nebraska Association of Commercial Property Owners. As I said, I'm testifying in Senator Briese's LB846, in 2018. Written findings are a good idea. However, requiring those findings to be supported by clear and convincing evidence is contrary to and far in excess of any requirement for any other municipal decision of which I am aware. I practice land use law and done land use approvals and land use litigation for over 20 years in multiple states across the country, and I have never seen a situation where the burden on the city is clear and convincing evidence. A municipality is a sovereign governmental entity. Like this Legislature, it has broad discretion



and it is owed deference in exercising that discretion. Accordingly, the typical legal standard for municipal action is an abuse of discretion standard. That standard does not judge the decision, but rather it only requires that the municipality have some evidence on which it bases its decision. LB1060 would greatly increase the standard, but only for Tax Increment Financing and not for any other land use or municipal finance matter even adopting a citywide annual budget. Inserting a clear and convincing evidence standard into a court proceeding and shifting the burden of proof from the challenger to the city is similarly extraordinary and unprecedented. It makes the standard of review and the burden of proof different in a TIF proceeding than a challenge to any other municipal decision. These measures effectively discriminate against Tax Increment Financing by holding it to an entirely different mechanism or context of legal challenge and legal support than any other type of municipal action, whether it be land use or otherwise. Similarly, requiring a city or a developer to hire at least two expert witnesses to give affidavits to provide clear and convincing evidence in support of the city's decision, is a burden of a height and type not seen in municipal law. This would be great for experts. It would be a full-employment act, but it would be unduly burdensome and unnecessary for cities and developers. Ultimately, this bill significantly infringes on municipal discretion. It would be like telling the city of Lincoln, hey, you passed the budget, but we're not going to recognize your sovereign authority. We're not going to give deference to your decision as a municipal entity with all of the expertise, all of the public process and all the things that go into that. Making the municipality prove itself with experts in a very high burden of proof does not give due deference to an elected legislative body, specifically a city council or a village board. It does not appropriately acknowledge local control or municipal sovereignty. Accordingly, I respectfully urge the committee not to advance LB1016. I thank you for your time, and I'm happy to answer any questions.

**WAYNE:** Any questions from the committee? Senator Arch.

**ARCH:** Thank you for testifying. I missed the first part. Clear and convincing evidence is what's in this bill. What's-- what's the present standard?

**DAVID LEVY:** The present standard, typically, if one were to challenge a municipal election, let's say, in court, two things. This bill would make the city-- would give the city the burden of proof and hold that burden of proof to a very high, clear and convincing evidence

standard. This bill, or I'm sorry, typically the challenger has the burden of proof, and that standard is what people refer to as an abuse of discretion. So unless the challenger can prove that the city abused its discretion or that it did not comply with the law in making the decision that didn't hold a required hearing, didn't give a required notice, the city wins that case. So the standard is-- is rather deferential to the city. Says the city, hey, if you followed the law and you had some evidence behind your decision, we as a court are not going to go any further than that. We're going to defer to the city in making that decision because the city followed the law and made the decision based on some evidence in the record. This bill would flip the burden to the city and give the city a much higher burden.

**ARCH:** So in the case of TIF, or I guess this is the standard, who would be the challenger? Who would-- who would come and challenge the city on the-- on the use of TIF in a particular situation?

**DAVID LEVY:** So I mean, it could be anybody, it could be a taxpayer. There was a case in, I believe it was 2018 where one business in a city challenged the city's approval of TIF for another business of the same type in that city. So really, I mean, it could be a wide-- a wide range of people. And again, rather than that challenge or having to prove that the city didn't follow the law, the city would have to prove that it did.

**ARCH:** Thank you.

**WAYNE:** What happened in that case in 2018? What was the outcome?

**DAVID LEVY:** In the Salem Grain case, the Supreme Court upheld the city's use of Tax Increment Financing.

**WAYNE:** Based off of abuse of discretion.

**DAVID LEVY:** Right.

**WAYNE:** And abuse of discretion is very hard to overturn, isn't that, really?

**DAVID LEVY:** It is, and I should clarify. The Supreme Court actually reached its decision based on procedural grounds, but at the lower court it was, they found that the city had not abused its discretion and it had followed the law. And yes.

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Urban Affairs Committee February 8, 2022  
Rough Draft

**WAYNE:** Would you entertain the idea of a preponderance standard, which is the go-between between the abuse and clear and convincing?

**DAVID LEVY:** You know, I think any standard that is different in challenging a TIF approval than any other kind of municipal approval with all respect, discriminates against TIF. If-- if the body, if the committee wanted to look at a different kind of a standard or clarifying a standard for all challenges to municipal approvals, that would be one thing. But that would be a significant change in a lot of pressment and a lot of statutes about all kinds of things that municipalities do, not just land use or finance.

**WAYNE:** True, but isn't-- I mean, everybody is talking about agency law, not necessarily municipal law because they're kind of similar, but there are situations where once you meet your prima facie case the burden does shift to a city or to an agency.

**DAVID LEVY:** There are-- that's true. But-- but the challenger has to meet a burden of its own before the burden shifts.

**WAYNE:** So would you be interested in that, where the challengers-- let's take the example that was just given in the last hearing where a company is going to make \$45 million a year and their TIF is only 17, if we were to draft something, they'd have a prima facie case that says that in this situation, if the income revenue was higher than the TIF project itself, the challenger does meet its burden of proof. I'm just throwing out some ideas because--

**DAVID LEVY:** Yeah.

**WAYNE:** --Senator Briese said he was open to some ideas, so.

**DAVID LEVY:** Yeah, no. And I don't like to be a testifier who just says, no, and doesn't have any ideas. And as you know, I'm always happy to work with the committee. But sincerely, I think if you look at something like that, you'll want to be very careful about what those thresholds are. I mean, that's when it gets hard is where do you set those levels? It's kind of like, I don't want to get into the casino thing, but saying no to TIF for casinos, well, what-- what other blend is. So I think there could be a lot of unintended consequences, but I'm always happy to talk about those things with the committee.

**WAYNE:** I mean, I think what you're seeing this year is the body trying to react to some-- some things that they-- they've read about and

trying to-- I use the analogy and I'm going to use it later during my testimony that, you know, you can put bright lights up on your yard and piss off your neighbors. Just because it's your right doesn't mean it's probably the right thing to do to your neighbors. And I feel like TIF law, just because it's the thing you can do, doesn't mean you should always do it. I think that's the sense of what people are, at least this body is starting to get frustrated about. So I look forward to having some more conversation and dialogue on this bill, and I do understand the shifting-- I mean the burden being clear and convincing might be a little hot. It's a big agency law, but we can have that conversation.

**DAVID LEVY:** Just real quick. One other thing I would ask the committee to think about on all of this is, you know, it's very different when you're doing a TIF project in Omaha or Lincoln than in a very small city or village that doesn't have the resources necessarily to make written findings and have evidence in a record clearly supporting those findings. You know, so please consider that as well as your thinking about these things. What burden do you put, especially on the smallest of cities and villages who might be using TIF for the first time to try and bring some economic development to their town and they're doing the best they can to do it and may not have the resources if one disgruntled resident challenges that to-- to overcome that challenge because the burden is on the city and it's so high.

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

**DAVID LEVY:** Thank you.

**WAYNE:** Any other proponents-- I mean opponents.

**KENT SEACREST:** Good afternoon, committee. My name is Kent Seacrest. I am a land use attorney practicing in Lincoln. My first TIF project was 40 years ago.

**WAYNE:** Could you spell your name for the record?

**KENT SEACREST:** Yes. Kent Seacrest, S-e-a-c-r-e-s-t, Kent, K-e-n-t. 40 years ago was my first TIF project where we imploded the Cornhusker Hotel and built the new Cornhusker, which is not new anymore. It's 40 years this year. I just want to present-- a lot of what David Levy said, I would second very strongly. The ever clear and convincing evidence is-- is-- is a term that's used in more judicial matter than

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Urban Affairs Committee February 8, 2022  
Rough Draft

it is legislative. You're asking the city council to make this type of what is normally reserved for judicial or quasi-judicial when it's administrative when going over some type of funding. You know, important right or license ability. We do not use the word evidence usually in a legislative setting. We use more words like information. The standard is reserved usually for lawsuits in contested cases where there's something more than money on the table, such as civil liberties, civil penalties, specific performance, punitive damage. That's when you start to hear that clear and convincing standard, not on monetary or legislative traditional matters. It is a term that we do not require, as David pointed out, city councils to follow before or county boards or school boards or community colleges, or even the Unicameral doesn't follow that type of standard when you legislate. So I think this is a very interesting precedent that you could be setting, but a dangerous one. It's used by the courts and administrative bodies when acting in a quasi-judicial matter on things like licensing, civil liberties and individual rights. The courts have three levels of review that we could get into, but they do not use clear and convincing standard to adjudicate monetary decisions. And that's what TIF is. Do we authorize this monetary tool or not? I just went on your legislative cite and found a 108 references that popped when I put in clear and convincing evidence, and they were all based on criminal cases or foster parent-- parental rights, court orders, mental illness, for dangerous people, pregnant women electing not to obtain consent of their parents and abortion. In other words, some civil "libitary" or licensing situation. What we're talking about is a council's ability to approve a redevelopment agreement, which is a legislative act. This takes one of the key governmental responsibilities and now requires the public funding to have a standard that we have not seen before in front of a city council or those other governments, local governmental bodies. It is a precedent that could possibly open the doors to other important city council powers, be it their police powers, life, safety, utilities or other governmental expenditures or appropriations. If you think about it, if you start to set the standard, why stop at city councils? It could apply to county boards, school boards, NRDs, community colleges, which again, I don't think is where you intend to go. And of course, it could then someday apply to yourselves in the Legislature or to the Governor, and whether or not that's a good precedent and standard to set is-- is for you to decide. The but for test is in the law. It's supposed to be followed and you guys have the right to audit and review and be sure that it is followed. Citizens have the right to sue, to be sure that but for is followed. And you know, in my many

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Urban Affairs Committee February 8, 2022  
Rough Draft

years of working with the city, I haven't seen that type of lawsuit because I think the city of Lincoln takes it very seriously and makes that necessary type of finding--

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

**KENT SEACREST:** OK. Just a couple more comments, if I may.

**WAYNE:** One more comment and then we'll have to try to keep it straight.

**KENT SEACREST:** Just the affidavit is a burden and a cost both to the city and to the redeveloper, and the change in the burden of proof will chill governmental actions. You do not want to reverse the assumption of who has to prove what. And with that, I would be glad to answer any questions.

**WAYNE:** Thank you. Any questions from the committee? Thank you for coming today. We appreciate it.

**KENT SEACREST:** Thank you.

**WAYNE:** Next, opponent. Welcome back to Urban Affairs.

**CHRISTY ABRAHAM:** Thank you, Senator Wayne, 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 I just want to say, you may remember this bill from four years ago. Senator Briese introduced a similar piece of legislation and the piece that we took out of his legislation and put into the LB874 package, this omnibus bill that we passed two years ago. I say four years ago, two years ago--

**TREVOR FITZGERALD:** Four years ago.

**CHRISTY ABRAHAM:** --four years ago, thank you. Oh, such good counsel we have here. Four years ago, this-- the but for test has to be in writing, and we thought that was a really good change and an important change that but for test is an important part of TIF and how it works, and that municipalities really should have that analysis in writing and we made that change and supported it. This bill, unfortunately, as we testified four years ago, is concerning to us. You've heard a lot of concern about the burden of proof issue. I think the League's main concern is this issue of the two affidavits by member-- by someone who has expertise in public finance. We're not exactly sure who does have

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Urban Affairs Committee February 8, 2022  
Rough Draft

expertize in public finance and who they would be and how much that would cost and how, in particular, our smaller communities would find these people. We think that that provision may be burdensome for a lot of our communities. So we just wanted to express that to you today. We appreciate your time and I'm happy to answer any questions you might have.

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

**CHRISTY ABRAHAM:** Thank you, Senator.

**WAYNE:** Any other opposition? Welcome to Urban Affairs.

**ERIC GERRARD:** Thank you. Chairman Wayne and members of the Urban Affairs Committee. My name is Eric Gerrard. That is E-r-i-c, last name is G-e-r-r-a-r-d, and I'm here today in opposition to LB1060 on behalf of the city of Lincoln. In full disclosure, I got a call about 1:10 from an assistant city attorney who was supposed to testify so it's going to say somebody else's name, but he had a COVID-exposure in his family, so, unfortunately, I'm here. I also want to apologize to Senator Briese. Typically, I'd let the introducer know we will be opposing. I didn't get a chance to do that so, I'm sorry to Senator Briese. While the city-- city of Lincoln respect Senator Briese's attempt to add more significant teeth to the but for test and the Community Development Law, I would submit to the committee that LB1060 will have the unintended consequence of introducing uncertainties and delay into the process of approving redevelopment projects in the city of Lincoln and ultimately make the city less competitive when it comes to attracting private investment. I will focus my comments on two aspects that the city of Lincoln believes to be particularly troublesome. First of all, the city opposes the imposition of the clear and convincing burden of proof into the legislative proceedings of the city council. As a burden of proof in the judicial setting, clear and convincing is a standard that exceeds the ordinary burden of proof in civil matters and is second only to beyond a reasonable doubt, which is reserved for criminal matters. As context for the weight associated with this standard of proof, it may be helpful to consider a few examples of when this standard is otherwise employed by the court-- the courts. For one example, clear and convincing evidence is the standard by which a mental health board must find that person is mentally ill and dangerous before the board can assume jurisdiction over the person, potentially resulting in that person's involuntary commitment for treatment. As a second example, and I think Mr.

Seacrest hit on this, clear and convincing is applied when the state petitions the court to terminate parental rights. Clearly a significant imposition. These examples illustrate that clear and convincing evidence is a standard reserved for the most serious determinations involving some of our most cherished rights and liberties. While it is not the city of Lincoln's intent to minimize the importance of the but for test as it relates to the use of Tax Increment Financing under the Community Development Law, the city questions whether the but for tests should be considered in the same category as terminating a parent's rights to his or her child, or depriving an individual of his or her liberty as a result of mental illness. I'm going to skip over the next paragraph to make sure there's a NFL example that I want to make sure to get in before we hit the yellow or red light. Given that this Sunday, the NFL will crown a new champion, it seems appropriate to consider an example from the NFL. Consider LB1060 as a form of instant replay for NFL games. Under LB1060, rather than the coaches being the only people in the stadium who have challenge flags, LB1060 hands out an unlimited number of challenge flags to each and every individual walking into the stadium. Those fans would be allowed to throw their challenge flags indiscriminately and without any burden to prove the call is wrong. Under-- under the approach of this bill, every call in the field is presumed to be wrong, and it is the burden of the official to prove that the call in the field by clear and convincing evidence, if so much as one fan who may not even been watching the play throws his or her challenge flag from the top row of the stadium and yells, prove it. That may be an extreme example, but it seemed relevant this week. I see that my yellow light is on, so I'm going to end there. I know some-- some of the other testifiers have hit on other examples. So with that, I'd be happy to entertain any questions from the committee.

**WAYNE:** Any questions from the committee? Senator Arch.

**ARCH:** I can't help it. Instant replay can provide clear and convincing evidence for the NFL, but that's just a holdup.

**WAYNE:** I wasn't going to go down that path. (LAUGHTER)

**ERIC GERRARD:** I should have been more careful with my example.

**WAYNE:** Got it. Any other questions from the committee? Seeing none, thank you for being here. Any other opponents-- opponents? Welcome to Urban Affairs.



**JENNIFER TAYLOR:** Good afternoon, Chairman Wayne, members of the Urban Affairs Committee. My name is Jennifer Taylor, J-e-n-n-i-f-e-r T-a-y-l-o-r, and I am assistant city attorney for the city of Omaha. I am here testifying in opposition to LB1060 on behalf of the city. I will attempt to be brief. What we always suggest to our testifiers in many, many public hearings and for the planning board and city council is, please do not repeat testimony. If something has been said, please do not say it again. So with regard to the legal standard that we have concerns about, Mr. Levy and previous testifiers have more than adequately addressed those concerns. With regard to the city's statements that some of the provisions were obviously included in LB874 four years ago. Ms. Abraham adequately addressed that concern and with some concerns regarding the two affidavits, she also addressed that quite well as also. So the only thing I would add aside from the fact that Mr. Gerrard and Ms. Abraham and Mr. Levy have all adequately addressed most of my concerns is that also suggesting that an affidavit be provided by a public finance individual may kind of gloss over or indicate that a led analysis is entirely financial in its basis. So it discounts the city's consideration of various other aspects as to whether or not a project would occur on that site, such as geographic location, nature of the site, nature of the property, condition of a building, and those kinds of rather "untangible" or nonfinancial aspects of a project that go into a city or municipalities decision as to whether or not they want to approve taxment financing for a particular project. So therefore, having a public finance individual would be the one that renders an opinion or an affidavit on that may discount significant aspects that would be considered by a city in its legislative decision as to whether or not to approve taxment financing. With regard to Mr. Gerrard's NFL example, I would point out that almost every single time I see instant replay evidence, I'm quite sure the call on the field is either going to be overturned or upheld and almost every time I'm wrong. That being said, I'm happy to answer any questions that you might have for me on facts.

**WAYNE:** Any questions from the committee? Seeing none, thanks for being here.

**JENNIFER TAYLOR:** Thank you.

**WAYNE:** Any other opponents? Anybody testifying in the neutral capacity? Senator Briese, you're welcome to close.

**BRIESE:** Thank you, Senator Wayne. Just very briefly, a few things I heard, it sounds like we need to walk back from the clear and convincing standard. As I said earlier, I'm not married to every aspect of what I have here, and that might be a place that needs to walk-- that I need to walk back from. I did hear that the affidavits would be a burden and a cost, but I would submit to you that failure to adequately follow the but for provisions of our Community Development Law is a burden and a cost for our taxpayers, and we need to ensure that those provisions are adequately followed. And somebody talked earlier about how we put into place four years ago the requirement this be put in writing, but yet we heard tes-- or we heard Senator Flood speak earlier to the casino situation, I guess, was the Omaha city council found in writing that the but for provisions were met relative to casino development, and that to me raise the red flag and suggest that we need to perhaps do more than just have in writing to ens-- those findings to ensure that the but for provisions are followed. Thank you for your time and answering questions, if I could.

**WAYNE:** Any questions from the committee? Seeing none. I do look forward to working with you on this bill.

**BRIESE:** OK. Thank you.

**WAYNE:** Thanks. There is no letters of support, no letters of opposition. That will close the hearing on LB1060. Next, we have LB1065, Senator Groene.

**GROENE:** Hello, Senator Wayne, Chairman, and committee members. After passing predated review last year where it's been my passion for years that I was not against Tax Increment Financing, I wanted to use it correctly in urban areas for blighted and substandard conditions exist and that's in the older parts of town. And it brought to my attention always that, well, you can't use TIF in smaller areas because there's not enough economic benefit or enough increment taxes to pay for studies to pay for all the expenses around it. And-- and it was my view that, no, some old house in the old part of town should be qualified for TIF. So we brought Micro TIF, which expedited it. It eliminated all the costs, allowed the individual to do it, the homeowner, a young family with a starter house who wants to rebuild and help with the building because of the using the future property taxes they pay. And small businesses who wanted to-- to use Micro TIF in the old downtown areas on a single building instead of pushing all the buildings in, refurbish the building. But it came to my attention from communities, especially smaller communities, that their biggest

problem is abandoned lots, lots that where a building was in and burnt down, and then was pushed in or condemned and especially on the main streets. And we disqualified that in Micro TIF and the reason behind it was, I've seen too often when you try to do the right thing, somebody comes in and find a loophole and takes that open lot, turns it into a cornfield on the outside of town and starts building houses. But I believe with some changes in LB1065, it assures that it will be-- that will be done on the open lots. We allow lots also not just existing structures, because in the bill, I added, it has to be platted in the city for 60-years long, just like the existing structure, and it had to also be inside the city limits for 60-years, already part of the city, not somebody started a development on the outside of town and it didn't work out and it's been platted for six years in the annex and then blighted to TIF. So anyway, those two changes would make a big difference. And then the next one would be to let them go 15-years like the Constitution says, instead of the city trying to keep track with 10-year period. Let the homeowner and the small contractor could buy an old-- could build a home in a reasonably priced home on a vacant lot. Turn around and sell it. And the other provision in the expediated review is that the increment follows the home ownership, so it isn't the contracted profits for the next 15 years. If a young family bought that home, they would reap the benefit of the increment tax returning to them for the period of 10 or 15 years if we pass this. So I mean, this fits right in to work force housing. People who-- who will work at my packing plant, who might work on in one of the rail park industries. They're not going to go out and buy a \$350,000 house on the edge of town. They want to buy an old house like I did, and many others did, the starter home, fix it up and then move on after a while and keep improving their living standards. My expedited review and Micro TIF does that. It's for the working guy, and it's for the small towns. And then the third issue I came in to which I have an amendment, I think we passed it out-- did you pass it out --where I'm getting pushback. We have a strange set system. Villages under 800 population, which there's 283 of them, can blight substandard 100 percent of their town, but communities over 800 to 5,000 or even Omaha and Lincoln, which don't qualify for Micro TIF, they can do 35 percent of their communities. Well, I'm getting pushback from the economic developers who want to build outside of town and blight the cornfield, that they need that full 35 percent to do that, and they don't want the city to blight and substandard a true blighted and substandard areas in the community, in the old parts of town. So, and I'm willing to work with them. Well, we came up with an amendment that-- I hope it's in here --that would allow cities to-- if

you read the amendment, it's AM1772. If a city has elected to allow expedited review of redevelopment plans to the section-- to Micro TIF section to study and now it's-- and the study or analysis deducted under Subsection 2 of this section has found an area of the city to be substandard and blighted, governing body of such city may declare a portion of such area to be substandard and blighted for purpose of the redevelopment plans receiving an expedited review. Such portion must be bound by existing streets, roads or natural boundaries and must be used exclusively for redevelopment plans receiving an expedited review. The reason we're doing that is, we want to be able to let them focus on their 35 percent, but if they want to do a block, two block area for Micro TIF, they can do it and with this. I did not leave it wide open that anybody could do it because the next thing I would find out is to keep their 35 percent they would do it on four acres outside of town instead of an 80 acres and then nickel and dime their-- their 35 percent or checkerboard it. It needs to be on Micro TIF that they can do this on bounded area by-- defined by streets. And because what's happening in North Platte, individuals are coming in and said, I got this old burned-out house, I want to Micro TIF it. Well, it's not in blighted substandard area. And in-- and tradition has it now that you do a study on an area, maybe a section of town. And then when the study comes back that it says, yes, it qualifies for blighted and substandard, they blight substandard entire area. But this would allow them to do is, well, you paid the money for the study, North Platte. The study does not sunset. It lasts forever, that when you are going to Micro TIF, you could do a block at a time or two blocks or three blocks, or-- as long as it's defined by-- by an area by bounded by streets. So I'm trying to get along, make it work for everybody. But there is a demand out there and there's the 25 cities, I believe, that are about-- or that are bound by the 35 percent and this would only affect them. Like I said, the villages, they want the vacant lot. That's the thing they want to improve Micro TIF. There are six cities who have done-- have done an expedited review program in North Platte, Norfolk, Beatrice, McCook, Tilden, Utica, and we have a lot more would like to. But they-- but they're working on it, trying to understand it, see how it works for other communities. But this would help a lot. This is workforce housing at its best. This is for people who are in that lower-income level and working by the hour who want to improve their housing. And it goes directly to those folks, not to a corporation somewhere who does build 50 houses and moves out and moves on. It's a-- it's a good program. So anyway, that's what I have, and I would like to see it added to the TIF bill.

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Urban Affairs Committee February 8, 2022  
Rough Draft

**WAYNE:** You're assuming we're having a TIF bill.

**GROENE:** Oh, that's--

**WAYNE:** Have you seen the bills maybe introduced on TIF? Thank you, Senator Groene. Any questions from the committee? I do have a question. So my concern right now is, we do the Micro TIF, my concern are the increases. I know why you're doing it because the costs have gone up.

**GROENE:** I forgot that part, I'm sorry.

**WAYNE:** No, but my concern is that at what point do the increases on a \$350,000 project, is no longer a Micro TIF, but it should be TIF. And I just want to hear your response on that.

**GROENE:** What I hear from the developers, there's no-- there's no TIF out there unless it's full-time million. I mean, where the-- where the corporation, whatever can pay for the study, can pay for the attorney fees, they don't want to mess with these because it's just not feasible. Three hundred-- I said \$350,000 house. I'm not as concerned about that. It could stay at 250, whatever, as I am at the five million because one million will not buy a multi-- multi-residential eight-plex anymore with the cost. It-- and the original, Senator Wayne, I would just as soon it wasn't that we wouldn't have put limits in there, but we wanted to stop people from-- I didn't want a doctor to come to town and say, I've got that. There's an old acreages that's been in town for years with an old shack on it, near the river property that I'm going to do that and put a million dollar house on there. Because this-- I truly meant this to be urban renewal for the working class people, but the 350, you know what inflation has done.

**WAYNE:** I understand that.

**GROENE:** You can read the bill, the original language in that bill, that if it hits to \$250,001, it doesn't qualify in evaluation. So I wanted to make sure \$250,000 house or project would-- it's got to be a single residence or single structure wouldn't get kicked out because it hit a little bit over when--

**WAYNE:** I understand. Thank you. Any questions? Senator Blood.

**BLOOD:** Thank you, Chairman Wayne. Just a quick question. I keep hearing-- what did you call it, working class or-- but I never hear the words affordable housing anymore, and the people that we're

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Urban Affairs Committee February 8, 2022  
Rough Draft

referring to would really require more affordable housing. Do you feel this based on-- on this increment it really addresses affordable housing?

**GROENE:** Yes, we're talking--

**BLOOD:** The definition of affordable housing is 30 percent of your income, right?

**GROENE:** Yeah. And new houses in North Platte-- average new house in Omaha was three hundred and I think seven hundred-- I read in the paper \$375,000. That's not affordable housing.

**BLOOD:** Right.

**GROENE:** What is affordable housing is, Mike Groene, when he got out-- when he got married, bought a \$13,000 house, fixed it up and sold it after a few years and then went and bought a \$30,000 house, fixed it up and sold it. I want to help that working class family who put their work at the-- equity into the house, and that's called affordable housing because they can afford an older home and then fix it up. That's affordable housing.

**BLOOD:** Anyway, I'll talk to you outside this room if I have questions.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. Are you going to stay for closing?

**GROENE:** I have a question and answer.

**WAYNE:** I-- first we'll start with proponents. Any proponents.

**GARY PERSON:** Senator Wayne, committee members. Name is Gary Person, spelled like person, P-e-r-s-o-n. I'm president and CEO of the North Platte Area Chamber and Development Corporation. I just wanted to go on record in support of all the provisions that Senator Groene talked about. Can tell you from experience in over 40 years of working with economic development and trying to encourage housing development in rural Nebraska, it's beyond a challenge. It's probably been no more challenging than right now today, just because of the escalating costs, the aging inventory of housing. Even a community the size of North Platte, which at one time was the fourth largest community in the state, now it's ninth. But we did a housing study, and 75 percent of our entire inventory is greater than 50 years of age, and probably 50 percent of it is 75-years or older. It's a real aging stock, and

you're just not seeing developers try to come to-- to rural areas, and so we look for every creative way to try to attract them there. We're trying to be proactive in getting people encouraged to look at development, just which the Micro TIF program opened the door for that to occur. But the reality is, unless that level is increased a little bit, is a real deterrent right now with the current law. Give you just a couple of quick examples. We have a program called Shot in the Arm where we try to revive a little bit of incentive for a developer that would build speculative housing, whether it be single-family or multi-family or upper-poor housing in a historic downtown. We've got developers really interested in the program. We've had three applications, but unless they use Micro TIF, they really can't even justify the affordability or to put the investment in and to make it match what the affordability factor is. So by increasing that increment from one million to five million on some of those old buildings that are over 100 years old, you got a lot of life safety issues there that have to be addressed, this really does change the whole thing. It makes it feasible. So I encourage you to do that. I don't think there's a community in the state of Nebraska doesn't have a housing challenge right now, and this is a program that can be in the most simplistic terms, so I think it's really important, too, that you could make it in a one block area. I'd like to see it even on a lot-by-lot basis if it qualifies. But I just think anything we can to encourage redevelopment and not have that aging stock continue to age and deteriorate and really damage entire neighborhoods when that's not being addressed, but if you get one example in a block that starts to enhance it, you know that can be a real peer pressure thing for other-- other residents and other owners to look at doing that. So I think it's a great program. It's taken a little while to educate people on the use of it. I think it's got some legs under it and this certainly moves it on the next level. So thank you.

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

**CHRISTY ABRAHAM:** Thank you, Senator Wayne, 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 feel like the universe has righted itself. I am now in support of a bill which feels much happier. It's even better with Senator Groene's bill. I think the world is back to happiness. We want to thank Senator Groene for introducing this. As he mentioned, there were several communities that really jumped out front and wanted to do Micro TIF. And I thought it was interesting that Tilden was the first

community that I was aware of that did Micro TIF. They immediately saw the benefit of doing these smaller projects to get workforce housing in their community and so I love it that it was Tilden. As he mentioned, you know, North Platte, Beatrice, Norfolk. They have also done it, and it makes sense in those larger communities as well. The League is particularly supportive of the provision about vacant lots. That's a big problem that we hear about a lot in communities where there isn't a structure there, it's a vacant lot. And to be able to build a house there really can help rebuild and revitalize a community. So we're very much in favor of this. I just have started glancing at the amendment, so I apologize. I don't have strong feelings on that yet. Senator Groene was gracious enough to give it to me, and I'm happy to review it, so I'm happy to answer any questions you might have.

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

**CHRISTY ABRAHAM:** Thank you.

**WAYNE:** Any other proponents? Any opponents? Anybody testifying in neutral capacity? Seeing none. Senator Groene, would you like to close?

**GROENE:** Thank you, Wayne. Also wanted to make it clear that this is a boom for small communities and small contractors, mom and pop, carpenters. They've been-- they've been pushed out of the whole housing market a lot unless it's a custom home for some wealthy individual. Because-- because they-- they now could take the work on or remodel an older home in an old part of town, they could-- they could actually build a smaller residence, affordable house on a vacant lot in a salvage part of town. Micro TIF also saves costs to the cities because all the infrastructure is already there, sewer, water, electrical and streets. Just drive the-- go through the older parts towns of any small town community and you will find exactly what I'm talking about. This-- this would be a boon to workforce housing if we can expand it and more people can take advantage of it. So I want to correct myself, my staff pointed out. Towns between 800 and 5,000, which is 114 of them can blight up to 50 percent of their community. Towns under 800, which is 283, can do 100 percent. And then there's 32 cities that are above 5,000 that can do 35 percent. But of course, Lancaster, I think there's six or seven communities in Lancaster, Sarpy, and Douglas County that aren't-- this isn't available to them, the larger counties were because it was meant for the smaller



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Urban Affairs Committee February 8, 2022  
Rough Draft

communities. So anyway, I appreciate your support. It truly is, I will repeat myself, workforce housing for the working class through urban development, urban renewal and small town urban renewal. We've never had that opportunity before, and it's a free market answer to it instead of a government answer.

**WAYNE:** Any questions from the committee?

**GROENE:** Thank you.

**WAYNE:** You want to put this on consent calendar?

**GROENE:** What's that?

**WAYNE:** Do you want this on consent calendar? I've never seen the TIF put on consent calendar, but I've never--

**GROENE:** Makes sense.

**WAYNE:** --seen us agree so much this year, so.

**GROENE:** There's no-- there's no fiscal note.

**WAYNE:** Let's see.

**GROENE:** Makeup of the committee, looks like people who appreciate the working class.

**WAYNE:** I appreciate it. Thank you.

**GROENE:** Thank you.

**WAYNE:** Yeah. And there are no letters of support or opposition or neutral and that will close the hearing on LB1065. Turning now to LB836. Senator Hunt.

**M. HANSEN:** All right, Senator Hunt, you're welcome to open.

**HUNT:** Thank you, colleagues. My name is Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8, which includes the northern part of midtown Omaha. So, LB836 is a bill to provide a mechanism for the removal of a blighted designation. It also will require cities to regularly review areas that have a blighted designation that have been blight-- blighted for more than 30 years. So while Nebraska Community Development Law provides for the designation by cities of substandard or blighted or extremely blighted areas, we don't have a statutory

process to allow the review of these areas after time has passed to see if we still think that the criteria exists for them to be blighted. Are these places still blighted or not? We don't really have a way in statute to unblight places, and with some areas being blighted for many, many decades, sometimes conditions that originally warranted the designation just aren't there anymore. Sometimes they might look entirely different and they're just not blighted anymore. But there's no statutory roadmap for how and when cities can review blighted designations and how they can repeal it if they want to. As time goes on, the need for a process to do this has become really evident, especially in Omaha, where some people have questioned the legal authority of the city to remove a blighted designation if they want to. If Community Development Law and redevelopment projects in blighted areas work as intended, then they shouldn't remain blighted indefinitely. If we have all of these incentives in place to help revitalize blighted areas, so what do we do once they're revitalized? We don't have a mechanism in place to review that. So this bill would also provide that cities regulatory review blighted areas. As drafted, it would require that cities take a fresh look at areas that have been blighted for 30 or more years every five years. During that review, the city would examine whether the conditions required to meet blighted or extremely blighted criteria still exist. If the city finds that the area no longer meets the criteria, then the governing body shall declare the area to be no longer blighted via a resolution. The removal of a blighted or extremely blighted designation would not affect any redevelopment plan or any project that was approved prior to the designation or removal. So if a place was considered blighted, then they got a development plan and then it's unblighted, they still get to keep that plan in place. So in summary, the two key components of the bill are, one, it requires cities to review any area that's been blighted for at least 30 years every five years to see if it still fits the criteria. And two, it provides the mechanism for removing the blighted designation. This draft has been shared with the League of Municipalities and the attorneys for the cities of Omaha and Lincoln, who have all indicated that the proposal is reasonable. The bill was suggested to me by committee counsel. The difference between this bill and our committee bill, LB797, is that this one provides a mechanism for unblighting and requires cities to use it. LB787 just provides the option. So that's the bill. Any questions?

**M. HANSEN:** Thank you, Senator Hunt. Are there questions from the committee? Seeing none, thank you for your opening.

**HUNT:** Thank you.

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Urban Affairs Committee February 8, 2022  
Rough Draft

**M. HANSEN:** And with that, we invite up our first proponent testifier to LB836. Welcome.

**CHRISTY ABRAHAM:** Welcome. Thank you, Senator Hansen 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. Senator Hunt did such a great and thorough job of introducing this bill, I feel like I'm unneeded, but I will say that the League certainly supports the goals and the intent of this. As Senator Hunt said, if TIF is working the way we want it to and the way we hope it is, that after a period of years, we hope that this area isn't substandard and blighted anymore or not extremely blighted, that the TIF has worked and maybe that designation should be removed. And so we certainly appreciate that communities should be looking at that and seeing if that designation does need to be removed. We would ask that this committee obviously look at the two bills that Senator Hunt also mentioned. I want to get it right, LB798 and LB797. As she mentioned, those bills also deal with sort of deblighting and extreme blight, and we did raise some questions on those bills. And so we're just asking this committee to just maybe take some time and make sure that all of those bills are harmonized and as always, we are happy to work with this committee to make sure all of those sort of provisions get done. You've been hearing a lot of TIF bills this year. I think this is day two and we commit ourselves that if you want to put a package together like we did with LB874, put that package together over the Interim, we commit to spending the time to make sure that that happens. So I'm happy to answer any questions and thanks again to Senator Hunt.

**M. HANSEN:** Thank you. Other questions? Seeing none, thank you for your testimony.

**CHRISTY ABRAHAM:** Thank you.

**M. HANSEN:** All right, we'll take our next proponent to LB836. Seeing none, are there any opponents to LB836? Seeing none, anybody who wishes to testify neutral on LB836? Seeing none. Senator Hunt, would you like to close? Senator Hunt waives closing and that will close our hearings on LB836. Trevor, were there any letters for the record?

**TREVOR FITZGERALD:** Yes, sorry. Here's the one.

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Urban Affairs Committee February 8, 2022  
Rough Draft

**M. HANSEN:** And let's see, we did have one letter for the record, a letter of support from Angie Phillips. The next bill is my own, so I will-- Senator Arch, would you mind the Chair?

**ARCH:** Sure.

**M. HANSEN:** All right. Thank you.

**ARCH:** Welcome, Senator Hansen.

**M. HANSEN:** Thank you.

**ARCH:** You may open on your bill.

**M. HANSEN:** Thank you, Senator Arch. Good afternoon, members of the committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. I'm here today to introduce LB725, which allows cities to utilize tax financing or TIF to establish formal guidelines for the consideration or approval of redevelopment projects that utilize TIF within the city. These guidelines could be used to establish general goals or priorities for the use of TIF or limitations or restrictions on the use of TIF. For example, to allow cities to specifically limit or require TIF to be used for affordable housing or other purposes. Last year, I introduced LB556, which confirmed the city's ability to include any additional requirements in a redevelopment contract or pro-redevelopment plan which was amended into the committee priority LB131 last session and passed. LB725 is a logical step in the same direction. I think it's an important tool to allow cities to ensure their TIF contracts are in line with the city's stated goals. Expect there are testifiers behind me that can explain a bit more how this is utilized by cities. With that, I will close and be happy to answer any questions,

**ARCH:** Any questions from the committee? Seeing none.

**M. HANSEN:** Thank you.

**ARCH:** Thank you. First, we'll have proponents. Any proponents? Welcome to your Urban Affairs.

**CHRISTY ABRAHAM:** Thank you, Senator Wayne, 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, representing the League of Nebraska Municipalities. I promise this is my last time today. Really, this is it, friends, this

is it. I just want to thank Senator Hansen for introducing this bill and giving it to the League to review before he introduced it. We really-- we really appreciate that courtesy. You've heard me say this before in this committee, the city attorneys sometimes are split on what discretion and abilities they have in state law. A lot of them read the TIF statutes very broadly and feel that TIF gives them a lot of discretion. And I think that's true by nature, TIF does give you a lot of discretion. Some of our city attorneys want something a little more specific that says, oh great, we can do guidelines. I need that specific authority in statute. And that's exactly what this bill does. It gives specific authority for cities to-- to have guidelines regarding TIF and their projects. And I just want to say, again, we are-- we are so open to helping put a TIF package together to work over the Interim, if necessary, to get that done. And that's all I have. Thank you so much. It's all good to see you today.

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

**CHRISTY ABRAHAM:** Thank you.

**WAYNE:** Any other proponents? Any opponents? Any opponents? Anybody in the neutral capacity? Seeing none. Senator Hansen, waives closing. That will close the hearing on LB725.

**HUNT:** We will open the hearing on AM1708 on LB798 introduced by Senator Wayne.

**WAYNE:** Good afternoon, Vice Chairwoman Hunt and members of the Urban Affairs Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. As the committee are-- are likely where the city of Omaha recently announced that they will be developing a downtown streetcar system. As part of the announcement, the city has also announced that the plan-- they plan to finance the streetcar through Tax Increment Financing and also specifically using 20-year TIF that was authorized in areas that have been clearly designated as extremely blighted. As we begin this discussion today, I want to be clear, I'm not necessarily opposed to the streetcar project, I'm not necessarily being opposed to TIF being used for the project. I am opposed and I am-- my concern and the reason I introduced AM1708 is that the streetcar is not what the legislator-- Legislature and the Nebraska voters intended the 20-year, extremely blighted TIF to be used for. As a reminder, some brief history on the extreme-- extremely

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Urban Affairs Committee February 8, 2022  
Rough Draft

blighted provisions. In 2019, the Legislature adopted LR14CA, which pushed a constitutional amendment on the ballot to extend the maximum length of time for repayment in TIF-related indebtedness from 15 years to 20 years, but only in cases where more than half of the property in the project was designated as extremely blighted. Nebraska voters approved this amendment, AM2, in the November 2020 general election with just over 61 percent of the vote. AM2 was implemented just last year with-- with this body's approval on LB25. As currently defined underneath the Community Development Law, extremely blighted is an area that is substandard and blighted, in which the average rate of unemployment in the area during the period covered by the most recent census data is at least 200 percent on the average unemployment rate in the state during the same period. The average poverty-- and the average poverty rate area exceeds 20 percent for a total federal census tract-- tracks or federal census block groups or block groups. In addition to the extremely blighted-- in addition to the eligible-- to be eligible for extended TIF repayment period an extremely blighted designation was also-- also makes them eligible for two incentives which passed. First, there is an income tax credit for those who purchased new residence in an extremely blighted area. Second, it provided affordable housing preferences on the housing-- Affordable Housing Trust Fund, so that was the emphasis or history of why we have extremely blighted. Making certain TIF projects, TIF projects are eligible for 20-year repayment period was a significant change for one of most-- one of the main reasons why I introduced LR124 to ensure the Legislature continues to monitor and to imple-- to monitor implementations of these changes. Both Omaha and Lincoln designated extremely blighted areas to include large portions of their downtown areas. While these are certainly-- while these are certainly, supposedly, I don't know for sure it's going to look at data points meet the statutory guidelines, and I say that because I don't know the data points they're using. I think it is important to remember the underlying purpose behind AM2 was to encourage the use of TIF in some of the hardest hit neighborhoods. As I argued in op- eds prior to the 2020 vote on AM2, because developers were able to access the same level of TIF financing at both 72nd and Dodge and in north Omaha developers historically had chose the easier development area, such as 72nd and Dodge or 108th and Maple-- 108th and Dodge every time. My concern is that allowing 20-year TIF projects downtown, developers will continue to leave north and south Omaha behind. With the announcement of the streetcar receiving 20-year TIF, I am concerned that going forward developers will feel that the entire downtown projects should get 20-year TIF. I think it's important to note that I

am saying explicitly now, so we have it on the record, just because there's an area that has been deemed extremely blighted does not mean that the city should give TIF projects all the 20-year repayment period. To date, the city of Lincoln has informally required that in order to be eligible for 20-year TIF, the project must include affordable housing, energy efficiency and flood water mitigation. This policy, while laudable, has not been formally adopted by the city council. In Omaha the 20-year TIF projects approved prior to the streetcars, have been used for affordable housing, but the city has yet to adopt any guidelines regarding the 20-year TIF, either formally or informally. AM1708 would require the prior-- that prior to authorizing any TIF projects in extremely blighted areas, the governing body of the city must adopt policies and procedures designed to ensure 20-year TIF projects are utilized only for specific goals established by the city, including development of affordable housing, flood mitigation, preservation of historic buildings, and remediation of poverty in established residential neighborhoods. While I recognize the streetcar project is significant and in the words game changer have been thrown out, I believe it highlights the importance of projects not being used-- not being a poster child of 20-year, extremely blighted TIF. I hope when the city of Omaha testifies later, they can spell out the 15-year period would bring for the streetcars. I would also encourage this committee to understand exactly how they're financing the entire project, including the TIF district. I think that's going to be worthy of a discussion in our committee a lot more. Again, I'm not opposed to the project, but it does concern me because that was never the intention that I think the voters picked, nor this body picked. And nor do I think TIF districts are necessarily allowable under current law, but we can definitely look to clean that up. I know it's been done before, but it just doesn't make sense from a TIF project of how it works because TIF was supposed to be designed by project. In fact, you go in front of the city council to be approved for that TIF project. Unrelated business getting TIFed without applying for that project along a TIF district, I think is a fundamental flaw. And if you don't know how it works, is it over here on (A) you apply for TIF and what a TIF district is what the city is saying is the entire district is going to be TIF, then property over here on (B) is in the district and because of the improvements in (A) and the streetcar will somehow improve property (B), you're actually being TIFed too. That's just weird to me. Best way I can explain. Again, I think by working with this body, we have found creative ways to come up with financing many of our big businesses and incentivizing them to stay here local. I think we can come up with a solution that

doesn't involve some of these TIF things. Thank you, and I'll answer any questions.

**HUNT:** Thank you, Chairman Wayne. Are there any questions from the committee? Seeing none, thank you for your introduction. First proponent for AM1708 to LB798. Any proponents? Any opponents? Any opponents? Seeing none, anybody here to testify in a neutral capacity? Welcome.

**JENNIFER TAYLOR:** Good afternoon, Senator Hunt, members of the Urban Affairs Committee. My name is Jennifer Taylor, J-e-n-n-i-f-e-r T-a-y-l-o-r, and I'm assistant city attorney for the city of Omaha and testifying on behalf of the city of Omaha. Let's see. First and foremost, I appreciate Senator Wayne's actually bringing of this amendment and raising the discussion. The city of Omaha is really more than happy to talk with senators or anyone about projects that we have proposed or ways that we intend to finance them. We intend to be completely transparent as much as possible with everyone who has inquiries. Second of all, I want to thank Senator Wayne for extending the period for extremely blighted areas for repayment because it does help areas that were challenged before in finding projects and financing those projects. We have recently, as Senator Wayne noted, financed a large, affordable housing project in north Omaha with 20-year TIF in extremely blighted area. Second thing I want to point out to begin with is that the city of Omaha, although informally, actually has adopted a set of guidelines for the use of Tax Increment Financing for a 20-year term in extremely blighted area within the urban core. And the TIF committee, or internal staff, Mayor's office and other members of the city of Omaha spent some time discussing this policy because there were some things we considered specifically in light of what Senator Wayne intended when he put his bill forth. And what we looked at when we docked the policy was that we wanted to make sure that we encourage the use of Tax Increment Financing for a 20-year term in an extremely blighted area to accomplish something more than what we were traditionally getting with a 15-year TIF, particularly in downtown and midtown. For example, a standard office building or condo rehab, or something like that, that could successfully be rehabilitated or constructed or done with TIF in midtown in 15 years is not the project that should be eligible for 20. There should be something else that that project brings to the table. So what the city of Omaha put together was a list of guidelines and goals that we want to achieve with the use of 20-year term to protect it from financing in extremely blighted area. And those include construction or rehabilitation of structures that include mixed-income



housing, low-income housing, or house in Tax Credit Financing, workforce housing or other such types of affordable housing. Any projects that would promote or comply with the city of Omaha's Affordable Housing Action Plan, which is not yet complete, but is being worked on as we speak. Public amenities such as parks or things that would make the area a more inviting place for people to be. Historic rehab, environmental remediation, development utilizing our transportation-oriented development zoning. So that's an area of zoning that we have in midtown and downtown. We encourage density of development, so that project that we're utilizing, that would be something that we would encourage, as well as projects that have public transportation, significant public infrastructure improvements or the system board solutions. So what the city of Omaha looked at-- I see my yellow light is on, but I'll say briefly --what the City of Omaha looked at with the streetcar project was, that this is a 100 percent public infrastructure project that would be funded entirely with Tax Increment Financing, excess tax revenues that were generated by that project itself, and use those additional revenues to fund that public infrastructure project. So that is why the city of Omaha felt that it complied with the intent of the law because that public infrastructure project will then allow significantly increased development and dense development in the urban core such that we can accomplish a lot of the things that Senator Wayne was looking for, increased jobs, increased affordable housing, and access density, which then benefits not only downtown, the surrounding neighborhoods, and the city of Omaha as a whole. And with that, I'm happy to answer any questions the committee may have.

**HUNT:** Thank you, Ms. Taylor. Are there any questions from the committee? Senator Hansen.

**M. HANSEN:** Thank you, Vice Chair Hunt, and thank you for your testimony. Can you just walk me through this to the specifics of the streetcar, because I know it's also tied to the library and it's also tied to the new skyscraper in some ways, correct? Can you just explain the projects?

**JENNIFER TAYLOR:** Sure. They're really-- they are two separate projects, but from a finance perspective, the second project, Mutual project can help inform the first one, but I'll start with the streetcar. So the city has been looking at a streetcar, and I'll try to keep this as brief as I possibly can. The city has been looking at a streetcar for over 10 years. And the reason that we've been looking at utilizing or implementing a streetcar system is actually in order

to try and to create a total mobility system within the urban core. And a total mobility system basically utilizes a circulator or streetcar system to connect linked parking assets. So instead of having-- I always explain the story, instead of having your trip to downtown or midtown involve four stops and four parking spots, you park once and you-- and you move around. It's a way of moving people around the core in a way that actually maximizes the existing parking we have, which frankly, the existing parking in downtown Omaha is only about 50 percent utilized. So it maximizes the utilization of the existing parking facilities and use-- and move people around the way that we don't have to create more parking. So we don't have to create more parking facilities for additional development, additional development then can become more dense. More dense development in development areas that would have involved parking otherwise, creates more areas for development. If we can do that, then we have higher buildings, more dense development. We have better opportunities for bringing jobs in, bringing people in, bringing housing in. The more housing you have in the core, the more that housing becomes affordable. The more jobs that are in the core, the more people can live near their jobs, they don't need cars, they can utilize public transportation, and all that becomes a more cohesive, affordable system to live, work and play. Oh, I hate that phrase. So the streetcar system is intended to basically raise the entire development potential of the core, thereby affording more jobs and more housing in the core. So that is a-- is what we call total mobility system. So that is what we are funding with tax and financing revenues is that public infrastructure system. So how do we do that? We do that by using the increased revenues of development that comes along because of that. So using Mutual of Omaha, for example. Let's take that particular site. On that site there is a limit to the size of building that can be constructed with the associated parking. So if you have to park with, right now, our current parking-- our current parking model in downtown Omaha is five for 1,000-- for five stalls for 1,000 square feet. If you use that parking model, you're limited in the amount of the size of buildings you can build because of the parking that's required to go with it. If I can reduce my need for parking, I can build a bigger building. If I can build a bigger building, I now have a more valuable asset. The streetcar allows a bigger building because I can utilize parking in other areas of town to park that building. So if I can do that, now, all of a sudden, what was maybe a 20 story building is a 30 story building or a 40 story building. That 30 or 40 story building is more valuable and obviously larger, and has a larger

assessed value that goes with it. What we are doing is we are using that increased value to support the streetcar.

**M. HANSEN:** So I guess going-- just picking in the baseball TIF, what's the but for? Like, who's the applicant and what's the but for that you're proving here? You get more buildings in the skyscraper because you have a streetcar?

**JENNIFER TAYLOR:** Yes. So the but for-- the but for is that the streetcar would not exist if we don't have the additional development that will come with it, that will be generated by the streetcar. The streetcar allows less parking to be developed, so we open up more places for development in the redevelopment area. We allow more dense development, but for the streetcar, that development does not incur-- does not occur. So what we have and-- what we have analyzed here at the city of Omaha is that the streetcar can open up almost an additional \$3 billion of development in the urban core. Without the streetcar, we don't have that level of element that's available to us. So, for example, potential development sites within the core would generate maybe half a billion dollars or something like that without the streetcar, but with the streetcar, you get \$3 billion. That additional development is what we are utilizing to pay for the streetcar. Without that development, the streetcar could not be built.

**M. HANSEN:** OK, and so the streetcar provides value because it gets around the limitations on parking so you can build more?

**JENNIFER TAYLOR:** Yes.

**M. HANSEN:** Who sets limitations on parking?

**JENNIFER TAYLOR:** The limitations of parking are just-- it's frankly, it's just reasonable. If you don't have-- and I've, in the time I've spent in the city of Omaha, I've encountered this a number of times. If you have an office building or residential building that comes in and wants to build on a single block, they also need to be able to park. Everyone knows what's going to be in that building. So if you have 2,000 employees in that building, you need 1,500 to 2,000 parking stalls. If you have 500 residents, you need two stalls for every unit, you now-- or 500 units, two stalls for every unit, you now need a 1,000 parking stalls. If I can move people around from the existing single assets that are linked by the streetcar, then I don't have to build that parking right next to that building. And then the building next door needs its parking right next to that building, etcetera. I

can utilize a link set of parking assets to service all those facilities, and I can open up that lot next to the building that I'm building and not dedicate it to parking, which frankly doesn't make anybody any money. Although, you know, throughout the model, we will actually try to alter how we-- we can adjust parking. But parking is often subsidized by the city. But instead of having to park-- to build that parking garage next to the structure, I can now devote that to another building, another office building, another retail, another residential building, etcetera.

**M. HANSEN:** And I guess I'm trying to get a little bit more technical here, so the limits on the parking is that something the developers are self-imposing upon themselves, or is that something in the city of Omaha's planning department? You mentioned getting around the limits of parking.

**JENNIFER TAYLOR:** And it's not actually a specific code set limit, it is a limit that is incurred both by planning and by developers because anyone that comes in, anyone's actually been to a planning board hearing with the city of Omaha, here's the first thing you get from any one of the neighbors when you build a new building or a new apartment complexes, where are they going to park? So parking is always going to be a concern. When you look at other cities that we've compared ourselves to when we've looked at the streetcar, say, Kansas City and Denver. So our parking levels, as I mentioned, are 5 to 1,000 thousand square feet. In Denver, they are 1.4 to 1,000 square feet. In Kansas City, they're 2.7. So we can reduce our parking ratios significantly by coalescing our parking into the parking assets and moving people around, as opposed to building parking next to every use we have. So there's a simple analogy I use sometimes when I talk about this, which is if you-- if you work downtown. You work downtown, you park in the Blackstone, you park at UNMC because that's where you work. You have said that night, you leave your car there, you take the streetcar to grab dinner, you take the streetcar further down, you go to the Orpheum, you go to the CHI center and you come back around, that-- that activity in the evening normally would have required you to park three different times. This time you had to leave your car in the garage where you started, you take the circulator around, you go back to your car and you're done. We haven't had to park you three times for the course of one evening. So the idea is to utilize the single parking assets and move people around the district that thereby limiting the amount of parking we have to put next to every single event activity. So every office building doesn't need to have its own set of parking. Every residential building doesn't need to have its

own set of parking. Every entertainment district, restaurant, bar doesn't need to have its own set of parking. It can share and utilize parking resources throughout the district.

**M. HANSEN:** OK, so park-- so it gets, so-- I guess soak in. So there's-- so does planning department ever turn down projects because there's not enough parking?

**JENNIFER TAYLOR:** It depends on where it's located and how and what the type of project is. We do have parking requirements and parking ratios. And in some places downtown, we don't have necessary parking requirements, but businesses oftentimes will not locate there if they can't have a place nearby to park their employees. So an HDR or a Union Pacific will come in and they'll say, I'll put my business downtown, but where am I going to put my employees? Where are they going to park? And so even though the city planning department might not require it, any business is going to want to know where my employee is going to park. And generally, if that parking is not immediately available, that's not attractive-- it's not an attractive option for that company. So back in 19-- here's an interesting actual statistic I'll share with you that might help a little bit too. In 1963, downtown Omaha had 48,000 jobs and it had 30,000 parking spaces. In 2014, we had 27,000 jobs and 42,000 parking spaces. And the issue was that over the course of time, suburban development started to be an attractive way for businesses to relocate to the city of Omaha. So you could go to suburban areas and you could build a large building with surface parking all-- all sorts of parking you could want because you had all the space you wanted and that would provide you what you needed. Downtown Omaha and downtown developers and the city was challenged to try to attract businesses back downtown because we could not provide that same level of space and parking on a single square block downtown that you can get in a, you know, multi-acre site in west Omaha. So we started subsidizing parking. So we started building parking for every business that came downtown. Unfortunately, what that's done is that has strangled our ability to continue to develop downtown because all of our-- or a lot of our good sites are either dedicated to parking or we don't have available parking to provide for somebody who wants to move downtown. We have to change that model. We have to change that parking trend and how we park and how we move around if we want to expand past where we are today.

**M. HANSEN:** OK. And this will be my last one.

**JENNIFER TAYLOR:** Oh, you're fine.

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Urban Affairs Committee February 8, 2022  
Rough Draft

**M. HANSEN:** No, but I want to-- I want to be kind of clear and concise in this still. The streetcar is getting TIF because it's going to reduce parking burdens, and therefore it can use more kind of office space or other downtown useful space. It's-- that's-- that's the connection between the streetcar and TIF?

**JENNIFER TAYLOR:** The connection between streetcar and TIF is that the streetcar will enable the city to open up areas for development and increase development, dense development that would not be available but for the streetcar. That increased development is what will pay for the streetcar.

**M. HANSEN:** OK. Thank you.

**HUNT:** Thank you. Any other questions from the committee? Seeing none, thank you. Oh, Senator Briese.

**BRIESE:** Thank you, Vice Chairman Hunt. Thank you for your testimony here today. So you're very last statement there was the development will be paying for the streetcar, correct?

**JENNIFER TAYLOR:** The increased value-- the increased value associated with that greater development that would not be there but for the streetcars, will pay for it.

**BRIESE:** OK, but that would not be there but for TIF, I think would be the correct-- but anyway, that's a different issue. We talked about that ad nauseam a little bit ago, but the decision has been made to pursue 20-year TIF here?

**JENNIFER TAYLOR:** We're available but-- we're-- we are extremely blighted in 20 when TIF is available. What it does is it enables the city to take a portion of that set. So let's say, for example, Mutual of Omaha. Mutual of Omaha's bidding is not getting 20-years of-- or mutual of Omaha is not getting 20-years of TIF. Mutual of Omaha is getting the amount of TIF it would have gotten in general under a 15-year program. The city is taking a portion of that tax from the financing proceeds and contribute towards the streetcar. So look at it a little bit the way that we did at Aksarben Village. When we developed Aksarben Village, the city installed all the public infrastructure and then every development that came online contributed its portion of that infrastructure cost back to the city to repay the city. So we're doing something similar here. We're investing in the public infrastructure and then we are requiring every business that

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Urban Affairs Committee February 8, 2022  
Rough Draft

comes online, every project that comes online along that streetcar line, to contribute its fair share back to the cost of the installation of that public infrastructure.

**BRIESE:** Will you be targeting 20-year TIF where available?

**JENNIFER TAYLOR:** Yes. So we're--

**BRIESE:** What goes into that decision, why not 15- or 12-year TIF?

**JENNIFER TAYLOR:** In 15-year TIF projects because even in a 15-year TIF project, because that building becomes more valuable, we will also be taking 25 percent of their TIF as well. So we'll maximize the TIF where we can, but then we're taking 25 percent of a project's TIF and making it being contributed to the streetcar. So every project along the line, 15- or 20-year will be contributing to the streetcar. And that contribution, just to be clear, is based on the fact that that project can be more dense and more valuable because of the streetcar. So it will generate more money, that money will go into the-- go back to repay the city for the installation of the property--

**BRIESE:** But to be clear, we would not have to utilize 20-year TIF everywhere. We could go 15, could go 12, could go 10, if the numbers would allow.

**JENNIFER TAYLOR:** Well, there are some areas where-- if the numbers would allow, but unfortunately it's-- even if the financing model does require or need, that additional 5-years where we have extremely blighted because of the greater density that it would create in those areas. And that greater density then allows us to pay for the streetcar. However, the redevelopment plan that the city has put forth also considers that any TIF proceeds that are received through this process and through the TIF district would also be available to use for one way to a conversions, other pedestrian and mobility solutions, as well as affordable housing options (INAUDIBLE).

**BRIESE:** Thank you.

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

**JENNIFER TAYLOR:** Thank you very much for your time and I'm happy to answer any questions at any time.

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Urban Affairs Committee February 8, 2022  
Rough Draft

**HUNT:** Any other neutral testifiers on AM1708? Anybody else neutral? Seeing none, Senator Wayne, you're invited to close.

**WAYNE:** Thank you, Vice Chairwoman Hunt. Earlier the city testified and I could have asked a million questions, but I choose not to because to me either you believe that this was the reason we passed extremely blighted and it came from this committee or you don't. And the fact of the matter is, is what's not been said is less than six blocks away is a \$100 million development that's been going on for-- on the old ConAgra campus. We just raised 317 million or 300 million for a park downtown. If that's considered extremely blighted, north Omaha and south Omaha don't have a chance. We worked extensively-- this committee by itself worked extensively to come up with this language. We worked with Senator Groene on the amendment and it was passed for the hardest hit areas. I'm willing to turn the other cheek if it's for affordable housing or something related to the people. But for corporations, particularly corporations who have significant tax breaks and will also get money under the ImaginNE Act when they move their headquarters, causes me concern about the use of extremely private. And with that, I'll answer any questions.

**HUNT:** Thank you, Senator Wayne. Any questions from the committee? Senator Hansen.

**M. HANSEN:** Thank you, Vice Chair Hunt, and thank you, Senator Wayne. Senator Wayne, I want to take kind of just get your take about the line of questioning I was asking the city of Omaha, kind of in terms of-- and this goes with all the TIF bills we've had today. Sometimes the-- what is exactly the but for like what are you paying for and what are you getting, and I'm not even sure I necessarily understand the project still. If you don't mind expanding--

**WAYNE:** So my extensive time on TIF in this committee, which is not next year, I can not be on this committee I need a break of TIF, but, uh, the but for tests was with the project moved forward from a financing standpoint-- but for, a financing standpoint. Is there a gap in your financing that is needed to finish your project? What you are hearing and what you have read in the papers is there's a 25-percent pool for the entire area, for a streetcar, not a particular project. We were talking about TIF districts. That's different than what I thought. It was utilized once. Once, I believe before, maybe another time. I know it was utilized in Lincoln, but they kind of worked extensively with the Legislature to make sure we were all kind of on the same page and what it was being used for. That didn't happen here.



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Urban Affairs Committee February 8, 2022  
Rough Draft

**HUNT:** Thank you, Mr. Chair-- or Senator Hansen. Any other questions from the committee?

**WAYNE:** I was in by saying at the end of the day, if it doesn't feel right and doesn't kind of sit right, we should have a conversation and see how we fix it. I don't know what the answer is, but it just doesn't seem right, doesn't make sense.

**HUNT:** Thank you, Senator Wayne. We have no letters for the record. And with that, I'll close the hearing on AM1708 to LB798 and close today's Urban Affairs hearing.