Hundredth Legislature - First Session - 2007
Committee Statement
LR 2CA

Hearing Date: February 6, 2007
Committee On: Urban Affairs

Introducer(s): (Rogert)
Title: Constitutional amendment changing provisions related to substandard and blighted property

Roll Call Vote – Final Committee Action:

	Advanced to General File
X	Advanced to General File with Amendments
	Indefinitely Postponed

Vote Results:

6	Yes	Senator Friend, Cornett, Janssen, Lathrop, McGill, Rogert
0	No	
0	Present, not voting	
1	Absent	Senator White

Proponents:	**Representing:**
Senator Kent Rogert	Introducer
Michael Nolan	City of Norfolk
Steve Sorum	NE Ethanol Board
Gary Hedman	Southern Public Power Dist.
Loran Schmidt	Self
Walter Radcliffe	NE State Homebuilders, Assoc. & NE Realtors Assoc.
Gary Krumland	League of NE Municipalities

Opponents:	**Representing:**
None	

Neutral:	**Representing:**
Neal Erickson	Secretary of State of NE
Ken Bunger	Self

Summary of purpose and/or changes: : LR 2CA is a resolution proposing a constitutional amendment to Article VIII, Section 12 of the Nebraska Constitution. That section deals with tax increment financing and the proposed amendment would remove the requirement that subject property be substandard and blighted, extend the authority to use tax increment financing to counties and into the extraterritorial zoning jurisdiction

of cities and villages, would provide for additional state oversight, and would extend financing periods for up to thirty years when projects involve state property to a significant extent.

By way of background, tax increment financing is a mechanism authorized for use by cities and villages to rehabilitate "substandard and blighted" properties within their boundaries.

First authorized by constitutional amendment in 1978, it permits cities and villages to declare property as "substandard and blighted" according to statutory definitions and then to divert (for up to fifteen years) a portion of the property tax revenue otherwise flowing to property-taxing political subdivisions for the retirement of debts incurred by the city (or community redevelopment authority) for the rehabilitation of the property.

Tax increment financing (as authorized in section 18-2147) operates on the basis that improvements financed by the city or village will increase the tax valuation of the property to such an extent that the property taxes generated by the improvements, if applied to the debt incurred to make the improvements, would retire or repay the debt. Following the determination to apply tax increment financing to a property, the value of the property is "frozen" for property tax purposes at the level of value of the property for the prior year before improvements were made. For up to fifteen years, the taxing subdivisions will receive property tax revenue on the basis of that "before" improvement value.

After the improvements are made, the value of the property will presumably increase. The property tax revenue (at the levy rate applicable to all property in the subdivision) which is attributable to this "excess" value, the value beyond the pre-improvement year's level, is collected to retire the debt incurred by the city to make the planned improvements. When the debt is paid, all future property tax revenue reverts to the various political subdivisions as any other property.

Thus, the owner of a TIF'ed property pays the same amount in "property taxes" as any other owner of property of the same value, but the portion of the "tax" attributable to the value of the property following improvements is used to pay for those improvements.

In 2006, Sen. Matt Connealy (a member of the Urban Affairs Committee), recognizing the virtual impossibility of providing meaningful enforcement of the requirement that land be "substandard and blighted" before TIF was applied to a project on the land, proposed that the "substandard and blighted" language be removed from the constitution and a new TIF authorizing statute be drafted (LR 272CA). Additionally, Sen. David Landis of Lincoln, also a Committee member, introduced LR 275CA, to provide a special exception to the TIF restrictions (most specifically the length of periods available for TIF financing) when a project involved a significant portion of state land being privately developed.

The committee amendments to both LR 272CA and LR 275CA were combined into an amended version of LR 272CA which become Amendment 6 on the November 2006 statewide ballot. LR 2CA is identical to Amendment 6 as it appeared on the ballot.

The LR 2CA would make major changes to the current constitutional authorization for TIF. The current provisions of this section of the State Constitution grant broad discretion to cities to designate land suitable for tax increment financing and it has long been argued that the authority granted insulates cities from review by

any state governmental agency regarding such determinations: city determination on suitability for TIF financing are only subject to court review.

The proposed constitutional amendment would in large measure return the authority to the legislature to determine the terms and conditions upon which tax increment financing authority could be exercised. Indeed, since it specifies that the Legislature "may" authorize cities to use TIF, it is clear that the Legislature's authority would even extend to denial of TIF authority if it chose to do so.

At the very least, there would be a requirement that the Legislature adopt enabling legislation before the new broader authority authorized by the constitutional amendment could be exercised.

Additionally, to the list of currently "qualifying" purposes for the use of tax increment financing (rehabilitating, acquiring, or redeveloping property) is added "developing" to make clear that the new authority granted by the amendment is broader than current law (underlining the disconnect from the current requirement that qualifying property be substandard and blighted).

Third, the amendment expands the authority to use TIF to counties and also to cities beyond their boundaries. Cities and villages are authorized to use TIF within their zoning jurisdictions. It would be for the legislature to determine the restrictions on the extent of county authority within areas of city jurisdiction.

The new provisions of subdivision (3) (formerly part of last year's LR 275CA) seek to provide for an exception (under specified circumstances) to the TIF requirement that the authority to apply tax increment financing to particular property not extend beyond fifteen years**.**

The new language would provide that the fifteen year limitation would not apply to property in a qualifying project area if:

First, more than one-half of the property within the project area "has been previously owned by state government" and

Second, if the proposed redevelopment could not be "reasonably financed within fifteen years. It would authorize an extension of the financing provisions for up to thirty years.

Explanation of amendments, if any: The committee amendment would extend the maximum financing period for TIF from fifteen years to twenty years.

The proposed amendment reflects a belief by the committee that the limitation of TIF financing to a period of fifteen years no longer reflects the financial reality of modern development finance. Indeed, the original legislation (LB 476 in 1978) that placed TIF authorization on the ballot originally called for a twenty year finance period (before it was amended down to fifteen years by amendment on the floor). As currently limited, projects which might be profitably undertaken are lost because the fifteen year maximum financing period will not develop sufficient revenue to make the project feasible.

Senator Mike Friend, Chairperson