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Urban Affairs Committee  
January 18, 2011

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[LB146 LB159]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, January 18, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB146 and LB159. Senators present: Amanda McGill, Chairperson; Colby Coash, Vice Chairperson; Brad Ashford; Tanya Cook; Bob Krist; Paul Schumacher; and Jim Smith. Senators absent: None.

SENATOR MCGILL: Welcome, everyone, to the first day of legislative hearings in 2011. It's exciting. And welcome to the Urban Affairs Committee. We've got some new folks here with us on the committee. Senator Ashford has joined us from Omaha. You'll remember Senator Bob Krist and Senator Colby Coash as being on the committee before. Senator Cook and Smith haven't arrived yet, but we welcome Senator Paul Schumacher to the committee. Welcome. He's from Columbus. Staff is the same. We've got the committee clerk, Katie Chatters, and our research analyst, Laurie Holman. A reminder to turn off your cell phones or put them on vibrate. When you come up here, we'll need you to fill out some information about who you are. The sheets are in the corners by the doors. Other than that, we're going to go ahead and get started. We just have a couple of bills here today since not a ton get referenced here to Urban Affairs, particularly this year. And, Senator Coash, I'm going to need you to kind of take over because I'm introducing these.

SENATOR COASH: Okay. So we're going to start out with LB146. Senator McGill, you are recognized to open on your bill.

SENATOR MCGILL: Thank you, Vice Chairman Coash. Good afternoon, committee. I'm, of course, State Senator Amanda McGill, that's M-c-G-i-l-l, and I'm introducing LB146 which provides for the use of planned unit developments in all cities and villages in Nebraska regardless of size. Currently, state law allows only metropolitan, primary, and first-class cities to utilize this development tool. The bill as written also adds language that will require a second-class city or village located in a county that exercises zoning jurisdiction to obtain county planning commission and county board approval for a planned unit development prior to approval. However, the League of Municipalities has brought us some language that would amend this section and remove the requirement of obtaining county approval but would still allow for county board input prior to the approval of the planned unit development. Planned unit developments zoning provisions permit large lots to be developed in a more flexible manner than would be allowed by the underlying zoning classification for the property. HUD ordinance provisions allow cities to permit developers to mix land uses, such as residential and commercial, on a large parcel of land to develop the parcel at greater densities and with more design flexibility than otherwise would be allowed by the underlying zoning district. This is done typically with the intention of allowing and encouraging more creative design of land development than is possible under district zoning regulations. There are some folks, I

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believe, here today who brought this legislation to me, that introduced it a while back and thought maybe now would be a good time to open up this ability for some smaller cities here in Nebraska. [LB146]

SENATOR COASH: Okay. Are there any questions for Senator McGill before we turn it over to testimony? Seeing none, thank you, Senator McGill. We'll take our first testifier as a proponent. Come on up, and while you're getting settled I'll introduce our newest colleague to the table. Senator Cook from Omaha has joined us. Good afternoon. [LB146]

KEITH MARVIN: Good afternoon, Senators. Thank you. I want to thank Senator McGill for bringing this forward. I am one of two individuals that approached her... [LB146]

SENATOR COASH: Okay, sorry, can you state your name for us? [LB146]

KEITH MARVIN: Oh, I'm sorry. Keith Marvin. I am a planning consultant with Marvin Planning Consultants and I am currently the Nebraska President for the Nebraska Chapter of American Planning Association. Myself and Mr. Chad Nabity, who is the regional planning director in Grand Island and Hall County, both came forward to Senator McGill to bring this bill forward. We had attempted this back in, I believe, 2003 and 2004, back with Senator Bromm introducing the bill at the time, and we didn't have any luck either time coming out of committee, and we feel that this is a tool that we still want to see brought forward to allow second-class cities and villages to be able to use in their planning and zoning efforts. We recognize that not a lot of...not all the villages and a lot of the second-class cities may or may not be able to use this or want to use this, but there are a number around especially the metropolitan areas that need this tool as they continue to grow. You know ones that I think of specifically are like Gretna, Ashland, Wahoo, my community of David City. All these communities don't have that ability. Springfield, Nebraska, doesn't have this ability, Bennington, all those, none of those are able to use this tool to be flexible in the design of subdivisions. One of the keys, I think, to this design ability is the ability to work around natural resources. I use the example a lot of times, if a developer has 80 acres of ground on the edge of town and the zoning requirements are 2 acres per lot and the simple math says you can do 40 lots without, you know, roads and streets, but what if you had a 20-acre wetland in the middle of that development? Now you've got 20 acres that you can't do. Under those requirements, you're now down to 30 lots instead of 40. What this tool does is allows them to go in and work with the city to potentially negotiate down that lot size, work around that wetland instead of destroying it or any tree outcroppings or whatever, and integrate those natural resources into the development and also giving them the ability to have the same density that they would have had under the 80-acre provision. So we're doing a lot to help protect some of our natural resources with this tool as communities grow. One of the things that I mentioned to the senator was the Legislature has been looking hard, I know, in the last several sessions at renewable resources. This

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will also allow developers to start looking at keeping their density levels appropriate for what...to cover their costs for development and begin to negotiate how these lots would be sited, so that you could use wind, use solar on these individual lots and make it more applicable and make it better for them and bring out more use of natural resources. I will tell you right now that I know of one very, very good planned unit development in the state of Nebraska that right now is illegal. Unfortunately...fortunately, I work with some of the best...two of the best land use attorneys in the state. Unfortunately, neither one of them or myself knew about this prior to about 2003, this section of statute. And the city of Ashland went through a PUD process. Now they're a city of the second class. The development called Iron Horse was developed as a planned unit development and it was done so in order to protect some of the growth, the tree growth in the area, some of the natural limestone outcroppings of the area, etcetera--very well-done development and I think it's a very good example of what can be done with this tool with cities of the second class and even villages in certain classes. [LB146]

SENATOR COASH: Very good. Thank you, Mr. Marvin. Do we have any questions for Mr. Marvin? [LB146]

SENATOR ASHFORD: What's the possible reason...I'm sorry, Senator Coash. [LB146]

SENATOR COASH: No. Senator Ashford. [LB146]

SENATOR ASHFORD: What would be the...what's the...I see no...what is the reason why second-class cities or villages have been excluded from this? [LB146]

KEITH MARVIN: I have no idea and I guess I haven't done the legislative research. I believe this section of statute was passed in the '80s, if I remember correctly. [LB146]

SENATOR ASHFORD: Was it passed as a PUD statute? Is that what... [LB146]

KEITH MARVIN: Yes, it was. [LB146]

SENATOR ASHFORD: So maybe at that time there was some concern about ag land or... [LB146]

KEITH MARVIN: I don't know. A few of my colleagues out there, from what I've gathered from them, is the city of Hastings was one of those communities that brought this forward in the '80s and it may have been to the point that it just wasn't thought that maybe second-class cities or villages needed that tool at this point in time. But we're seeing a need for it out there as community planners. [LB146]

SENATOR ASHFORD: Well, certainly as cities expand or areas around cities expand, places like Ashland become part of the metro area really, or Springfield. [LB146]

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KEITH MARVIN: Yes. [LB146]

SENATOR ASHFORD: And, yeah, it'd be interesting to see what the rationale for excluding the second-class cities was. But prior to '80, 1980, is it your...the '80s, were there no PUD statutes? Is that...? [LB146]

KEITH MARVIN: I really can't answer that... [LB146]

SENATOR ASHFORD: Okay. [LB146]

KEITH MARVIN: ...unless they were using them under the typical enabling legislation or...I believe Hastings actually asked for a clarification on it and that's how part of it started. [LB146]

SENATOR ASHFORD: Okay. So what happens to Iron Horse? They just tear it up and... [LB146]

KEITH MARVIN: I hope not. (Laughter) [LB146]

SENATOR ASHFORD: You know, it's fun to go out there and play golf and... [LB146]

KEITH MARVIN: It's a beautiful park. [LB146]

SENATOR ASHFORD: ...it's a great golf course and... [LB146]

KEITH MARVIN: It's wonderful. [LB146]

SENATOR ASHFORD: ...yeah, I hate to see it go. (Laughter) Okay. [LB146]

KEITH MARVIN: Yeah. I can see the headlines tomorrow. (Laugh) [LB146]

SENATOR ASHFORD: Thanks, Senator Coash. [LB146]

SENATOR COASH: Thank you, Senator Ashford. Are there any other questions for Mr. Marvin? [LB146]

KEITH MARVIN: If I could add one last thing, Senator. [LB146]

SENATOR COASH: Sure. [LB146]

KEITH MARVIN: Senator McGill mentioned that Gary Krumland was proposing an amendment. Gary, Mr. Krumland and I have been in communication with this, as well as

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Chad Nabity, and we have no problem with this. His amendment actually cleans up the language, I think, that originally was intended by what was in the original bill. [LB146]

SENATOR COASH: Very good. Thank you for that clarification. Seeing no other questions, thank you, Mr. Marvin. [LB146]

KEITH MARVIN: Thank you. [LB146]

SENATOR COASH: All right. We'll take the next proponent. While Gary is coming up here, I will introduce the last member of our committee. Senator Smith from Papillion has joined us. Thank you. Hi, Gary. [LB146]

GARY KRUMLAND: (Exhibit 1) Senator Coash, members of the committee, my name is Gary Krumland, it's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB146. First of all, I want to thank Senator McGill for introducing the bill. It does provide a needed tool for some of the smaller cities and villages and clears up some of the problems that you heard about already about whether they've had this authority and whether they need it. As was mentioned, some of the smaller cities, just because there is not a lot of development going on across the state, may not use this right away, but there are areas that will use it and it is important for them to have the tool. As was mentioned, larger cities have it, and if I could just digress a minute, there are five classes of municipalities in Nebraska. The largest is metro and that's cities with a population above 300,000. That's basically Omaha. Primary is 100,000 to 300,000 population, which is basically Lincoln. And first-class cities are those with a population between 5,000 and 100,000, and there are 30 of those. So the cities that this will affect are cities of the second class, which have a population between 800 and 5,000, and villages, which are those with a population below that, and that includes 498 cities and villages. So the population is not there but there are a large number of them that will be affected by this so we do think it's an important tool. What has been handed out is an amendment I'm offering. There are...I did have some concerns when I read it about on page 4, subsection (5), on an approval process. This creates a new process that would say that both the county planning commission have to approve and the county board would have to approve of any PUD from a city of the second class or village, which is different than the normal processes that are already in the statutes. Generally, a planning commission is an advisory body; they don't do approval. So this raises some concerns, both about the process and about possibly lengthening the time for an approval. There already is a statute, 17-1002, that does have some of these processes in there. So rather than create a new process, what I would suggest is that the bill be amended to just reference to the current process already. And the amendment would simply just say a city of the second class and village exercising these powers relating to PUDs would comply with Section 17-1002. This is the section that gives the cities of the second class and villages authority to go out one mile beyond the corporate limits with their zoning and planning. And if you look

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at the subsection in red, subsection (4), it does provide already that when a city or village is doing these sorts of things, they do need to send all the information to the county planning commission and give the county planning commission four weeks to review the information to decide whether they wanted to provide input to the process. So that process is already in place, it's already being used, and so I guess we would say that that's probably the more appropriate process to use since it's already there. But otherwise, we do support the bill. We think it is a good tool and will clear up the law for these smaller communities. I'd be happy to answer any questions. [LB146]

SENATOR COASH: All right. Thank you, Mr. Krumland. Any questions for Gary? Senator Ashford. [LB146]

SENATOR ASHFORD: Is that the reason, Gary, that first-class...second-class cities were included is the county jurisdictional issues? Is that why? [LB146]

GARY KRUMLAND: I don't know the reason. [LB146]

SENATOR ASHFORD: I mean it's just... [LB146]

GARY KRUMLAND: My guess is maybe what happened is when it was first proposed a couple of the cities thought, well, it's something we need clarification and so they...the only ones interested at the time were the larger cities. I know there was an attempt, oh, five or six years ago to include smaller cities and there was concern that they just may not be sophisticated enough to do it. [LB146]

SENATOR ASHFORD: Really? [LB146]

GARY KRUMLAND: But I think... [LB146]

SENATOR ASHFORD: That's an odd reason. [LB146]

GARY KRUMLAND: Yeah, but that's the only reason I can come... [LB146]

SENATOR KRIST: Sophistication. [LB146]

SENATOR ASHFORD: Yeah, I don't know how sophisticated we are in Omaha. (Laughter) [LB146]

GARY KRUMLAND: Yeah. But there are...you know... [LB146]

SENATOR ASHFORD: I mean that's a debatable point probably. [LB146]

GARY KRUMLAND: Well, and there are...I mean they do hire professional planners,

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especially some of the larger second-class cities have professional staff, and they also have interlocal agreements. [LB146]

SENATOR ASHFORD: Right. [LB146]

GARY KRUMLAND: So I don't think it's a problem. [LB146]

SENATOR COASH: Senator Schumacher. [LB146]

SENATOR SCHUMACHER: Mr. Krumland, on...in small villages and smaller second-class cities where they do not exercise their zoning authority even though they have it, do you see any role for this particular legislation? Can they do anything under this and do you see it? [LB146]

GARY KRUMLAND: Well, this would probably only apply to those cities and villages who adopted zoning. I mean it really wouldn't...it's just an additional tool to use with their zoning regulations. If they haven't adopted zoning, it really probably wouldn't apply to them. But if they do, then they can decide whether this is a tool they want to use and add to their regulations. [LB146]

SENATOR COASH: Any further questions? All right. Thanks, Gary. [LB146]

GARY KRUMLAND: Okay. [LB146]

SENATOR COASH: Take the next testifier in support of LB146. Seeing none, is there anyone here to testify in opposition of LB146? Seeing none as well, we will read into the record a letter from the Nebraska Association of County Officials in the neutral capacity which has been submitted to the committee. (Exhibit 2) So with that, Senator McGill, you're welcome to close. [LB146]

SENATOR MCGILL: Yeah, just real quick, in terms of the sophistication issue, like Gary said, I think five years ago, whenever this bill was last introduced, it was a question of if they had the professional capacity and experience to be doing this. As he said, many of them hire professionals already as it is, so I don't see that as being a major concern now. And I just don't think there was as strong of a push or will to get it done back then, but I feel this is something that could be useful, especially as a lot of those cities are growing in eastern Nebraska. Thank you for your consideration. [LB146]

SENATOR COASH: Very good. Any final questions? Okay, then we are going to move on to LB159, an Urban Affairs Committee bill. Senator McGill, as Chair of the committee, you can open on LB159. [LB146]

SENATOR MCGILL: I am still State Senator Amanda McGill, M-c-G-i-l-l. I bring LB159

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because Amendment 1 passed in the primary election last year, which is exciting. Amendment 1 authorized the use of revenue bonds issued by municipalities and counties to assist in the development of property for use by nonprofit enterprises. It was approved, of course, by the voters last year with good numbers. LB159 amends provisions of the Nebraska Industrial Development Act to permit municipalities and counties to participate in the financing and development of projects for nonprofit enterprises through the state, whether located within or outside of a blighted area, through the issuance of revenue bonds and the execution of related leases, loan agreements, and other documents relating to the project and the associated bonds. Participation in these projects by municipalities and counties through the issuance of revenue bonds does not give rise to liability on the part of such municipality or county. LB159, as required by the constitutional amendment, also excludes any portion of a nonprofit enterprise project to the extent used by a sectarian institution (sic) or study or devotional activities or religious worship. It also includes a number of technical amendments to the existing Nebraska Industrial Development Act to provide additional certainty and finality with respect to actions taken under the act. With that, I know there are some folks here to give a little bit more detail behind me. [LB159]

SENATOR COASH: Very good. Any questions for Senator McGill? Okay, seeing none, we'll take the first testifier in support. [LB159]

BOB HALLSTROM: (Exhibit 3) Senator Coash, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association to testify in support of LB159. My last name is spelled H-a-l-l-s-t-r-o-m. Senator McGill has talked a little bit about the general provisions and objectives of LB159 in carrying out the will of the voters through the passage of Amendment 1. What I'd like to do real briefly is talk just a little more detail about what the constitutional amendment provides, the benefits that it provides for nonprofit enterprises. Under current Nebraska law, counties and municipalities are authorized to issue bonds and lend the proceeds therefrom to private enterprises for manufacturing projects and for other enterprises located in designated blighted areas. LB159 and Amendment 1 would extend that concept to nonprofits with regard to the issuance of bonds by municipalities and counties. The benefit under the bill is that the nonprofit community will have an opportunity to benefit from tax-exempt financing. In order to have the tax-exempt status for these bonds that are issued by the municipalities in the counties, however, they must be authorized by state law. Because of the state of Nebraska's law, that required both the passage of the constitutional amendment and now the implementing legislation in the form of LB159. As we have done in the past, for those of you who sat through a couple of versions of LR295CA and its predecessor, before we finally got the voters' approval in the primary election last year, the revenue bonds are not obligations of the issuing county or municipality but are paid back from the revenues from the project itself that is designated by the nonprofit entity. The constitutional amendment itself and the legislation suggests that there can be no



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taxpayer funds used or taxes levied in the repayment of these bonds. With regard to the specific provisions of the bill, I'd like to just bring to the attention of the committee that Sections 1 and 2 of the bill are the primary instruments by which the implementation of the constitutional amendment is derived. Section 1 includes the definition of nonprofit enterprise, which is key. It identifies the types of projects that qualify for revenue bond financing and it also contains the required exclusion for any portion of a nonprofit enterprise project to the extent it is used for sectarian instruction or study or devotional activities or religious worship. In order to provide maximum flexibility for the types of projects that are financed under this proposal, Section 2 of the bill provides that the industrial development bond projects may be conducted on a loan agreement basis as well as a lease agreement basis. With regard to the remaining provisions of the bill, these could be seen as perhaps going beyond the mere implementation of LB159. In the course of drafting the legislation, we worked with bond counsel, who suggested there were some technical areas in the Industrial Development Act that could use some clarification. Those specifically are found first in Section 3 of the bill. There is a reference to new language for "other transaction parties." That specifically addresses the requirement that the terms of any bond transaction must be secured in a manner that is deemed advantageous to the issuing authority. The reality of these transactions is that that decision is generally made by the parties to the transaction: the bondholder or underwriter and the conduit borrower, in this case the nonprofit enterprise. The issuing authority, the county or municipality, generally does not provide much input into that decision as long as the terms are acceptable to the other parties to the transaction. Also contained in Section 4 of the bill is it makes it clear that the public hearing that is otherwise required for a determination that a project is located in a blighted area is not required for the issuance of these particular bonds. The reason is that the nonprofit enterprises projects can be located either within or without a blighted area, so the determination of blighted area and the necessity for a hearing is irrelevant. One thing I do want to make clear for the record is that that does not mean that there will not be a hearing and notice provided to the public to have input as to whether or not they object or support a particular project that is proposed or the entity that is proposing the project. Federal law and regulation clearly requires such a hearing to be preceded by notice, and the municipality or county after that hearing would have to put together a formal resolution to accept and finalize the project itself. Final changes under the bill in Section 5 contain provisions found in many other existing bond issuance statutes which are designed to provide greater certainty and finality with respect to actions taken in the process of issuing bonds. Specifically, the language was parroted verbatim from Section 18-2142.01 under the Community Development Law. In my testimony I've also cited a number of other statutes that have a limited period of time, for example, to challenge the validity of the process or the issuance of the bonds, and those are again standard and common practice. And given the complexities of these types of bond issues, to assure that finality and certainty in the process, we have put these provisions into the Industrial Development Act. With that, I would be happy to address any questions. I would let the committee know that also in the room today there are other witnesses, but also Mr. Mike

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Rogers from the Baird Holm law firm, who specialize in bond issue matters, is available if there are any questions of a technical nature that I may not be able to address satisfactorily for the committee. [LB159]

SENATOR COASH: Okay. Thank you, Mr. Hallstrom. Any questions from the committee? Senator Ashford. [LB159]

SENATOR ASHFORD: These are tax-exempt bonds? [LB159]

BOB HALLSTROM: Yes, they're tax-exempt revenue bonds so they are paid from the revenues of the project and specifically and expressly not from any taxpayer funds, nor is any property of the issuing authority or any tax levying authority permissible in any respect. [LB159]

SENATOR ASHFORD: Could the city of Omaha, by authorizing the sale of these bonds, help finance a nonprofit hospital? [LB159]

BOB HALLSTROM: I believe they could, Senator. It's probably unlikely. There are other statutes under which those particular types of financing and bonded projects can be accomplished. There are specific statutes that had already gone through this type of process, I presume, to be authorized under state law. There's one for educational institutions and one... [LB159]

SENATOR ASHFORD: I know there's one for education. [LB159]

BOB HALLSTROM: Yeah. [LB159]

SENATOR ASHFORD: Is there one for hospitals as well? [LB159]

BOB HALLSTROM: Yes. Yes. [LB159]

SENATOR ASHFORD: So a hospital would have no reason necessarily to utilize this section. [LB159]

BOB HALLSTROM: My assumption would be not independently of the existing... [LB159]

SENATOR ASHFORD: That there are other options where they can... [LB159]

BOB HALLSTROM: Yes. [LB159]

SENATOR ASHFORD: ...they can rely upon tax-exempt financing... [LB159]

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BOB HALLSTROM: That already exists, is my understanding. [LB159]

SENATOR ASHFORD: ...that already exists. So the kinds of facilities that would be financed would be what? [LB159]

BOB HALLSTROM: Oh, there's been...in other states there have been Goodwill Industries that have been financed and realized the significant savings that come about from the tax-exempt financing. The YMCAs were a big supporter of the constitutional amendment. They have had projects here in Lincoln. The Red Cross, and, in fact, back in the '90s, when this issue first cropped up, it was the Red Cross that was looking at building a new headquarter facility here in Lincoln. They got the job done but they didn't do it as efficiently and as cheaply as they would have had this been on the books. [LB159]

SENATOR ASHFORD: Okay. So Catholic Charities would not be able to access these funds? [LB159]

BOB HALLSTROM: Catholic Charities could to the extent that a particular project was not devoted to sectarian or religious worship. The Catholic Charities had supported this, I know, in 2002 or 2006, when Senator Synowiecki was in the body, because they do have nonreligious, nonsectarian aspects that they could utilize. [LB159]

SENATOR ASHFORD: So the drug rehab facilities theoretically could be expanded with this financing if there wasn't a church attached. [LB159]

BOB HALLSTROM: If it's a nonprofit and there is not a...the federal law basically requires a bond opinion, so even though we put the language in the state law, Senator, in the constitutional amendment, the bond counsel can't issue the opinion to the extent that any part of the project is funded by the bonds. So you can have a project but the funds cannot be used for any portion of that project that is utilized for sectarian or religious purposes. [LB159]

SENATOR ASHFORD: Okay. In north Omaha there's a significant facility, it's Hope Center. It's expanding, it's growing. I think they serve 4,000 young people on an ongoing basis. The building itself or expansions of that building could occur with this financing but no money could go to programs. Where could the money not go? [LB159]

BOB HALLSTROM: Well, if there was a portion of that building or let's utilize maybe an example, and there's other methods to get there with nonprofit tax-exempt financing, but if you had a hospital and there was a chapel for people to go to, that portion of the building and the chapel could not be financed or provided for in any fashion from the bond proceeds. [LB159]

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SENATOR ASHFORD: If there is religious instruction at the Kroc Center, could the Kroc Center or Salvation Army facility receive any bond financing through this? [LB159]

BOB HALLSTROM: My understanding is that they can, Senator, and I may ask the committee, with their indulgence, to perhaps allow Mr. Rogers to come out here before the... [LB159]

SENATOR ASHFORD: That's fine. I mean I think these are real issues... [LB159]

BOB HALLSTROM: Yeah. Yes. Yeah. [LB159]

SENATOR ASHFORD: ...and I just...I just...and I know Mr. Rogers knows what he's talking about so...as do you sometimes. [LB159]

BOB HALLSTROM: Thanks for adding that, Senator. (Laughter) [LB159]

SENATOR COASH: Senator Krist. [LB159]

SENATOR KRIST: Thank you, Chair. Just to clarify, we're not talking about the organization being religious based. We're talking about the function of the structure being used for secular or religious... [LB159]

BOB HALLSTROM: Yes, Senator. The project itself cannot be entirely or in part devoted to the sectarian or religious purpose. And that's why I assume, when you look at a group, as Senator Ashford suggested Catholic Charities, you don't just look at their purpose. You look at what it is that they're doing in a particular project-by-project basis. [LB159]

SENATOR KRIST: Thank you. [LB159]

SENATOR COASH: Thank you, Senator Krist. Any other questions for Mr. Hallstrom? Seeing none, thank you. [LB159]

BOB HALLSTROM: Okay. Thank you. [LB159]

SENATOR COASH: We'll take our next testifier in support. [LB159]

MICHAEL ROGERS: Good afternoon. My name is Mike Rogers. I'm an attorney at Baird Holm in Omaha, Nebraska. Last name is spelled R-o-g-e-r-s. I'm here in support of this bill and I don't have any prepared remarks. I think I'm here to answer any questions you might have. [LB159]

SENATOR COASH: Senator Schumacher. [LB159]

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SENATOR SCHUMACHER: Mr. Rogers, just a couple of questions. I take it these bonds are what would be typically called securities. [LB159]

MICHAEL ROGERS: Yes. [LB159]

SENATOR SCHUMACHER: Okay. And who is the issuer of these securities? [LB159]

MICHAEL ROGERS: The issuer would be the municipality or county, whoever, whichever municipality would be issuing the securities. [LB159]

SENATOR SCHUMACHER: And how would the issuer or you contemplate or the proposed law contemplate the issuer doing due diligence to make sure that there are a complete disclosure and no unintentional or intentional omissions in connections with the securities? [LB159]

MICHAEL ROGERS: That's a good question. When financings like this are done and sold publicly to the general public, attention is paid mostly to federal securities laws where the issuer must prepare a disclosure document, which is prepared normally by securities attorneys or securities law experts or a bond counsel and that's done with input particularly from the institution who is borrowing the money in the end, the 501(c)(3) or the nonprofit institution. They provide all of the relevant information because these are conduit issues and the ultimate obligor is the nonprofit. The people who are buying the securities are going to be most interested in their financial situation and the security for the payment of the bonds, whether it's real estate or revenues of the property. And so that information is of primary concern for the professionals involved in preparing the security disclosure document. In terms of disclosure regarding the municipality or the issuer itself, those...that's all very factual information that's easy to identify or understand by the issuer itself, in other words, who's on the city council, that the city is a city of the first class, for example. Because ultimately the city is not...has no pecuniary liability for the repayment of the bonds, all of the obligation falls to the ultimate borrower, the 501(c)(3), for example. And so the most attention...most of the attention is paid to the ultimate 501(c)(3), to their finances and their...and factual matters related to their organization. [LB159]

SENATOR SCHUMACHER: Now in preparation of the prospectus, you said basically that's done with view of the federal securities law. I take that to mean... [LB159]

MICHAEL ROGERS: And the state securities law as well. [LB159]

SENATOR SCHUMACHER: Okay. But the federal one that you mention, they focus on the '33 act and the '34 act. [LB159]

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MICHAEL ROGERS: Uh-huh. [LB159]

SENATOR SCHUMACHER: Okay. Now the state act that you just mentioned has a different standard for what is typically the antifraud provision under the federal act than the federal act. The federal act requires scienter; the state act does not require scienter. Are there any particular provisions in the state Securities Act which would exempt the cities as an issuer or exempt this particular transaction from the antifraud provisions or the negligence provisions of the Nebraska Securities Act? [LB159]

MICHAEL ROGERS: I am not aware of any that would exempt issuers under this particular statute or issuers of conduit bond issues, similar to what we're talking about here, under any other sets of statutes. For example, Hospital Authorities Act where...which is the set of statutes that most 501(c)(3) hospitals finance their hospital buildings with in the state, whether it's hospitals in Omaha or other communities around the state, I don't think there are carve-outs from the Nebraska Securities Act for those securities or whether it's a conduit issue issued by the Nebraska Investment Finance Authority. I'm not aware of carve-outs from the Nebraska Securities Act for those issuers. [LB159]

SENATOR SCHUMACHER: So then if a issuance took place and there were what was later found to be a material fact or omission and the buyer didn't know about that omission and the city could not prove or the municipality could not prove that in their exercise of reasonable diligence it could not have known and disclosed that omission, then there could be liability by the city and for the taxpayers under the Securities Act. [LB159]

MICHAEL ROGERS: Under the Nebraska Securities Act? [LB159]

SENATOR SCHUMACHER: Yes. [LB159]

MICHAEL ROGERS: I don't...I'll have to say I don't have the Securities Act in front of me so I'm not, off the top of my head, familiar with the standards under the Nebraska Securities Act. [LB159]

SENATOR SCHUMACHER: Well, just...I would call to your attention, for your review at some point, 8-1111, excuse me, 8-1118 of the Nebraska Securities Act and see if you can gel that into your thinking in respect to the possible exposure to the taxpayers as it is worded now. [LB159]

MICHAEL ROGERS: Okay. Thank you. [LB159]

SENATOR COASH: Thank you, Senator Schumacher. Senator Ashford. [LB159]

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SENATOR ASHFORD: Senator Schumacher makes great points and I have really another question that Senator Krist brought up to me here and I think it's true. It gives the governing body quite a bit of power here to select. Assume you have two or three, four, whatever the number, financially viable nonprofits. They have large donor bases and they...the city council makes a decision on whom it's going to support with this bond issuance. That's quite a bit of power, is it not? It's giving the city council quite a bit of authority to select one nonprofit over another. [LB159]

MICHAEL ROGERS: Yeah, there is no language under the bill that would require... [LB159]

SENATOR ASHFORD: Would... [LB159]

MICHAEL ROGERS: ...the city to accept all... [LB159]

SENATOR ASHFORD: All of them. [LB159]

MICHAEL ROGERS: ...all comers or set out criteria. [LB159]

SENATOR ASHFORD: Well, I mean and I just think back to the Legislature gave the counties, well, Douglas County, I assume all the counties--I'd have to go back and think about it--authority to...maybe it is only Douglas County, to utilize I think it's hotel/motel tax money for particular nonprofits and the county board makes a selection on those, what particular nonprofits. The zoo, for example, gets a lot of money and that's all well and good, but then there are other nonprofits that don't get funded. This is a funding mechanism for these nonprofits. It is not...it wouldn't rise to the level of bothersome, but it is a bit of an issue, it seems to me, to vest in that governing...and I don't know who else you vest authority in, but that power to select, for example, the Hope Center versus Catholic Charities versus you name it. We already politicize the relationships between nonprofits in the cities as it is in other ways. There is the risk of politicizing that choice. [LB159]

SENATOR KRIST: And I will only add that I think it is even more a risk factor, not to...but to add to that, within the blighted areas. I mean it would be very easy I think for a community to say it's a blighted area, and there are many that probably do qualify, and then turn right around and select... [LB159]

SENATOR ASHFORD: Yeah, something that's not. [LB159]

SENATOR KRIST: Right. [LB159]

SENATOR ASHFORD: And you get...again, you get institute...we're blessed in Omaha certainly, I'm sure around the state, with incredible donor generosity. I mean it's

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unparalleled in the country I'm sure for a state our size. But then we're getting the politic politics involved in nonprofits' financing. I can see abuse. Yeah, I can see picking and choosing and it could have unforeseen consequences. And that's not a bond issuance question. It's more of a policy question but...nor does it necessitate an answer. (Laugh) But I raise that because I think it really happens. That's what happens in reality, is you have a worthy project that some councilperson may not like because it's, you know, the Zoroastrian based and somebody doesn't like the Zoroastrians and then you don't have the project approved or there are other projects which are kind of more mainline and they have better parties and so they get funded. And I just...we don't want this to be another one of those things, I guess. That's... [LB159]

MICHAEL ROGERS: This probably is not in direct response to that, but under the Nebraska...under the Industrial Development Revenue Act, that existed for industries who were going to the city to try to get tax-exempt financing through the cities and... [LB159]

SENATOR ASHFORD: No question, I mean no question that there's precedent. [LB159]

MICHAEL ROGERS: And also the other thing is that anyone who comes to a city to take advantage of these provisions would need to have a financing institution behind them, whether it's an underwriter or a private bank, willing to finance the property. [LB159]

SENATOR ASHFORD: No question, and my thought would be that there are numbers of nonprofits in the Omaha area that would be able to qualify by having financial statements clearly suitable or sustainable. So I just see, over the years of seeing how politics enter into which nonprofits are nonprofits of the day, so to say, and that other nonprofits aren't. And it's not a reason not to do it. I mean I think that certainly the policy behind giving nonprofits another financing vehicle is something, you know, most...probably all of us supported on the floor as a constitutional amendment, but...and I don't know how you change it, but every time we do this there is a potential for one nonprofit that is perfectly able to meet the financial obligations that you would require but for some odd reason are not approved. That's all. [LB159]

SENATOR COASH: Thank you, Senator Ashford. Senator Cook. [LB159]

SENATOR COOK: Thank you, Mr. Chairman. Mr. Rogers, I have a question about the kinds of nonprofits that would qualify. I know we had a constitutional amendment. The exact language is slipping my memory right now, maybe because it's been a year or so. Are those nonprofit organizations required to have been incorporated within the state of Nebraska? Based on what Senator Ashford was saying, I was maybe imagining, I don't know, the Ford Foundation who also has lots and lots of money, determining that they might want to--this is my kind of worst case scenario imagining--take over and put



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something up in a blighted area or, at least the way the statute reads, a nonblighted area, and they'd have the resources to do that, plus leveraging ours. [LB159]

MICHAEL ROGERS: I don't think it requires the nonprofit organization to be incorporated in Nebraska. [LB159]

SENATOR COOK: Okay. [LB159]

MICHAEL ROGERS: It just requires it to be a nonprofit enterprise. [LB159]

SENATOR COOK: All right. Thank you. [LB159]

SENATOR SCHUMACHER: Mr. Chairman, is there a copy of the constitutional amendment that gave rise to this that's available to us? [LB159]

SENATOR COASH: We will get you...we'll get some passed out to the committee members. [LB159]

SENATOR SCHUMACHER: I just don't have it here. [LB159]

SENATOR ASHFORD: Senator Coash. [LB159]

SENATOR COASH: Senator Ashford. [LB159]

SENATOR ASHFORD: Mr. Rogers, I think Senator Cook makes a great point. Should we enable nonprofits not...they would have to be registered in the state assumedly, correct, some sort of registration that would have to occur? It can't simply be a nonprofit from some other state coming in and asking the city of Omaha to issue bonds to have it build something and it not be a Nebraska nonprofit or registered in Nebraska. [LB159]

MICHAEL ROGERS: You mean in order for them to conduct activities in the state? [LB159]

SENATOR ASHFORD: Right. In order for them to... [LB159]

MICHAEL ROGERS: Under the... [LB159]

SENATOR ASHFORD: ...be funded, wouldn't we want to particularly focus on nonprofits that are Nebraska nonprofits? [LB159]

MICHAEL ROGERS: This...the constitutional amendment and the statute, the proposed...the LB159 in front of you does not require it to be a Nebraska nonprofit. [LB159]

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SENATOR ASHFORD: Right. But I think we could legislatively... [LB159]

SENATOR COOK: Uh-huh, we could talk about that. [LB159]

SENATOR ASHFORD: Well, no, but we could legislatively come up with provisions that are consistent with the constitutional amendment but may not mirror the constitutional amendment. [LB159]

MICHAEL ROGERS: Yeah, and... [LB159]

SENATOR ASHFORD: Correct? I mean we could... [LB159]

MICHAEL ROGERS: Yes. [LB159]

SENATOR ASHFORD: ...we could pass enabling legislation that may not...that can derive from that language but may not be specifically consistent with. [LB159]

MICHAEL ROGERS: Yes, and I don't...yeah, I'm not familiar enough with the state nonprofit laws to know whether a foreign nonprofit entity must register to do business in the state of Nebraska if it's located in Nebraska. [LB159]

SENATOR ASHFORD: Well, the YWCA, for example, is a national organization. I don't know whether it's also incorporated in Nebraska as the YWCA of Nebraska. Is it? [LB159]

SENATOR MCGILL: Yeah. [LB159]

SENATOR ASHFORD: Yeah, okay. [LB159]

SENATOR MCGILL: Like my city one. [LB159]

SENATOR ASHFORD: Right. [LB159]

SENATOR MCGILL: Yeah. [LB159]

SENATOR ASHFORD: So Senator McGill suggests that they are incorporated in Nebraska as a Nebraska nonprofit. I mean that bothers me. I mean if we're going to...if we're going to hold...and Senator Schumacher makes a great point, if there is an underlying failure to disclose or there's been a...has not been a disclosure compliant with the law, that we have a nonprofit that's not even a Nebraska nonprofit and we are, in effect, financing that entity and there could be some other...something else going on somewhere else. I mean they could be having business activities in some other state.

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They come to Nebraska and get...take advantage of this act and could have some mishap occur in Pennsylvania that would impact their... [LB159]

MICHAEL ROGERS: Their overall financial condition. [LB159]

SENATOR ASHFORD: ...their overall financial condition. [LB159]

SENATOR COASH: Senator Schumacher. [LB159]

SENATOR SCHUMACHER: Just in following up on that line of thought a bit, it is the development or whatever project, at least under the way this is worded now. Is that confined to the state of Nebraska or could they raise the financing here and build the project in Pennsylvania? [LB159]

MICHAEL ROGERS: I do think it needs to be in the state of Nebraska. [LB159]

SENATOR ASHFORD: I mean I didn't see anything that restricted the project. It just said a nonblighted...that it was something we can clearly... [LB159]

MICHAEL ROGERS: It shall be located within the state. [LB159]

SENATOR ASHFORD: Does it say that? [LB159]

SENATOR SCHUMACHER: Does it say that? [LB159]

MICHAEL ROGERS: It does. [LB159]

SENATOR ASHFORD: Okay. [LB159]

MICHAEL ROGERS: Yes. [LB159]

SENATOR SCHUMACHER: Okay. [LB159]

SENATOR COASH: Any other questions? [LB159]

SENATOR SMITH: Yes. [LB159]

SENATOR COASH: Senator Smith. [LB159]

SENATOR SMITH: However the...there's a component here, "equipment." Now equipment that is not annexed to the property or to the real estate, it could be transferred outside of the state. [LB159]

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MICHAEL ROGERS: Conceivably, yes, but this is intended to be financing a project. If you finance a new building, you need to equip it and that language is intended to help with equipping buildings. Otherwise, you might end up with being able to finance the shell itself but then falling short on financing for all the equipment that goes along with the building. [LB159]

SENATOR SMITH: Is there adequate wording here to specify that equipment needs to go with that particular project and remain in the state or remain with that project and not be transferred? [LB159]

MICHAEL ROGERS: The language in the legislative bill says such project shall be located within the state and the definition of project includes equipment. So I don't think there's anything beyond that language now. [LB159]

SENATOR SMITH: Okay. [LB159]

SENATOR COASH: Thank you, Senator Smith. Any other questions for Mr. Rogers? Thank you, Mr. Rogers. [LB159]

MICHAEL ROGERS: Thank you. [LB159]

SENATOR COASH: Do we have any other testifiers in support of LB159? Come on up. Welcome. [LB159]

ANDY BRADLEY: (Exhibit 4) Good afternoon. My name is Andy Bradley. Last name is B-r-a-d-l-e-y. Members of the Urban Affairs Committee, I'm the executive vice president for Goodwill Industries located in Omaha, but I'm here today actually representing the four independent Goodwill organizations operating in the state of Nebraska. Our agencies are locally governed. We serve local community needs. And those four in our state are headquartered in South Sioux City, Grand Island, Lincoln, and Omaha. Goodwill Industries strongly encourages you to approve LB159. We're very appreciative of Senator McGill's efforts and this committee's leadership last year to ensure that the issue was placed on the ballot for the 2010 primary elections. Subsequent voter adoption of the constitutional amendment now puts us on the verge of making a really important financing tool more readily available to any Nebraska nonprofit that needs to expand or renovate its facilities or build new ones. Goodwill, for one, would greatly benefit and I want to explain how. In the last seven years, the Omaha-based Goodwill Industries has opened nine new facilities throughout the area, including Fremont and Omaha. These buildings are used not just for the collection and sale of donated goods but for job training, for people who are unemployed, for people with disabilities, disadvantaged youth, or those with other significant barriers to employability. Industrial revenue bond financing can enable us to finance construction projects for up to 3, maybe even 3.5 percentage points lower than what we've been traditionally able to

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secure through traditional bank financing. Simply put, we can save upwards of \$800,000 per facility in interest payments by utilizing IRB financing. If we were to realize that kind of savings for every new facility, we could provide services to literally thousands of additional unemployed Nebraskans. For every million we could save in interest rates, Goodwill could serve at least an additional 500 people, all this, of course, without financial obligation or even the slightest risk to any public entity, municipality, county, or citizen thereof. In our opinion, opening up IRB financing for the nonprofit world continues to make perfect sense for the state of Nebraska and its many nonprofit organizations, and most importantly for the thousands of people that they serve. So we encourage today your support of LB159, and thank you for your time and I'd welcome your questions. [LB159]

SENATOR COASH: Thank you, Mr. Bradley. Have any questions for Mr. Bradley? Seeing none, thank you for testifying. [LB159]

ANDY BRADLEY: Thank you. [LB159]

SENATOR COASH: Do we have any other testifiers in support of LB159? Seeing none, I'll read into the record a letter from Barb Bettin of the YMCA in support. (Exhibit 5) We'll have...that letter has been handed to the committee members. Is there any testimony in opposition? Seeing none, any testimony in the neutral capacity? Seeing none as well, Senator McGill, you're welcome to close. [LB159]

SENATOR MCGILL: All right. There's a reason I didn't schedule an Exec today and it's because I figured this bill would take a little bit of work, you know? And I'm really...I'm glad to see so much discussion on this, especially from our new members. You know, I hope we can work through most of these issues this year because I do think this is a very important tool. The people of Nebraska voted on it and they want to see this put into effect. I think some very legitimate concerns came up today that hopefully we'll be able to work through. [LB159]

SENATOR COASH: Great. Thank you, Senator McGill. [LB159]

SENATOR MCGILL: Uh-huh. That's it. [LB159]

SENATOR COASH: That will close our hearings for today. Thank you. [LB159]

SENATOR MCGILL: Thank you. [LB159]