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Transcriber's Office

Urban Affairs Committee  
February 01, 2011

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[LB438 LB471]

The Committee on Urban Affairs met at 1:30 p.m. on Tuesday, February 1, 2011, in Room 1212 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB438 and LB471. Senators present: Amanda McGill, Chairperson; Colby Coash, Vice Chairperson; Brad Ashford; Bob Krist; Paul Schumacher; and Jim Smith. Senators absent: Tanya Cook.

SENATOR MCGILL: All right. I think we have enough of us here to get started now.

SENATOR HOWARD: Let's go with it.

SENATOR MCGILL: This massive crowd is just waiting to hear how this hearing goes. (Laughter)

SENATOR HOWARD: All right. All the fans are here.

SENATOR MCGILL: This is the beginning of our Urban Affairs hearing. Welcome.

SENATOR HOWARD: Thank you.

SENATOR MCGILL: I don't know if I even want to give an opening because nobody is here it hear it. (Laugh)

SENATOR HOWARD: They hopefully know the rules.

SENATOR MCGILL: If you are here to testify, there are forms to fill out in the doorways. Make sure your cell phones are off or on vibrate and silent. Here with us on the committee today, on my right are: Senator Bob Krist; Senator Colby Coash; my research analyst Laurie Holman. On the far left is Katie Chatters, our committee clerk; we have Paul Schumacher sitting down here, and Senator Jim Smith next to him. With that, we'll go ahead and start with the hearing on LB438. Senator Howard.

SENATOR HOWARD: (Exhibit 1) Thank you, Senator McGill and members of the committee. For the record, I am Senator Gwen Howard, H-o-w-a-r-d, and I represent District 9. I'm introducing LB438 because handicapped parking is frequently abused. For some reason people seem to think that handicapped parking laws are some kind of a flexible guideline that does not really have to be followed if they are busy or in a rush. I was listening to a talk radio program on the way back to Omaha last night actually hoping to get the weather report, and the host explained how he was...how he has parked in a handicapped parking. To quote, sure I know it was wrong, but I was in a hurry. This is the attitude of this individual who is on the radio broadcasting this out. The result of this is that all too often a space is unavailable for a handicapped person who

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actually needs it. LB438 would increase the maximum penalty for handicapped parking infraction to \$1,000. That may sound steep, but when you break the law there are consequences, and those consequences should be severe enough to be a deterrent to future lawbreaking. I want to reiterate that \$1,000 is the maximum penalty. If a judge so chooses, he or she could still fine a lawbreaker \$150 for the first offense, \$300 for the second offense, \$500 for the third, but LB438 would allow a much steeper penalty for the fourth or fifth or even sixth offense. Okay. Sure. Such as the reality of individuals who choose to break these laws all the time, judges need to have discretion to deter individuals who would violate these laws over and over. There is some confusion as to whether this bill would actually apply to people who misuse parking permits, those perfectly capable people who use a handicapped person's permit. The truth is, the way the current statute is written is just plain confusing. At the present time, the misuse of a permit is both a handicapped infraction and punishable under Section 1741 with an additional penalty and suspension. It takes careful reading of the statute to understand the meaning of this, however. I've had an amendment drafted that I think is going to be coming that would clear up the confusion in this statute. LB438 would carry a very stiff penalty for handicapped parking violations, but when you violate the law, you pay the price. Handicap parking stalls should be available for those who need them. And after my little incident on Friday and going over to the Walgreens Saturday to get a few things, I really had new appreciation for people that are struggling to get around and should be parking...should be having these places available to park there. I would just add, my LA just gave this to me as I came back from lunch. We were chosen as the World-Herald poll site today (laugh), and 86 percent of the people answered yes, they do think the penalty for parking in the handicapped park spot should be stiffer. So just for your information. I don't know if this goes on all day or... [LB438]

SENATOR MCGILL: Very scientific poll, but. (Laughter) [LB438]

SENATOR HOWARD: It is scientific. Yea, there was a 6 percent maybe, so you can factor (laugh) that in. [LB438]

SENATOR MCGILL: Okay. [LB438]

SENATOR HOWARD: So hopefully that is helpful. We did have people lined up to come down and testify, but they were in wheelchairs and some didn't want to risk it. I told them to send us in any information that they might want to give us. [LB438]

SENATOR MCGILL: And we'll appreciate that. Thank you. [LB438]

SENATOR HOWARD: And when we get the amendment, I'll share that with you. [LB438]

SENATOR MCGILL: Okay. Are there any questions for Senator Howard? Senator

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Coash. [LB438]

SENATOR COASH: Thank you, Chairman McGill. Thanks, Senator Howard. It's interesting when I talk to folks who I know who use wheelchairs, they tell us that the most inaccessible place for handicapped parking is our building. [LB438]

SENATOR HOWARD: Oh, oh, that hurts. [LB438]

SENATOR COASH: But my question is, we frequently see bills like this to...because the fines haven't kind of kept up with...I don't know if inflation is the right word, but we frequently have to bump up these fines... [LB438]

SENATOR HOWARD: Right, no, I know exactly what you mean. They don't seem to be...they're not enough that they're a deterrent basically. [LB438]

SENATOR COASH: They're not reflective of what it is. So do you know...I mean, you're jacking it up here to \$1,000, do you know when the last time it was changed? Like how far back we are? [LB438]

SENATOR HOWARD: You know, I think I do because I think I read that, and... [LB438]

SENATOR MCGILL: It was very recently. [LB438]

SENATOR HOWARD: Yeah, it was like... [LB438]

SENATOR MCGILL: Since I've been here. [LB438]

SENATOR HOWARD: I'm thinking, let me think just a minute. I think it might have been '07. [LB438]

SENATOR COASH: Okay. [LB438]

SENATOR HOWARD: And we can...I remember reading it. It was in yesterday's newspaper article and I think it was '07, but apparently that's not really cutting it. Here is the amendment that we had drafted. Let me just glance at this. And this was at the request of a handicapped individual. I'll leave this amendment with you so that you've got it to work with. [LB438]

SENATOR MCGILL: Yeah. We can take a look at it. [LB438]

SENATOR HOWARD: Basically it says: In addition to any fine imposed under subsection of this section, any person found guilty of a handicapped parking infraction under section shall be subject to suspension of such person's handicapped or disabled

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parking permit for six months or any such other punishment as imposed. Basically that applies to people that misuse somebody else's. [LB438]

SENATOR MCGILL: Yeah, I remember from the last hearing we had on this that the bigger problem was people who misuse the handicapped stickers. Yeah. [LB438]

SENATOR HOWARD: The relatives, yeah. Yeah, and that's something to certainly look at because the point is, it should be available to people that honestly need it. [LB438]

SENATOR MCGILL: Um-hum. [LB438]

SENATOR HOWARD: And other people... (laugh) I have to laugh at this radio commentator who is a big mouth anyway. (Laughter) But to blatantly say I do it because I needed to and so what really points out the problem to me. [LB438]

SENATOR MCGILL: All right. Thank you, Senator Howard. Any other questions? [LB438]

SENATOR HOWARD: Thank you. [LB438]

SENATOR MCGILL: No. Thank you very much and... [LB438]

SENATOR HOWARD: All right. I'll just leave this with you. [LB438]

SENATOR MCGILL: Senator Ashford had joined us here on my right. [LB471]

SENATOR HOWARD: Well, Senator Ashford, did you have question or would you like a recap? [LB438]

SENATOR ASHFORD: Hi, Senator. No, this is Senator Lynch's bill. I remember that when it originally passed. [LB471]

SENATOR HOWARD: When was that? [LB438]

SENATOR ASHFORD: I was there. It was eighty...late eighties I think. [LB438]

SENATOR HOWARD: All right. So that was the original, and then it was apparently revisited in we're thinking '07 with a bit of an increase in fines then. [LB438]

SENATOR ASHFORD: I remember when Dan brought it originally. [LB438]

SENATOR HOWARD: Okay. Well, if there's anything else that I can do that's helpful, and I would sincerely...I don't mean to be light about this at all. I would sincerely say that

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it's time to look at what we can do that would...when people are looking at that handicapped stall are saying, I'm not going to chance it, and that's what it comes down to for me. [LB438]

SENATOR MCGILL: All right. Thank you. [LB438]

SENATOR HOWARD: Thank you. [LB438]

SENATOR MCGILL: Are there any proponents here? Because they all got snowed in. (Laugh) Any opponents? Anyone neutral? Well, would you like to close, Senator Howard? [LB438]

SENATOR HOWARD: I'll just tell you thank you for considering this. [LB438]

SENATOR MCGILL: Okay. [LB438]

SENATOR HOWARD: And I'm going to leave it in your capable hands to work on. I think you all understand the problem. And I'm going to just limp on out of here now. Thank you. [LB438]

SENATOR MCGILL: Okay. Thank you. All right. That closes the first of our hearings for today. (See also Exhibits 3-4) Up next we'll have...I suppose Senator Karpisek didn't expect that to go so quickly, so you could call his office really quick and just let him know. We will be moving on to LB471, which is the other constitutional amendment that was on the ballot last year in November. We'll just stand at ease. [LB438]

BREAK

SENATOR MCGILL: Senator Karpisek.

SENATOR KARPISEK: Senator McGill, how are you?

SENATOR MCGILL: Good. Our first hearing went very quickly.

SENATOR ASHFORD: We'll all good, too, Senator. (Laughter)

SENATOR COASH: Thanks for asking.

SENATOR MCGILL: Would you like to open on your bill?

SENATOR KARPISEK: Oh, sure, while I'm here. Senator McGill, members of the Urban Affairs Committee, for the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District in the Legislature. LB471 implements

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Amendment 1, which is the constitutional amendment that was approved by the voters in November of 2010. Amendment 1 gives authority to the Legislature to grant municipalities more flexibility in funding sources for voter-approved economic development. The Local Option Municipal Economic Development Act, or LB840, is a law that allows cities and villages to use local revenue to support economic development. An economic development plan created under the act must be approved by the voters of the city or village. Under the old constitutional provision and current LB840, municipalities can only use property tax and sales tax to fund voter-approved economic development plans. I think that's very important to point out because there's been a little confusion that this is putting property tax and sales tax into that. That was the only thing that you could use before. Under the constitution as amended by Amendment 1, the Legislature can define local sources of revenue as the city's property tax or city's local option sales tax or any other general tax levied by the city or generated from a municipally-owned utilities or grants, donations, or state and federal funds and received by the city subject to any restrictions of the grantor, donor, or state or federal law. LB471 amends the LB840 statutes to redefine local sources of revenue to include the language from the constitution. LB471 further defines the definition of local sources of revenue by listing the uses for funds received from local utilities. LB471 provides that funds generated from municipally-owned utilities shall be used for utility-related purposes or activities associated with the economic development program as determined by the city council including but not limited to: load management, energy efficiency, energy conservation, incentives for low growth, line extensions, land purchase, site development, and demand-side management measures. So in short, this is the enabling legislation from Amendment 1. Again, it does include but doesn't make the city property or local option sales tax a new part of it; it just adds the donations and state or federal and also another tax that could be levied on the power or services. That, in a nutshell, is it. [LB471]

SENATOR MCGILL: There were some big words in there that... [LB471]

SENATOR KARPISEK: There were. And I was...you know, and I had to run down the hall so I didn't slow back down. [LB471]

SENATOR MCGILL: It's okay. Any questions for Senator Karpisek? No. All right. Thank you. First proponent? (cell phone rings) What is with this committee today? (Laugh) I don't think I've ever had that happen where two senators... [LB471]

SENATOR COASH: If this were somebody out there, we'd be giving them dirty looks. [LB471]

SENATOR MCGILL: Yeah. Yes. [LB471]

LYNN REX: (Exhibit 2) Senator McGill, members of the committee, my name is Lynn

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Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And, first of all, I'd like to thank Senator Karpisek for introducing this bill. He also was the introducer of LR297CA which became Amendment 1 which passed in the November 2010 ballot. So we do think that this is an important piece of legislation for this committee. Just a quick background. The LB840 program came about because in 1990 the Legislature passed LR11CA which was then approved by the voters in 1990. That was the underlying enabling legislation...or constitutional provision for LB840 programs. Earlier, actually last week, you considered LB57, which is a bill by Senator Mello, to amend the LB840 statutes to enable cities to look at retail and also remove caps. So in essence, this is yet another piece of legislation but a very, very important piece of legislation. And I like to just underscore a few points that Senator Karpisek has made. If you look on page 2 of the bill, lines 3 through 8, so lines 3 through 8 essentially are right out of Amendment 1. And what I passed out to you for your consideration is just a copy of Amendment 1 itself. This is the exact language that the voters approved November 2010. Then if you look starting on line 8 in the middle of the line with funds generated, "from municipally owned utilities shall be used for utility-related purposes," and it outlines what those purposes would be. That language, per se, was not in the constitutional amendment. That's just defining what types of language would be there. The League had made a commitment and senators working on this to also work with utilities to try to clarify what constituted utility-related purposes under this act. One thing I would like to underscore is that, as Senator Karpisek noted, prior to passage of Amendment 1 and still until you would approve this and the Legislature approves this, cities are limited to fund LB840 programs with property tax and local option sales tax only. Almost all municipalities, with the exception of one, use local option sales tax. And that's simply because of the property, pressure on property tax. So of the 55-some cities with LB840 programs, they're fundamentally funding those with local option sales tax. And because of that, that's why Amendment 1 was so important. We really appreciate your support in expanding the sources of revenue. I do want to underscore that for those 55-some cities that already have local option sales tax to fund their LB840 programs, if they want to expand it to include, let's say, municipally-owned utility funds or any of the other or they want to use grant funds or donor funds, they would have to go to a vote of the people to amend their LB840 program. An LB840 program works not unlike a municipal budget under the municipal budget act. You have a proposed plan; you have a hearing; you hear from voters and taxpayers in terms of what they think of that; and then you either amend the plan or adopt the plan and then submit that plan to the voters, and you are bound by that. So for those municipalities that have not yet adopted a plan, they certainly can move forward and include other sources of revenue if this bill would pass. If they already have a plan and they want to expand the sources of revenue beyond property tax or sales tax, they, too, would have to go back to the voters. But if they're going to maintain just property tax or local option sales tax, they would not...that would not require a new vote. We, again, appreciate Senator Karpisek for his hard work on this issue and his staff, and I'd be happy to respond to any questions you might have.

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SENATOR MCGILL: Any questions? No. Thank you, Lynn. [LB471]

LYNN REX: Thank you very much. [LB471]

SENATOR MCGILL: Are there any other proponents here? [LB471]

LYNN REX: If I may make one comment very quickly. [LB471]

SENATOR MCGILL: Um-hum. Yes. [LB471]

LYNN REX: There are three or four people that had planned to come in and testify in support of this and they are back in their homes... [LB471]

SENATOR MCGILL: It is the story of the day, Lynn (laugh). [LB471]

LYNN REX: ...safe and warm, so I'm sorry that they're not here. But we had cities coming in to testify on this, and... [LB471]

SENATOR MCGILL: Tell them to feel free to send us e-mails or letters. Okay? [LB471]

LYNN REX: Okay. Thank you very much. Thank you. [LB471]

SENATOR MCGILL: All right. Thanks. Okay. Any other proponents? Any opponents? Anyone here neutral? And Senator Karpisek waives closing, so that ends our hearings for the day. We're going to go into a less formal briefing mode to talk about the other constitutional amendment language. Yes, you can go. You can go. (Laughter) Be gone with you. [LB471]