Government and Administrative Practice Section Seminar

The Alphabet Soup of Local Economic Development: TIF, PACE, EEAs & More!

Christine Abraham
League of Nebraska Municipalities

Trevor A. Fitzgerald
Urban Affairs Committee/Nebraska Legislature

David C. Levy
Baird Holm LLP

Joel D. Pedersen
Baird Holm LLP

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A Brief Introduction to Tax-Increment Financing

The Basics of the Community Development Law

What is TIF?

TIF is short for Tax-Increment Financing

The process for using TIF is outlined in the Community Development Law, Neb. Rev. Stat. 18-2101 to 18-2154

TIF is an infrastructure finance tool used by municipalities to finance redevelopment in areas designated as blighted and substandard
Who Gets to Use TIF?

Only cities and villages are authorized to use TIF

And generally, TIF can only be used within the corporate boundaries of a city or village, except formerly used defense sites.

How TIF Revenue is Generated

Base year: single parcel
Total value = $100,000

<table>
<thead>
<tr>
<th>Base Assessed Value</th>
<th>Base Tax Revenue at 2%</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000</td>
<td>$2,000</td>
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</tbody>
</table>

15 year term for single parcel
Total value = $1,100,000

<table>
<thead>
<tr>
<th>$1,000,000 Value of Improvements</th>
<th>$20,000 Tax Increment</th>
<th>X 15 years = $300,000 Max. amount of TIF Revenue going to project</th>
</tr>
</thead>
<tbody>
<tr>
<td>$100,000</td>
<td>$2,000</td>
<td>This amount goes to taxing entities throughout project</td>
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</table>

Base Assessed Value
Base Tax Revenue At 2%

This amount goes to taxing entities throughout project.
Steps to Start TIF Project

One of the first steps is for a municipality to create a Community Redevelopment Authority (CRA) or Community Development Agency (CDA)

CRA has extensive powers to eliminate and prevent urban decay, including authority to prepare redevelopment plans, make grants and loans, and issue bonds to be repaid from TIF funds

Substandard and Blighted Designation

A redevelopment plan for an area cannot be prepared by a CRA until property is declared blighted and substandard by the governing body after a public hearing

TIF can only be used to redevelop substandard and blighted areas

The Community Redevelopment Law outlines the criteria used to determine if the area is substandard and blighted
Substandard and Blighted Definitions

**Substandard means:** area conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime and is detrimental to the public health, safety, morals, or welfare.

**Blighted means:** area with deteriorating structures, inadequate street layout, unsafe conditions, diversity of ownership, improper platting, conditions that endanger life or property by fire, combination of factors what impairs sound growth in community and at least one of the following (1) unemployment is at least 120% of state or national average (2) average age of residential or commercial property is at least 40 years, (3) more than half the property has been unimproved for 40 years, (4) per capital income is lower than average income of the municipality, or (5) area has stable or decreasing population.

Substandard and Blighted Designation

Municipalities generally hire a community planner to study the area.

Municipality submits the study to the planning commission which holds public hearing then makes a recommendation whether the area is substandard and blighted.

After holding public hearing, municipality makes a decision.

Study information is included in public notices for the hearings.

Copies of the study posted on website or made available.

Neighborhood associations and political subdivisions are notified.
Extremely Blighted

Recently, language has been added to allow construction of workforce housing in an extremely blighted area for municipalities in Douglas, Sarpy and Lancaster County.

Extremely blighted means rate of unemployment in area is at least 200% of the average rate and average poverty rate exceeds 20% for the total federal census tract.

To declare area extremely blighted, follow the same process as declaring area substandard and blighted.

Extremely blighted process can be conducted in conjunction with substandard and blighted process.

Redevelopment Plan

A CRA cannot prepare redevelopment plan until the substandard and blighted designation.

A CRA may prepare a redevelopment plan or a developer may submit a redevelopment plan to a CRA.
Redevelopment Plan

Basic requirements of redevelopment plan:

1. Governing body must adopt a general plan for redevelopment for the municipality

2. The redevelopment plan must clearly outline the relationship between its objectives and the local objectives which may include appropriate land uses, improved traffic, public utilities etc.

3. The CRA must engage in a cost-benefit analysis for the redevelopment project

4. Redevelopment plan needs to include certain criteria including: maps showing proposed land uses, information on population and building intensities after redevelopment, needed changes in zoning ordinances, a site plan of the area, and whether new public facilities will be required
Redevelopment Plan

A CRA submits the proposed redevelopment plan to the planning commission which holds a public hearing.

The CRA may recommend redevelopment plan to the municipality for approval.

The CRA needs to consider whether the proposed land uses and building requirements in the plan are consistent with accomplishing the goals of the general plan.

Redevelopment Plan

Duties of the City Council or Village Board:

After the planning commission hearing, city or village holds a public hearing on the redevelopment plan after public notice.

Municipality must also provide notice to neighborhood associations and political subdivisions.
Redevelopment Plan

A city or village may approve a redevelopment plan after the public hearing:
  • If it finds the plan is feasible and in conformity with the general plan for the development of the municipality, and
  • If TIF is used, the “but-for” test must be met

The “but-for” test includes: whether the project would be economically feasible without the use of TIF, and whether the redevelopment project would occur in the community redevelopment area without the use of TIF

TIF Revenue

If the municipality approves the redevelopment plan, TIF revenue can then be made available to the redeveloper to finance certain costs of the project

TIF revenue is generated for a maximum term of 15 years

Financing may include use of bonds, notes, an advance of money, or other commonly-used financing structure where debt is purchased by a third party
Safe Harbor Uses of TIF

1. Acquisition and site preparation of redevelopment sites including demolition, grading, special foundations, environmental remediation and related work prior to construction of the project.
2. Public improvements associated with a redevelopment project, including the design and construction of public streets, utilities, parks, and public parking, and enhancements to structures that exceed minimum building standards to prevent the recurrence of substandard and blighted conditions.
3. Repair or rehabilitation of structures within the redevelopment project area.
4. Architectural and engineering service fees related to the project, as well as the municipality's attorney's fees.

Redevelopment Agreement

Redevelopment Agreement is the agreement between the redeveloper and the CRA

It should provide for the:
• Division of taxes
• Pledging of TIF revenues and granting proceeds from the indebtedness to the redeveloper
• Setting forth obligations of the redeveloper including construction of the project, payment of taxes, etc
• Remedies for the CRA in the event of default
Thank you!

Questions?
Nebraska State Bar Annual Meeting

**Occupation Tax and State Historic Tax Credits**

David C. Levy
October 11, 2019

**Occupation Tax and Enhanced Employment Area**
Occupation Tax

• Nebraska Community Development Law allows the imposition, collection and use of an additional sales tax.
• The proceeds of the additional sales tax are used for eligible expenditures.

Occupation Tax (cont'd)

• Can be, but need not be, in an area designated as blighted, substandard and in need of redevelopment.
• Eligible expenditures may be broader than TIF-eligible expenditures. (See § 18-2142.03)
Occupation Tax (Cont'd)

- City must first designate as an "enhanced employment area" if it is not already designated as blighted and substandard. Limit 600 acres.
- City then levies a "general business occupation tax." (§ 18-2142.04)

Occupation Tax (Cont'd)

- Not limited to 15-year period.
- Additional sales tax may be limited to certain land use(s) and may be different for different land uses.
Occupation Tax (Cont'd)

- Occupation tax requires same formalities as a redevelopment agreement, and possibly as a TIF project.
- Occupation tax agreement may be combined with redevelopment agreement.

Occupation Tax (Cont'd)

- Investment in the occupation tax area must generate minimum job growth and investment levels depending on the population of the municipality. (§18-2142.04)
- Cannot use eminent domain in connection with an occupation tax project. (§ 18-2142.03)
Nebraska Job Creation and Mainstreet Revitalization Act

Nebraska Historic Tax Credit Overview

- Nebraska Job Creation and Main Street Revitalization Act authorized what is commonly called the Nebraska Historic Tax Credit program.
- The program is administered by the Nebraska State Historical Society’s State Historic Preservation Office (SHPO) and the Nebraska Department of Revenue.
- Goal: Revitalize historic Nebraska buildings and districts and create jobs in those communities.
Nebraska Historic Tax Credit Overview (continued)

- 20% tax credit for qualified expenditures in rehabilitating a qualified historic structure
- Partially transferable – real estate financing tool
- May carry forward to subsequent tax years
- Applicants may obtain both state and federal credit

Qualified Historic Properties

“Historically Significant Real Property”

- Listed individually in the National Register of Historic Places or in the process of listing.
- Located within a district listed in the National Register of Historic Places and is historically associated with the district or in the process of listing.
- Designated individually under an approved local preservation ordinance or resolution or pending designation.
- Located within a historic district designated under an approved local preservation ordinance or resolution and historically associated with the district or pending designation.
Part 1
Historic Structure Certification

- Part 1 “Historic Structure Certification” is required to determine that the building meets the qualification as “historically significant real property.”
- Submission of a Part 1 only does not constitute a complete application for purpose of allocating credits.
- Part 1 can be submitted at any time.

Rehabilitation Standards
Secretary of the Interior’s “Standards for the Treatment of Historic Properties”

The Secretary of the Interior’s “Standards” are generally-accepted preservation standards promulgated by the U.S. Department of the Interior. They consist of:

- **Rehabilitation** acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character. In practice, these standards will guide most projects.
- **Restoration** focuses on restoring a property to a particular period of time in its history.
- **Preservation** includes a focus on the maintenance and repair of existing historic materials and the prevention and avoidance of further deterioration of a historic building or structure.
- **Reconstruction** applies to recreating vanished or non-surviving portions of a property.

Local preservation standards adopted by ordinance or resolution must be approved by the SHPO.
Eligible Expenditure

- "Any cost incurred"
- "For the improvement of"
- "Historically significant real property"
- "If in conformance with the standards"

Broader than the federal program

Part 2
Rehabilitation Certification

- Prior to commencing work, a Part 2 application must be filed.
- The SHPO reviews the application for completeness including but not limited to, plans and specifications prepared by a licensed architect, licensed engineer or licensed contractor. Photographs of existing conditions are required. Applicants must carefully follow the instructions on the form. Applications that are incomplete are not considered and must be reapplied.
- Part 2 is required to describe proposed rehabilitation work. A complete application must be submitted to the SHPO prior to commencing work on the historic building.
- All work must meet the “Secretary of the Interior’s Standards for the Treatment of Historic Properties” or approved local standards.
- As work progresses, it is critical that the applicant conforms to the work that is proposed in the Part 2. However, the Part 2 can be amended if changes are proposed.
Part 3
Completed Rehabilitation Certification

Final Application and Completion of the Process
• The applicant completes the project, and seeks and obtains final approval of the work from the SHPO.
• Part 3 (Completed Rehabilitation Certification) is submitted upon completion of the project to certify the work.
• Upon approval, the SHPO will forward a certificate of completed work to the Nebraska Department of Revenue.
• With issuance of the SHPO’s certificate the Nebraska Department of Revenue will calculate the credit and issue a tax credit certificate or certificates to the applicant.
• The applicant must file within 12 months of placing the building into service (for example, obtaining a certificate of occupancy).

Nebraska Historic Tax Credit Transferability

• Transferability is critical. Allows monetization of credits.
  – Half of the credits are freely transferable; remainder must be used or syndicated.
  – Credits accrue to the entity incurring expenses.
  – Non-profits and political subdivisions can freely transfer all credits.
  – Syndication is complex and expensive.
  – Syndication can be done with other credits.
Nebraska Historic Tax Credit
Timing and Program Caps

- $15,000,000 in tax credits available annually for five years (through 2021), unused credits carry forward.
- $1,000,000 maximum credit per project.
- $15,000,000 in credits leverages a minimum of $75,000,000 in rehabilitation projects.
- First come, first served, up to available credits.
- Reservation for non-metro projects through April.
- Certain pre-application expenses may be eligible.

Priority Status

- Applications begin to be received the first business day of the calendar year.
- Each is reviewed for “completeness” within 21 days. “Complete” applications will be given “priority” status based on the date received. Incomplete applications are not assigned a priority status and must resubmit.
- Each complete application is then reviewed under the “Secretary of the Interior’s Standards” (or local standards) within 30 days. Approved applications are given an allocation of credits based on their priority date. Denied applications will lose their priority status.
- When $15,000,000 is reached the SHPO suspends new applications. Those not allocated before the suspension will retain their priority status for the next calendar year.
Economic Benefits

- State historic tax credits have accounted for billions in investment
- In 2018, $50 million in expenditures, with total economic impact of $105 million
- Nebraska historic tax credit projects supported 738 jobs in 2018 and nearly 2,500 jobs since inception in 2015
- Total economic impact of over $300 million since inception in 2015
- Not just historic preservation, but significant economic development and contributions to the property tax base

Current Legislation

**LB 310** (Vargas) would streamline the Department of Revenue review and issuance of credits.

Bills to sunset or otherwise limit the program have largely receded, at least for the moment.
Questions?

David C. Levy, Esq.
Baird Holm LLP, Omaha, Nebraska
Phone: 402-636-8310 (O) / 402-213-9063 (C)
Website: www.bairdholm.com
E-mail: dlevy@bairdholm.com
Nebraska Opportunity Zones

Baird Holm LLP
Joel D. Pedersen
Opportunity Zones

• "I think there's going to be over $100 billion dollars in private capital that will be invested in opportunity zones . . . ."
  – Steve Mnuchin US Treasury Secretary


Tax Policy

Unlock "built-in" capital gains and reallocate those gains to Qualified Opportunity Zones ("QOZs")
• Benefits:
  – Deferral of capital gain by up to seven years
  – Reduction in amount of capital gain eventually recognized
  – Potential "tax-free" growth on QOZ investments after recognition of initial gain
Deferred Gain

“Deferred Gain” is included in the taxpayer’s gross income on the earlier of

- the date the OZ investment is sold or exchanged; or
- December 31, 2026.
QOF Investments
Capital Stack Example

EXAMPLE: Capital Stack

Developer Equity--$10,000,000
**QOZ Equity--$30,000,000**
Hard Debt/ -- $60,000,000
Public sources--$50,000,000
Private Donations -- $50,000,000

**TOTAL-- $200,000,000**

Timeline for OZ Investment

January 1, 2019—Sale Generating Capital Gain
(In general, need to make investment in 180 days)

**$1,000,000 gain deferred**

June 29, 2019—Last Day to Make Qualified Investment

**$1,000,000 gain contributed to "Qualified Opportunity Fund"**

June 29, 2024—10% Step-Up in Basis Occurs

**$1,000,000 gain reduced to $900,000**
Timeline for OZ Investment

June 29, 2026
Additional 5% Step-up in Basis

$1,000,000 gain reduced to $850,000

December 31, 2026
Deferred Gain Recognition

$850,000 gain recognized; $170,000 tax

June 29, 2029
Step-up in Basis to FMV on Sale or Exchange

Full Step-up to FMV—interest sold for $2 million. **NO TAX**

QOZ Benefits

Three Primary Benefits to investors:

1. Deferred recognition of capital gain up to seven (7) years (2026)

2. Potential 2 step reduction of 15% of deferred gain

3. **Potential to permanently eliminate new taxes on the sale of the QOF interest if held for 10 years**
   - **NOT** a permanent exclusion of current capital gain
   - Should produce a lower cost of capital because of **lower tax liability**
QOZ Benefits

Comparison to investment without QOF

ASSUMPTIONS USED IN COMPARISON

Capital Gain from Sale of Asset $15,000,000
Long-Term Capital Gains Rate (Federal and State) 26.0%
Traditional Portfolio Annualized Return 7%
QOF Portfolio Annualized Return 7%

Traditional Portfolio

<table>
<thead>
<tr>
<th>2018</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Gain</td>
<td>Pay taxes now $15,000,000</td>
</tr>
<tr>
<td>Taxes due</td>
<td>$(5,900,000)</td>
</tr>
<tr>
<td>After-tax gain</td>
<td>$11,100,000</td>
</tr>
<tr>
<td>Amount invested in traditional portfolio:</td>
<td>$11,100,000</td>
</tr>
</tbody>
</table>

Qualified Opportunity Zone Fund (QOF)

<table>
<thead>
<tr>
<th>2018</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Defer taxes</td>
<td>$15,000,000</td>
</tr>
<tr>
<td>Gain Taxes due</td>
<td>$—</td>
</tr>
<tr>
<td>After-tax gain</td>
<td>$15,000,000</td>
</tr>
<tr>
<td>Amount invested in QOF:</td>
<td>$15,000,000</td>
</tr>
</tbody>
</table>
How do investors sign up?!

3 Step Process:

Step 1: Taxpayer sells an asset and realizes gain.

Step 2: Taxpayer contributes cash (up to the amount of gain) to the OZ Fund within 180 days of the sale (perhaps longer under certain circumstances).

Step 3: The OZ Fund contributes cash to a directly owned qualified opportunity zone business (“OZ Business”), an opportunity zone corporation (“OZ Corporation”), or opportunity zone partnership (“OZ Partnership”). Cash must be deployed within 31 months for construction projects.

Exit Options for OZ Fund Investors

- Put/Call Options
  - Example:
    - After 10 years from date of investment, Research Park, LLC could have option to acquire Research Park, LLC’s interests from OZ Fund
    - OZ Fund could have option to force Research Park, LLC to purchase LLC interests
    - To avoid characterization as “financing” for tax purposes, would typically be FMV
Questions?

Baird Holm LLP
Attorneys at Law

Joel D. Pedersen | Attorney
Tel: 402.636.8343
Fax: 402.344.0588
jpedersen@bairdholm.com
The Rest of the Alphabet Soup
PACE, LB 840, Land Banking, & More!

The Property Assessed Clean Energy Act
Introduction to PACE & how it works
What is PACE?

- PACE is a simple, effective way to finance energy efficiency, renewable energy, and water conservation upgrades to buildings
- PACE has been authorized in 37 states, including Nebraska
- Of the 33 states that have authorized PACE:
  - 15 have authorized only commercial PACE
  - 2 have authorized only residential PACE
  - 20 have authorized both commercial and residential PACE, including Nebraska
The Property Assessed Clean Energy Act  
Nebraska Revised Statute §13-3201 through §13-3211

- Passed in 2016  
  - As originally enacted, provided municipalities with the authority to finance the installation of energy efficiency improvements and renewable energy systems  
  - Authorizes the creation of clean energy assessment districts  
- Amended in 2017  
  - Expanded Act to include counties  
- Amended again in 2019  
  - Clarified ability of counties, cities, and villages to create joint clean energy assessment districts  
  - Allowed case-by-case flexibility on certain requirements

Where has PACE been authorized in Nebraska?

- Under the PACE Act, any county, city, or village may establish clean energy assessment districts, establishing a PACE program  
- As of September 2019, no counties have established PACE programs  
- Currently two active PACE programs in municipalities  
  - City of Omaha  
  - City of Lincoln  
- Both active PACE programs have only authorized commercial/industrial PACE, have not authorized residential PACE
Key Terms
Nebraska Revised Statute §13-3203

- “Municipality” includes cities, villages, and counties
- “Energy project” is either the installation or modification of an energy efficiency improvement or the acquisition, installation, or improvement of a renewable energy system
- “Assessment contract”: contract entered into between a municipality, a property owner, and, if applicable, a third-party lender under which the municipality agrees to provide financing for an energy project in exchange for property owner’s agreement to pay annual assessment for a period not to exceed the weighted average useful life of the energy project
- “Energy efficiency related item”: repair, replacement, improvement, or modification to real property that is necessary or desirable in conjunction with an energy efficiency improvement
  - Examples include structural supports, repair/replacement of building components or fixtures

Key Terms (cont.)
Nebraska Revised Statute §13-3203

- “Energy efficiency improvement”: acquisition, installation, or modification benefiting public- or privately-owned property that is designed to reduce the utility (electric, gas, water, or other) demand or consumption of the buildings on or to be constructed on the property, or to promote the efficient and effective management of natural resources or storm water
- “Renewable energy system”: a fixture, product, device, or interacting group of fixtures, products, or devices on the customer’s side of the meter that uses one or more renewable energy resources to generate electricity
- “Renewable energy resource”: a resource that naturally replenishes over time and that minimizes the output of toxic material in the conversion to energy
**Eligible Energy Efficiency Improvements**
Nebraska Revised Statute §13-3203

- Insulation
- Storm windows and doors
- Automated energy control systems
- HVAC systems
- Caulking and weather-stripping
- Replacement/modification of light fixtures
- Energy recovery systems
- Daylighting systems

- Electric vehicle charging outlets
- Water conservation/pollutant control systems
- Roofing
- Energy-efficient fixtures
- Water heating systems
- Energy efficiency related items
- Other cost-saving measures approved by municipality (*not a comprehensive list*)

**Renewable Energy Resource**
Nebraska Revised Statute §13-3203

- Includes, but is not limited to:
  - Nonhazardous biomass
  - Solar/solar thermal energy
  - Wind energy
  - Geothermal energy
  - Methane gas captured from a landfill, etc.
  - Photovoltaic systems
- Does not include petroleum, nuclear power, natural gas, coal, or hazardous biomass
Qualifying Property
Nebraska Revised Statute §13-3203

- Agricultural Property
- Commercial Property
  - Includes multi-family residential property comprised of more than four dwelling units
- Industrial Property
- Single-family Residential Property
  - May include up to four dwelling units

Clean Energy Assessment Districts
Nebraska Revised Statute §13-3204

- Municipalities may create one or more districts, which may be separate, overlapping, or coterminous
- Governing body of municipality serves as governing body of district
- Prior to creating a district, municipality must hold a public hearing (notice by publication 10 days prior to hearing)
- Ordinance or resolution creating district must meet statutory requirements
- If a county is creating a district, it may not include territory within the corporate boundaries or extraterritorial zoning jurisdiction (ETJ) of any city or village located in whole or in part within the county
Ordinance or Resolution Requirements
Nebraska Revised Statute §13-3204

- Public purpose finding
- Assessment contract form
- Identify official authorized to sign contracts on behalf of municipality
- Application process & eligibility requirements
- Explanation of annual assessment process
- For residential properties, requirement for fixed interest rates/repayment schedules
- Information regarding debt service and loss reserve funds
- Information on application, administration, or other program fees
- Requirement that annual assessment terms not exceed useful life of energy project
- Requirement that energy efficiency improvements must be conveyed with the property upon transfer
- Requirement that owners must notify purchasers that they assume responsibility for payment of annual assessments
- Marketing and participant education provisions
- Verification that improvements were properly installed and operating
- For residential properties, requirement to comply with FHA/FHFA guidelines

Assessment Contracts
Nebraska Revised Statute §13-3205

- After passage of ordinance, municipality may enter into assessment contracts with record owners of qualifying property within clean energy assessment (PACE) district
- Municipalities may not impose an annual assessment unless the assessment is part of an assessment contract, and collection of annual assessments shall only be sought from the original owners or subsequent purchasers of the property
- Before entering into an assessment contract, the municipality (and third-party lender, if applicable) must obtain verifications from property owners regarding the status of the property and the ability to pay the assessments
- For non-residential properties, property owners must obtain a consent and subordination agreement from mortgage holders and trust deed beneficiaries before entering into an assessment contract
- Annual assessments agreed to under an assessment contract shall be levied against the property at the same time and in the same manner as property taxes are levied and collected, except that an assessment contract for non-residential property can provide for third-party collection of assessments
Assessment Contract Requirements
Nebraska Revised Statute §13-3205

- Description of the energy project, including estimated cost of the project and estimated savings
- Mechanism for verifying the final costs of the energy project and ensuring that any amounts paid by the municipality will not exceed the final cost
- Agreement by the property owner to pay annual assessments
- Statement that the obligations set forth in the assessment contract, including the obligation to pay annual assessments, are a covenant that shall run with the land and be obligations upon future owners of the property
- Acknowledgment that no subdivision of the property shall be valid unless the assessment contract or amendment to the contract divides the total annual assessments due on a pro rata basis
- Copies of assessment contracts must be filed with the county assessor and register of deeds in the county where the property is located

PACE Liens
Nebraska Revised Statute §13-3206

- Annual assessments under the Act constitute a lien against the property; Municipalities are required to file a notice of PACE liens in the office of the register of deeds of the county in which the property is located

- Notice requirements
  - Amount of funds disbursed or to be disbursed pursuant to the assessment contract
  - Names and addresses of current property owners
  - Legal description of the property
  - Duration of the assessment contract
  - Name and address of the municipality filing the notice

- Upon transfer of ownership of the property, the obligation to pay annual assessment runs with the qualifying property
A Bifurcated Process
Nebraska Revised Statute §13-3206

Single-Family Residential
- Annual assessments constitute a lien upon the initial assessment
- Liens are subordinate to a first mortgage or trust deed; no consent and subordination agreement required
- Lien released when all annual assessments, including any interest and penalty, are paid in full
- Lien survives foreclosure sale

Non-Residential
- Annual assessments constitute a lien upon becoming delinquent
- Liens have same priority and status as a property tax lien; owner must obtain consent and subordination agreement from mortgage holders
- Lien released when delinquent assessments, including any interest and penalty, are paid in full
- Lien does not survive foreclosure sale

Financing PACE
Nebraska Revised Statute §13-3207 and §13-3209

- Municipalities may raise capital to finance their PACE programs from three sources
  - Sale of bonds
  - Set-aside funds
  - Third-party lending
- PACE bonds must be revenue bonds, secured by payments of annual assessments by property owners subject to an assessment contract
- Statutory lien on annual assessments pledged for bond financing
- Municipalities may create a debt service reserve fund to be used as security for capital raised to finance PACE
Restrictions on PACE
Nebraska Revised Statute §13-3207

- Voter approval required in order to:
  - Issue a bond exceeding $5 million
  - Finance an energy project on property owned by the municipality
  - Finance an energy project on property owned by any other political subdivision
- Restrictions designed to prevent municipalities from using PACE to exceed other statutory bonding limitations

Loss Reserve Fund
Nebraska Revised Statute §13-3208

- Municipalities that create a clean energy assessment district must create a loss reserve fund, used to pay:
  - Delinquent annual assessments in the event of a foreclosure sale on residential property subject to a PACE lien, if proceeds were insufficient to pay the delinquent assessment
  - A single annual assessment in the event of a foreclosure sale on residential property subject to a PACE lien, if the mortgagee or trust beneficiary becomes the owner of the property and the property is not conveyed prior to the annual assessment becoming due
- Loss reserve funds may be funded by a variety of sources, but not the municipality’s general fund
Joint PACE Programs & Third-Party Administration
Nebraska Revised Statute §13-3210

- Two or more municipalities may create a joint PACE program using the Interlocal Cooperation Act
  - Joint PACE districts may not include the corporate boundaries or extraterritorial zoning jurisdiction (ETJ) of a city or village unless the city or village is one of the municipalities that created the joint PACE district
- Two or more municipalities may jointly administer their PACE programs using the Interlocal Cooperation Act
- Municipalities may contract with a third party for the administration of their PACE program

Reporting Requirements
Nebraska Revised Statute §13-3211

- Any municipality that creates a clean energy assessment district must file an annual report with the Urban Affairs Committee on or before January 31st each year, to be submitted electronically
- Report must contain:
  - Number of clean energy assessment districts in the municipality and their location
  - Total dollar amount of energy projects undertaken
  - Total dollar amount of outstanding bonds issues
  - Total dollar amount of annual assessments collected/yet to be collected as of the end of the most recently completed calendar year
  - Description of the types of energy projects undertaken
The Local Option
Municipal Economic Development Act

More commonly known as “LB 840”

The History of LB 840
Chase v. Douglas County & Article XIII

- In 1976, the Nebraska Supreme Court held that statutes allowing cities and counties to use public funds to purchase real estate for industrial development violated Article XIII, Section 3 of the Nebraska State Constitution, which prohibits state and local governments from giving or loaning the “credit of the state”

- This decision, Chase v. Douglas County (195 Neb. 838), effectively prohibited local governments from making loans or grants to private businesses, restricting the economic development options available to municipalities

- In 1990, Article XIII, Section 2 of the Nebraska State Constitution was amended by the voters to specifically authorize municipalities to collect and appropriate local tax dollars for economic development purposes, if approved by local voters
Implementation of LB 840
Nebraska Revised Statute §18-2701 through §18-2739

► Following the adoption of the constitutional amendment, legislation was introduced in 1991 to implement the new constitutional provisions and establish the Local Option Municipal Economic Development Act

► While the Act is occasionally referred to by the acronym “LOMEDA”, is it most commonly referred to as “LB 840”, after the bill number which passed the Act in 1991

► Since the passage of LB 840, the Act has been substantively amended at least fourteen times, most recently in 2019

► Language in Article XIII, Section 2 has also been amended by the voters to expand the original definition of “local sources of revenue”

Adopting an LB 840 Plan
Nebraska Revised Statute §18-2710 through §18-2714

► Under the Act, a municipality must develop a local economic development plan, which forms the basis of the municipality’s LB 840 program

► Following completion of the proposed plan and a public hearing on the plan, the question of whether to adopt the plan must be submitted to the voters

► The ballot question must briefly set out the terms, conditions, and goals of the proposed LB 840 program, including the length of time the program will be in existence, the source of funds for the program, and whether the city intends to issue bonds to carry out any provisions of the program

► If the program is to be funded through property taxes, the ballot question must include the annual property tax cost of the program at the time of the election

► If the program is to be funded through a local option sales tax that has not yet been approved, the sales tax must be placed on the ballot as a separate question

► Upon voter approval of the LB 840 program, the city must establish the program by adopting an ordinance that conforms with the terms of the program approved by the voters within 45 days of the election
The Citizen Advisory Review Committee
Nebraska Revised Statute §18-2715

- As part of the ordinance establishing the LB 840 program, the city is required to create a citizen advisory review committee
- Committee details
  - Not less than 5 or more than 10 registered voters within the city
  - Appointed by the mayor of the city or chairperson of the village board, approved by the governing body (city council or village board)
  - Must include at least one member with experience in the field of business financing or accounting
- Committee is required to meet regularly to review the LB 840 program, and must report to the governing body at least once every six months on its findings and any recommendations regarding the program

Amending an LB 840 Plan
Nebraska Revised Statute §18-2714

- Following the adoption of an LB 840 program, the ordinance establishing the program may be amended following notice and public hearing, upon a two-thirds vote of the municipality’s governing body
- Changes to the program also require voter approval, except for the following:
  - Adding or removing a type of qualifying business from those that are eligible to participate in the program, if such addition or removal is recommended by the citizen advisory review committee
  - Making corrective changes to comply with the Act
  - Making correcting changes to comply with any other existing or future state or federal law
Eligible Uses of LB 840 Funds
Nebraska Revised Statute §18-2705

- Generally, municipalities can spend LB 840 funds in two ways:
  - Grants and loans to qualifying businesses
  - Payment of related costs and expenses
    - Examples include the cost of public infrastructure projects, cost to administer the program, etc.
- The definition of “qualifying business” under the Act limits the use of LB 840 grants and loans to specific statutorily-identified business activities
- If the business activity isn’t on the list, then the municipality can’t use LB 840 dollars on it!

Qualifying Business Activities
Nebraska Revised Statute §18-2705 and §18-2709

- Manufacturing
- Research & Development
- Processing, Storage, Transport, or Sale of Goods
- Sale of Services
- Headquarters Facilities related to eligible activities
- Telecommunications activities
- Tourism-related activities
- Retail
- Low-Income Housing*
- Workforce Housing*
- Advanced Telecommunications Capability
- Film Production
- Rural Natural Gas Infrastructure*
- Relocation Incentives for New Residents
- Early Childhood Infrastructure Development*

*only for cities of the first class, cities of the second class, and villages
Qualifying Business Activities (cont.)
Nebraska Revised Statute § 18-2705 and §18-2709

- Municipalities with a population under 2,500 are not restricted to the statutory list of qualifying business activities
- Qualifying businesses are not required to be within the territorial boundaries of the municipality from which they are receiving financial assistance
- Qualifying business does not include a political subdivision, state agency, or any other governmental entity
  - Exception for cities of the first class, cities of the second class, and villages for rural natural gas infrastructure

Spending Limitations
Nebraska Revised Statute §18-2717

- Under the Act, a municipality’s annual spending on its LB 840 program cannot exceed a flat-dollar amount based upon the classification of the municipality
  - Cities of the metropolitan class/primary class - $5 million
  - Cities of the first class - $4 million
  - Cities of the second class/villages - $3 million
- As part of the ballot question to approve an LB 840 program, municipalities may also enact voter-approved limitations on their annual spending on their LB 840 program
The Nebraska Municipal Land Bank Act
A brief introduction to land banking
Land Bank: Neither Land nor a Bank

What is a land bank?

- A land bank is a governmental entity or non-profit corporation that focuses on the conversion of vacant, abandoned, and tax-delinquent properties into productive use
  - In Nebraska, land banks take the form of a separate political subdivision created by municipalities, with their board appointed by the municipality or municipalities that created them
  - There are approximately 175 land banks throughout the country, with the highest number of active land banks in the states of Michigan, Ohio, and Georgia
The Nebraska Municipal Land Bank Act
Nebraska Revised Statute §19-5201 through §19-5218

- Passed in 2013
- Authorizes the creation of land banks by municipalities located in Douglas or Sarpy County
- Considered a “third generation” land bank statute
  - A single set of comprehensive statutes that are permissive and flexible
  - Provides internal financing options and strong disposition authority
  - Interacts with the property tax foreclosure system
  - Encourages opportunities for intergovernmental cooperation
- Currently, the Omaha Municipal Land Bank is the only land bank in the state
- Several recent attempts have been made in the Legislature to expand the Act to allow other municipalities to create a land bank
The Land Bank Board
Nebraska Revised Statute §19-5205

- Seven voting members, appointed by the mayor and approved by a two-thirds majority of the city council
  - Must be residents of the municipality
  - If council is elected by district, one member must be elected from each district
- Seven voting members must include at least:
  - One member representing a chamber of commerce
  - One member with experience in banking
  - One member with experience in real estate development
  - One member with experience as a realtor
  - One member with experience in non-profit or affordable housing; and
  - One member with experience in large-scale residential or commercial property rental
- A single voting member may satisfy more than one of the requirements

The Land Bank Board (cont.)
Nebraska Revised Statute §19-5205

- Non-voting Board Members
  - The planning director of the municipality that created the land bank (or his or her designee)
  - One member of the governing body of the municipality that created the land bank, appointed by the governing body
  - Such other non-voting members appointed by the mayor
- Public officials and public employees are eligible to serve as a member of the board (either voting or non-voting)
- Board members serve without compensation
- Chairperson, Vice-chairperson, Treasurer, other officers elected annually
General Powers of a Land Bank
Nebraska Revised Statute §19-5207

- Adopt bylaws
- Sue & be sued
- Borrow money and issue revenue bonds
- Enter into contracts and other instruments
- Procure insurance
- Invest land bank funds in instruments and securities
- Acquire and sell property within boundaries of the municipality that created the land bank
- Develop, demolish, reconstruct, rehabilitate, renovate etc. property owned by the land bank
- Collect rent on land bank property for a period not to exceed 12 months
- Enter into partnerships and joint ventures with municipalities and other public and private entities
- DOES NOT have taxing authority
- DOES NOT have eminent domain authority

Key Land Bank Powers
Nebraska Revised Statute §19-5211

- A land bank receives 50% of the property taxes collected on real property conveyed by the land bank for the five-year period following conveyance
  - Does not apply if the taxes have been divided for a TIF project
  - Land bank board may elect not to receive property taxes by resolution
- A land bank may extinguish liens for back-taxes owed on property acquired by the land bank
  - Does not apply to tax sale certificates held by a private third party
- A land bank may interact with the tax foreclosure process
  - By purchasing tax sale certificates
  - By purchasing properties at a sheriff’s sale when a tax sale certificate is not redeemed and the lien is foreclosed upon
Land Banks & Tax Foreclosure Sales
Nebraska Revised Statute §19-5217 & §19-5218

- At a sale for non-payment of taxes (tax sale certificate sale), a land bank may
  - Bid on the property just like any other bidder
  - In limited circumstances, exercise an “automatically accepted bid”
- In all cases at a tax sale certificate sale, the land bank must pay the full amount of taxes, interest, and costs owed on the property (not a true auction)
- At a sheriff’s sale following the foreclosure of a tax sale certificate, a land bank may:
  - Bid on the property in an amount the land bank would be willing to pay for the property
  - In limited circumstances, exercise an “automatically accepted bid” in an amount equal to the total amount of taxes, interest, and costs due on the property

The “Automatically Accepted Bid”
Nebraska Revised Statute §19-5205, §19-5217, & §19-5218

- An automatically accepted bid may be given in one of three instances
  - The property substantially meets multiple criteria from a statutory list of criteria that generally describes abandoned or problem properties
  - The property is contiguous to a parcel that either meets multiple criteria from the statutory list of criteria that generally describes abandoned or problem properties or that is already owned by the land bank
  - Acquisition of the property would serve the best interests of the community as determined by a two-thirds vote of the land bank board
- Examples of statutory criteria include lack of utilities being provided; buildings deemed unfit for human habitation; deterioration of the building due to exposure to the elements; presence of vermin, uncut vegetation, or debris accumulation; past actions by the municipality to maintain the grounds or any buildings; property being out of compliance with orders of local housing officials, etc.
Other Land Bank Limitations
Nebraska Revised Statute §19-5208 & §19-5210

- A land bank may not own property outside of the boundaries of the municipality or municipalities that created the land bank
- A land bank may not hold legal title at any one time to more than 7% of the total number of parcels of real property located in the municipality or municipalities that created the land bank
- A land bank may only lease its property for a cumulative period of twelve months, unless there is an existing lease on the property when it is acquired by the land bank

Questions?
Comments?
Trevor Fitzgerald
Legal Counsel, Urban Affairs Committee
tfitzgerald@leg.ne.gov
(402) 471-2727