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Revenue Committee
February 14, 2008

[LB863 LB887 LB888 LB1000 LB1175]

The Committee on Revenue met at 1:30 p.m. on Thursday, February 14, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB863, LB1000, LB887, LB888, and LB1175. Senators present: Ray Janssen, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senators absent: Abbie Cornett. [LB863]

SENATOR JANSSEN: Good afternoon, ladies and gentlemen, welcome to the Revenue Committee. For the record, my name is Ray Janssen, representing 15th Legislative District. The members of the committee that are here are Senator Preister to my far left; Senator Burling, next to Senator Preister; Senator Ron Raikes to my right; I'm Ray Janssen and that is Erma Kilpatrick, the committee clerk down there, Erma James, and Erma Kilpatrick, is our...(laughter) I mean, George Kilpatrick is the legal counsel. A few things we'll run through. Our pages are Sarah and Tim. Please turn your cell phones off while you are in the hearing room. Sign-in sheets for the testifiers are on the table by each door. If you need, they need to be completed by everyone if you're wishing to testify. If you're testifying on more than one bill, you need to submit a form for each bill. When you come up to testify, hand your sheet to the committee clerk. There are also clipboards in the back of the room, sign in. If you do not wish to testify but would like to indicate your support or opposition to that particular piece of legislation, these sheets will be included in the official record. We will follow the agenda as it's posted on the door. The introducer or the representative will present the bill followed by a proponent, then opponents, then those in the neutral capacity. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, state your name, spell it for the record. If you hand out, have handouts, please bring ten copies for the committee and the staff. If you only have the original, we'll make copies for you. Give the handout to the pages to circulate to the committee. With that, we will start the hearings for today and Senator Langemeier is raring to go and here to tell us all about LB863. Senator Langemeier. [LB863]

SENATOR LANGEMEIER: LB863. [LB863]

SENATOR JANSSEN: LB863, good God's sake. [LB863]

SENATOR LANGEMEIER: (Exhibits 1 and 2) I'm going to talk about LB863, whatever that is. Chairman Janssen and members of the Revenue Committee. My name is Chris, C-h-r-i-s, Langemeier, L-a-n-g-e-m-e-i-e-r, and old McDonald had a farm. I represent District 23. I bring you today, LB863. As there's been a number of discussion on the floor, the appropriations chair has well noted this, that into the future of Nebraska's financial outlook, there's kind of a sunset coming. And there's been a lot of discussion about the cash reserve and how we should keep the cash reserve for that time.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

However, in a statement said by the Chair of the Appropriations Committee this morning, he thinks the downturn is going to last longer than any we've had before. And so with that in mind, I think, as a wise policy statement on behalf of Nebraska, we need to, our responsibility is to take action. And what we can do to prevent those negative. What can we do to stimulate the economy? What can we do to keep those negative days away? And sitting back and just holding a cash reserve, I think, is an irresponsible decision. So I bring you LB863. What LB863 does is, it's simple in its nature. It adjusts the income tax brackets. We've all been handed out a handout that shows the current brackets and I'm just going to go through the single bracket. Single bracket currently 0 to \$2,400 is the first bracket. This change would take it to 0 to \$5,000. The second bracket \$2401 to \$17,500 would go from \$5,001 to \$20,000 and so on and so forth, which taking the top bracket for a single of \$27,001 and over up to \$35,100. I think this is a responsible recognition of inflation and income. And I've heard a lot of people say, hey, you can't, you aren't going to stimulate the economy if you do that. But I can tell you just with the marriage penalty tax we passed last year, I've heard more people from my district that get paychecks every two weeks saying, hey, I got \$4 more or I got \$5 more just taking out the marriage penalty. And that sparks a positive mind-set that they can go out and buy gas for roads and buy things and you get your sales tax dollars back. I handed out a second page and what I did is, rich states and poor states. ALEC put out a summary on financial impacts in states and what they're doing and I highlighted the last paragraph in the summary and I think this summarizes it the best, and I'm just going to read it to you so we have it on record. It says, finally, in the history, if history is any guide, states that try to respond to slow revenue growths and budget deficits with tax hikes will not gain tax revenues; they will lose businesses, jobs, and families. In the last U.S. census, or recession, excuse me, the state that actually cut taxes to promote economic growth and job creation saw the most rapid return and financial economic health. States cannot tax their way to prosperity or to a balanced budget for that matter. We believe this is the most critical state fiscal lesson of all. And I think as we look to this proposal, it's not dramatic. It's not, it affects all tax brackets and I think it's a sound decision to, if you look at the fiscal note, in the first year of '09 it's \$37 million with '09, '10, at \$122 million. That is a direct impact of lost income due to these brackets. But I...it's my belief that economic engine driving of these changes to sales tax, I think you will jump start your economy and I think you will well recoup this. So to say this, I'm not arguing the fiscal statement because I believe in the fiscal office but I think in the long run in what they can't calculate in this, is the overall impact to the state will be positive. With that, I will conclude my opening. If there's any questions? [LB863]

SENATOR JANSSEN: Any questions? Ron. [LB863]

SENATOR RAIKES: Chris, the premise here, suppose it does turn out to be a recession that impacts Nebraska. So the way, at least in my memory in the past, recessions have impacted Nebraska is that revenues drop. Tax revenues drop. So if we did something like this, we'd say, okay, we're going to exaggerate that drop. We're going to, we're

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

going to accept whatever drop we have with the current tax structure and magnify it by making this sort of a change in the tax structure. And this person, this fellow, Laffer, I guess, Laffer and Moore, they seem to be suggesting that we made a big mistake here in Nebraska in the last recession because we did, in fact, increase tax rates. We thought we had no choice if we were going to provide even a reduced level of services, we had to have, we had to have additional tax revenues over what we were getting in order to see...and he seems to be saying here that was a big mistake that that didn't work out. That's not my memory or my belief about what happened. I think, in fact, that's what we did do, that's what we had to do and that's the way it worked out. Because we increased those tax rates, we got more revenue, we were able to fund the services at albeit a reduced level, but still fund them. [LB863]

SENATOR LANGEMEIER: I won't argue that point. I believe you're correct in that report but I think what we have to couple in with that, is what the feds did at the same time. As Nebraska raised, we had capital gains drop, we had income tax drop on a federal level to help generate economy growth. So do we blame it all back to the fact that we generated more funds. We did expand the sales base and I...without expanding the base of services taxed, commercial repair, home repair, we've taken as a body as a decision that that was wrong, that we should undo that. So if we're going to have that mindset, I think the income tax putting more money into the economy and allowing people to spend more money on a daily basis is a positive. [LB863]

SENATOR RAIKES: Okay. [LB863]

SENATOR JANSSEN: Other questions? I don't see any, Chris, thank you. [LB863]

SENATOR LANGEMEIER: Thank you. [LB863]

SENATOR JANSSEN: Take proponents first. Those in favor of LB863. I don't see any proponents. Opponents. Are there any opponents? Anyone in the neutral capacity? You can sit back down, Chris. (Laughter) [LB863]

SENATOR LANGEMEIER: I don't have much to add to this. I know we're going to get a couple of testifiers that are going to be late. They had called. They will weigh in when Senator Burling's bill comes up so you will hear that. But I still think responsible, we have a responsibility as policymakers to say, we have a cash reserve of \$500 million. That may last us, if forecasts are right, two years. What do we do the third, the fourth, the fifth year? And we have taken steps in the past to say, we're going to change the taxing base. How can we generate economic growth and I think this is the way to do it. Questions? [LB863]

SENATOR RAIKES: A better line than, I've got some proponents but they're late is, the bus had a flat tire? (Laughter) [LB863]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

SENATOR LANGEMEIER: And you have mastered that, I can tell. [LB863]

SENATOR DIERKS: What if the economic forecasting board comes back with a very, very flat report and that could happen. Don't they come back with a report here next week or the next week? [LB863]

SENATOR LANGEMEIER: The 22nd of February. I think that's going to also clearly tell us that we need to do something. I think we cannot, we cannot sit...five hundred, we saw that in 2001, 2002, they were running about a \$200 million cash reserve. Yeah, we're at \$540 million now and we show flat. \$540 million won't last us two years. So you're going to have to do some dramatic tax increases three years out if we do not do something now to try and generate economic growth. [LB863]

SENATOR DIERKS: So would this, you're just, you're just planning for this to go into the general fund to support whatever we need. You don't have a particular earmark for your funding here? [LB863]

SENATOR LANGEMEIER: No. [LB863]

SENATOR DIERKS: So you're not going to say, well... [LB863]

SENATOR LANGEMEIER: We've got to get the concept first. [LB863]

SENATOR DIERKS: Okay. You're not going to say, well, we need to, we need to drop the property tax level a little bit and we're going to use this to make up the difference. [LB863]

SENATOR LANGEMEIER: No, I think we did a very responsible package last year with the 8 cent drop and I think that was responsible for the two years. But I think that's done. I think we live up to that. I think that's good public policy. But what you have in that at the end of the day is, how do we spark the economy? And that's actually physically allowing people to have more cash in their paycheck every two weeks. [LB863]

SENATOR DIERKS: Good. [LB863]

SENATOR JANSSEN: Any other questions? I don't see any. [LB863]

SENATOR LANGEMEIER: Thank you. [LB863]

SENATOR JANSSEN: Thank you. Okay. Senator Pirsch is not here. We'll stand at ease just for a moment here. Senator Pirsch to introduce LB1000. [LB863]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

SENATOR PIRSCH: Thank you, Chairman Janssen and members of the Revenue Committee. My name is Pete Pirsch. I'm the representative for the Legislative District 4 and the sponsor of LB1000. What a great number. LB1000 is a property and income tax relief package. First, LB1000 grants \$100 million in property tax relief for Nebraskans for tax year 2008. Second, LB1000 provides for income tax relief by allowing for more of the income of Nebraskans to be taxed at the lowest income tax rate. The lowest tax rate would be changed to apply as follows: a single return increases from \$2,400 to \$5,000 level; married filing joint returns increase from \$4,800 to \$10,000; head of household returns increase from \$4,500 to \$8,000; married filing separate returns increase from \$2,400 to \$5,000 and estates and trusts increase from \$500 to \$1,000. By increasing the amount of income allowed in the lowest tax bracket, LB1000 grants approximately \$99 million in income tax relief, \$33 million in 2008 and 2009 and in 2010. Just a little over the, then. [LB1000]

SENATOR JANSSEN: Any questions? Ron. [LB1000]

SENATOR RAIKES: You've got the bracket change, I'm looking at the fiscal note. There's a plus \$100 million in cash funds. Is this a cash reserve transfer? [LB1000]

SENATOR PIRSCH: The way I've structured it, there's the, it was...at the time that it was introduced there was a projected revenue surplus of \$13 million in the general fund and so I used that \$13 million from the general fund towards this and then the balance from the cash reserve fund. [LB1000]

SENATOR RAIKES: Okay. [LB1000]

SENATOR PIRSCH: The total would be about \$199 million, about \$200 million in overall tax relief when you include both the property and the income tax relief. [LB1000]

SENATOR RAIKES: Okay. And the income tax is the bracket change, particularly for the lowest income level. [LB1000]

SENATOR PIRSCH: That's correct. [LB1000]

SENATOR RAIKES: And then the property tax is, I'm sorry, I missed that. The property tax... [LB1000]

SENATOR PIRSCH: The property tax, the method of delivering that property tax would utilize the same process that we did last year, so it's just essentially transferring that \$100 million into the fund that would be disbursed in the same manner that we disbursed it last year. [LB1000]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

SENATOR RAIKES: So whatever mills that works out to. [LB1000]

SENATOR PIRSCH: Yeah. [LB1000]

SENATOR RAIKES: Okay. [LB1000]

SENATOR PIRSCH: And, yeah, with respect to the income tax relief, that would, it affects the lowest bracket. That's what I'm, I'm, that this bill is adjusting so that more in that first bracket, more of Nebraskans income then would be taxed at that lowest rate so. [LB1000]

SENATOR RAIKES: Okay. Thank you. [LB1000]

SENATOR PIRSCH: You bet. [LB1000]

SENATOR JANSSEN: Chris. [LB1000]

SENATOR LANGEMEIER: Chairman Janssen, thank you. Senator Pirsch, so this roughly I'm told about 16 cents in the property tax, is that on, you want to add that to the 8 cents that is currently for '08? [LB1000]

SENATOR PIRSCH: Right, this would...it's eight more. [LB1000]

SENATOR LANGEMEIER: So eight more, you would be 16 total. [LB1000]

SENATOR PIRSCH: That's correct. This doesn't negate any...it's, this is an overlay on top of the property tax that was enacted last year so. [LB1000]

SENATOR LANGEMEIER: Thank you. [LB1000]

SENATOR PIRSCH: Sure. [LB1000]

SENATOR JANSSEN: Any other questions? Don't see any, Pete, thank you. Okay, we'll take proponents to LB1000. Those in favor of the bill? See none. Any opponents? Any opponents? Seeing none. Anyone in a neutral capacity? Same thing. Pete, close. [LB1000]

SENATOR PIRSCH: Great. Well, I'll tell you, I'll just kind of comment on some of the, now the policy reasons. Kind of touched on the structural reasons. But in commenting why this is a good idea at this point, I know there's a kind of a concern over the use of cash reserve funds. But if there is a downturn in the economy, and it's quite possible that happens from time to time, I think that that's really why this bill is needed as we've seen just recently, the federal government is looking at economic stimulus type of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

measures and this, they passed one yesterday and I think this would help amplify that measure that was just taken yesterday to make sure that we can stave off or help mitigate any economic recession. So I think that's an important point to consider. I think that when you look at the magnitude of this, this is a tool that I put out there, this bill. I think that it's important, you know, the exact amounts and the types, I think, are something that you should consider and talk about but this has been put out there as a conceptual tool. I do think that it is very important that we do have tax relief of some sort this year. It's not important to me that you utilize my, necessarily my bill as the vehicle to do that but I, at least, want to put that out there as a tool and give you a variety of different mechanisms for doing that. But I think when you're looking at an all time record of \$543 million in the cash reserve, obviously in 2003 there was a downturn but, you know, that was 13 times less the money in there. That might have been inadequate. I don't need to argue that point but this amount of reserves is to the level that it's excessive. And so I think in looking at that amount, we could give some substantial measure back to the taxpayers and show good faith and yet still be posed that should there be a downturn in the economy, we're in reasonably good shape. And I think downturns in the economy also give us an opportunity to, at the same time that we're using these taxpayer monies that are stored in the cash reserve, to also have that sort of momentum that we need to look at our spending processes and decide, is there anything there that's waste or inefficient that we can also. And so if we just continually set that cash reserve account up and say, well, you know, we really dispel or take away the incentive to ever get around to looking at wasteful spending practices. So, I think, at the same time that hundreds and hundreds and hundreds of millions of dollars in stored taxpayer monies are infused then into the downturning economy, we also need to be looking at, you know, it shouldn't be too excessive such that we're not looking at eliminating those wasteful practices so that's another point that I'd like to make. And you know, I think, finally that it's just the right thing to do for the people of Nebraska. You know, we should, we ought not take, you know, that the money in this cash reserve account is, you know, we kind of look at it as our money but it's really not our money. It's stored taxpayer money and if we don't have a compelling and immediate need for the money, you know, I think that we ought to give it back. And if circumstances change and, you know, this is a modest amount in light of the entirety of that which is in that fund and so, I think it's the reasonable thing to do to keep faith with the taxpayers in Nebraska and I do appreciate your time here before the committee today. [LB1000]

SENATOR JANSSEN: Any other questions? I have one, Pete. You know, we always hear about wasteful spending. Where would you say we have wasteful spending? Is it in HHS or university or where is there wasteful spending? [LB1000]

SENATOR PIRSCH: Well that's a good thing...for instance, the wasteful spending, you know, I can give you an individual, say. Last year there was a number of reports. My understanding, now this is secondhand, that there was a light that was showing green both ways, you know, the department that was responsible for checking those lights just

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

had gotten notice that those, that they were showing green for intersections going this way but also showing green for that way. They didn't get out and for whatever structure mechanism was in place with regards to those malfunctioning traffic lights, didn't get out there in time. Common sense would tell you and it actually produced the fruition of an accident with someone injured so there was a \$10 million judgment against the state of Nebraska. And so, and this was my understanding and so, you know, if, if...it's those kind of processes. That's a substantial sum of money from something that, I think, you know, maybe we need to restructure things or. And so, you know, I can give you instances where, for instance, in Health and Human Services last year, I know, it was talked about on the floor that there was monies that should have been collected by the Department of Health and Human Services but in fact weren't collected even though the individuals who owed those were quite wealthy and had the ability to do so. And so, you know, I think that...what I'm suggesting is that, you know, that the incentive for people, you know, if you're quite wealthy and, you know, you're not going to be worried about scraping about the hundreds, you know, saving a dollar here and a dollar there. But if money is a, to the extent that we make budgeting a, something that you're always mindful of, you're going to be always, or more often reviewing your spending practices deciding where you can save an extra \$5 million, \$10 million without changing the outcome to taxpayers. I'm not suggesting that we reduce services. I'm talking about waste and, you know, there's a number of innovative ways. I obviously am not going to know as much as the heads of the departments but I can tell if we have enough money that we can have an automatic rate of growth, and that there's no discomfort in all levels, and there's just incremental added on amount every year, there won't be that incentive for people to look inward and to decide, and to say, are there areas that we can look at eliminating waste and I think that's important. [LB1000]

SENATOR JANSSEN: Okay. All right. Any other questions? I see none. Thank you, Pete. [LB1000]

SENATOR PIRSCH: Sure. Thank you. [LB1000]

SENATOR JANSSEN: That ends the hearing on LB1000 and Senator Burling, you're up next with LB887. [LB1000]

SENATOR BURLING: Thank you, Senator Janssen, members of the Revenue Committee. My name is Carroll Burling, B-u-r-l-i-n-g. I represent District 33 in the Legislature and I'm here today to introduce LB887, which would change the corporate income tax rate and also the bracket. The next two bills that I have to introduce today are result of the recommendation of the Tax Policy Reform Commission as they looked at corporate tax in the state of Nebraska and recommended that we take a look at that and possibly make some changes. The introducers ahead of me this afternoon have already shared with us the advantages of lowering taxes to spur the economy and these bills go right along with that idea. Currently, an income tax is imposed on taxable

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

income of every corporate taxpayer that is doing business in this state. The lower rate is 5.58 percent of the first \$50,000 and 7.81 percent of all income in excess of \$50,000. Now these rates have been the same since 1991 but the threshold of \$50,000 has been the same since 1995 and we'll address that more in the next bill. The reason that it's necessary, I think, to take a look at our corporate tax rate in Nebraska, is that there's only one state around us that has a higher rate and the rest of them all have lower corporate tax rates than Nebraska does. And this bill, if it was passed, would put us more in line with the states around us. The only state around us that has a higher corporate tax rate is Iowa. Colorado, Kansas, Missouri and South Dakota have flat rates which are in the area of our lowest rate and Wyoming has no corporate income tax at all. So I present this to you for your consideration. I encourage your advancement to General File and with that I'll step down and see if we have some proponents, unless there are questions. [LB887]

SENATOR JANSSEN: Any questions? I don't see any, Carroll. Take proponents first. Those in favor of the bill. [LB887]

LARRY KOPSA: (Exhibits 3 and 4) Mr. Chairman, members of the committee, my name is Larry Kopsa, L-a-r-r-y K-o-p-s-a. I'm a certified public accountant from York, Nebraska, and I am on the board of the Nebraska State Chamber of Commerce and I'm here to represent them in favor of LB887. I am also the chair person of the small business committee of that, of the State Chamber of Commerce. Small business in Nebraska is very important and as an accountant, I work with hundreds of small businesses and I understand the importance of taxation in their laws and how it impacts them. As Senator Burling said, the tax, the \$50,000 base has been in place since 1975. If this would have been indexed to inflation like most tax laws, a \$50,000 base right now, or excuse me, in 2007, would be at \$192,000. In 1998 over \$200, or excuse me, in 2007, would be at, over \$192,000 and in 2008 would be well in excess of \$200,000. To look at that a little differently, if you bought something in 1975 that would cost you \$50,000 and \$12,000, would be \$12,000 respectively. So times have changed but the tax brackets have not changed and so I think it's important for the state of Nebraska, and especially for businesses and small business, to consider this change. You know, when you live in a small town like I do, you wear many hats and I was fortunate to be the president of York economic development for two years and Richard Baier was our executive director at that time and I worked with him. I know what businesses look at when they are looking to come to different locations and several things. But one of them is certainly is income taxes and as Senator Burling said, we sit with some of the higher rates in the area. Wyoming, South Dakota has no corporate income tax. When we look at the rankings, you can look at several different tax foundations, state chamber of commerce, or national chamber of commerce and others, we rank always in the 40th as far as where we stand for attracting small business or around us, we have rankings of first and second. First being the best, of course. Thirteenth, fifteenth, the states around us. And I know in talking to businesses that were looking at York and looking at other

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

states, that was always one of the factors they looked at. And I think that certainly LB887 would help to cure this problem. As a certified public accountant, I represent over 1500 clients, most of them being small businesses, a lot of corporations. And I can tell you, when we're planning with clients and small businesses, we look at these thresholds, this \$50,000 threshold and when we can, we try to keep the income at \$50,000 for corporations, because if you go over that, it's higher than the individual rate. We do this through wages and through other means, so the \$50,000 does serve as an obstacle for us in trying to plan and be prosperous in our business. Many corporations have switched to S corporations. I know you see the corporate income, the income taxes from corporations decreasing. A lot of companies are becoming S corporations and why is that? Because an S corporation is a pass through entity. An S corporation does not pay tax. Whatever income the S corporation has, passes through to the shareholder and is taxed at their rate, which is higher than the highest corporate rate, which is lower than the highest corporate rate. So S corporations are becoming a real big factor. Another factor, we see the income dropping from corporations is, recently in the last few years, banks have been allowed, small banks have been allowed to be an S corporation by federal regulations and so once again, those banks are now switching over and it's taxed on the individual rates. We also see a paperwork problem when we're dealing with clients. If they have over \$50,000 and we can't bring them down, we look at setting up multiple entities and it creates more paperwork and more issues. They're not allowed to do what they need to do best and that's to prosper and to make money in Nebraska. And I think worst of all, I see companies moving out of Nebraska because of several factors. One of them being tax rates. If you had a chance to be taxed in South Dakota, in a corporation, at a zero rate. We're taxed in Nebraska at 7.81. It's not a hard choice to make and certainly LB887 helps to cure those problems by increasing the threshold to \$100,000 and by increasing the, by decreasing the rates. I have with me an outline of what I've talked about and I'll be here to talk about LB888 also. And then, also from the taxes and spending from the legislative web site information on state taxes and how we rate and how it impacts us. And I think you can see, that to be competitive and to have more people in the state to pay more taxes, in the long run we need to be competitive on a tax basis and we need to be not 43rd in the nation, we need to be higher up so. Thank you very much. [LB887]

SENATOR JANSSEN: Any questions? Ron. [LB887]

SENATOR RAIKES: If the corporate tax rate were comparable to the individual, would there be more businesses organized as C corps than pass throughs? [LB887]

LARRY KOPSA: I think it would make a, I think it would make a real difference in that situation. It would depend on the circumstances. It would depend on the activity. In my situation, being a small business, the activity of the owners and how involved they were. We don't hardly look at C corporations any more for small businesses because of the higher tax rates and so I'm... [LB887]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

SENATOR RAIKES: But it's not just state tax rates? [LB887]

LARRY KOPSA: I think to answer your question, it would surely be something that we'd look at and it would put C corporations back on the, back on the plate as an option for small businesses, yes. [LB887]

SENATOR RAIKES: But wouldn't federal rates be more important than state rates on that? [LB887]

LARRY KOPSA: Federal rates play into it also certainly but we look at, in sort of the double tax that gets involved and, of course, you never know what's happening in Washington but they are talking about changing the federal rates for corporations also so that does play into it, yes. [LB887]

SENATOR RAIKES: Okay. Thank you. [LB887]

SENATOR JANSSEN: Tom. [LB887]

LARRY KOPSA: Yes, Senator White. [LB887]

SENATOR WHITE: None of this would avoid double taxation, correct? [LB887]

LARRY KOPSA: None of this would avoid double taxation, that's correct. [LB887]

SENATOR WHITE: In the tax world, the feds are the dog, we're the tail, correct? [LB887]

LARRY KOPSA: Say that again. [LB887]

SENATOR WHITE: The federal government's the dog, we're the tail. [LB887]

LARRY KOPSA: Yeah, the federal government certainly plays an impact and we look at them... [LB887]

SENATOR WHITE: A lot bigger than we do. [LB887]

LARRY KOPSA: You know, there are other issues though which get a little bit complicated when, when the federal government changes as they just did yesterday and put an economic stimulus package in, when this happened a few years back, Nebraska did not go along with the same depreciation rules. And so what happened, we had different income tax bases for federal and for state purposes. And when you talk about the dog and the tail, we had situations then when we had lower income on the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

federal, and higher income on the corporation, because now we were picking up some additional depreciation and some of the carryover, which, which again was a paperwork problem for my clients. And also, it affected us in our planning process. [LB887]

SENATOR WHITE: Thank you. [LB887]

SENATOR JANSSEN: Any other questions? I don't see any. Thank you, Larry, for being here. [LB887]

LARRY KOPSA: Okay. Thank you. [LB887]

SENATOR JANSSEN: Are there any other proponents? [LB887]

PHIL PHILLIPS: Thank you. Are we adjusted right for the microphone here? [LB887]

SENATOR JANSSEN: Sure. [LB887]

PHIL PHILLIPS: Okay. My name is Philip Phillips, P-h-i-l-l-i-p-s, and I'd like to say good afternoon to all of you, and offer some testimony on behalf of the Greater Omaha Chamber of Commerce and the State Chamber of Commerce. Originally I had hoped to be here to testify for LB863 and I hope you'll take this as being in favor of that bill as well. Unfortunately, the only thing that's doing 75 on the interstate today is crosswinds, so it's a little slow getting here. (Laughter) Yet, I'd like to really thank Senators Langemeier and the senator from Kenesaw for introducing the bills, LB887 and LB888. These will continue to improve Nebraska's business climate. Three years ago we made a tremendous stride when we passed the Nebraska Advantage Act and that really updated our programs and made us more competitive with other states and regions, and we really appreciate that. Unfortunately, the world continues to move on, other areas continue to improve and enhance their incentive programs. My role with the chamber of commerce in Omaha is as director of business retention and expansion. And what that means is that I get the rather unglamorous part of the job of convincing existing businesses to remain and grow in Nebraska. That sometimes doesn't get as much newspaper play as trying to convince some out-of-state business to come here but it is a crucial part of the business development of the state. One of the most important tools that we have to try to retain businesses in Nebraska, and try to convince businesses to grow in Nebraska, is tax policy. As you know, we compete with thousands of communities and many other states around the United States traditionally. Now we're competing with locations throughout the world. A lot of the projects I work on now, the competitors are not just in Kansas and Oregon, they're also in China and Poland. So we have a much broadened competitive field. As with any other product, the more advantages that we have, the more amenities that we can offer, the better we're likely to do. One of the major amenities a region can offer, is tax climate. Today with the internet and the availability of data on the internet, it's very easy for a corporation or a

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Transcriber's Office

Revenue Committee
February 14, 2008

consultant to sit down and start comparing different locations to try and find a best operating conditions and a low cost operating cost. Typically when companies do this, they get down to two or three or four communities and in terms of the non tax costs, those communities are all about the same. I spent a number of years as a site selection consultant, worked with a lot of companies. On a hundred million dollar project, often the finalist communities have an estimated difference of only a few hundred thousand dollars. One or two-tenths of a percent on the total cost of operation and in a situation like that, you get down to the point where the tax burdens do make a difference. Sometimes people say, well, taxes are a relatively small part of the total cost of the businesses operation but as a matter of fact, when you are comparing against finalist communities, those other differences have washed out so taxes are probably the differentiating factor. The other important thing to remember is, that as we compete for business in industry, we can't do much about the cost of labor. The gentlemen here in the Legislature and "gentlewomen" can't do much about that. The one thing which we can really make a difference on, is our tax policy and that's why people negotiate with us about taxes because that's what they can negotiate with us. The lowering of taxes has another important factor. It sends out a message. When you look at the difference in the rates, it doesn't look like an enormous difference in numbers, especially if you compare it to South Dakota, which has no corporate income tax. But it does send a message to companies that we are moving in the right direction and that we're concerned about business. And there is a whole industry of site selection consultants who pay very close attention to what states are doing and the direction of the business climate because they're making recommendations not just for now, but for five or ten or fifteen years in the future. As well, corporations are looking at all of the state rankings and seeing how things play out. So we believe that LB887 and LB888 as well as LB863 are important in the long-term. And we think that it's important to do whatever we can to make our state more attractive for business so that we can continue to generate two things. One, is jobs and employment for our citizens, and the other is, the opportunity for our citizens to find employment and especially for high school and college graduates to find employment in this state rather than having to leave for somewhere else. We appreciate any and all things you can do in terms of the legislative package which we have endorsed. And we recognize that's an ambitious package and we may not get everything but they're all important parts of what we see in the national business picture. I'd be happy to answer any questions that you might have about our position or any specifics. [LB887]

SENATOR JANSSEN: Cap. [LB887]

SENATOR DIERKS: Mr. Phillips, notwithstanding the labor cost, how does China and Nebraska compare with their taxing as far as favorable taxing for corporations? [LB887]

PHIL PHILLIPS: Well, that's a rather difficult comparison to make because China's structure is so totally different. What you're looking at is a difference in total operating

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

conditions and a lot of the cost difference in China is a difference in transportation costs and it's a difference in the amount of management operational, or management time that's required. Chinese tax picture is, frankly, there's a lot of things that go on there so it's kind of hard to know what the real tax picture looks like. Taxes are... [LB887]

SENATOR DIERKS: Evidently they have somewhat of a favorable tax structure because it seems like we're outsourcing an awful lot of our products to that country. [LB887]

PHIL PHILLIPS: Well, their big sales point is not taxes. Their sales point is low, low labor cost. But our response has to be, not to throw another roadblock in the way of businesses staying here. [LB887]

SENATOR DIERKS: Yeah, okay. Thank you. [LB887]

SENATOR JANSSEN: Any other questions? Ron. [LB887]

SENATOR RAIKES: A couple of things. One, you mentioned there's nothing we can do as a state about the cost of labor. [LB887]

PHIL PHILLIPS: Not directly. Obviously, there are some long-term things and indirect things, yes. [LB887]

SENATOR RAIKES: For example, providing training for people, well educated work force, those kinds of things, which... [LB887]

PHIL PHILLIPS: Yeah, we could, in the long-term, influence the quality of labor and the labor skills but that's not our, really a direct control of the state and that's something that, you know, if we work very hard today, the results will show up in ten or fifteen years. It takes a long time to change the basic educational climate and the can of statistics that a site consultant would use. For example, they may look at the proportion of people who are high school graduates, that changes slowly. They may look at the value of output per dollar of labor. That changes very slowly, even if we worked very hard and very effectively. [LB887]

SENATOR RAIKES: On the other hand, if we were to underfund or otherwise ignore education in this state, we could expect for years to come to pay that price? [LB887]

PHIL PHILLIPS: Yeah, we don't want to underfund education, that's very true. [LB887]

SENATOR RAIKES: Well, let me ask you also, you said the Advantage Act, and the Advantage Act was basically picking out certain people and saying, you pay lower taxes. And you do that really at the expense of, well, we can either allow certain people

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

to pay lower taxes and all the rest of us pick up the difference or we can say, we're all going to lower taxes for everybody. And it seems to me, you're kind of saying, well, we want our cake and to eat it too. We want the special deals but we also want to lower taxes for everybody. [LB887]

PHIL PHILLIPS: I think with the Nebraska Advantage Act that was pretty carefully crafted to look at those kinds of businesses which, you know, the term is usually, foot loose. The kind of businesses like a manufacturer, most manufacturers are relatively small proportion to their markets in Nebraska. They could easily locate somewhere else and still serve their customers, whereas the service business is tied, you know, a restaurant or some service business like that, is tied very directly to its customer base. If they don't serve, if Wendy's doesn't serve hamburgers to hungry people, McDonald's will do it, you know, in their place. So we tried to focus those programs and to give some, very, you know, very substantial benefits to companies that could choose to locate here or very easily choose to locate somewhere else. This is a little different picture trying to reduce the overall burden recognizing that the difference is going to be incrementally much smaller but it would still be significant in the eyes of business. [LB887]

SENATOR RAIKES: Okay. Thank you. [LB887]

SENATOR JANSSEN: Tom. [LB887]

SENATOR WHITE: After a year and a half in this committee, I've realized that everybody wants a tax break. Everybody wants to go to heaven, nobody wants to die. Here's what we face with, faced with. We have retirees saying they're leaving because they're not getting a tax break. We have people who have come to us as corporations saying, we need a tax break to bring more business and it needs to be corporate. We've also had people coming and said, if you don't give high income personal income tax breaks, we can take our business where we want to go. And what Senator Raikes has made clear to you is, there's certain demands, I mean, what is it, almost 50 percent of our budget is education, and we have an excellent education system. You're in the business world. You help people make hard allocations of resource decisions. We're faced with irrevocably competing demands for limited resources, and a demand that essential resources that the employers insist on because they won't come here if we have bad schools. Where do we allocate it? Welcome to my world. [LB887]

PHIL PHILLIPS: Yeah, and we recognize that. I think I mentioned in the prepared statement that we know it's probably not going to be possible to do everything and it is a balancing act. It reflects what the revenue picture looks like this year as well as the expense picture, and as we're seeing right now, revenue is one of those things we can't control that much. But what we can hope for is, that in times when the revenue picture does look a little better or when there is a little bit of flexibility, that we're able to reduce

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

that tax burden. [LB887]

SENATOR WHITE: Have you seen the forecast? [LB887]

PHIL PHILLIPS: Haven't looked at it in detail lately but I know they're headed the wrong direction. [LB887]

SENATOR WHITE: What are they? Seven percent down depending on how we count it? I think it's, isn't that what they're saying, Ray, based over...2 percent over the last official, 7 percent over the last one but not been certified. [LB887]

PHIL PHILLIPS: Yeah, and we recognize that as that picture changes. You have to make different decisions. Frankly, I'm glad I don't have to make the decisions that you have to make in some ways. [LB887]

SENATOR WHITE: The pay is great though. (Laughter) [LB887]

PHIL PHILLIPS: But we do hope that people recognize that part of the equation has to be the tax burden on individuals and on businesses. Clearly, we don't want services to suffer whether it's education or social services or any other thing. And it is a difficult, difficult dilemma. [LB887]

SENATOR JANSSEN: Any other questions? I don't see any. Thank you. [LB887]

PHIL PHILLIPS: Okay. Thank you. [LB887]

SENATOR JANSSEN: Next proponent. [LB887]

BRUCE BOHRER: Good afternoon, Chairman Janssen, members of the Revenue Committee. For the record my name is Bruce Bohrer, B-o-h-r-e-r, appearing on behalf of the Lincoln Chamber of Commerce and we're here in support of LB887 for three primary reasons. First of all, the inflation adjustment that's made. I don't remember what the proponent, or the introducer, Senator Burling mentioned, but it's been quite some time since this bracket's been adjusted. I believe it's over 20 years so we appreciate and support the adjustment that compensates for the impacts of inflation. And then also, equity or just the similarities between different business forms that I think Mr. Kopsa mentioned how we really tax very similar business entities differently. For whatever reason, some businesses aren't able to adopt the pass through form and we think it's a matter of good tax policy if you equalize those two. And then finally, just the regional competitiveness. I think we probably have, I believe, the second highest corporate tax in the region and I know there's some differences in the way they're figured but for businesses based in Nebraska that have the C corp form, if we could make this change we do think it would improve our competitiveness. So that's going to be my testimony on

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Transcriber's Office

Revenue Committee
February 14, 2008

LB887 and I would like to note, if the Chairman wouldn't mind, our support also for LB863. We did put in a letter and I was going to come up here but we got to Senator Pirsch before I made it up here but so I would be happy to answer any questions you might have. [LB887]

SENATOR JANSSEN: Any questions? Tom. [LB887]

SENATOR WHITE: C corp form is largely devoted towards larger corporations with multiple shareholders. Increasingly, pass throughs is whether they're LLPs, LLCs or sub S are limited in smaller stockholders or owners, isn't that true, generally in your experience? [LB887]

BRUCE BOHRER: Yes. [LB887]

SENATOR WHITE: Now those folks generally tend to live in the state. They tend to live closer to their business so they tend to pay income tax, property tax, sales tax here, isn't that true? [LB887]

BRUCE BOHRER: Yes. [LB887]

SENATOR WHITE: Now, as a guy who has a city, my district has five Fortune 100 companies that are...or 500 companies in Omaha and I don't really want to go here but the reality is, that the corporate taxes that those big guys pay, tend to get spread down to shareholders who don't share income tax, or don't, tend not to share property tax, sales tax burdens, isn't that true? [LB887]

BRUCE BOHRER: Yes. [LB887]

SENATOR WHITE: Thank you. [LB887]

SENATOR JANSSEN: Any other questions? Thank you, Bruce. [LB887]

BRUCE BOHRER: All right. Thank you. [LB887]

SENATOR JANSSEN: Next proponent. [LB887]

BOB HALLSTROM: Chairman Janssen, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the National Federation of Independent Business. H-a-l-l-s-t-r-o-m, in support of LB887. You've heard a lot about competitiveness today in terms of recruiting new businesses to Nebraska. From the small business corporation perspective, we're also interested in being able to have an incentive or an assist in providing new jobs as the major creator of jobs being small business. Particularly in the rural communities in Nebraska, to be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

able to bring a couple or a handful of new jobs and the families they represent and the taxes they pay in rural communities in Nebraska. Reduction of the corporate income tax rate can provide a benefit in that respect. Be happy to address any questions of the committee. [LB887]

SENATOR JANSSEN: Tom. [LB887]

SENATOR WHITE: Maximum bang for the buck, Bob. Drop the high end for income tax, drop property tax, drop corporate tax, where do we get the most economic growth? We don't have enough money to do everything. [LB887]

BOB HALLSTROM: Senator, I haven't given a great deal of thought before you posed the question. I suppose from the small business perspective, if you have an individual income tax reduction perhaps, would be, would be most beneficial. You may, probably, in terms of other individuals though, you'll seem them be more supportive of a property tax break. [LB887]

SENATOR WHITE: Thank you, Bob, I really appreciate that. [LB887]

SENATOR JANSSEN: Any other questions? You know, Bob, I've been around here for 16 years and it seems like every year, we get to see you in the Revenue Committee. [LB887]

SENATOR WHITE: Just one of the joys of life. [LB887]

SENATOR JANSSEN: Especially when we have some of these bills. You know, and it's a...will that ever end. Will we ever get this, well, I hope it never ends or you're going to lose your job but... (Laughter) [LB887]

BOB HALLSTROM: Or worse. (Laughter) [LB887]

SENATOR JANSSEN: But it just seems like it's an ongoing thing. You know, no matter what we do. I thought we did a pretty good job last year, you know, but here we come back again. And it just keeps, it goes on and on and one good thing about term limits, I won't have to listen to it anymore. (Laughter) I'll be able to go home and try to make a buck on my own. [LB887]

BOB HALLSTROM: And you'll do fine, Senator. [LB887]

SENATOR JANSSEN: So, anyway, thank you. [LB887]

BOB HALLSTROM: Thank you, Senator. [LB887]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

SENATOR JANSSEN: I had to get that...you were the guy that I could do that to. (Laughter) Are there any other proponents? Any opponents? Anyone in a neutral capacity? Carroll to close and open on the next bill. [LB887]

SENATOR BURLING: Thank you, Senator Janssen. Just a couple of things. We're really here on this corporate income tax situation today because, as I said, the bracket threshold hasn't been changed since 1975 and the rates haven't been changed since 1991. We have made adjustments in personal income tax brackets and rates over the years but this issue, I think, needs to be talked about because it's been a long time since a change has been made. And there are a lot of corporations out there in the state that don't qualify for Nebraska Advantage Act. Some of these corporations feel like they're paying taxes to support the incentives for, that come to the Nebraska Advantage Act. So those issues are a couple of things I wanted to bring up and are there any questions on that? [LB887]

SENATOR JANSSEN: Questions? Nope. [LB887]

SENATOR BURLING: Okay. [LB887]

SENATOR JANSSEN: You stay right there and open on LB888 then. [LB887]

SENATOR BURLING: Senator Janssen, members of the Revenue Committee, I'm Carroll Burling, B-u-r-l-i-n-g. I represent District 33 in the Legislature, and I'm here now to introduce LB888. Where the other bill, LB887 contained a change in the bracket threshold and the rate, this bill is simpler in that all it does is change the \$50,000 to \$200,000 and that's already been discussed by testifiers in the other bill. That inflation alone since 1975 would say that if \$50,000 was the right figure then, \$200,000 is the right figure now, because as you...if it's not indexed for inflation, just inflation alone will bring more of your income into the higher tax bracket. And so corporate income taxes in Nebraska have risen because of the \$50,000 being in statute, not indexed to inflation and also the fact that we have risen the rate for corporate taxes since conception years ago. So that's all that this bill does and as I said, it comes at the recommendation of the Tax Policy Reform Commission and pretty straightforward. [LB888]

SENATOR JANSSEN: Ron. [LB888]

SENATOR RAIKES: Carroll, picking up on a comment you made on your closing, in your opinion, are there businesses out there in Nebraska that sort of shudder at the thought of yet another business tax incentive program because they suspect they will not qualify for the program but yet because we do that program, we won't have revenues available to reduce taxes they do pay. [LB888]

SENATOR BURLING: Yes, I think we've done a good job as a body to try to bring in a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

lot of businesses into the incentive programs but you just can't bring in everybody. Everybody can't qualify and I think we just have a lot of small corporations in Nebraska that are saying, look, I've been here all my life, I'm doing my job, paying my taxes and I don't get any encouragement, any incentives, except the basic tax policy, which is what we're talking about here. So if you don't qualify for incentives, only thing you've got is basic tax policy and that's what this is addressing here, is just adjusted basic tax policy would include every corporation, big, small, whoever. [LB888]

SENATOR RAIKES: I guess my point is, that to the extent you do tax incentive programs, you're going to be less likely to be able to address basic tax policy. [LB888]

SENATOR BURLING: Uh-huh. [LB888]

SENATOR RAIKES: Okay. [LB888]

SENATOR JANSSEN: Any other questions? [LB888]

SENATOR WHITE: Just following up on that. Senator, one of the complaints I've had from people in my district is because of exactly the point Senator Raikes has just made, we favor newcomers. But, you know, new business, new hires but the people that have been here, built the economy, been here for 50, 100 years, they're carrying the load and they wonder. It's kind of like the gospel of the prodigal son, they never thought that was very fair either. You know, somebody was there working the farm the whole time and the other guy gets the party. (Laughter) How would you balance them? [LB888]

SENATOR BURLING: Well, I've just personally said all along that I thought a basic tax policy was more fair than incentives because you can't include everyone in incentives but I think there's room for both. But this, this particular issue in tax policy hasn't been addressed for so long that I think it's time to look at it and consider those factors. [LB888]

SENATOR WHITE: Kind of like the inheritance tax being inflated out of being reasonable. [LB888]

SENATOR BURLING: Uh-huh, uh-huh. [LB888]

SENATOR JANSSEN: Okay. I don't see any other questions, Carroll. [LB888]

SENATOR BURLING: Okay. Thank you. [LB888]

SENATOR JANSSEN: We take proponents. [LB888]

LARRY KOPSA: Good afternoon, Chairman Janssen. My name is...and committee. My

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

name is Larry Kopsa, K-o-p-s-a. I'm a certified public accountant from York, Nebraska, as I mentioned earlier, and I'm here to represent the State Chamber of Commerce. I'm the chair person of the small business committee. LB888, as LB887, is, I think, important to the state of Nebraska. I think it helps small businesses as it raises the threshold to \$200,000. Earlier I testified that if a inflation adjustment between 1975 when this was, when this law, the \$50,000 bracket was created, was adjusted for inflation in 2009 when this would come in place, so that number would be over \$213,000. Buying power is a lot different now. I look at this from two standpoints. Number one, from a standpoint of a small business first and how it affects my clients. And I also look at it, how it affects my clients from the standpoint of economic development. We have 25 people in my firm. I would say half of those people are secondary employees from big businesses, bigger businesses that have moved in because of economic development. I sit on our church council and I tell our priest that, you know, one of these days we aren't going to have as many people sitting out in those pews because York is not growing. We need economic development to fund schools, to fund jobs, to fund charities and such and so I think it's very important. This increase would be very good for small businesses. I work with a lot of farm corporations that don't face the double taxation that we talked about earlier because the farm corporations are passed on to the next generation. Most of my farm corporations are C corporations and they pay this level of tax. And so I recommend that you approve this and pass this forward. [LB888]

SENATOR JANSSEN: Any questions? I don't see any. Thank you, Larry. Any other proponents? Any opponents? Any opponents? Anyone in the neutral capacity? Seeing none. Carroll could close. [LB888]

SENATOR BURLING: Thank you, again. I'll just say that, you may note that the fiscal note on LB888 is much less than LB887. So I thought that was interesting and I just make note of that on the record. Any questions? [LB888]

SENATOR JANSSEN: No questions Carroll. [LB888]

SENATOR BURLING: I'd ask you to advance it to General File. Thank you. [LB888]

SENATOR JANSSEN: All right. Thank you. That ends the hearing on LB888 and we are at the last bill today, LB1175. Senator White. [LB888]

SENATOR WHITE: My name is Tom White, W-h-i-t-e. I'm a Senator. I represent District 8 in Nebraska. Senator Janssen, members of the committee, thank you for allowing me to introduce this bill. LB1175 is a technical bill and it is designed to address a series of concerns that have been brought up in the past. It is brought according to requests and suggestions by members of the administration. First, LB1175 would add a provision to piggyback any future federal withholding changes on 1099 payments to certain

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

independent contractors. At some time in the future, the department anticipates that the federal government will address this issue. I can honestly tell you, I don't understand that from Adam but I take it on faith. The next part, however, I do understand and the third part. LB1175 will require any payor to withhold from all individuals who are providing construction services who are not employees be any person, both individual, other entities, who are providing for or arranging for labor for construction services. The amount of the payment subject to withholding can be reduced in that circumstance by expenses up to 50 percent of most payments or if the subcontractor, for example, a plumber is providing pipe, as much as 75 percent in those circumstances. The amount of withholding on the remaining amount of the payment is 5 percent. This is here because, one of the things that I've been concerned about and I know other members share, are the number of people taking advantage of independent contractor status to avoid paying taxes. What this bill is designed to do is require the general contractors, who actually control the money, to actually insist that the people below them are going to pay taxes on the money they earn in this state. We have had a history, and it's largely anecdotal because these folks don't pay taxes so we don't know what they're avoiding, of large numbers especially of out-of-state contractors coming in performing services, not withholding taxes, not remitting taxes whether it's unemployment, whether it is actually income taxes. This bill is designed to make the general contractor, the person in the best position, to make those judgments responsible for ensuring the taxes properly due to the state are paid. It does not increase taxes but it does tell the generals, you are going to do your part to ensure taxes are properly paid. The third part, LB1175 changes the liability of a contractor hiring a nonresident subcontractor, one of the biggest problems we have with enforcement. Under current law, a contractor hiring unlicensed and unbonded nonresident contractor is required to withhold part of only the final payment. The final payment is not defined by our law. It's defined by whatever the contract is. It could be 1 percent of the total contract fees. If no amount is withheld by the contractor, the state can hold the contractor liable for the amount of taxes that the subcontractor would have been required to pay but in most cases that amount cannot be discovered because a nonresident contractor is no longer within the jurisdiction of the state. Let me give an example. And as a guy who spent a lifetime trying to prove stuff in a courtroom, it's important that our laws not only provide certain requirements but they be provable. In this situation, if I am a nonresident contractor providing roofing for a big apartment complex, I bring a crew up from Texas, I do the work, I take the money and I leave. The state has no ability to prove what I paid my subcontractors because what I paid them would be a deduction on what I owe. They don't know what tools. They don't know how much I paid for hotel rooms. They don't know of any of the deductions I would normally be entitled to. Therefore, they can't prove what profit I made therefore is properly taxable or even for that matter, what I paid in taxes. Nor can they prove whether those people under me were really independent contractors who had no obligation to withhold from in the first place. So what we've done under existing law, is put a law in that can't be enforced. This bill is designed to make it easier for the administration to collect taxes that are properly due and payable. It is not going to be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

beloved by the contractors who have been good supporters in the past but it doesn't tax them any more. It simply requires that they withhold money so the state can properly assess the amount of taxes that are due. The only people who will pay more under this bill, are people who aren't paying what they should in the first place. So in this sense, this is a bill again. It's like the bill we took on using too many exemptions last year. It's designed to catch people who are not paying their fair share and that's the intent of these bills. I'd be happy to try to answer any questions you may have, especially about parts two or three, part one. [LB1175]

SENATOR JANSSEN: Tom, how often is this happening? [LB1175]

SENATOR WHITE: From what I'm told, and nobody that I know has a decent study, Senator Janssen, but I have seen roofing contractors on big projects and I mean crews of 20 men. Not one of them is from here. Not one is "an employee". I've had constituents come up to me and said I was on a crew roofing or doing cement, mad as all get out because even though they'd be paid a dollar more than the guy next to him, they're taking home substantially less because they're paying taxes and withholding but the guy next to him is an independent contractor. Those guys aren't going to pay taxes and then are off to another state to the next project. So I cannot tell you on any study but I can tell you from what I've seen and from what my constituents have seen, and my district is full of laborers, craftsmen, it's a substantial problem. We don't know how big yet and until we pass bills like this to find out what we've been losing, we won't know, in my opinion. [LB1175]

SENATOR JANSSEN: So in your opinion, will this do that? [LB1175]

SENATOR WHITE: This is a good start. It's certainly a good start. It's what, as I understand it, the department has asked for this power and it will help us. If we're serious about tax relief for all Nebraskans, then the first step is what Senator Raikes has said. All of us need to pay our fair share or some of us are going to pay too much. [LB1175]

SENATOR JANSSEN: Okay. Any other questions? Ron. [LB1175]

SENATOR RAIKES: Tom, just so I know how this works. I...you know, I'm the guy that's hiring roofing contractor or whatever. [LB1175]

SENATOR WHITE: You're the general contractor. [LB1175]

SENATOR RAIKES: Okay. You know, and I would be the, say I own the building or whatever and I'm not hiring anybody else to be the contractor, I'm dealing directly with the service provider, the roofer in this case. [LB1175]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

SENATOR WHITE: Well, if that's true, I'm not sure what the definition, Senator Raikes, is whether you're the contractor or the owner. In most situations under the law that I'm familiar with, you would not be the contractor in that situation. You'd be the owner. [LB1175]

SENATOR RAIKES: Okay. So let's pursue that for just a second. So I'm the owner, I hire... [LB1175]

SENATOR WHITE: Me. [LB1175]

SENATOR RAIKES: You, and you've got a crew. I write you the check. [LB1175]

SENATOR WHITE: I hire these guys to roof. (Laughter) It's going to take a while, Senator. (Laughter) [LB1175]

SENATOR RAIKES: Yeah, I'm worried about the leaks once you get done too, but... [LB1175]

SENATOR WHITE: That too, Senator. [LB1175]

SENATOR RAIKES: Okay. So I write you a check after you're done and you go back to Texas or wherever. That's the current arrangement. [LB1175]

SENATOR WHITE: Well, no, what would happen is, right now as a contractor licensed to do business in this state, right, if this bill was passed, I would have an obligation to withhold a certain amount from my crew whether they call themselves independent subcontractors or not and... [LB1175]

SENATOR RAIKES: You would but I wouldn't as the owner as the person... [LB1175]

SENATOR WHITE: As I understand it, this bill only goes to a contractor, not to an owner, and they're very distinct traditionally under the law, whether it's for liens or taxes. [LB1175]

SENATOR RAIKES: I guess that concerns me if there is, if there is... [LB1175]

SENATOR WHITE: It's not a liability on the owner. [LB1175]

SENATOR RAIKES: ...a problem then, couldn't, isn't that a loophole? You deal directly with the owner rather than through a contractor and get the... [LB1175]

SENATOR WHITE: Well, I would submit that anytime an owner hires anybody, the person the owner hires is the contractor. [LB1175]

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Transcriber's Office

Revenue Committee
February 14, 2008

SENATOR RAIKES: Okay. And right now, without this bill, what would happen?
[LB1175]

SENATOR WHITE: Well, right now without this bill, if we look at it, the contractor who hires a nonresident contractor in this section right now, is only required to withhold part of the final payment. For example, I get 90... [LB1175]

SENATOR RAIKES: Okay. Maybe nothing. [LB1175]

SENATOR WHITE: Yeah, I mean, what it does is, it requires instead that you withhold part of the amount paid rather than just the final payment so it increases the amount you're required to withhold, as I understand it. [LB1175]

SENATOR RAIKES: Okay. [LB1175]

SENATOR WHITE: Okay. And that is to protect the state because if, for example, you only get a 5 percent, there's a 5 percent withholding at the end, and its a million dollar job, that's not enough to protect the state so would require a percentage on the whole amount be withheld. [LB1175]

SENATOR RAIKES: Okay. Thank you. [LB1175]

SENATOR JANSSEN: Any other questions? Carroll. [LB1175]

SENATOR BURLING: Thank you, Senator White. You have identified a problem that we've been dealing with for, I know, at least eight years down here and haven't found a solution yet. I hope this would be it. [LB1175]

SENATOR WHITE: You and I both from your lips to God's ears, as my grandma said. (Laughter) [LB1175]

SENATOR BURLING: I don't expect you to answer this right now but my question is, is it enforceable? I mean, you know, in rural Nebraska we have the contractor would be one person and the subcontractor would be one person and they're paying their taxes now. You're not after those people. [LB1175]

SENATOR WHITE: No, it doesn't make it...I think it's not an absolute where, okay, it's red light, green light. I think we move towards green light. It gets easier to enforce and it obviously gets easier to enforce on bigger projects. You know, the guy that's going to pour a sidewalk on the side and, you know, you slip him a hundred bucks. It's not going to get there. The guy that's doing a big apartment complex with a crew of 20 roofers, yeah, we're starting putting in place where we might have a shot, better any way.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

[LB1175]

SENATOR BURLING: Good luck. (Laugh) [LB1175]

SENATOR WHITE: Okay. Thanks. [LB1175]

SENATOR JANSSEN: Any other questions? Okay. [LB1175]

SENATOR WHITE: Thank you for your courtesy. I will waive closing. [LB1175]

SENATOR JANSSEN: Okay. All right. We take proponents. Those in favor of the bill. No proponents. Any opponents? Go ahead, sir. [LB1175]

JAMES OVERCASH: Good afternoon, Senator. My name is James Overcash, O-v-e-r-c-a-s-h. I'm here this afternoon to talk to you on behalf of the Associated General Contractors of Nebraska, Nebraska Building Chapter, general contractors who work in the state, as well as the National Electrical Contractors Association, the Nebraska chapter, who provide electrical work. Primarily they're subcontractors in the state. I appear also today obviously in, since I stood up, in opposition to the current version of LB1175. First, I want to make sure that I tell you the members of our associations are supportive of efforts to make sure that all businesses and individuals pay all the taxes that are due. That not only stabilizes our tax system but it also, it provides for a level playing field so all businesses can compete equally on things by efficiency and having a better idea in building a better mousetrap. At the same time, we do believe that reporting and filing obligations of our members are already considerable and we're concerned about the additional filing requirements that may be caused by LB1175. The biggest concern I want to talk to you today is, when I look at the language of LB1175, we use, the term independent contractors been used today. If you look under, and I'm just going to read it to you, but under Section 1 which affects really income tax under 77-20753 and then Section 5, it's about out-of-state contractors which is under 77-3106. It adds really two types of people that were going to have to collect or I'll say withhold payments from, we being a general contractor or any upstream contracting party. For example, if the electrical contractor had retained a instrumentation subcontractor, they would have to do the same thing. Those two types of people, first of all, individual other than an employee who is not subject to withholding. To some degree, those people would be easy to identify because in theory be individually, wouldn't have a sales, they wouldn't have a, for example, a federal ID number. The second, though, and there's an and in here as to any person who is providing or arranging for labor for construction services has either his employee or as an independent contractor. I believe the way LB1175 is currently worded, that that person language would define any entity being individual, partnership, corporation, LLC, and so forth. When we talk about that person providing labor for construction services and being an independent contractor, for example, in a regular construction project where

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

you have a general contractor is paid \$1 million to build a building and they hired an electrical contractor for \$100,000 to do all the electrical work, that electrical contractor, by definition, you know, I believe is an independent contractor. So the general contractor, you could have a project if LB1175 was passed as it's currently written, contract in the state of Nebraska, Nebraska based general contractor, Nebraska based electrical contractor, that general would have to withhold a payment on a percentage basis. My estimations, it would be 5 percent under 2753 and there would also be about 15 percent to 20 percent under the other provision because it's not specific to nonresident. So one of my big concerns is, that the current version or probably the biggest concern is the current version would in effect cause the general to and the subs to start withholding on every payment on subcontractors. That really goes back to in effect, the heart of the definition of person. There are other issues with the bill in terms of trying to calculate what the withholding percentage would be in turning generals and subcontractors into trying to make those calculations. My history has been with contractors and I believe they're good people and I believe the ones in the state of Nebraska try very hard to abide by all the laws and regulations but with the committee's experience with tax on labor and so forth, there is difficulty with contractors, I'll say trying to interpret what is meant and what the withholding percentages and how those work, so I do have other concerns. But my primary one is making, taking LB1175 and making it in effect withholding the general contractor and the subcontractor sort of become withholding agents for these large sums of money and the problems that would come from that. I do appreciate though again, LB1175's effort to cut down on what I think also people might think is independent contractors and narrow a category in terms of people that are trying to evade the law. I also would like to point out to the committee in Section 5 of the bill, and there's a part at the end point of Section 5 that talks about the withholding, and that the withholding could be sent out by the general or the subcontractor who had subbed based upon a clearance from the Department of Revenue. Now that clearance language is very interesting to me because I do think there are maybe a method to set up with some type of a registration or a certificate that could be issued by the department to a contractor. And so just like for example, general contractors would typically collect a certificate of insurance from the subcontractor before that subcontractor is allowed to work on a project that normal, of course, is something that's there. Just like this, from the standpoint it could also be a requirement if you hire a subcontractor there would be some type of a certificate that would come from either the Department of Revenue or the Department of Labor or some type of clearing house at the state that would allow the general to have faith that that entity is registered and is collecting tax. Helping some type, something like that, or that type of concept may address the issue which is an issue. In summary, although I'm testifying against the current version of LB1175, I do appreciate Senator White's efforts on making sure that people are collecting the proper tax and that's being remitted to the state and we look forward to working out with the Senator, with the department, on trying to fashion some type of a resolution during the session. Thank you for the opportunity to be here today and if I can answer any questions, I'd be happy to try.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

[LB1175]

SENATOR JANSSEN: Any questions? Okay, Chris. [LB1175]

SENATOR LANGEMEIER: Chairman Janssen, thank you. Thank you for your testimony. I think you stated in there the current version or the green copy or the way it's written now, I think seven times. Do you have an amendment to offer to get this in a more palatable state or? [LB1175]

JAMES OVERCASH: I do not have an amendment to offer to you today, Senator. Independent contractor and that issue is an issue that's also the subject of other legislative bills this session, on LB1016 that's in front of Business and Labor that has been addressed by that committee. I think from the standpoint of, there are people working on it in my mind a solution in terms of interest groups trying to come up with something that's palatable, for lack of a better word, to move forward on that. I don't have one today, no, Senator. [LB1175]

SENATOR JANSSEN: Any other questions? Seeing none, thank you James. [LB1175]

JAMES OVERCASH: Thank you. [LB1175]

SENATOR JANSSEN: Any other opponents? [LB1175]

JUSTIN BRADY: Chairman Janssen and members of the Revenue Committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska State Home Builders in opposition to LB1175. And first I'd like to start off as the previous testifier did and that is, the Nebraska State Home Builders aren't opposed to trying to find a mechanism to make those responsible for paying a tax to actually pay them. I would say, Senator White referenced that this would be the first step in that process. I would indicate that LB204, which this Legislature just passed and the Governor signed, which is the Contractor Registration Act, is the first step in that process. It took that registration act statewide. We increased the fees to give the Department of Labor enough money to be able to go out and try to enforce to get contractors registered and start that process, as I understand it, of determining whether or not there, people that work for them are employees or independent contractors. I would say that goes into effect, if I recall correctly, March of '09. We need to see how that process goes before you start taking the next step of saying, you need to start withholding. If they can go through and knock and finish 85 or 90 percent of the so-called bad actors with that Contractor Registration Act, that would be a way to solve it that wouldn't put an extra burden on all the good actors that are currently in the state. The other thing, as I understand reading the bill, would, is unclear to me anyway, is that it would almost require a double withholding. If you go back to your question, Senator Raikes, on, if you were building a house, how this reads is, the payor shall withhold.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 14, 2008

You're the payor to me as general contractor. You then shall withhold 5 percent. I then hire Senator Burling to do the roof. I then am paying him and I will withhold 5 percent from him. There's that...I know, that's more a technical, mechanic side of it but I'd still come back to say, I don't know if...and maybe that is the intention to try to get the double withholding on that but otherwise I'd go back to saying, the Contractor Registration Act, let's find out who these people are that aren't registered and are being bad actors out there and let the Department of Labor act on that. With that, I'd try to answer any questions. [LB1175]

SENATOR JANSSEN: Any questions? Ron. [LB1175]

SENATOR RAIKES: You're not going to register people from Texas though. [LB1175]

JUSTIN BRADY: If they do business in the state under the Contractor Registration Act, if they do any more than \$3,000 worth of business in this state, they have to be registered under the act that was passed. [LB1175]

SENATOR RAIKES: Okay. And that's enforced how? I mean, I show up from Texas to do your roof for you and I'm here one day, do the roof the next and I'm gone just as soon as you write me a check. [LB1175]

JUSTIN BRADY: Those...that was part of why the fees on that statewide registration act were increased because the Department of Labor said they needed that increased money to actually go out and hire enforcement agents to do it. I don't know whether they'll get a fly-by-night person that shows up one day, leaves the next. I don't even know if this bill necessarily would. I mean, if you've got people that are willing to skirt the law, we'll always have to figure out a way to catch them. [LB1175]

SENATOR RAIKES: Well, but isn't that the reason that you withhold the money. I mean, if I got to come back to Nebraska to get my money back, I probably will but if I've got it all, I'm staying in Texas. [LB1175]

JUSTIN BRADY: Right, but if you, would you accept cash? That same fly-by-night person would probably say, if you just pay me in cash. And we're willing to look for ways to catch those, if you want to say catch those individuals. Have them be responsible like the other individuals who were here. We just don't think this is the proper step at this time. Let the registration act work and if it doesn't work, then we're willing to sit down with this body and whoever and say, okay, what's the step now that it didn't work. [LB1175]

SENATOR RAIKES: Okay. Thank you. [LB1175]

JUSTIN BRADY: Uh-huh. [LB1175]

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Transcriber's Office

Revenue Committee
February 14, 2008

SENATOR JANSSEN: Senator White. [LB1175]

SENATOR WHITE: Justin, in that situation, though, you need two people willing to violate the law. The fly-by-night from Texas and the contractor here, not just one. Thank you. [LB1175]

JUSTIN BRADY: Uh-huh. [LB1175]

SENATOR JANSSEN: Don't see any other questions. Thank you. [LB1175]

JUSTIN BRADY: Thank you. [LB1175]

SENATOR JANSSEN: Next opponent. [LB1175]

RON SEDLACEK: Chairman Janssen and members of the Revenue Committee. My name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, representing the Nebraska Chamber of Commerce and Industry today. We oppose the current version of the legislation at this time. There's not really a whole lot I can add to what has already been previously articulated, particularly by Mr. Overcash, in regard to how we are interpreting the bill. We understand the intent. Our interpretation is a little bit different. We have had some considerable input and questions in regard to the bill as drafted. I think we need to further appreciate what is being attempted here but at this point, it seems that our conclusion that it hasn't, it is overly broad and in some places there seems not to be enough clarity. I think Mr. Overcash has particularly mentioned those areas. One point that has not been mentioned so I'm not repetitive to the committee, and I know this is the, getting to be the close of the day, and that is the area regarding the disclosure of expenses in order to reduce withholding. And one of the issues that was raised is, would this cause proprietary problems. For example, if you have, you know, particular kind of piping that other competitors don't have that would allow you to do or wiring or whatever it might be, you put it in, it's more expensive but you spend half the time in labor, as an example. Do we...is this something that would, would affect those proprietary interests in order to legitimately reduce the withholding. So I leave that on the table for the Senators to consider also. [LB1175]

SENATOR JANSSEN: Any other questions? Ron, I just have one. You know, a comment. Maybe if we catch enough of these renegades, we'll save enough tax dollars so we can have some more tax incentives for business. (Laughter) [LB1175]

RON SEDLACEK: Well, or that we could possibly fund the bills that we heard earlier this afternoon. That would be nice. (Laugh) [LB1175]

SENATOR JANSSEN: Okay. Thanks, Ron. [LB1175]

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Transcriber's Office

Revenue Committee
February 14, 2008

RON SEDLACEK: Thank you, Senators. [LB1175]

SENATOR JANSSEN: Any other opponents? I don't see any. Anyone in the neutral capacity? Seeing none. Senator White to close. Senator White waives closing and that ends the hearings for the day. Thank you all for coming. Motion to go into Exec. [LB1175]

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Revenue Committee
February 14, 2008

Disposition of Bills:

LB863 - Held in committee.

LB887 - Indefinitely postponed.

LB888 - Advanced to General File, as amended.

LB1000 - Indefinitely postponed.

LB1175 - Indefinitely postponed.

Chairperson

Committee Clerk