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Revenue Committee and Urban Affairs Committee
October 21, 2008

[LR349 LR375]

The Committees on Revenue and Urban Affairs met at 9:00 a.m. on Tuesday, October 21, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR375 and LR349. Revenue Committee senators present: Ray Janssen, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Abbie Cornett; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senators absent: None. Urban Affairs Committee senators present: Mike Friend, Chairperson; Kent Rogert; Ray Janssen; Tom White; and Steve Lathrop. Senators absent: Amanda McGill. [LR375]

SENATOR JANSSEN: Good morning, and welcome to the joint hearing between the Revenue Committee and the Urban Affairs Committee. I'll go through a little stuff here and introduce a few people for the record. My name is Ray Janssen, I chair the Revenue Committee, and to my right is Senator Friend who has the Urban Affairs Committee, which I'm fortunate enough to be on that committee also. Starting down at my far left, Senator Lathrop is here; Senator Preister; Senator Burling; Senator Dierks; Senator Rogert; to my far right, Senator White. Erma James is our clerk. George Kilpatrick is counsel for the Revenue Committee. And that other fellow that's sitting alongside of him, Bill Lock, he is the research analyst. The page today is Courtney. I think I've covered everyone that is here. Please turn your cell phones off. I know you've heard this a thousand times, and the sign-in sheets are up in front. Make sure you complete them when you come up to testify. Hand that sheet to the clerk. There are also clipboards in the back of the room if you want to sign it. If you do not wish to testify, just fill one of those out. We will follow the agenda that's posted on the door. The introducer or the representative will come on up. And if you're a proponent or opponent, we'll take those as we go along and anyone in a neutral capacity, which I suppose most everyone will be. All right, when you come up, state your name and spell it for the record. If you have anything to hand out, we need at least about a dozen copies probably. Senator Langemeier has joined us. With that, we will start out the hearing this

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morning. [LR375]

GEORGE KILPATRICK: Thank you, Chairman Janssen, Chairman Friend, my name is George Kilpatrick, counsel of the Revenue Committee, here to introduce LR375. This resolution was introduced, sort of after some discussion between, in our committee or in the Revenue Committee, and we have some common knowledge with Urban Affairs. It turned out there were about three different bills kind of touching on this subject. Two in Revenue, one in Urban Affairs that deals with a more general topic of delinquent taxes, delinquent property taxes, properties that have delinquent property taxes, and what to do with that. What arrived at the Urban Affairs Committee was a bill that would say that instead of the Land Reutilization Commission being created the way it is now, it should be an operation taken over by the city and I'll talk about the Land Reutilization Commission a little bit, in a couple of minutes. The Revenue Committee had a couple of bills, one of which would have elevated demolition liens to be at parity with tax liens, general tax liens, and another of which would have provided a mandatory notice to neighbors before the Land Reutilization Commission sold any property. These all sort of nibble at the edge of a very large and long process that occurs when property taxes are delinquent. The first thing that occurs, the first thing that occurs is on the first Monday or third Monday in March after taxes are delinquent there's something that takes place that's called a tax sale, and tax sale certificates are issued. At that point, any bidder can offer to pay the taxes, the delinquent taxes and interest that's accumulated to that date on some property, and they'll get what's called a tax sale certificate. They pay the county \$10 and all of the governments, at that point, get all of their money that is delinquent, and that essentially becomes a lien on the property that's owned by the holder of this tax sale certificate. It can be redeemed over the next three years. If it doesn't, that owner has the right to either take the title, if it is not redeemed by the owner, by redeemed we mean they essentially pay everything that's delinquent and take the tax sale certificate back so the property can't be seized. Or they can foreclose, what's called foreclosure, in which case the sheriff sells the property to some other third party. Now what happens, sometimes, is that there are no bidders for the tax sale

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certificates and in that case it goes to the county itself, who essentially acts like the owner of the tax sale certificate. In, it is optional for counties, but only in...Douglas County has created one and Otoe and Sarpy County use Douglas County's. But there's something called the Land Reutilization Commission that was created in Douglas County, and instead of the county taking these tax sale certificates, this entity that contains representatives from the school district, the city, and the county, takes the tax sales certificates and if indeed it becomes delinquent and they take ownership, the job of the Land Reutilization Commission is to try and place the property in a more productive manner, trying to recapture the money and get it back into, I guess, the private domain in a fashion that it's productive and contributes taxes in the future. For a number of years that worked reasonably well. In recent years what we discovered in some meetings with Douglas County folks was that fewer and fewer properties will fall into that level. And a couple of things contribute to that. One of which is that the investors, the folks who buy the tax sale certificates, get more interested when general interest rates fall. The interest rate on delinquent taxes is 14 percent by statute, so it can be quite lucrative assuming that the people that are delinquent can redeem the property and make the payments and eventually get current, that's pretty good income. And most of these get taken by investors and so fewer and fewer of these properties fall to the Land Reutilization Commission. And in Douglas County's case, they're having difficulty making ends meet within the commission itself. Supposedly, the properties are to be sold at enough of a profit that they can get them back into productive use, pay for the expenses of the commission, and otherwise not be a burden on the rest of the tax base. Recently, in Douglas County at least, the school district, OPS, the city of Omaha and the county are all contributing about \$25,000 to try and operate the commission and that has become a budgetary difficulty in the Omaha area. Revenue Committee has had a number of bills over the years dealing with tax sale certificates. Among those would be to increase the fee from \$10 to \$20. That's happened a number of times. There have been proposals to change the interest rate, make it more of a floating interest rate as is true with state taxes, so that that difference isn't so great. There was a proposal at one time that Douglas County, or I'm sorry, not Douglas County, Lancaster County thought,

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well, gee, if there's all this money to be made in delinquent taxes maybe the public should be making the money and perhaps we should simply take over all of this delinquent tax process. There was a study about four years ago, and I tried to look at that time at all 50 states and try and figure out how other people were handling delinquent taxes, how other states were handling delinquent taxes. Our system is kind of, in a way, mainstream although not a majority. About a third of states have something similar to what we have, which is done with tax sale certificates. The advantage of a tax sale certificate process is that, as I noted earlier, when that sale occurs, the governments get their money now, and that delinquency is transferred to a third party. And so, the governments are able to budget much closer, are able to budget without assuming a whole lot of delinquency on property taxes, because generally speaking it gets paid, either by the person, the owner of the property or through this process. Other states don't necessarily do that. There is a foreclosure, there is a sale, there's almost always, well, there is always some right to redemption for a period of years where they can get the property back is they can just get current and get the property back. Sometimes there's an administrative process that works a little bit faster but that's unusual and there's still usually at least six months for folks to reclaim the property. Now that's a bit of background. What we had talked about and when, myself and Bill Lock and Bill Stadtwald had a whole days worth of meetings up with Douglas County folks and with the Land Reutilization Commission and so forth, and talked about some of these issues and how they blended together and what might be helpful. And we tried to work on a sort of an alternate way of looking at all of this which would say, instead of allowing the tax sale process to work as it is now, and maybe, I'm sorry, I should have mentioned this earlier. The way the tax sale certificates are sold in Nebraska is on what we call a round robin format. The statute refers to auctions and it talks about selling properties at the tax sale or the least multiple thereof, or something along those lines. Effectively, the way it's worked historically, is that on the day of the sale there are a bunch of people that say, I'm a qualified bidder. I want to buy some of these. And there may be five of them sitting there in the room and there maybe twenty sitting in the room, but what they do as they come up for sale, these buyers are sort of numbered or in

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order, and if you're number one, you get that one. (Laugh) And if you don't want it, you don't have to take it. But if you want it, that's yours. And then on the next property it's seller number two, and on the next one it's number three and it just goes around until they're all gone. Sarpy County last year, or a year ago, had somebody who wanted to buy all of them, a company. They said that the process was not in compliance with the statute. The district judge agreed that it was not in compliance with the statute, but essentially didn't grant a remedy. There was no remedy he could think of anyway except to say that the process is not in compliance with statute. And so Sarpy County at least, and probably all counties, have some interest in resolving the way that this auction is supposed to be conducted. And that's an issue that, I suspect, the Legislature will have to face on some level to do something about how that process works. What we had talked about with the folks in Douglas County when we went and met with them a month or so ago, was a process whereby a city, if a city planning department, in Douglas County's case, the Omaha City-County Planning Department, wanted to, we'll say take the certificates on a certain number of properties that are up for sale, under certain limited conditions. What we developed, which was designed to be restrictive, is to say, first of all, the land has to be in the city, (laugh) because obviously Douglas County delinquent properties could be outside the city of Omaha. But if the land were in the city and it either had a demolition lien pending, or perhaps it was on a list for demolition but it had not yet been performed and there had not yet been such a lien assessed against that property in order to demolish. Or if it were on the same block or nearby, one of those properties who were in one of those conditions, or if it were already part of a redevelopment area, for example, already been declared blight and substandard due to some study because of redevelopment purposes so there's some redevelopment aspect. Under one of those conditions, perhaps the city can take first. And what the city would be able to do at that point is increase the number of properties that fell, would otherwise fall to the Land Reutilization Commission, so that the cost could be spread more. And also, by being able to take ones that are more strategic where the city has an interest because of a demolition lien or a weed control lien or about three kinds that, what I would call nuisance liens, things that the city does for the city's good in order to

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try to keep properties cleaned up. There would be more properties and there would be more potential in the properties that were acquired, both for redevelopment to try and package deals together, maybe get a little better price. And this would do a couple things. It might help with trying to collect the demolition liens to a certain extent or it maybe avoid them in some cases. It would spread the cost better over the public sector in terms of performing this service, and it might enhance the potential to redevelop certain areas. Now that is a proposal. Certainly, it's not the only proposal but that's sort of how we sort of came around to saying, we can maybe address more than one of these problems if we turn this process a little bit on it's head in a fairly restricted manner. So that's the background and that's sort of what we talked about and that's what's in your report. Bill, is there anything I've left out? [LR375]

BILL LOCK: The only other thing that I'd want to mention that we didn't try to document in the report is that although we worked quite a bit with the folks in Douglas County that had brought these issues to the Legislature last year, we were also contacted by people in other areas of the state, specifically in southwest Nebraska in Senator Christensen's district, where for certain small towns and community development organizations, this process of redeeming tax sales certificates and having properties sit in a deteriorating condition, those community development groups are frustrated with the slowness of this process and asked us if the Legislature had a way of speeding up the process because their goal is to...because some of these properties are so badly deteriorated, they're depressing the value of other surrounding properties and the property values in their communities. They would like to get them demolished if they're in that bad a condition and transferred back to private ownership and redeveloped, if possible, as lots. They contacted...I did a phone interview. We didn't go out there and meet with them but there were two or three counties in southwest Nebraska where people are working on this issue and they're frustrated with the slowness of the process of getting tax sales certificate properties back into use, and essentially demolished if they're affecting other property values. So I wanted to pass that along and we've done that additional research as well, and that's all I would add. [LR375]

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GEORGE KILPATRICK: Yeah, and just to follow up, under our current...under our statute, property owners have three years to redeem so after that March date they're already delinquent, of course, by six months at that time. After that March 31, or March date, of which the sales occurred, the property owner has three years by statute to redeem that property so it's still going to sit there off the public...not off the roles because it's privately owned, but essentially out of productivity all of that time under our statute while the property owner retains the right to redeem. That's in the statute. The constitution says two years, so there is a limited amount of time that that could be done to shrink that but, you know, that's another issue because it does take a long time to turn a delinquent tax property into a productive property under a different private owner. [LR375]

SENATOR JANSSEN: Any questions? Don. [LR375]

SENATOR PREISTER: George, you probably said it but I didn't catch it for sure. The Sarpy County court case determined that the round robin type of approach was not able to be done in the future in Sarpy County. That has implications for all the other counties that do that same way, so. [LR375]

GEORGE KILPATRICK: Of course, of course. And as far as we know, that's every county, as far as we know. [LR375]

SENATOR PREISTER: Yeah, that was my understanding, okay. Thank you. [LR375]

SENATOR JANSSEN: Tom. [LR375]

SENATOR WHITE: George, are you proposing that the Land Reutilization Commission be used, they have a first choice as the property list comes out to take them out of the process, then the ones they're not interested are auctioned off, and those that are left, it

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again takes it. So both gets a first selection and then it takes the bottom group. [LR375]

GEORGE KILPATRICK: Yes, with one, I don't want to say modification, one other decision for you to make, I guess, which is the bill LB899 that was introduced would have changed that function to the City Planning Department. And so if you were to go that route, that would be the city that would be taking the first choice and it would fall to them later, perhaps. [LR375]

SENATOR WHITE: Let's assume for a minute that the Land Reutilization takes some property, they hold it for a couple years, they sell it to a redeveloper, at that time would they redistribute the proceeds on a pro-rata share to all the taxing entities that have money involved? [LR375]

GEORGE KILPATRICK: The taxing, yes. I'm going to say, yes. For the most part they've gotten their money when the tax sale certificates were sold but to the extent there remains liability, yes. [LR375]

SENATOR WHITE: So what we are looking at, I mean, just theoretically, is making a rational collection agency that will represent in the proposal of these cities, but it could also apply across county boards, allowing for, first of all, recapture the 14 percent interest in properties that are likely to pay it, and to a more rational approach, to redeveloping distressed properties. [LR375]

GEORGE KILPATRICK: That's the hope. [LR375]

SENATOR WHITE: Thank you. [LR375]

SENATOR JANSSEN: Kent. [LR375]

SENATOR ROBERT: I have one, to follow up on Senator White. Who and what kind of

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process would there be for sale of those properties later? Would it be an auction?
Would it be a set price in your...? [LR375]

GEORGE KILPATRICK: If it were, I suppose it would vary by property would be the answer. If it were part of a sort of a redevelopment of a whole area, it could simply be a proposal by a developer that was accepted by the city. [LR375]

SENATOR ROBERT: Okay. My concern was, what, you know, who then gets to further profit from the sale of that property? Would it be, you got it, it's a \$20,000 property, you sell it to a developer for \$100,000, they sell it for \$1 million, you know, what is...because we gave them the opportunity to do that, where does it lie between the public and the private entity to create a profit out of that property? [LR375]

GEORGE KILPATRICK: I suppose that becomes an issue for the public entity that's doing the selling. I mean, the more that they're able to generate some profit out of an individual sale, the more they're able to reduce the public cost of handling this issue. But I suppose there's no question that when you're doing a redevelopment project, and your going to use a private developer, they're going to want to make money. So I mean, there's going to be a profit on the back end as well. [LR375]

SENATOR ROBERT: Sure. Okay. [LR375]

SENATOR JANSSEN: I would add that Senator Cornett has joined us. Welcome, Senator. Tom. [LR375]

SENATOR WHITE: Following up on Senator Robert's question then, often, for example, the city of Omaha sells property for one dollar looking then to have more structures put in, to either build in for structure, advance it, would there be guidelines or have you thought through guidelines for the land reutilization, and are they to sell it for the highest dollar available to return tax dollars? Are they to sell it for the best part to redevelop the

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community, to develop their tax base, or do we just leave it up to their discretion entirely? [LR375]

GEORGE KILPATRICK: We haven't thought about those sorts of conditions. The current statute says that the Land Reutilization authority is to get it back as quickly as possible and at the highest price they can get. [LR375]

SENATOR WHITE: So just get it back into the market? [LR375]

GEORGE KILPATRICK: Sure. But if again, if you wanted it done by City Planning Department there may be other goals to be achieved. [LR375]

SENATOR WHITE: And one other question while I'm on this. Kent said an isolated parcel can be worth almost nothing but assembled into a block through this mechanism maybe can become cumulatively quite valuable. It seems to me that if we do give this authority to some entity, we need to give them guidance on what the purposes should be other than just maximizing profit, perhaps. Have we talked to the City Planning in the other counties about that? [LR375]

GEORGE KILPATRICK: No, although you have the Urban Development director from the city of Lincoln here to, I think, talk about that issue. [LR375]

SENATOR WHITE: I know a lot of the small towns have real problems with this as well. So it's not just an Omaha-Lincoln issue. [LR375]

GEORGE KILPATRICK: Exactly. [LR375]

SENATOR JANSSEN: Any other questions? Senator Burling. [LR375]

SENATOR BURLING: Thank you. Do I understand it right that Douglas County is the

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only county that has the Land Reutilization Commission operating? [LR375]

GEORGE KILPATRICK: They're the only ones that have one operating. Now they, by contract, do the same service for Otoe and Sarpy County. So those three kind of use this process, but there's really only one commission. [LR375]

SENATOR BURLING: Well, we've kind of uncovered a problem around the state apparently with this issue. And have other counties indicated an interest in going that route or do they need legislation for a simpler method or what? [LR375]

GEORGE KILPATRICK: In the other counties that I've, where I did talk to people which are confined to southwest Nebraska, their concern was the speed of the process, the slowness of the process. And if it could be speeded up, I think they've tried to work with their county treasurer's offices and county attorneys to speed up the process. There are developed organizations. I don't know whether...they're so small in the volume of properties they might deal with, if they were to try to address it through some sort of public agency, it would probably had to be almost regional in nature in order to generate the volume of activity and professional staffing they'd want. They may be interested in that and it's a question that we could pose to them, that if they're interested in expanding the use of a vehicle that would operate on a more than one county basis. In some of the counties where I interviewed people over the telephone, there were fewer than 15 or 20 properties that I question. And it's not a lot of volume of properties to be dealing with to handle with a professionalized approach. So you might have to do it on a multi-county basis. It's possible that they'd be interested. If they wanted to do it, I think our statutes on inter local agreements would probably allow them to develop a multi-county approach to it or a multi-city approach to it if they wanted. They wouldn't necessarily have to use the statutes on the Land Reutilization Commission, which...they're not certainly confined to counties of Douglas' size either by statute, I don't believe. I know they're not but if you don't have one, this operation still takes place. It just takes place...the county is supposed to do it. The ability creates a, sort of, more

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professional operation of this process was authorized, I don't know how long. It's been around a long time, probably 40 years. And Douglas County wanted to do it and they had a large enough volume that they thought they could pay professional staff to try and do this better, more efficiently, more effectively. They asked for an authorization and the Legislature granted it. But things have changed over those years, and there are fewer and fewer properties that end up falling to the bottom where the Land Reutilization Commission gets it. [LR375]

SENATOR JANSSEN: Kent. [LR375]

SENATOR ROBERT: Sorry guys, you keep stemming ideas in my head. In other counties, other than Douglas and perhaps Lancaster, I assume the process for sale has to be put into place by a county attorney to force a tax sale on a property. [LR375]

GEORGE KILPATRICK: No. Well, a tax...you used the term tax sale. A tax sale is something that happens automatically and the treasurer conducts it. [LR375]

SENATOR ROBERT: Okay. Just for example, in counties that have many properties with overlaying taxes, it seems to me that either the treasurer or the attorneys don't take the time or have the time and quite know the process to go through and take care of those properties. I think some of them sit, to my knowledge, for many, many years and taxes never paid on them but there is never a sale made upon them as well. Should there be or would this type of commission have the power to go ahead and further that process? [LR375]

GEORGE KILPATRICK: The statute says that all properties upon which there are delinquent taxes shall be sold. That doesn't mean there's buyers and particularly in smaller places and if you can see a parcel that has no apparent owner and they disappeared or whatever, then those are the ones that tend not to be sold because the only...because generally, in a lot of places, the only folks who might buy would be

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investors that want the interest and in order to get that, there's going to have to be a property owner who is going to pay it, so. [LR375]

SENATOR ROBERT: So the reason there may not be a sale or a buyer is because the property is undesirable... [LR375]

GEORGE KILPATRICK: Yes. [LR375]

SENATOR ROBERT: ...there's more debt upon it than would be valuable. Could we or why can't...maybe, there's no process. Could there be some type of process put in place where it becomes public land at that point? [LR375]

GEORGE KILPATRICK: The constitution, again, allows two years to redeem after that sale or failure of sale. Taxes can't be cancelled for, I'm going to say, 20 years. There's a constitutional restriction that I can't exactly remember. But there are going to be some title issues so long as there are liens hanging around for taxes. Can it be done? Of course, it can be done, but there are some issues in that regard to be aware of. [LR375]

SENATOR ROBERT: Well, the reason I ask is that, I believe, that is the problem. Some of these smaller towns, which I'm familiar with, is there is no owner, the owner can't be found. There is no buyer because of the depressed property value and the possible debt upon it for special assessments in a development area or razing the property that's on it because it's in such bad shape. But the only process at that point is to condemn it and go through that type of process and take it by public domain, which nobody really seems to want to go through. [LR375]

GEORGE KILPATRICK: Yeah. [LR375]

SENATOR ROBERT: Okay. [LR375]

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GEORGE KILPATRICK: I don't have any answer but, yes, that is a problem. It is what I heard when I did the telephone interviews that I mentioned. [LR375]

SENATOR ROBERT: Okay. [LR375]

SENATOR JANSSEN: Any other questions? Tom. [LR375]

SENATOR WHITE: I think we'd would want to be careful about automatic, Senator Rogert. Because, for example, some of these properties aren't desirable because they have environmental pollutants. And if the public takes title, then under federal laws we're obligated to clean them up. And so I don't think we'd want it automatic, old gas stations, some of those other kinds of properties, you just don't want to own. [LR375]

SENATOR ROBERT: But an option, maybe, could be considered. [LR375]

SENATOR WHITE: Sure. [LR375]

SENATOR ROBERT: Okay. [LR375]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, fellows. We'll take proponents first. Anyone wishing to testify? [LR375]

DAVE SCHREINER: Good morning. I'm Dave Schreiner, the director of the Douglas County Land Reutilization Commission in the Omaha Metro area. [LR375]

SENATOR JANSSEN: Excuse me, what was that name again? [LR375]

DAVE SCHREINER: (Exhibit 1) Dave Schreiner, S-c-h-r-e-i-n-e-r, the director of the Land Reutilization Commission you've been referring to. A report is being passed out to you, with also a future financial projection on the back of that. I'll keep my comments

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brief. The two gentlemen before me have done an excellent job of presenting the situation. To answer one question that came up and I'll try to answer a couple that I heard. Senator White, when there is a property currently that is in a redevelopment area that the City Planning board has approved, and then the city council has approved, and then the LRC board has approved, and right now for example, this will make sense to some of you but not all of you that are familiar with Omaha, there's a large redevelopment area that borders on Cuming on the south, 52nd on the west, the Sorensen Parkway on the north, and 16th Street on the east. I'm not sure how many square miles or blocks it is, but it's very large, as you can count by blocks. Any property that comes into the LRC inventory that's within those boundaries, and there are some other ones, there's one in south Omaha or a couple in south...any property that comes into the inventory in that area, the city does have first right of refusal on. And when they, by the current rules that are set up, the city used to pay a dollar or pay nothing and the closing costs. Now they pay 20 percent of the assessed value with a minimum of a \$50 fee and a maximum of \$250 fee, plus they pay \$106 in closing costs, which are just out-of-pocket administrative costs for filing the deed, performing the title search, and the appraisal that was usually done on the property, not always when the city is involved. These same guidelines go for nonprofits such as Habitat for Humanity, is the big one we work with. They pay the same price. [LR375]

SENATOR JANSSEN: Tom. [LR375]

SENATOR WHITE: Is that for properties that come into the LRC or all properties go on the tax sale list? [LR375]

DAVE SCHREINER: I'm just referring to the LRC. [LR375]

SENATOR WHITE: Yeah, but that kind of misses the point. The point is, you get a very small percentage of the properties that go through the process. The question is whether we elevate your position to being able to cherry-pick first properties out. [LR375]

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DAVE SCHREINER: Right. That's a very good point. [LR375]

SENATOR WHITE: Thank you. [LR375]

DAVE SCHREINER: I'm sure that the city of Omaha would be in favor of that. [LR375]

SENATOR JANSSEN: Other questions? Or were you finished with your...? [LR375]

DAVE SCHREINER: Well, just one more brief comment in your report. [LR375]

SENATOR JANSSEN: Yeah, go ahead. [LR375]

DAVE SCHREINER: As the gentleman stated that the financial well-being the LRC has, has gone down in recent years, as you will see in these charts in that report kind of stated the picture the best. But one thing to kind of highlight, we're seeking, obviously, to get some help, this agency, as it needs help right now. I don't think we're just, as an agency, sitting here with our hands out through...since 1989, this agency has returned approximately \$3.5 million back to the Douglas County coffers to be disbursed to the different entities, city, county, schools, the Metropolitan Community College, all those, MAT busing, all those entities that have a percentage of that payout there. So I guess we're just looking for a little return favor here for what we've done, the good we've done through the years. So I'll entertain any questions you have. [LR375]

SENATOR JANSSEN: Kent. [LR375]

SENATOR ROBERT: Mr. Schreiner, looking at the chart on the third page, what's the reason for the early large activity and just the massive decline in the last ten years? [LR375]

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DAVE SCHREINER: You can even go to the previous page, Senator, on page 2 of the top chart shows the inventory in 1990 was approximately 3,000 properties. As I remember that's about when I started with the commission. We had 180 houses, 2,800 some lots. Now, as I just did a count yesterday, and I don't see that in front of me, there's approximately 60 lots in the inventory now and one house. So we've done a good job through the years. We've always joked about working ourselves out of a job. It's gone from three staff people to two to myself, as a one person office. [LR375]

SENATOR ROBERT: Are there, in your opinion, more properties outside of your jurisdiction that could be taken advantage of to increase that inventory again? [LR375]

DAVE SCHREINER: In other counties, you mean? [LR375]

SENATOR ROBERT: You extend to all borders of all the county? [LR375]

DAVE SCHREINER: Of Douglas County, yes. [LR375]

SENATOR ROBERT: Okay. All right. [LR375]

SENATOR JANSSEN: Anyone else? [LR375]

DAVE SCHREINER: I guess to piggyback on a question that was brought up earlier, my predecessor in the mid to late '90s contacted all, I believe, it's 99 counties in the state to see if they had interest in starting a Land Reutilization Commission. I'll call it LRC. We heard back from four other counties. We did start LRC as in Thurston, Burt, Otoe and Sarpy Counties. Thurston and Burt, for lack of a better word, kind of fizzled out. [LR375]

SENATOR ROBERT: My counties. [LR375]

DAVE SCHREINER: I thought that was you. You were on my board, weren't you?

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[LR375]

SENATOR ROBERT: No. That's my fault, I killed them, no. [LR375]

DAVE SCHREINER: No, but you look like somebody that was on the board, I think. I can't remember his name. Good looking guy though. (Laughter) [LR375]

SENATOR JANSSEN: Sorry, that's not the case this time. (Laughter) [LR375]

DAVE SCHREINER: But so now all we have left is Sarpy and Otoe and quite frankly, there's no salable property in Sarpy right now. There's two pieces, one I can't get an answer. I'm just 99 percent sure it's been redeemed by the next door neighbor, paid off. The other one is right in the middle of a city park. I'm working with somebody in the Sarpy County on that one too to get that to them because they need to have that. It's a little triangle. [LR375]

SENATOR JANSSEN: So in other words, you're just kind of working yourself out of a job, right? [LR375]

DAVE SCHREINER: That's what we've always joked about through the years, and yes. [LR375]

SENATOR JANSSEN: Tom. [LR375]

SENATOR WHITE: The chart shows the number of properties under the LRC's control but not the number of properties going up for sale through the tax certificate process, correct? [LR375]

DAVE SCHREINER: That's correct. [LR375]

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SENATOR WHITE: Is the volume of those properties declining or is what's happening that the 14 percent and the prospect of owning that property is more attractive so just fewer and fewer are falling down to you guys? [LR375]

DAVE SCHREINER: Right. I think the prospect, obviously, the 14 percent interest. That's more of a question for the county treasurers office in Douglas County. I'll speak for, a little bit of them. From what I understand, the volume is fairly similar to what it used to be. Ninety-nine point some percent, is what I've heard, of the bidders at tax lien sales don't want the property. They want the interest. They don't want to own land. They're just investing their money. Fourteen percent interest is amazing nowadays. So that's the way I understand that, if that answers your question. [LR375]

SENATOR WHITE: Thank you. [LR375]

SENATOR JANSSEN: Anyone else? I don't see anybody. Thank you. [LR375]

DAVE SCHREINER: Okay. You can call me back if you'd like here. [LR375]

SENATOR JANSSEN: All right. Dave. [LR375]

DAVID LANDIS: Good morning, members of the Revenue and Urban Affairs Committees, David Landis, Urban Development Department director with the city of Lincoln. In an earlier incarnation I was before the Urban Affairs Committee when this was LB899. Testified in favor of it at that point on behalf of the city of Lincoln and want to reiterate that testimony, but also comment on some of the materials in your briefing paper because there's some pretty darn good ideas in there. First, you might remember what the city of Lincoln asked for when we came before the Urban Affairs Committee. We agree with the idea of moving from the land reutilization county committee to essentially the Omaha planning department, in that we would agree that the principle there of moving from the county agency to the city agency is actually the right place to

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put what is essentially an urban development tool. The equivalent for the city of Lincoln would be, if we had a land reutilization committee at the county level, to move it into our urban development department. But we don't have a land reutilization committee. We would ask to have the bill amended because we would need authority to have that land reutilization function but we would like it placed consistent with what's being done in LB899, which is to move it into a city agency, and that city agency for the city of Lincoln should be urban development department. But if you just simply gave it to the city to disburse to its appropriate function at the mayor's direction or the city council's direction, that would be fine. If you wanted to specify one agency or the other, I would suggest that it be the Urban Development Department because the function that that city agency will play is the outgrowth of this whole new public, private partnership way of doing business. Cities are acting in a far more aggressive capacity in priming the pump of development activities. They help with respect to the use of tax increment financing. They help with site acquisition. They help with site demolition. They do it on behalf of projects they don't own that the private sector owns, but because we're in a bidding war for economic development activities, what cities are prepared to do to help developers becomes a kind of a way of developer's deciding where they're going to do their growth. And so cities want to be helpful. They want to reach out and assist developers in clearing blighted land and creating office buildings or retail or in the case of, let's say an older neighborhood in Lincoln, condominiums and home ownership investments. So it would be wise, I think, to move from the county to the city. We agree with the idea of LB899 for Omaha. We think it should apply to Lincoln. We think it should go to a city department. We'd nominate the Urban Development Department, but if you simply gave it to the city to allocate that function, we would like to have that happen. There's a reason why you'd would want land in the hands of a city temporarily, not permanently, but temporarily. One of the reasons is that the cities likely to think of it in terms of it's strategic long-term development as an incentive for growth to occur in certain ways by being able to assist. And one of the things that we can do that doesn't occur in the private sector, is that we sell land at reasonable prices. Today, because of the Antelope Valley growth in the city of Lincoln, when people want to develop a land, build an office

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building, and they go into a core area of the city, they'll take an older block that's got some nice structures but some dilapidated structures, an area that would be good for redevelopment. They'll find 12 or 15 landowners on that block. It's an older core neighborhood. They're probably single family houses and there's a lot of pieces of property in one block. Well, the developer goes out and starts to assemble the land and pretty soon they've got eight of those twelve locations but the word's around in the neighborhood, and there are four left, and then three, and then two, and then one. And what we're finding is that people are deciding that they're going to retire on their land sales in these areas where growth is coming, because they know the growth is coming and they want to be a holdout. And when they are a holdout, they are at three and four and five times assessed value and three or four times appraised value. And the development succeeds if you can overcome that holdout position by whoever the last remaining pieces are. Here's what we've found. When one or two of those pieces are city owned, and we can contribute them towards the development but get a different kind of value in return than let's say, purchase price, we can make it a livable proposition even though those holdouts are going to be a part of the package, even though the developer is going to have pay absolutely top dollar for the private sector's land. And the reason we can do that is because we're part of the mix. Now we're not going to give the land away free for a dollar, although there's some municipal administrations who might. It's certainly been heard that you'd sell it for a buck. But in the city of Lincoln what we do now...let me tell you a couple of agreements that we've made recently. We've agreed to sell land at a very low price but because the people that we're selling it to say, we have a conference room. This neighborhood has no area in it for the neighborhood to meet. We will agree that you'll be able to have access for public meetings in our private sector building on an ongoing basis to create a resource for the neighborhood. That's value for city. That's good city building. It's good for a neighborhood. That would be a form of value. Got another one that we did recently where we said, look, we'll sell the land to you and we don't have to charge top dollar, we will take off the price of the land, your ability to let us use your parking lot on the weekends and the nights when your office folks are all gone. But we've got a park in the

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area and that park is going to have public need and we don't want to build a parking structure close to the park. If you'd let us use your parking lot on evenings and weekends, we could take money off the purchase price for the land that's going to make your project work. That's good city building. That gets an efficient use out of the land and it allows us to with that developer to say, look, you give us value different than money but it's still value. We can take the purchase price off the land we own as we then make it part of a building block of this larger development. When the city has possession or ownership of a couple of strategic pieces of property, they can be a very positive catalyst for development to occur. And I'm not talking about giveaways. I'm talking about reasonable exchanges of value. When the city of Lincoln sells, it sells at fair market value. It sells at fair market value. However, to get fair market value, it doesn't have to be dollars. It can be parking. It can be access to public assets. It can be some other form of value that we get in exchange. The fact that we sell at fair market value, when there's lots of people that won't sell at fair market value, they'll sell at three times fair market value. It means that we have something to contribute to the development process. It's hard for other people to do. It's not bad to put us in that position which is why, number one, that piece on the land reutilization pieces, a wise piece. We hope that you give that authority on the same, you know, on a similar basis to the city of Lincoln. But on page 4 and 5 of your memo is a suggested solution by your staff in which I think they use the phrase cherry-picking, fair enough. But to have as a right of first refusal a city's ability to use the foreclosure on land for which tax is not being paid, could have put the city in a primary position to act in this strategic fashion. Your investors who bought the tax certificate sales are well treated. They are very well treated. They're getting essentially a guaranteed 14 percent recovery. You can't find a better deal for an investor than that. So we rewarded the investor very handsomely. Now we're talking about where not only do they get a 14 percent return, but they also might be getting land at bargain basement prices. We've done well by the investor already and that point it seems to me that injecting the city for legitimate public purposes, a right of first refusal, would be a wise idea. I think the list that you have in there is a good list. I'll tell you the one that I care most about and it's on the area of d.

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The property has been determined to be blighted and substandard and is therefore within a redevelopment district. Those are likely to be core neighborhood areas where the market place is not working very well, and to jump-start the market with some city ownership that it can encourage and entice people in. And even if we can't sell it, I'll tell you the city is a darn good person to have in this capacity. Let me give you an example. Got an unbuildable lot we got a number of years ago. It came to us because of a tax foreclosure. None of the adjoining landholders want to buy the land and it's a dead-end piece of property. Okay. Imagine that it had gone to the tax certificate purchaser. It would be unmaintained. It wouldn't be mowed. I can't imagine. You know, it would be the absolute minimum. It's unbuildable and there isn't a way to make money off of it. How much money is a private developer going to use for that piece of land. They're not going to do it much. The city does maintain it, but what the city does. The Urban Development Department goes out and finds lands like that and said, there's no other use, what about a community garden. Is there a way to make this a vegetable garden for the immigrant population in the area to grow vegetables and to feed themselves on city owned land. If we can't get a buyer, and by the way we'll sell it, what if we put it into a city building function, a development function. There's a reason to have land in the ownership of a city because it's prime to maintain to make the city as attractive as possible and to jump-start the development process and when it can't, it still is looking for unique ways of using land in a positive urban context. I support the idea of LB899. I hope it will be extended to the city of Lincoln. I also suggest to you that your position on page 4 in which the city is given a position to come in and use this process, particularly in blighted and substandard neighborhoods as a potential development tool, is, I think, a wise, urban strategy for this state and I recommend it to you. Thank you. [LR375]

SENATOR JANSSEN: Any questions? Ron. [LR375]

SENATOR RAIKES: This community vegetable garden competing with local farmers, I...(Laughter) [LR375]

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DAVID LANDIS: Can you believe that, I know. (Laughter) [LR375]

SENATOR RAIKES: Your interest is, if I understand, being able to phrase cherry-pick, properties come up for tax sales certificates, at least in certain cases, you want the city to be able to have first right of refusal. [LR375]

DAVID LANDIS: That is one of two or three goals, but that would be true. Let me tell you that one of the things that I'd like to do is if there is a land reutilization function, which is wise to me, in a context of an urban setting, it's, I think, better that it be in the city than the county. And the reason is, cities are more likely, because of their ability to use tax increment financing, they're more likely to be in the public private partnership situation than a county. Not that counties don't want growth, they do. But they don't wind up oftentimes getting drawn into the same way and their tool box is a little different. So I don't want to throw away the idea of moving the function from a county level to a city level, at least with respect to the primary class city, because I think that function is appropriate. I think we know our city better and we can use the development process more successfully than if it was lodged at the county function, which is where state law would now place that. Don't want to throw that value away. But I will say, I think, yes, I would agree to the principle that you're suggesting. It just doesn't exhaust my requests of the committee. [LR375]

SENATOR RAIKES: Okay, a detail. If you are allowed to cherry-pick, then you do, in fact, at the time pay the taxes and the money then is distributed to all the entities. [LR375]

DAVID LANDIS: We would be, wind-up being with the tax, that's right. We'd pay that money in the way this is now allowed. [LR375]

SENATOR RAIKES: You would basically be a tax sale investor and with all the obligations and rights of the taxpayer. [LR375]

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DAVID LANDIS: We would be paying it off, that's right. What we'd do is, we would do at the far end what this committee was asked to give cities at the front end several years ago and the committee rejected. But it could be either done by redeeming the certificate. You might, if you wanted to give us just the power for the land to come to us, we'd accept that. We would accept it under the conditions you allowed us to exercise that right of first refusal. And it would be of value to us to do that, because I think we're going to work very hard to leverage that land into affirmative development. And development is going to have two benefits. One of the benefits is it's going to replace blighted area with growth and new investment, which will mean, you'll cut back on the externalities of a blighted piece of property to the property around it. If you get a new development it has a tendency to raise values around it and to provoke development around it. That's one virtue. That's why you'd want to have the city provoke development in that way. And the second way that you'd do that is, the city is interested in getting that back on the tax roles. And back on the tax roles not at it's lowest blighted valuation, but at the higher value of post development values, and that winds up being a growth for the entire city. And by the way, the schools and the counties, if you can get that growth to occur, and cities want to leverage that growth in a public private partnership. [LR375]

SENATOR JANSSEN: Kent. [LR375]

SENATOR ROBERT: David, in this situation, is there a need or would there be a need to statutorily cap the percentage of property owned by a public entity in these types of situations in a given area? [LR375]

DAVID LANDIS: Well, there would be, you have capped, if you were looking for an analogy at the amount of land that a city of a certain size can blight for the purpose of using tax increment financing. We've said 35 percent of the city. Now for villages, that's not true. There is no limitation there. So there are some places where you've put some limitations. Look, we'd just be darn grateful for the power to do this. If you put some

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strings on it, we'd live with the strings. But I will tell you this, cities are hungry for tools in which they can participate in the development process. And most of all, if they can jump start it, to entice a developer in for the purpose of increasing the value of the land, and to move it towards highest and best use when it's sitting there as blighted and the market isn't resolving the outcome of that land. [LR375]

SENATOR ROBERT: Thanks. [LR375]

SENATOR JANSSEN: Any other questions? David, I have one. You had mentioned the fact that the city would work out an agreement with a company that had a large parking garage, you know. What happens if that changes hands? That out the window then? [LR375]

DAVID LANDIS: No. When we do a redevelopment agreement, for which this by the way would be the case, those obligations would run the life of the redevelopment agreement and that would be probably 15 years. And it would apply to whatever the successor purchaser would be, and if we decided by agreement with the developer because we'd have the ability to do that, that it was something that ran for longer than that, we can make it for longer than 15 years. In the redevelopment process when we're doing, let's say, a redevelopment agreement with the developer, we are essentially doing a contract. And that contract can be binding on both of us and we can put in there a term that says that, you agree to this length of time and if you sell the property, you agree now that that sale will have to have in it the continuation of these rights. Just like you could do with a piece of property if you were doing that and it ran with the property. In other words, we undoubtedly would ask for the 15 years because that's the length of time an agreement would be. But we could ask it for longer than that and we could have it run with the property. So we have the ability to control this fate. [LR375]

SENATOR JANSSEN: Good. Okay. Thank you. [LR375]

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DAVE LANDIS: Thank you. [LR375]

JACK CHELOHA: Good morning, Senator Janssen, members of the joint committee, my name is Jack Cheloha, last name's spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I'd like to testify in support and thank both committees for having this study. Initially, I'd like to address the LRC. As you've heard, in Douglas County were the only county and city and school district that has this entity or this creature. The way that LB899 was incubated, if you will, was our city council member, Frank Brown, who I'm, by the way, testifying on behalf of because he has a regular city council meeting today and couldn't be here, so he apologizes. He is our city of Omaha rep on the LRC. We have a rep from Omaha public schools and then a rep from Douglas County as well. And as you've heard earlier, basically because Dave and his staff, and now it's down to just Dave, have been so efficient, we've essentially created this funnel, if you will, where we don't have any, or not very many properties left, for the LRC to deal with. And so Frank Brown, as a member of this commission, you know, thought through it. He saw the fact that we were having to actually subsidize the LRC now. Each of the governing entities had to contribute \$25,000 just for the operation and the staff salary, etcetera. So he thought, well, why don't we give this to the largest city in the county, which would be the city of Omaha, and have their planning department take in this operation and ultimately handle this and continue to operate, if you will, as they do, with the primary mission to get these lands back on the private tax roles, if you will. So that way we could bring the revenue back in to all of those taxing entities within our county system. And so the bill was heard in the Urban Affairs Committee, and then we had another bill by Senator Pahls that was referenced to the Revenue Committee having to do with the amount of time of notice given that came to this committee, and then in the meantime, we had an issue regarding a special assessment liens. So that's why we're here today, if I somewhat set the table. In terms of Lincoln support, I mean, we welcome that. We thank former Senator Landis for that. We think that's a great idea. As you heard, on a limited basis in Douglas County, in particular, in the redevelopment district, we've tried to pick up some of these properties that fall to the LRC in terms of, you know, banking

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them and trying to redevelop them. Most of the properties, it's my understanding, that fall down either for tax foreclosure or for the LRC redevelopment, happen to fall in the east side of Omaha, the poor part of town, if you will. That probably explains the makeup of the LRC membership. Frank Brown's district is similar in terms of how it's drawn to your colleague, Senator Chambers, in terms of what part of the state he represents, and that part is northeast Omaha, just right north of downtown. Most of these properties, I just have to caution you just a little bit, most of these properties that fall down to the LRC though, are typically residential properties and they're very irregular sized lots. They're very small, if you will, and so in order to, you know, come up with more of a grand scope, I think it's wise to give it to the city that has an urban development department. We have a development department. This would give us some other tools, if you will, to help work and redevelop those areas of the city that now are blighted or substandard or declared, you know, for other economic purposes that this Legislature has authorized. It would just, you know, keep moving us forward, if you will. Yet at the same time, we, as this was being discussed last session, we did have a little bit of a concern in terms of taking ownership because we thought maybe that would be contrary to the mission of the LRC. But yet at the same time, after hearing the eloquence, Davis Landis, you know, I think that fits well with our mode and dedication of what we need to do on redevelopment. Yet at the same time, you know, we have to be mindful of our budget and so we still have a question and we'd have to study it further. Do we want to be obligated on the front end, you know, for paying the taxes now in order to acquire those? I think maybe that's something that we'd have to look at and discuss further. On one hand, I think it's a great idea and we'd be better set and the right group, if you will, to try and redevelop these. But yet at the same time, what's the budget amount and how much could we afford to do. So it could be, you know, a pilot program that starts. So that's the concern that we have. And then in terms of talking about the special assessment liens, our city attorney is here and he'll talk about that directly. But I just wanted to, at this point, handle the LRC part of this discussion and testify on behalf of our elected city councilman who sits on the LRC board, so. I'll try and answer any questions you might have. [LR375]

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SENATOR JANSSEN: Tom. [LR375]

SENATOR WHITE: Mr. Cheloha, in my district we have a number of these properties. They become enormous drains on the neighborhoods. They're frequently used as crackhouses. They are subject to arson, the rodents, rats, yards are not maintained. If we give the city this additional authority to take these properties, what kind of assurance do we have that the city of Omaha is going to maintain them in a way that won't hurt the rest of the city. Because I will tell you, right now the city is not doing a particularly good job because of budgetary constraints on maintaining abandoned properties, mowing for weeds, and things like that. [LR375]

JACK CHELOHA: Right. That's a good question, Senator, and I appreciate it and it does play into the financial aspects, and I'm glad that you mentioned that. The city of Omaha in terms of condemning property, for demolition, or placing liens on them for weeds and litter and things like that, it's great. The number is substantial. I don't have that in front of me right now, but we have a serious backlog. We spend millions of dollars a year on demolition, but yet we have a list of, I think, of the thousands that are still on that list that could be demolished. In terms of taking ownership of it, you know, we'd have to do, you know,...all I can do is assure you that we'd try to do the best we could. I mean, and so that is the concern and I understand that because we try to, you know, limit our budget in terms of property taxes like everybody else does, so. [LR375]

SENATOR WHITE: Well, now, if you don't pay for the property, don't you have an inherent conflict of interest? When the city takes this property they may want to hold on to it for 20 years and then turn it over, as Senator Landis had suggested, for a lower than price than they could otherwise get because you'll get to use it for a parking lot. Now that may not satisfy the school board which wants money or the county which wants money. So if you pay the money, I can understand you no longer have a conflict there. You're taking care of them under the law. But if you don't, doesn't the city want it's

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cake and eat it too? They want control of the property, they don't want to have to answer to the other taxing entities, and they don't want to have to pay them. [LR375]

JACK CHELOHA: The way I...I thank you for that question as well. The way I would answer that one, Senator White, would be, first of all, let's look at the TIF property, if you will. This Legislature and the voters thought that the cities had the ability to declare property, you know, blighted and substandard in the sense that would qualify for TIF. And so in order to redevelop those parts of our community that are run down, the city is able to declare that. We're able to bankroll, if you will, the property taxes that would have been paid in order to pay for that development. And hopefully, members of this committee, you know, think that's been successful, and with that we've tried to extend it to this new program that might be proposed by the staff of this committee. [LR375]

SENATOR WHITE: Let me get this straight. We're to take comfort in TIF and I do agree TIF is similar to that. For example, it was fairly controversial when the city of Omaha found that Warren Buffet's neighborhood is blighted and substandard. TIF's not been a program without serious critics about whether or not it has been responsibly used. [LR375]

JACK CHELOHA: Right. And I understand that and granted, when those districts were drawn, it may have extended too far, Senator, and so rightfully so the public expressed their displeasure and it was redrawn, if you will. So you know, that was somewhat new at the time and we've learned from there and I think that we could do this. So that's why we're cautious in the sense of, do we want the city to take over ownership or do we want them just to be able to come over and, if you will, be a manager type person. [LR375]

SENATOR WHITE: Thank you. [LR375]

SENATOR JANSSEN: Any other questions? I don't see any. Thank you. [LR375]

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JACK CHELOHA: Thank you. [LR375]

SENATOR JANSSEN: Any other testifiers? [LR375]

PAUL KRATZ: Good morning, my name is Paul Kratz, it's K-r-a-t-z. I'm the city attorney for the city of Omaha. I want to talk about two issues. I just want to briefly touch upon this profit question that came up earlier and then I want to get into, specifically, the special assessment issue that I discussed last spring or last fall. First of all, in the city of Omaha, any land that we get that comes through the LRC is always residential, almost always residential property. And what we do, we take that, accumulate a number of those pieces of residential properties in the poor parts of the neighborhood, and then we will package that and sell it to a nonprofit group like Holy Name Housing, renewed community development, and along with that, we'll put in community development block grant funds, along with some home loan funds, and allow these entities to build homes in depressed areas of town. That's our main focus of the property we get from the LRC. And if this flips over to the city, I would envision the exact same thing happening. We have not and I can't imagine that we would use the LRC for commercial development. We have other methods of doing that, and it doesn't seem to make sense to use the LRC for that. Secondly, I guess, the specific point I wanted to get into and that's with respect to special assessments. This is kind of a narrow point, but it does impact the city from a financial standpoint. Prior to a couple of years ago, the courts have been interpreting special assessments to run with the land. A couple of years ago the Nebraska Supreme Court revisited the language of the statute and concluded it does not run with the land, so it can then be foreclosed out. Now why that is important is because, as these lands go through a tax sale, as we've been discussing, there's three years to redeem. Usually, within the three years about 75 percent of those properties are redeemed, but that leaves another 25 percent that are not, that eventually wind up going to foreclosure. It's during that three year period of time where the property is neglected, the houses become run down, that the city will come in and especially

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assess to cut the weeds and, in some cases, demolish the home. And so we then put a lien on that property. And at that point we have usually added some value to the property by demolishing the home or by, again, fixing up the property. The Supreme Court said now, as a result of their reinterpretation, that when the person or the investor that buys the tax certificate, then forecloses, that our lien, our special assessment, gets wiped out. As result, the city is losing money. We have a revolving program where we use, set aside some funds, use it to demolish homes, pay for weeds and litter, and it gets replenished by the special assessment liens and collection on those liens. So by allowing it to be foreclosed, we are losing money. And that's the specific point that we addressed in the session earlier and we'd ask you to address it again in the next session. That's it. I'll respond to questions. [LR375]

SENATOR JANSSEN: Tom. [LR375]

SENATOR WHITE: This is a technical property law question. The Supreme Court called it, not running with the land. [LR375]

PAUL KRATZ: That's correct. [LR375]

SENATOR WHITE: But the solution, rather than making it running with the land, which could be a permanent and really irrevocable impediment on title, wouldn't it also satisfy the city simply to say special assessments have a higher priority than property taxes? [LR375]

PAUL KRATZ: I think that would probably work too. [LR375]

SENATOR WHITE: And then the city would have the ability to foreclose on if those aren't paid off, they could foreclose down. [LR375]

PAUL KRATZ: But then you run into the issue, I guess, what about OPS, what about

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school districts, what about the county? [LR375]

SENATOR WHITE: Well, I mean.... [LR375]

PAUL KRATZ: Does that create an issue there? You know, I don't know. [LR375]

SENATOR WHITE: Well, it's the same thing. The difference is that one can be foreclosed down. It takes the top off. Basically, what you would say, if you run with the land, you can't get rid of them. [LR375]

PAUL KRATZ: Unless they're paid. [LR375]

SENATOR WHITE: Unless they're paid. [LR375]

PAUL KRATZ: Right. [LR375]

SENATOR WHITE: But if you have higher priority, can you foreclose down on them, not get them, and then clear title? [LR375]

PAUL KRATZ: What we're talking about is these assessments that come in after the tax sale. [LR375]

SENATOR WHITE: I understand that but my concern is not so much that you shouldn't be paid, I agree. What I want to do is make sure that we're going to make that property easy to resell because we can clear title. That we don't end up, inadvertently, with a bunch of property that have clouds on the title we can't get rid of. Have you worked with, for example, a title insurance companies and others to determine what language would work so that we can make these salable again? [LR375]

PAUL KRATZ: Remember that...I think they do. If they have that special assessment it

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doesn't get paid off, it goes down to the LRC, and will eventually come to the city, and that's when the city packages those lots for further development for homes. [LR375]

SENATOR WHITE: The city or whoever did. For example, what if the weed control authority does it? [LR375]

PAUL KRATZ: That's the city. [LR375]

SENATOR WHITE: Yeah, in Omaha, it is. [LR375]

PAUL KRATZ: In Omaha, it is, yeah. [LR375]

SENATOR WHITE: Have you worked with title insurance companies and developers to make sure that what you propose will not screw up title long-term? [LR375]

PAUL KRATZ: We haven't sat down and talked with them specifically. But let me mention, this is the way it was prior to two years ago, prior to the Supreme Court reinterpretation. [LR375]

SENATOR WHITE: So you would have a statutorily return it to where it was? [LR375]

PAUL KRATZ: That's what we're asking for, yes. We have proposed some language to do that, that the Supreme Court actually suggested in its opinion. [LR375]

SENATOR WHITE: Okay. [LR375]

SENATOR JANSSEN: Any other questions? I don't see any. Thank you. [LR375]

PAUL KRATZ: Thank you. [LR375]

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SENATOR JANSSEN: Are there any others? All right, don't be bashful. [LR375]

FRED UHE: (Exhibit 2) (Laugh) I think you know me better than that, Senator. (Laughter) Senator Janssen, members of the Revenue and Urban Affairs Committee. My name is Fred Uhe, the last one is spelled U-h-e. I am the chief deputy clerk in Sarpy County and the registered lobbyist for Sarpy County. I really just want to take this opportunity as I pass around a letter from Rich James, our county treasurer, dealing with some of the issues as result of the court case. I did obtain files of the legal action, which I did turn over to Bill Lock and George Kilpatrick. I'm just here to, basically to offer Sarpy County, not only our treasurer, but county attorneys offices, would be willing to participate and help wherever we can. I'll touch on a couple of comments. I think former Senator Landis touched on this. We have taken very good care of the investors. Early '90s we averaged probably about 12 or 15 tax sales. Now we're running about 800. We've actually had to rent a social hall near the courthouse to handle the crowd for this nature. Rich James said we run about 2,200 parcels and with the sales again being about 800 being sold, and he mentions in his notes that he had computed a couple of years ago that the cost to the county probably was \$25 each for each sale, not the \$10 we are receiving. So just wanted to present the information to the committees and offer that Sarpy County would be willing to participate in any further discussions. [LR375]

SENATOR JANSSEN: Okay. Thank you, Fred. I don't see any questions. Anyone else wishing to testify? I don't see anyone else. Okay. That will end the hearing on LR375. Move on to LR349. Bill. [LR349]

BILL LOCK: I think I have instructions to go ahead and start. My name is, for the record... [LR349]

SENATOR FRIEND: Yeah, I'm sorry, Bill. Go ahead. [LR349]

BILL LOCK: That's okay. For the record, my name is Bill Lock. I'm the research analyst

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for the Revenue Committee. I am opening and introducing as, a report that I wrote for the committee on LR349, which is introduced by Senator Dubas and Senator Adams and the members of the Revenue Committee. The report is on county aid programs. There is a cursory examination of city aid programs. I didn't devote as much time to that. It was a secondary topic to the sponsors, but I did try to quantify some aspects of the city and county aid relationships with the state of Nebraska that have been changed over the last 10 or 12 years. I'm going to give this report sort of a quick overview. It is lengthy. It's been suggested to me that it's longer than a memo needs to be, but what I did do is try to examine the states aid policies, historically and the precedence that we've set in establishing what the guidelines for our aid programs are. On the first page of my report, I tried to document aid cuts in programs that have occurred over the last decade, both for cities and counties. And as I move forward through the report, you're going to see, and if you have read it you will see that I've cited a document which is actually this document here, an old tattered copy I have. I have a newer copy, but this is a report that was written by the National Conference of State Legislatures and by a task force of legislators and local officials in 1989. It's called a Practical Guide to State and Local Relations. It poses policy questions and makes suggestions about the state and local relationship and how that relationship might be examined, and what policies might be considered as you're examining that relationship. It does address issues of state aid, design, or policy, but it also examines other questions that you want to think about. What I did for my report, there's an appendix. I went through a long list of guidelines they had in there, suggested questions you ask yourself. They are included in the appendix. They involve things like, are there functions of local governments that more properly could be done at the state government level. And are there state functions that could more properly be done at the local level. It examines questions of what taxing authority you have given local governments, whether it's broad or narrow, whether it's limited or capped. I tried to give Nebraska sort of based answers to those set of questions and that's contained in the appendix. But I mainly focused in on the checklist items that they had in that report as guidelines to my research and work, and those were to examine how you determine what your aid policies ought to be. And I also

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examined the precedence that have been set in Nebraska in aid policy, particularly as to counties and cities. Our main fiscal relationship at the state level with our county and city governments is through our highway allocation formula, which was basically written in 1967 and has stood the test of time. I did not examine that aid policy, but I did draw from it a precedent about how to design aid policies and that's this. In examining how to distribute money to local governments, one of the things that you want to consider is what needs they have, what powers and duties they have, and what needs that creates for money. The taxing authority that you've given them, and whether they are using their maximum tax authority, and how much of it they may be using. So coming out of that, in the highway allocation formula as a precedent, or a policy precedent, is the notion of examining needs quantifying them. The way it's done in that policy is to look at miles of roads, number of people is the main driver for that aid formula, and that has been a driving variable for all our aid formulas with cities and counties over the years. The other main policy in terms of determining need that we look at sometimes, is we look at the service function itself, and how much demand there is. So in the highway allocation formula, we look at miles of road. We look at the number of motor vehicles that are on those roads. And in the county version of the highway allocation formula, we also look at trying to measure need that's related to agricultural production where there might be heavier demand on rural roads because of an intense amount or a larger than average amount of agricultural production. In city and county aid policies other than highway allocation, what we've generally done is per capita formulas. We have done share of taxes levied, is our main county aid policy structure right now for the largest chunk of funds that we give to counties. In the report I documented about \$12.7 million of aid that we distribute, 4.5 of that in approximate sense is distributed based on how much the county taxes were as a share of statewide taxes in the prior year. That is an aid policy that was established over 30 years ago and it's a reflection of what was being done at the time, which was that we were reducing the tax base of counties and cities by removing things from the tax roles, specifically, inventories, personal property, and a variety of other taxable objects that we had up to that time taxed. When we made that transition to a different property tax base, we created these aid programs, or that aid

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program. We also have an aid program that is the county insurance premium tax. It is the county share of a statewide collected tax on insurance policies. We give a portion of those revenues to counties and we do that per capita. We have a policy called the County Property Tax Relief Program which is a needs capacity type formula that examines valuation bases, compares them, looks at miles of roads that counties have as a need burden, and determines those that have weaker capacity than others, and attempts to equalize their capacity to meet that need. It has a criteria in it that I want to mention and I mention in the report, that is also mentioned in the report I cited earlier from NCSL. It's a matching grant or effort principle. Typically, you'd see this included in state policies on aid because it's viewed from a perspective of, if we're in a partnership with each other, both of us ought to be contributing something, and if you don't make the other partner contributed something, they're going to have a tendency to spend more than they might otherwise spend if they did have to make their contribution. In the highway allocation formula that I mentioned earlier, that constitutes a 25 percent matching requirement. In some of our other policies, specifically the Municipal Equalization Fund, our state aid formula for schools, we have a local effort requirement that is met and determined by looking at the tax rate that the county government or school government or city government might apply. And that's an effort rate criteria. Generally, that's recommended because you want to be a partnership in which both partners are active partners and are making some effort and you try to measure that and decide what that should be. So those are policy principles and precedents that are in your current state aid programs. I tried to quantify the amount of county aid that you distribute and the city aid is on the...those numbers are on the first page of your report. Because the particular focus of this resolution was, came about because of a controversy, a conflict between the state and the counties over a program that was created in the late 1990's, 1998, it's called the Jail Cost Reimbursement Program and it's not really an aid formula. It is a reimbursement program for prisoners that counties hold in their county jails which...and those prisoners that we reimburse counties for holding, are those prisoners that eventually show up in state facilities and are held in custody in state facilities or are subject to state supervised probationary time. That

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policy was established in 1998. It's been controversial because we essentially do not fully reimburse what the program would require us to reimburse. We budget about half what it would currently require us to pay under the policy and it's not really an aid formula. One of the suggestions is that because of the way we disburse it, and I tried to quantify and document this for myself, we have budgeted for it on a partial basis. And what we do is, we hand out money until we run out of money, which means that if you're a county and you come in our third fiscal quarter or fourth fiscal quarter as a state, you don't get any of the money that you would otherwise be able to claim. And so there are some counties that get 100 percent of what they claim because they only make claims in the first two fiscal quarters, and some counties that don't get anything because they only make their claims in the third and fourth fiscal quarters, that has been a problem. (Laugh) And not well received. This interim study resolution suggests that one way to address that problem is to convert this from a reimbursement program to some sort of an aid formula using some measurement of need. I actually developed a couple of proposals. There are actually three that I distributed to committee members and each one of them has a slightly different basis of determining need. They also have different mechanisms and policies. Two of them are what would be called need capacity and effort formulas. And the third would be more akin to the highway allocation formula in that it just looks at percentage of need and distributes money based on percentages of need, which you could use several different measures of need and you could weight them the way that we do highway allocation formula, but not consider the taxing capacity of the local government in distributing the money. I attached those three different models to your reports. They've been distributed to the county governments. I expect that they will testify on those today because they've had a chance to examine them. I only want to touch on one more issue and then I think the people who have travelled here today to testify should have a chance to come up and talk, but I did put a table in your report on county budget numbers. I wanted for myself and for the introducers of the resolution to understand how the work of public safety, criminal justice, corrections, how it fit into the county budget picture on a statewide basis and on an individual county basis. So this is actually a supplemental report, which to save

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paper and trees, I did not print out and bring to you. But what I did here, put in table 1 on page 3, is an analyses of the 2007, 2008 budgets of counties and the 2000 and 2001 budgets of counties, budgeted dollars. And I broke them into operating categories and percentages. And then I examined the growth in that type of spending. So there is a type of spending that the state auditor asks the counties to report called operating public safety in law enforcement. Back in 2000, 2001, when I examined all the county budgets in the state, that are on file with the auditors office, that type of spending constituted 16 and a half percent of total operating spending. Today it constitutes over 21 percent. The growth rate, the growth increase, the amount of increase in that type of spending is nearly 92 percent, whereas total county spending quantified through those reports is just short of 50 percent. It is, public safety and law enforcement, is the fastest growing area of county public expenditures. There is one exception. If you take a close look at the table, the category labeled "miscellaneous" which I tried to carefully examine and determine that the higher growth there was due to the practice of putting health insurance policy contributions by the county government into the miscellaneous category rather than folding them back into the other operating categories. I believe that that's why that category has grown so fast. But it would take further research to really, you know, sort that out. But aside from that observation, public safety and law enforcement, the job of protecting the public, protecting their public safety, in addition to the job of housing prisoners is a responsibility that is shared between county and state government, but also with city governments which is why cities are mentioned in here. City governments, as it turned out, arrest by my rough estimate 70 to 75 percent of the people who wind up in jail or in court. I thought it was important to note that. But the impact on county budgets is obviously dramatic, it's grown as a share of their county budgets or their operating budgets at least, and has grown faster than other types of spending that they do. I think that's why you're here looking at LR349. I think that's why you're looking at the jail cost reimbursement program. It's an important issue for counties. The program has some administrative problems right now because of the way we budget and the way they experience it. What I attempted to do with the report was put forth an alternative way of pursuing that policy, of funding public safety needs of

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counties more through an aid formula type design than through a reimbursement program. And I gave you, sort of, three options, each of which is slightly different than another and uses different measures of need. I was asked by a couple of people who read the report to clarify a couple of points. I ran a total of what we currently distribute to counties through aid programs other than the highway allocation, came up with \$12.7 million total. That includes aid to counties at \$4.5, jail cost reimbursement at \$3.9 million, and I'm using round numbers here, \$1.5 to county property tax relief, and \$2.3 to insurance premium tax. Of those four numbers, the last one is the variable. That number varies every year because we distribute a percentage of the insurance premium taxes that the state receives. That number or the volume of dollars grows, but because the state takes first preference at taking dollars out of that pool of money at the state level for one of our other public health programs called the comprehensive insurance program, we take first draw at that pool of money. So even if it grows, the percentage then further distributed down the line to the local governments, including schools and cities, may not grow, in fact, may fluctuate up and down depending on how much money the state takes out of the pool of money that's being contributed by insurance premium taxes. But the other three that I mentioned are quite frankly fixed budgeted amounts that then we allocate out according to formula. The fourth one is the only one that grows. I'll open up to questions about the report. I realize there's a great many numbers in it. I actually withheld some numbers. I would like to point out that I do have them. In the aid designs that I gave you, I used an effort principle in two of them, and I used a rate effort principle, and I used 30 cents as the effort rate that I required in my models. I calculated that by examining county levies and not simply the county government levy, but rather the county government levy plus the other allocated levies that they're responsible for. Back in 1996, was when the legislation passed, but became effective in 1998, we changed the way county governments tax and the rates that they can set. And what we required county governments to do is to take into account some other local governments that are subunits of county government and balance their levies and bring them into a 45 to 50 cent levy rate cap by considering the needs of those other local governments. Those include fire districts, townships, agricultural

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societies, the groups that run county fairs. In some cases there are rural library levies that have to be considered. And there are other subdivisions of government that have to be considered by the county board as they set the levy for the county. I examined the 2007-2008 county levies and county allocated levies, determined what those are, generated a report about what those are. I have it available for you. I used that information when I built the models to test effort at 30 cents and include the allocated levies in whether or not they met the test of being above 30 cents or not. There are counties that are below, which surprised me. But once you're in the levy allocated environment, you actually find some counties where the maximum rural levy that might be applied by the county government and this other subunits can be as high as 70.076 is the highest combined rate I've found. That's in a county that has township governments that have nearly 20 cent township levies. Now, how is that possible with a 50 cent levy limit? The township or in some cases the fire district in those counties where the county board says we only have 50 cents to allocate, if you want to go above some level that we have prescribed for you, you must seek it on your own through a vote. We actually had a bill last year that we had a hearing on in Revenue Committee on modifying that policy. But I used the combined allocated levy test on the local effort formulas or local effort test that I used in the formulas I used. Calculated it, have a report on that if county government officials or legislators want to examine that. I do have that, but I didn't want to kill a few more trees just to prove that I'd done the research. So I think that's sum and substance of what I want to say, and then I'll open myself up to questions. [LR349]

SENATOR FRIEND: Thank you, Mr. Lock. Are there questions from committee members? Senator White. [LR349]

SENATOR WHITE: Bill, if we just paid...well, first of all on the jail reimbursement which is a real sore toe, is that calculated on a per diem cost per prisoner across the state same in Scotts Bluff as Douglas County? [LR349]

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BILL LOCK: Yes, it is. It's a \$35 rate per jail day, and... [LR349]

SENATOR WHITE: What percentage of the jail...and not all jail days are chargeable to the state, correct? [LR349]

BILL LOCK: Correct. [LR349]

SENATOR WHITE: They have to be sentenced to, a post conversion, sentenced to a term that would allow them or require them to otherwise be put in the penitentiary. [LR349]

BILL LOCK: Yes, and generally that would be for a term of a year or, you know, in that range. [LR349]

SENATOR WHITE: What would it cost...or let's put it another way, how much are we not paying the counties for those jail days, let's say in the last year or two that we would or should pay them if we paid them the full amount? [LR349]

BILL LOCK: What they have claimed, and they file claims even though they're not getting reimbursed, this past year the corrections department gave me a report, which I have, and I put the number in my calculations. We are supposed to be paying out a little over \$8.3 million and we paid out \$3.9. So we paid 47 percent of the claims that were filed on a percent... [LR349]

SENATOR WHITE: And some counties got nothing for reimbursement, and so got 100 percent. [LR349]

BILL LOCK: Depending on which fiscal quarter they filed, yeah. [LR349]

SENATOR WHITE: What policy does the state have for not paying its bills? [LR349]

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BILL LOCK: We underbudget for the program deliberately because when we were in a fiscal crunch in '01, '02, '03, it was one of the cuts we made in the state budget. We essentially said we're not going to pay out the full amount of the claims, we're going to budget this much and we'll pay that much of the amount. So it's a policy that was adopted in times when we were short of receipts, when budgets were being cut, and this was one of the items in the state budget that was reduced to a fixed level. It's hard to allocate it out to counties because it is a reimbursement policy and that's one of the administrative difficulties with this policy. In other words, we could wait until the end of the year until everybody had filed their claims and then pay them on an equal percentage basis based on how many they'd filed. We could have done it that way, we didn't. [LR349]

SENATOR WHITE: But we could put enough funds in a reserve fund and as they're verified as being actually state days, just promptly pay the counties, correct? [LR349]

BILL LOCK: Yes, yes. But we have not implemented that policy. What we've done is deliberately budgeted only a fixed amount, and then decided how to distribute that. And the way we're distributing it is the way that you described earlier. If you file your claim in the first two fiscal quarters, you're likely to get paid, in the third and fourth, you have a less of a chance of being paid. [LR349]

SENATOR WHITE: I mean, I'm sure this is a naive question, but why don't we just pay people what we owe them when we owe it to them? Doesn't that allocate it according to need because if you've got more crime, you're going to have more prisoners. We're going to pay them where it is so we don't have to worry about allocations and formulas and the other stuff. [LR349]

BILL LOCK: Yeah. I think that's why you have the resolution in front of you because people think that that's what ought to be done. And what I did was I thought, well, what I

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could add to the debate, the policy debate, is if you tried to convert it to an aid formula, what measure of need would you want to use. And then would that be easier to administer, and then would it reflect their true needs for public safety funding? That's the question I tried to raise and answer in the report. [LR349]

SENATOR WHITE: And then just as a comment, on the CHIPS program, you mentioned that we take the premiums of them. That's functionally insolvent, is it not? We're heading that way pretty rapidly? [LR349]

BILL LOCK: Not to my knowledge, but I don't know a whole lot about that program. I just know that the reason that the insurance premium tax revenue that we distribute doesn't grow or fluctuates is because we take money off the top of the pool before we decide how much to distribute to local governments. And it is because of the funding the CHIP program, which I am not an expert about, I don't know whether it's financially solvent or insolvent. [LR349]

SENATOR WHITE: Thank you. [LR349]

SENATOR FRIEND: Thank you. Further questions? Senator Cornett. [LR349]

SENATOR CORNETT: Bill, you weren't here in the Legislature when the bill was originally passed to fund this. [LR349]

BILL LOCK: I was. I was staffing the Revenue Committee in 1998 when LB695 passed. [LR349]

SENATOR CORNETT: Going back and reading the transcripts, the intent was to fully fund this from what you read. And then when we hit the budget crunch, going over transcripts, the counties agreed to take a cut until we were solvent. And we have been solvent, more than, for the last few years, and we have not lived up to our half of that

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agreement, is that... [LR349]

BILL LOCK: I assume you're correct. I have not read the transcripts of the hearing, and I should qualify my earlier statement that I was here staffing. [LR349]

SENATOR CORNETT: I know you weren't during Revenue because... [LR349]

BILL LOCK: I was staffing Revenue Committee. The bill on jail cost reimbursement actually was referred to Appropriations Committee, and advanced by them to the floor. So... [LR349]

SENATOR CORNETT: We were in the Legislature though, so you remember those... [LR349]

BILL LOCK: Yeah. I was not sitting there when the committee deliberated that bill. I was staffing Revenue and we were deliberating county property tax relief at the same time, and both those bill then got merged into LB695. [LR349]

SENATOR CORNETT: Right. [LR349]

BILL LOCK: So I didn't sit through the Appropriation Committee discussions about how and I did not sit through the Appropriations Committee discussions about why to underbudget or what the agreement was. So I assume your account is correct because you've apparently read the transcripts, I have not. [LR349]

SENATOR WHITE: I testified in front of Appropriations on that issue asking them to fully fund the jails, and they just simply refused to do so two years ago, last budget cycle. [LR349]

SENATOR FRIEND: Are there further questions for Mr. Lock? Senator Raikes. [LR349]

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SENATOR RAIKES: Let me approach it this way, and Abbie as well as Bill probably have some insight on this, as I remember those discussions early on, it was a question of how does the state provide aid to counties to assist them in dealing with...and that was the issue more than, look, we owe you for some prisoner time or jail...keeping prisoners that are eventually going to end up at the state level. In my view, the program, at least from the outset, was structured in a strange way where there is a fixed appropriation which will not last the entire time. You know, so by the third and fourth quarter you run out of money. But really I would submit that what we're talking about now is something different. We go back to the issue of how does a state effectively assist counties in dealing with budgetary situations, jails, and others. And I hope we don't miss the point of Bill's work that probably an appropriate way to do this is with an equalization type formula, as well as some nonequalized distribution of funding which I think is what is covered in your report. That you've got an equalization type formula it depends on two things, local effort rate and the property valuation you have in the county. And I think you can effectively argue that the best way to (inaudible) state dollars is to be careful that you allocate them where they are needed, not where there's a lot of local property tax wealth that can be used to provide the service locally. This is something that's been done for years in the school aid formula, for example, as well as in some other aid. Now, you know, you fly against the idea that, well, I'm in this state, so I deserve some state aid. You know, and it doesn't make any difference if I've got a lot of property tax wealth in my county, I deserve state aid. You know, this other county that doesn't have any property tax wealth, well, they can get along somehow. So what you're proposing, I think, or at least what you've discussed in this report is a combination of those two things. And I think the important point is to go back and reexamine the issue of providing financial aid to counties and how best to do that. And to some extent I think revisiting the jail reimbursement thing with you didn't pay the bill, no, we did pay the bill, you didn't pay all the bill, is off the point. [LR349]

SENATOR WHITE: Let me ask because... [LR349]

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SENATOR FRIEND: Hold on, hold on, let's make sure for Erma's sake that we've got people recognized. I think Senator Cornett was next in line. [LR349]

SENATOR CORNETT: Senator Raikes, I agree with you on that and that was the gist of the conversation last year when I IPP'd my own bill was that we would sit down over the interim and figure out what was best for counties as a whole. Is there counties that don't have jails that are hurting for state reimbursement? I think, and I don't mean to put words in Senator White's mouth, but at least my point is I want to clarify exactly why we are here doing this. And it's because the state hasn't met its obligations that they've already promised to do to counties. And that was my point is we said we were going to do this, then we didn't fund it. If we do this, are we not going to fund this? [LR349]

SENATOR FRIEND: Thank you. Senator White. [LR349]

SENATOR WHITE: Even if a county doesn't have a jail, it still has to pay for prisoners. And if it has a prisoner that comes from that county that is really a state prisoner under the statutes, it still has to pay for them. Unlike Senator Raikes, I don't like complicated formulas with massive weight shifting because I think it has led to a property tax system that is back breaking and it has not led to efficiency. I would argue that what we have is counties have problems with prisoners, crime fluctuates, the state should honor its obligations by paying for its own prisoners. We should also look, if for example as we have had with methamphetamine invading some rural counties, add special enforcement assistance. But we start the process by acknowledging and paying the obligations that are properly the state's, rather than try and fold it into a grand program, there isn't real accountability. To me I think most county, if I was in a county I would want the state first to honor its own obligations to pay for its prisoners. When we have done that, then we can look about if counties have special needs for additional for law enforcement which they may, we look at that separately, but we don't collapse them because then we lose our way through the woods. [LR349]

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SENATOR FRIEND: Thank you, Senator White. Are there further points or questions for Mr. Lock? Mr. Lock--hold on--did you have another point to made? [LR349]

BILL LOCK: Yeah. Just one last observation that was in the report and a point that I think is a part of this debate that I tried to examine. When we structured the policy in 1998, what we said was that the prisoners that we would reimburse them for were the ones that wound up in state facilities. When I was looking at this issue, I tried to examine how many jail days the counties experienced for people other than those that get in state facilities. And then that caused me to think through the question of why is it that we limit our fiscal relationship to them to the prisoners that wind up in our facilities. Because the question is I think what you're about, you're about protecting the public from people who have committed crimes. So you've confined those people. And whether that crime is not serious enough to deserve time in a state facility or not, you still...counties have a duty and the state enforces a set of jail standards that say that a jail has to be run at a certain level and it has to be an experience that is not dangerous to the person being held there, dangerous to the person working there, or dangerous to people who come in to visit the people who are living there. And regardless of whether that's a person who's in there because they were DUI committed to a county jail or a person who's committed violent assault on another person, there's still the same standard of care within the facility. And the facility is expensive to run. It takes 24-hour supervision and we have standards for how those places are supposed to be run. And it seems to be to beg the question to suggest that we're only responsible for the ones that commit crimes serious enough to wind up in a state facility when the central question is what we're responsible for as a state and a local government combined in a partnership is making sure that we have jails that are safe, well staffed, and they're safe for everybody including the prisoners, the staff, and visitors. That's an expensive proposition. It's an expensive proposition to meet, but it seems to be the legal standard that we applied to ourselves by establishing jail standards is to say we're going to make sure that these places are well run and that they're adequately staffed. And to think that

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you address that question by only reimbursing for the prisoners that wind up in your facilities seems to be somewhat shortsighted. At least that was the observation I made when I was examining this question this summer, and that's why I tried to quantify how many jail days are actually experienced at county facilities. And I think that we're only going to be subject to reimbursing somewhere between 20 and 25 percent of the jail days that are actually experienced in those facilities because that's the amount of prisoner claims that we seem to be processing for people who wind up in state facilities. In other words, 75 percent of the people that are in a county jail are never...they're not prisoners that we're ever going to be subject to our reimbursement policy anyway. I think, if I can suggest something to you, that you step back and take a longer look at that question as to what will both state and county people are fiscally responsible for, and I think it's running a safe jail. I think that's the question. That's a point I tried to make in perhaps milder terms in the report by simply reporting that we're really only going to reimburse 20 to 25 percent of the prisoner days that are experienced by counties anyway even under fully funding our current policy, so a point I wanted to make.
[LR349]

SENATOR FRIEND: Okay. Thank you, Mr. Lock. Are there further questions from committee members or comments? Thank you. Thank you for the opening. For lack of a better way to break it apart, I think it's probably appropriate to start with proponents or folks that are in support of LR349 or in general support of LR349 move forward. State your name and spell it for the record, if you would, sir. [LR349]

JOE HEWGLEY: Sure. Mr. Chairman, my name is Joe Hewgley, H-e-w-g-l-e-y. I am a member of the Lincoln County Board of Commissioners and have been since 1985. I'm also the president of the Nebraska Association of County Officials. Mr. Chairman, members of the committee, I first of all want to thank you for giving us this opportunity to have this dialogue. I think it's extremely important that from time to time the various entities, counties, cities, and the state, sit down and have a dialogue. After all, we all collectively represent the people of this state. And I applaud you for that. I applaud you

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for the work. I applaud Mr. Lock for the work that he has done on putting this report together. I'm in a unique situation. I was the president of this group also ten years ago. I appeared before the Appropriations Committee, and in fact it was myself along with Senator Pederson and the NACO group, NACO staff that introduced this legislation. Don Pederson is a friend of mine, was an attorney from North Platte that understood the process of the courts and of the jails and how that was becoming really a nightmare, if you will, for those of us at the local level. A little bit of history, and with all due respect to Senator Raikes. I know your great work on the Education Committee, but I agree a little bit with Senator White. I think we're talking about two different things. The one thing that I never want us to lose focus of here is if the state goes out and leases, which they do a fleet of automobiles, you don't come at the end of the year and say, well, we're going to appropriate 42 percent because we had a tough budget year. That's an obligation of the state of Nebraska, and to the best of my knowledge, i.e., the people expect us to pay our bills. We're no different on the county level. And I'll tell you a little bit about how it came about that we decided what laws needed to be broken in order to qualify for these amounts. We had to start somewhere. In Lincoln County I don't think that we put anyone--and we have our sheriff here who will correct me I'm sure if I'm wrong--anyone in our county jail that has who not been found in violation at least from the county sheriff's department, the city police, or the state patrol of some violation of the state of Nebraska. We do not put people in jail on local ordinances--we don't do it. So in fact every person in our jail, even though maybe 20 percent might be qualified for "jail reimbursement" on a state violation and will be adjudicated in a state court by a direct state employee, i.e., a judge. Okay. In my opinion, we are an interim housing unit for those individuals. So that's how we sat down and said, now what crimes should we start with, and that's clearly how that started. We knew that we couldn't just say we need to have you reimburse everything because that would go absolutely nowhere. So we said, let's try to have a partnership, let's take only the worst, the most heinous crimes and have that as a starting point. I will tell you that there was dialogue at that time about that perhaps down the road we should have another talk as to should there be other crimes. But that was a starting point. I appreciate the comment earlier about the funding and

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putting the money in a reserve. If you go back and look at the legislative history as to what happened, the first year they didn't really know, nor did we, what kind of dollars we were talking about. The second or third year I think it was 2000 or 2001, and somebody on the NACO staff I'm sure has those numbers, there was a deficit funding of about 60 percent, I think. Senator Pederson wasn't aware of that, most members of the committees weren't aware of that, and the Legislature as a whole was not aware of that. Senator Pederson had a discussion with our then governor and said, why aren't we funding this? Well, we don't have the money. As you remember or do not remember, Senator Pederson was on the Appropriations Committee saying that's not true, we do have the money. We have reserve funds that all an agency has to do is request those reserve funds. Not once has the Department of Corrections come and requested reserved funds to meet their obligations to the counties--not once. He said, if you send them over, they'll get the funds. Please check that. That is exactly what happened. They asked for a deficit appropriations, they received it and we received I think full payment I believe that second year. So those things are important, but you know I'm not here to harp on that, what's happened in the past. What I don't want us to lose fact of is that in my opinion, and I think it was the opinion of the legislative body as a whole at that time anyway, that it was a reimbursable expense. And I just want us to remember that, members of the committee, I could go on and on. But basically that is really the crest of what I am here to say. I'd be glad to answer any questions as the committee may have. [LR349]

SENATOR FRIEND: Thank you, Mr. Hewgley. Questions from the committee? I think Senator Raikes has one. [LR349]

SENATOR RAIKES: Mr. Hewgley, how is your daughter doing? [LR349]

JOE HEWGLEY: She's doing very good. She's here in Lincoln working for the state of Nebraska in a legal position right now. Thank you. [LR349]

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SENATOR RAIKES: Good, good, good. You commented on several things, but my comment, concerns or question concerns your focus on one specific issue. [LR349]

JOE HEWGLEY: Yes. [LR349]

SENATOR RAIKES: You can almost get the impression from what you said that there's only one source of money to counties. That would be state aid to support prisoners, and obviously that's not true. [LR349]

JOE HEWGLEY: Sure. [LR349]

SENATOR RAIKES: The state provides for counties to levy property taxes. There's the county inheritance tax money that they get, plus some other things. [LR349]

JOE HEWGLEY: Highway allocation, several other funds. Yes, sir. [LR349]

SENATOR RAIKES: Yes. So there are a number of funds. You know, to consider it an iron-clad obligation if a county incurs an expense that is somehow related to the state that it is the state's obligation, I would just point out to you, special education in the public schools. Schools are required by federal statute to provide special education services in their school districts. Are they reimbursed 100 percent for that? No they are not, they get a percentage. And part of that traces back to the federal government and the fact that the federal government passed the regulation that doesn't provide the full law. But we live under that situation. And as a matter of fact, we have I think in the case of schools and education maybe in a sort of backhanded fashion used that to direct the efforts. In other words, if I the local subdivision am on the line for part of the expense, even I'm going to get reimbursed for part, I'm probably going to take some steps to make sure that those costs don't get out of line that I might not otherwise take into account. If I'm going to get reimbursed 100 percent, I have no incentive to cut the costs. I just simply send the bill and I'll get paid and whatever. So I would just suggest to you

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two things for you to comment on eventually. I'm going to put a question on the end of this (laughter). That there are multiple sources of funding to counties, and if there is an aid from the state that's required, think about it globally. The second thing is it is a widely used proposition in funding of local governments, be they counties, be they cities, be they school districts, that you local put up a dollar and the state will put up a dollar. If it's only the state's dollar, no. It's a combination of the dollars. So your comments. [LR349]

JOE HEWGLEY: Senator, I agree with you. But let me ask you a question, if I might. You... [LR349]

SENATOR RAIKES: No, I'm immune, but go ahead (laughter) and (inaudible). [LR349]

JOE HEWGLEY: Humor me, I will...you had made the analogy of schools and special education. Is there a state school? Do you have a state school you send people in special education? Is it state's...I mean, what is the name of that state school? I'm not sure what it is. I don't understand that. [LR349]

SENATOR RAIKES: Every public school district in the state provides public school district provides special education services. [LR349]

JOE HEWGLEY: Oh, absolutely. But you don't have like a school you send them to. I say that facetious, Senator. You have the Department of Corrections where you send these individuals. That's why I think it's not a fair analogy. There are pass-throughs in every form of city, county, and state government. Look at our highway allocation dollars. I respect what you're saying, but to say a pass-through obligation is the same and using the analogy of special education, I would respectfully disagree. If we had a...and God forbid we ever have this because I hope we don't. I remember the ESUs and the special education and I also am pretty familiar with when we started integrating those in our schools and what the (inaudible) program saw it. As you're aware, I know a little bit

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about that. And I know that...and God forbid that we have a place where we send every person that has a special education need. But we do have a place where we send people that are found guilty of a state crime, and that's called the Department of Corrections, whether that be in our new facility down south, whether that be at Lincoln, whether that be at a work camp in McCook. Now that's a specific place we send them and those individuals become a direct cost of the state of Nebraska. If you choose to have the county house them, that's okay, just pay for it. And I know I seem pert. I apologize for that. But I did answer your question. [LR349]

SENATOR FRIEND: Thank you, Mr. Hewgley. Senator White, did you have anything? [LR349]

SENATOR WHITE: No, thank you. [LR349]

SENATOR FRIEND: I thought I saw your...any further questions from committee members for Mr. Hewgley? I see none. [LR349]

SENATOR FRIEND: Thank your for my time. [LR349]

JOE HEWGLEY: Thank you for the testimony. Next proponent. [LR349]

DENNIS KIMBROUGH: Thank you, committee members, for the opportunity to be here. I'm Dennis Kimbrough from Fillmore County, K-i-m-b-r-o-u-g-h. I'm a supervisor in Fillmore County and I also serve as vice president of NACO at this time. I have just a little bit different angle to what our president has said in that I'm from a very small county. Our jail capacity is eight prisoners. We get hit in a little bit different way because we have not facility for women, so we have to transport to York. We are very fortunate to have Saline County with a larger jail in York where we can transport prisoners to when we need to. The reimbursement issue is a little bigger to us because of our size, although percentagewise it may work out the same. But if we have claims in our later

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quarters and we are denied those because we have to contract out, we're out 100 percent. Where a county with a jail is out, they collect a percentage of that, the 47 percent or whatever it may be. So our budget has a tendency to have great peaks and valleys in our law enforcement because of that and the number of crimes that would qualify for this. So it can affect us in a much more drastic way on a percentage of our budget. I applaud you for the efforts to set down and talk. I would encourage you to include county members in this discussion because the county funding as a whole is very vital. We would see in some discussions we've noticed that some of the counties that may get hurt by the formulas may be in our growth area in prisoners. It's at this point a little hard to tell because we really haven't set down and went through it. You may hear more about that later. We are involved in a national program with our national organization of counties which is called restore the partnerships, which is to work with our national leaders and our president to go hand in hand on some of these issues that affect our nation and get back and get a little closer feeling to the home. I would encourage you to also restore the partnership with the counties and work on these efforts. I think the only way we can make progress is to work together. I know in my brief time in NACO that I have heard these issues for several years over and over and over and over and I'm sure all of you have also. And maybe it is time we try and solve some of these and negotiate this and get it off the table. So that's all I'd like to bring you today. [LR349]

SENATOR FRIEND: Thank you, Mr. Kimbrough. Are there questions from committee members? Senator White. [LR349]

SENATOR WHITE: Mr. Kimbrough, if I understand what you're saying, for example, you might be fortunate and have no crimes and have an empty jail for the first four months or five months of the year. [LR349]

DENNIS KIMBROUGH: That's very possible. [LR349]

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SENATOR WHITE: Then you have a meth bust or God forbid a big murder or something which happens in our rural counties now, though it didn't used to very often. Now you've got a full jail for the last two quarters, plus you have all the expenses of providing defenses and prosecution of those crimes all falling on the county. And then you don't get paid back at all for the prisoners, and it might be 10, 15 years before such an unfortunate series of crimes occurs again in your county. [LR349]

DENNIS KIMBROUGH: That's possible. [LR349]

SENATOR WHITE: Here's my concern if we go with the flat formula on that: We end up putting money into counties that may not need it at the time and not giving money to the counties when they really are under the pressure and they need it. They've got a full jail, they've got the costs of prosecution, the costs of defense that they have to provide, and then they take care of it. And I can think of the crimes in Rulo, Nebraska, for example or other situations. And yet we're going to keep putting money into county budgets when they don't need it. But when they really need our help, we're not going to be there, we're going to tell them we don't have any money to pay for your prisoners. Doesn't seem to me to be a good way to run a railroad. [LR349]

DENNIS KIMBROUGH: If I understand the way the jail reimbursement is allotted, that if you don't make claims, you don't make money. [LR349]

SENATOR WHITE: And in my county, Douglas County now, we have basically a stable prison population. We have about the same number of heads through a year. So we don't get hit like a small county that has a fluctuating population. [LR349]

DENNIS KIMBROUGH: That's correct. [LR349]

SENATOR WHITE: Thank you. [LR349]

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SENATOR FRIEND: Thank you. Are there further questions for committee members? I see none. Thank you, Mr. Kimbrough. Are there any other proponents? [LR349]

DEB SCHORR: Good morning. Thank you, Senator Friend. Good morning members of the committee. My name is Deb Schorr, S-c-h-o-r-r. I'm a member of the Lancaster County Board of Commissioners. Thank you for the opportunity to comment on the critical issue of state aid to counties and cities. During my tenure as a county commissioner, the number one concern expressed by my constituents has been property tax relief. When placed in this context, a well designed and reliable program for state aid to counties and cities becomes an essential component in our efforts to control property tax growth. Every dollar of state aid equals \$1 of property tax relief. A well-designed program will not only direct the funding where is needed most, but can also lead to greater efficiencies in providing local government services through state and local cooperation. Finally, any state aid must be predictable and reliable. Counties and cities cannot adequately plan budgets with unpredictable state funding. More importantly, our property taxpayers are the ultimate beneficiaries of a stable and well-funded program. Before I answer any questions, I'd like to comment on two statements made previously. To Senator White, we talked about the \$35 that is currently the reimbursable amount. Our figure right now to hold a state prisoner for one day is approximately \$78. So not only is the total amount not being properly funded, but the actual amount that is costing Lancaster County to hold a state prisoner for a day is not being adequately funded. And secondly to Senator Raikes, with regards to comment about an incentive for counties to keep the daily rate low, please remember we hold not only state prisoners, but hold prisoners for the city of Lincoln, for the state patrol, for the federal government, and for UNL. So we have a per diem daily rate that is consistent for all prisoners. We don't allocate differently based upon the entity that we are holding the prisoner for. So the incentive to keep rates low is a daily concern for ours no matter what type of prisoner we are holding. Be happy to answer any other questions. [LR349]

SENATOR FRIEND: Thank you, Commissioner Schorr. Are there questions for

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Commissioner? Senator Raikes. [LR349]

SENATOR RAIKES: Yeah. Commissioner, I appreciate your comments because what I heard you say was that we need to look or the Legislature should look broadly at the issue of financial support for counties. Certainly prisoners is part of it, but others as well. I mean, your focus was on the total cost, how much of that you have to allocate over to property taxes, how much you can get from other sources. So I think that's very consistent with the work done in this report that we come up with an A program that addressed broadly the financial needs of counties. Taking into account the amount of services they provide certainly is as pointed out in the smaller counties as well as Lancaster or Douglas, your costs are impacted if you have a lot of prisoners versus if you have fewer prisoners as well as other services you have to provide. And I recognize that formulas can be a problem, they can be hard to understand. But on the other hand, they're not impossible to understand and they are the best way to accurately reflect and actually take into account the things that need to be taken into account in determining an effective use of state money. And as you well know from your position in counties, certainly the coffers or the money available at the state level is not unlimited, much the same as the situation you face. So again, I appreciate your broader vision of the issue. [LR349]

DEB SCHORR: Stable and predictable would be two essential components to that formula. Right now Lancaster County is owed over \$3 million in back dollars for the state reimbursement for our prisoners. [LR349]

SENATOR FRIEND: Further questions from committee members? I see none. Thank you, Commissioner. Are there any other proponents? [LR349]

GARY KRUMLAND: (Exhibit 3) Senator Friend, Senator Janssen, members of the committees, my name is Gary Krumland. The last name is spelled K-r-u-m-l-a-n-d. I'm representing the League of Nebraska Municipalities. I just want to take a few minutes,

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take this opportunity to talk a little bit about the state aid programs. I know the focus of the hearing so far has been on the county. But there are a couple of state aid programs I wish to discuss. What is being handed out is a handout that was prepared a few years ago when the municipal state aid programs were cut, and I did kind of update it. But it just kind of shows you what the various state aid programs are for cities. If you look at the first page, aid to municipalities is a state aid program that's distributed on a per capita basis. It was created around 1970 when the state removed property tax from business inventory from certain ag products, and because the property tax base was being narrowed, they created state aid programs for cities, counties, schools to make that up. At that time, \$17.9 million was put in the statutes to make that up. Although the actual funding depends on the appropriation each year. Seventeen point nine at the time was probably not enough to reimburse cities for that cost and it's never been increased since then. The second program is called MIRF. This is the Municipal Infrastructure Redevelopment Fund. This is a fund where the source of revenue is from the cigarette tax. It started in 1989 and had a 20-year life. It started off, it was \$4.5 million to cities from the cigarette tax for infrastructure other than streets and highways. Early on in the early '90s, it was cut to \$3 million a year and was funded at \$3 million a year until 2003 when in fact the funding was eliminate. And then the last major state aid program is the Municipal Equalization Fund. This is a fund that was developed in 1998 when the levy limits and the budget lid was in place. It's a program that distributed based on a formula based on level of effort. The funding sources are the premium tax that the cities get, plus the collection fee that the Department of Revenue collects on the city sales tax when they collect the city sales tax. So those were the sources of funding. Money is distributed under a formula, and then there is a rollover. If there's any money left over, it was distributed on a per capita basis. The rollover was also cut during the 2002 years. Just to give you an idea of what they are, there's some (inaudible) here. But if you look on the second page, Aid to municipalities in 2001 was \$17.6 million. And then right now on the last page, the current appropriation is about \$11.2 million and has been \$11.2 for the last four or five years. It hasn't had any additional cuts, but it hasn't been restored. The MIRF for all practical purpose has been eliminated. There has been

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\$500...excuse me, \$520,000 has been appropriated each year to the city of Lincoln. That was because they issued bonds based on the MIRF funding and they didn't want to hurt their rating. But because of that, they took a \$520,000 reduction in state aid, so their state aid was reduced by the same amount. So they're getting the same money as everybody else, but they're just getting a different fund. And the equalization fund rollover for the first several years was somewhere between \$1 to \$2 million. That was reduced to \$300,000 just for those cities that did not have a sales tax. The last year though and the projection for this upcoming year though is that there will not be a rollover. So that really won't make much of a difference. There's not enough money in that fund to fund the distribution under the formula, so it's distributed on a per rata share. So the rollover really doesn't count. But I just wanted to get this on the record that what this major state aid programs for cities are. They were cut in the early part of the decade because of the fiscal crisis and they haven't been restored either since then. Be happy to answer any questions. [LR349]

SENATOR FRIEND: Thank you, Mr. Krumland. Questions from committee members? I don't see any. Thank you. Next testifier. [LR349]

LARRY DIX: Good morning everyone. Members of the committee, my name is Larry Dix, spelled D-i-x. I'm executive director of the Nebraska Association of County Officials. Certainly at this time I want to thank the Revenue Committee for having this hearing. I want to thank Senator Dubas and Senator Adams for introducing the LR. Certainly want to thank the Revenue staff for the time that they put together on this hearing. One of the things I think that's very clear. When we talk about jail reimbursement, it's an emotional issue with counties. I mean, it's knock down, drag out emotional issue and it is based on a number of years. By the very nature of the program called reimbursement and by very nature of the state not reimbursing the amount that the program was intended to set out. So you can imagine the emotion that's been going on. This has been building for ten years. And over that period of time, we've come at it from about every different direction I think we can come at it from. I've been here now for six years. So we've approached it.

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We've approached it to try to get bills in the Revenue Committee. I've testified in front of Appropriations. Thanks to Senator Cornett, we got the bill out of Appropriations. Thanks to Senator White for testifying in Appropriations, we got it out to the floor only to get far enough through the process that we realized that we were going to run out of time. That's why we're here today. My intention is not to set here and just talk about jail reimbursement. There are four components of what folks would call aid. My statement is there are probably three aid programs and one reimbursement program currently in state statute. I would tell you our track record in any of these is not good. It is not good. The intention and that I hear, that I hear senators state on the floor of the Legislature, most of you I think would probably agree the most detested taxes that we have is property tax. We're always looking for property tax relief. Part of LB695, part of that discussion was property tax relief. It ended up being rolled into jail reimbursement and a program called county property tax relief. And over the years, those programs have had diminished funding. So if we're really serious about property tax relief, I would think we would not be diminishing the programs that we started that initially said we want to look at county property tax relief. Doesn't make sense to me, doesn't make...I can't (inaudible) that. Historically the cities had mentioned they've got aid to municipalities. We also have aid to counties. And when you go back, I think Mr. Krumland stated that aid to cities started at \$17.9 million. Aid to counties in '92 was setting at about \$13.5 million. Today that figure is closer to, as Mr. Lock reported in his report, closer to \$4.5 million. So that has had a declining line. Jail reimbursement at one point in time had appropriated \$6 million, still short of the requirement to reimburse the counties. Now that is at \$3.9. County property tax relief, another program designed for property tax relief, designed by the Legislature at one point in time had \$5.4 million. A couple of years ago, it had zero. Now it has \$1.5 million. The insurance program that Mr. Lock talked about has been flat, has been somewhere in the area of \$2.3 million. So if we're serious about county property tax relief and we're going to look at county aid, I would assume that we would look at a program, as Commissioner Schorr had mentioned, that is stable and is predictable. One thing that I would throw in there is that we look at it and it also has growth. The reason that I say that, we have been setting at \$35. I would bring

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to you, I would testify that I doubt the cost of housing a prisoner, be it a state prisoner or a county prisoner, I seriously doubt that cost has remained the same over a ten-year period of time. I don't think anybody would dispute that. I also would tell you, as Commissioner Schorr had mentioned, \$78 we're getting 50 percent of 50 percent. I mean, it's just such a small, small amount. I do look forward to looking at the options that we may have available. I think it's time that we look at it. Either we do one of two things. Either we go down the road and we say we have a jail reimbursement program, we're going to fund it, we're going to fund it fully, and we're going to fund it at the rate that it cost to house these prisoners; or we look and maybe in addition to that we look at additional aid based on another factor. I would tell you that NACO is certainly willing to come to that table, have that discussion. I relish the fact of having that discussion. I look forward to it. I think it is time that we have that discussion. It has been ten years. We've seen a steady, steady decline in a lot of these areas as far as funding to the county. I understand the state went through a downfall. I was there the time when we negotiated and said, hey, look, we have a partnership with the state. We will step forward. We will agree to take a decrease in some of our funds. I was there at that time. I was standing (inaudible). I remember making that deal. And that is because we have this partnership. But I firmly believe we have the partnership and I would hope everybody at the state level believes we have the partnership. So I look forward to it. I think what the Revenue staff has done in looking at this is give us a couple options to explore. I do like the fact that in the proposals, in a couple of the proposals...in all the proposals, in fact, there is a hold harmless provision. When you look at these tables, in some of these we have 19 counties. We're always going to have winners and loser when we change a formula. We've all been around long enough to understand that. But in here, in the proposal that I see in this LR is there is a hold harmless provision. It does allow for counties, the counties that possibly would have a reduction in revenue, to hold harmless. My assumption is we're going to have to fight for that revenue year after year to continue the hold harmless. The other thing I see in here that certainly hasn't been mentioned by anyone yet, when I look at it, Mr. Lock had mentioned that we have about \$12.7 million of aid to counties. In the proposals that are on the table, there is a variance from an

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additional \$6 to \$9 million available to counties in these two proposals. I think that's positive. I think that certainly is a step in the right direction. We are going through a process. Certainly we saw this. I want to let everyone in the Revenue Committee know that two days from now we're going to have a legislative conference in Kearney. we've invited Senator Dubas, Senator Cornett I know because of her schedule is unable to attend, Mr. Lock certainly is going to be here. There's going to be a representative from the Appropriations Committee. That's going to make this presentation to our legislative conference. The day after that, our NACO board is going to meet and have a discussion on this proposal. Quite honestly, we're open to some of these ideas. We want to look at it. We want to explore it. Bottom line, we want to put together a program that is adequate, that provides county property tax relief, and that allows for some growth of that program in the future years. Be certainly happy to answer any questions anyone may have. [LR349]

SENATOR FRIEND: Thank you, Mr. Dix. Questions from committee members at all? Senator Janssen. [LR349]

SENATOR JANSSEN: Larry, do the costs differ throughout counties on how much it costs to house a prisoner? One county may have a brand new facility that they're trying to get paid for, and can you elaborate a little on that? [LR349]

LARRY DIX: Sure, sure. I would tell you the costs do...they are going to vary. As you know, there are some counties that are going to have an older facility that may not have some of the costs that the newer. I think it's the same issue was as we go across our state, there are different pockets where things certainly cost a little bit different. So that I would say there is a difference. Now, how much of a difference? I hear from some counties, I think Lancaster County testified \$78. I've heard some counties say they're approaching the \$90. I've heard some counties say that they may be able to house a prisoner for \$55 to \$65, somewhere in that area. So that is the case. I would... [LR349]

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SENATOR JANSSEN: But when your reimbursement comes out it's the same for each county, right? [LR349]

LARRY DIX: But when the reimbursement comes out, it is the same for each county. But when the reimbursement comes out, it doesn't reach the level of even the lowest county. And the way I look at it...and I'd had some discussions with some folks about it, as counties we have a facility, we have a jail that is there. And if that jail is at capacity or if that jail has one or two people in it, there are some fixed costs that we as counties will have. We will have fixed costs to heat it, cool it. We will have fixed costs maintenance. We'll have fixed costs for staffing regardless of the level of folks that are in there. Now, from a jail management point of view, certainly you obviously have those fixed costs, the more folks that you have in. And if you have some reimbursement, those fixed costs are going to vary or those fixed costs are going to be divided among more people. But I would tell you there is a variance across the state. But the lowest, like I said, the lowest I heard does not meet what we are being compensated. [LR349]

SENATOR FRIEND: Thank you. Any further question? I see none. Thank you, Mr. Dix. Next proponent. [LR349]

SENATOR DUBAS: Thank you, Senator Friend, Senator Janssen. My name is Senator Annette Dubas, that's D-u-b-a-s. And my original concern was with county jail reimbursement of. Part of my district is impacted. Hall County has had this concern for many, many years. And so when I began talking with Mr. Lock about this program and why we are where we are, it just seemed this resolution grew from there. Yes, we need to look at reimbursement. Counties have been counting on this money. But just depending on the timing, if you've got it in the first half, you were lucky; if you were in the second half, you were not so lucky. So I think it's important that we are having this discussion today. Legislatures in the past have obviously recognized an importance for aid to counties, and we've had several programs created to give that aid to counties. And due to hard times, those programs have taken some significant cuts. And I do hear

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from my county boards, they don't know what they can count on. So we need to have something that is sustainable that allows them to build their budgets around something that they can count on. So that's what precipitated this resolution for me. It did start with the reimbursement issue. And I guess my question and my goal is if for whatever reason the political will is not there to fully fund jail reimbursement, then what is it that we are willing to do as a body? What is it that we are willing to put forward for county aid so that our counties can...you know, we've just been sitting on dead center for a long, long time. And I think it's time that we...we owe them as well as ourselves, in state government, a direction. And if we're willing...what dollars we're willing to put into these types of funds and then move forward. I do think we have an obligation. I thought from the very beginning if they're doing a duty for the state, we have an obligation to pay our bills. But it's very obvious that we have not been willing to live up to that obligation. And so if we're going to continue to sit there and not want to move forward, then what is it that we are going to be willing to do. And that was my sole reason for bringing this legislation forward. Mr. Lock has helped me immensely in understanding all of the aid programs, and he has worked very hard in putting together a variety of options. And while I know no one will ever be completely happy with any one particular option, I think we've got some good things to work from here and that hopefully we'll be able to move forward. So I appreciate the committee's time and attention to this issue, and look forward to hopefully working with you in moving something forward. [LR349]

SENATOR FRIEND: Thank you, Senator Dubas. Are there questions from committee members? I don't see any. Thanks. Next testifier. [LR349]

JACK CHELOHA: (Exhibit 4) Good morning, Senator Friend, members of the joint committee. Jack Cheloha is my name, last name C-h-e-l-o-h-a. I have a handout here I'd like to advance a position or extend beyond what Gary Krumland talked about in terms of state aid to municipalities. What this handout will go through for you are those three areas of state aid and how they've specifically affected the city of Omaha in terms of the amount of money we've received from the state. In terms of what Larry Dix talked

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about with the counties, we see ourselves as being in partnership as well with the state or a political subdivision. We rely on the state and the state's word in terms of programs that were affecting our abilities to raise revenues way back in 1970 where we changed the personal property tax and then implemented a state aid program. Cities have relied on that promise, if you will, for years. And since then, we've you know lost the amount dramatically in terms of how much we've been reimbursed for our loss of the ability to tax personal property. In the meantime, our sales tax, local option sales tax, have been stagnant. The public at large has a general disdain, if you will, for property tax. And so municipalities are hemmed in in a sense in terms of trying to meet our budgets and trying to provide services to our citizens. This handout, if you will, speaks for itself. We have enjoyed a little bit of an increase though in the highway allocation fund, and that's because of some actions that the Legislature has taken in terms of putting some extra money into that fund, whether it came from the sales tax on lease vehicles or some other general changes, and we appreciate that. As you know, cost have risen dramatically as well to paved streets and improved roads. Finally, in recent times through the last downturn of this decade, we were hit again, if you will, in terms of loss of dollars, in terms of the general state aid which on our sheet was LB816. We've lost roughly 25 percent of that. At the time, we thought that we were helping the state and that it was a temporary assistance. So we'd like to get that back to at least where it was in 1996. We talked about the state insurance tax, but unfortunately or fortunately that goes into the Municipal Equalization Fund now. And so Omaha, because of our levy, we don't receive any of that money anymore. So that just generally explains that. And recently, some things we've done also at the legislative level may have made good policies, but yet they've affected our ability to raise sales tax. Where we've extended exemptions on sales tax, that's constricted, if you will, our revenues there. Finally, I wanted to talk about the county jail reimbursement because that affects us as well in the city of Omaha. Recently, we used to run a city jail, but recently we've moved to the point of where we have actually closed it. Now through interlocal agreement we house people charged with crimes that Omaha police arrest whether it's on a state charge or a city ordinance in the county jail. And if they're there long term, we have an agreement with

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the county where we reimburse them for at least what we call "our prisoners," if you will. A number of times though, they're not charged with only a city ordinance violation, that's typically other state charges. And with that, we pay about \$6 million per year to Douglas County. And so we think that if we could work something with the Legislature where the county is reimbursed at a better rate for those charged with state crimes, that ultimately that would help our budget as well. Finally, just some general comments from our city finance director. Balancing a budget is difficult and the public, as you know, doesn't want a property tax increase. Let's see, we have little ability to go to other revenue sources because for instance in the city of Omaha, we can't even charge a garbage collection fee unless we would submit that to the voters for a vote of the people. And imagine that. How many people would vote to implement a fee on themselves? So in the past eight years or so, we've cut our spending, we've lost basically 13 percent of our civilian workforce in that time, and we've had the generally shift to more of a commitment to only provide core services, which would be police and fire and things along those lines. And so I guess what I'm saying is cities are hurting. We have been hurting throughout this decade. And if in the past the state has made some agreements or promises to us, we'd like to come back and ask to be reimbursed at least at the rates where we were receiving state aid in the mid-nineties. And I don't know if you can believe everything you hear on TV, but I think I heard something recently where someone said that the state has the largest surplus in its history. So I just thought maybe it's time to come back and pay some of our bills, if you will. I'll try and answer any questions. [LR349]

SENATOR FRIEND: Thank you, Jack. Are there questions for Mr. Cheloha from the committee? I don't see any. [LR349]

JACK CHELOHA: Thank you. [LR349]

SENATOR FRIEND: Thanks. Are there any other proponents? [LR349]

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KENNETH KRIZ: My name is Kenneth Kriz, K-r-i-z is the spelling of the last name. I'm an associate professor at the University of Nebraska at Omaha's school of public administration, and I've been studying public finance off an on for about the last 12 years. I wanted to speak about a study which we did at the behest of the city of Omaha comparing Omaha's revenue and where it gets its money compared to other cities of a similar size. We were asked to do this in the summer of 2007 and completed work later on in the fall of 2007. And the city, as the last speaker alluded to, is facing a number of challenges and wanted to see how they compared to cities of a similar size in a similar position. And so they asked us to do this research. We designed our research in two ways. We looked at a small group of cities very intensively. We originally had ten cities as comparable cities. Albuquerque, Atlanta, Kansas City, Louisville, Minneapolis, Tulsa, Wichita, cities that we thought were comparable in terms of size, economic composition, recent economic growth, population growth, and how they were structured in terms of density of land use, all the things we think should affect their comparability. The mayor and city finance director asked us to add in Des Moines as a comparison city also, although we didn't feel it was...because it was smaller, about half the size of Omaha, we didn't think it was a very comparable, but we did as we were told. In order to back this up since we're looking at a relatively small group of cities, we also had a second sample of data from the U.S. Census Bureau that gave us more general information, allowed us to make some very broad comparison, it allowed us to crosscheck our results to make sure we weren't simply looking at a certain group of cities that was different from all other cities. So what did we find? In terms of the questions in front of you in LR349, we found that Omaha gets far less general intergovernmental aid--I sorry I should preface that--general intergovernmental aid, the types of things that could be used to reduce the property tax burden and other choices than the similar cities did from their state governments. Just to give you an example, from our most comparable cities, Omaha received by our calculations in terms of general fund, general intergovernmental revenue, the things that could be used directly to reduce property tax burdens or provide for services, they received about \$3.5 million in 2005 from their financial statements. Wichita, \$15.5 million; Tulsa, \$24.5 million--I'm just reading over

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here--Portland, \$26.5 million; Nashville, which is a combined city and county, so this is somewhat, \$79.6 million; Minneapolis, \$80.2 million; Louisville, \$26.5 million; Kansas City, \$15.2 million; Des Moines, \$1.3 million, that was one that was relatively close of a same type of magnitude as Omaha; Denver, \$31.5 million; and so forth. It's not only different, it's different by an order of magnitude in terms of what the city receives. This was confirmed by the census data. On a per capita basis, Omaha's \$3.5 million is about \$9 per capita, dividing by the population. The median of our census bureau cities, and this was a sample of 70 cities that were within 300,000 population, so down as low as 100,000, as high as 700,000 population from Omaha, the median of those cities received about \$70 per capita in terms of general governmental aid. So again, it's not only different, it's different by an order of magnitude. I've also got some work under way right now that looks at it and tries to break it down. It appears the state is more close, although it is at the end of the distribution in terms of what cities receive that are kind of in what I would call the middle range, cities of 25,000 to 100,000. Nebraska cities on average received about \$4 per capita in state general aid, and the average was again it was about \$55 per capita in the middle state. And I think that middle state was Ohio is the one I think it was. So what we found are major differences in terms of Nebraska compared to other states. Now, I'll leave it up to other people to kind of discuss how it affects things. I would like to make a couple of comments based upon things that have been said before. One of the reasons you have state general aid is to pay down or to substitute state tax burdens for city tax burdens to a certain extent. And that's certainly something that you need to take into account and to equalize. But there is another general issue that I think needs to be addressed. When you're talking about the needs of cities in terms of providing services, one of the things that makes it difficult to assess that need is the presence of what fuzzy-headed economists like me call interjurisdictional spill overs. What that means is not only do the decisions that Omaha and Lincoln and Hastings and Kearney and all the cities and counties in the state, their decisions not only affect their residents, but they also affect to a certain extent and certainly for different services different levels, but they affect residents in other parts of the state also. So if jails aren't run properly in Douglas County, that not only affects

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Omaha and Douglas County, but potentially Sarpy County and other counties. And I'm sure you know this, but being an economist I have to tell you what you already know. One of the things and what I would encourage is careful study on this issue is what is the extent of these spill overs? How much do the decisions that one county or city makes affect the other city or counties? In those services where those are large, the state should play a large role. In areas where it may be more the benefit accrues to local residents, then the cities and counties should probably be more on the line in terms of the amount they finance. I'd be glad to take any questions. [LR349]

SENATOR FRIEND: Thank you, Dr. Kriz. Are there any questions from the committee? Senator Rogert. [LR349]

SENATOR ROBERT: Just a couple you probably can't answer, but more food for thought. You mentioned the average per capita dollars received in the...such as Omaha \$9 versus \$70 was the median. My question for you, how many of those states had 40 percent of their population living in that city? And how many of those states have gambling? [LR349]

KENNETH KRIZ: Um-hum. Good question. Thank you, Senator Rogert. In terms of how many states have the majority of the population in the center of the city, I think there's a mix obviously. The more you get into the Midwest, the more that...and the west, the more that's the case. So certainly...I used to live in Colorado. Denver has the majority of the population in the state of Colorado. But again, their general state aid was \$31.5 million, on a roughly similar population base to Omaha's. So that certainly is a factor and I wouldn't want to say that it doesn't play a part, but certainly it is. On the question of gambling, I think that's a good question. I don't have figures in front of me in terms of gambling's takes, but I think--that wasn't meant to be a joke--I would say that from what I know about general figures...I teach the gambling part of my public finance class, that it tends to be in much smaller in the range of say \$10, maybe \$15 per capita in most states. It may make some of the difference, it doesn't account probably for all the

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difference. [LR349]

SENATOR FRIEND: Thank you. Senator Cornett. [LR349]

SENATOR CORNETT: Maybe I misunderstood you. Were you saying that Omaha had a similar population to Denver? [LR349]

KENNETH KRIZ: Um-hum. Yes, within the city itself. [LR349]

SENATOR CORNETT: What is the population of the city of Denver compared to Omaha and are you looking at just the city of Omaha or are you looking at the metropolitan area including Sarpy County, Washington County, Lancaster? Explain your methodology there for me please. And then secondly, I know you said \$31 million. I'm not so interested in the total amount because Colorado is a lot bigger state than we are. What is the per capita amount? [LR349]

KENNETH KRIZ: The answer to the first question is we simply looked at the cities. That is what our task was given to us to look at cities. [LR349]

SENATOR CORNETT: The incorporated city. [LR349]

KENNETH KRIZ: Incorporated city. So obviously the metropolitan area of Denver is much larger. If I had to do it myself to publish this, I would probably also looked at that. But you know as far as I remember, the MSA if you look at Omaha is roughly 1 million. It's in that range. In Denver, you're probably... [LR349]

SENATOR CORNETT: That was including the metropolitan. [LR349]

KENNETH KRIZ: Yeah. That's the metropolitan statistical area. [LR349]

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SENATOR CORNETT: So you're taking Omaha as the metropolitan area compared to Denver just as the city of Denver. [LR349]

KENNETH KRIZ: No. We looked at Omaha as an incorporated city compared to Denver as an incorporated city. It wasn't apples to apples relationship there. [LR349]

SENATOR CORNETT: What is the population of the city of Denver? [LR349]

KENNETH KRIZ: As of 2005, the estimate was 558,000. So it was slightly larger. [LR349]

SENATOR CORNETT: Okay. And what was the per capita spending? Just \$31 million versus whatever (inaudible). [LR349]

KENNETH KRIZ: Per capita basis, that would be about \$63 per capita for Denver. [LR349]

SENATOR CORNETT: Thank you. [LR349]

SENATOR FRIEND: Thank you. Are there any further questions from committee members? I see none. Thank you, Doctor. Any other proponents generally, general proponents? Are there any general opponents? Anybody else wishing to testify in the neutral, anything? That will close the hearing on LR349. [LR349]

SENATOR JANSSEN: And the joint hearing for the day. [LR349]