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Revenue Committee
March 12, 2009

[LB210 LB336 LB466 LB587]

The Committee on Revenue met at 1:30 p.m. on Thursday, March 12, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB336, LB210, LB466, and LB587. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Mike Friend; Galen Hadley; LeRoy Louden; Dennis Utter; and Tom White. Senators absent: None. [LB336]

SENATOR CORNETT: Good afternoon, my name is Senator Abbie Cornett from Bellevue; to my left is Vice Chair, Senator Cap Dierks from Ewing; to his left is Senator Adams from York; Senator Hadley from Kearney; Bill Lock is research analyst and Erma James is committee clerk. On my far right is Senator Utter from Hastings; Senator Louden will be joining us from Ellsworth, as will Senator White from Omaha. Senator Friend is introducing our first bill today. Our pages are Rebecca Armstrong and Elsie Cook. Before we start the hearing today, I'd ask everyone to please turn off their cell phones and pagers while they're in the hearing room. Sign-in sheets are at the back of the room for testifiers on the tables by both doors. Those sheets need to be completed by everyone wishing to testify. If you're testifying on more than one bill you need to submit a form for each bill you're testifying on. Please print and complete the form prior to coming up. When you testify, hand your testifier sheet to the committee clerk. There are also clipboards at the back of the room to sign in if you do not wish to testify but would like to indicate your support or opposition to a bill. These sheets will be included in the official record. We will follow the agenda posted at the door. The introducer or representative will present the bill followed by proponents, opponents and neutral. Only introducers will have the opportunity for closing remarks. As you begin your testimony, please state your name and spell it for the record. If you have handouts, please bring ten copies for the committee and staff. If you only have the original, we will make copies. Please give those handouts to the pages. Senator Friend, you are recognized to open on LB336. []

SENATOR FRIEND: Thank you, Madam Chairman and members of the Revenue Committee. For the record, my name is Mike Friend, F-r-i-e-n-d, and I represent the 10th Legislative District in northwest Omaha. I'm here to introduce LB336. The bill is simple. It repeals the sales tax on municipal water. Our sales tax code, you've heard me rant about this in the past, is dysfunctional and, in my view, it's broken. This is a perfect example of that. A person can go to a store, buy a...purchase a bottle of water, purchase a case of water, three cases of water without having to pay any sales tax. And if they obtain water from a tap in their home, in my district at the very least and in a lot of yours, you pay a sales tax, and a certain type of use tax. I know that there's going to be some folks to speak to that in a proponent fashion and an opponent fashion. I believe, simply put, that...and by the way, I have no problem with the fiscal note. I thought I had better put that out there. I think it's probably pretty close. I do have a problem because I understand our fiscal situation and I know what the reality is. So I also know what we're

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up against here. So that being said, I think the dysfunctional and disproportionate part is obvious. Water is a necessity of life. We don't tax food. We don't tax water when you purchase it. I don't purchase much water at the store. I get it out of the tap. I think it's silly. I'd answer any questions that anybody would like to ask. [LB336]

SENATOR CORNETT: Seeing none, thank you, Senator Friend. [LB336]

SENATOR FRIEND: You're welcome. [LB336]

SENATOR CORNETT: First proponent. [LB336]

DOUGLAS CLARK: (Exhibits 1 and 2) Good afternoon, Chairman Cornett and members of the Revenue Committee. My name is Doug Clark, C-l-a-r-k. I'm with the Metropolitan Utilities District and I am vice president of government affairs and marketing. I have a few handouts for you today. One is a bill that we send out to all of our 200,000 water customers and the other is a study done of similar sized utilities in the United States. And I will make a quick comment on the utilities study. It is done by Memphis Power and Light and Memphis Power and Light will, every two years does an analyzing of all the utilities in the United States of similar size and public ownership. In Omaha we are very fortunate that we rank number one in the lowest utility cost for public owned utilities in this survey. I want to say in the country but I can't say that with certainty, so I will say at least in this survey we rank as the lowest price utility cost. That's for electricity, water, natural gas and even storm water, sewer systems. So we do a pretty good job of holding our rates low in the metropolitan area. I think it's important to understand that the amount of tax that people pay on their water when you look at the bill that I just showed you, that I've handed out, the tax rate would be roughly \$1.35 a month in taxes on the water. A residential home, we call this a base load, which is usually in the wintertime, we gauge the base load in the wintertime which is your normal consumption to wash your clothes, flush the toilet, wash your hands and cook with, is roughly 9,000 gallons a month for the normal family, whatever you want to classify the normal family in Omaha as. And that number is also declining. As in the natural gas business, we are in a declining market because more and more homes are more water efficient. They're using less water in the showers, in the toilets, and in the sinks. And your automatic dishwashers are much more efficient. It comes down to a fairness issue. This particular bill was requested by our board and the board felt and has received many phone calls as to why am I paying sales tax on the consumption of my water. The other thing that residents of the metro area are paying sales tax on, to support our water system, is the \$2 water infrastructure replacement charge. And over the course of the next 25 to 30 years when we rebuild the eastern portion of our water system, we will spend roughly a billion dollars replacing pipes in the ground, and over that time there will be a 7 percent tax on that also. Roughly 2 percent of the water consumption in this state is used domestically. That 2 percent is paying 100 percent of the tax on water in this state. There's no other water taxed outside of the domestic consumption or the consumption

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on a municipal system. And our board has felt that this is an inequity in the tax system and they've asked for it to be repealed. And with that, I'd answer any questions. [LB336]

SENATOR CORNETT: Senator Adams. [LB336]

SENATOR ADAMS: What do you do with the sales tax dollars that you collect? [LB336]

DOUGLAS CLARK: We remit... [LB336]

SENATOR ADAMS: Your local. [LB336]

DOUGLAS CLARK: We remit it to the city of Omaha. [LB336]

SENATOR ADAMS: Back to the city. [LB336]

DOUGLAS CLARK: Yes, sir. [LB336]

SENATOR ADAMS: So if...MUD is a unique character amongst municipalities. [LB336]

DOUGLAS CLARK: Yes, sir. [LB336]

SENATOR ADAMS: So to pass this, we may have other municipalities with local option sales tax that we absorb those on water, wastewater, intraproprietary funds and use them for further infrastructure development, possibly? [LB336]

DOUGLAS CLARK: Possibly, yes. [LB336]

SENATOR ADAMS: All right. So what you've done is you've pulled that out, supposedly. [LB336]

DOUGLAS CLARK: Yes. [LB336]

SENATOR ADAMS: Gas, infrastructure, replacement, three bucks. Water infrastructure, \$2. [LB336]

DOUGLAS CLARK: Yes. [LB336]

SENATOR ADAMS: How close does that come to handling your infrastructure replacement? [LB336]

DOUGLAS CLARK: Currently, at the current rate that we're doing it, it's handling it quite well. And we're moving along. We're trying to keep it from being a sticker shock situation, so we're trying to replace several miles a year. We have roughly 500 miles of

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pipe that we want to replace. [LB336]

SENATOR ADAMS: Does Omaha filter its water? [LB336]

DOUGLAS CLARK: Yes. We just built a \$354 million treatment in western Douglas and eastern Sarpy, or Saunders County, excuse me. [LB336]

SENATOR ADAMS: Are you recovering that debt? I'm assuming in your cost structure here. [LB336]

DOUGLAS CLARK: In our rates, yes, sir. [LB336]

SENATOR ADAMS: No more questions, thank you. [LB336]

SENATOR CORNETT: Senator Hadley. [LB336]

SENATOR HADLEY: Mr. Clark, some of this water that we're using here though would be used for irrigating my lawn and such as...you know, other than drinking, right? [LB336]

DOUGLAS CLARK: Yes, sir. Absolutely. [LB336]

SENATOR HADLEY: And the water that I buy at the store I would normally be just for drinking or cooking? [LB336]

DOUGLAS CLARK: That would be true to a degree. But a lot of the other water that's not taxed is also used to water other things and not used domestically. [LB336]

SENATOR HADLEY: I guess...is the question that the tax is inappropriate because we're not taxing other water or is it inappropriate because I can buy...I can buy water at the store and not pay a tax on it. Does that make sense? [LB336]

DOUGLAS CLARK: From a board perspective, our position would be that when 98 percent of the water consumed in the state is not paying the tax, and 2 percent is, that that would be a tax inequity. [LB336]

SENATOR CORNETT: Seeing no further questions, thank you. [LB336]

DOUGLAS CLARK: Thank you very much and thank you, Senator Friend for introducing the bill. [LB336]

SENATOR CORNETT: Next proponent? Opponents? [LB336]

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JACK CHELOHA: Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Jack Cheloha, J-a-c-k, the last name is spelled C-h-e-l-o-h-a, registered lobbyist for the city of Omaha. I want to testify in opposition to LB336. It's strictly a revenue loss for the city of Omaha according to the fiscal note that we submitted to your office. We would lose roughly \$680,000 in fiscal year '09, '10, and roughly \$748,000 in the next biennium, or I'm sorry, the next year of the biennium. You know, that's significant dollars to us as I've testified before this committee before. We raise about \$110 million a year in sales tax. You know, this amount pays for a significant portion of our General Fund operation whether it's the police officers, or parks, or libraries or whatever we dedicate that to. The city of Omaha may be a little bit different than some other cities as we don't operate our utilities. They are a separate political subdivision, if you will. And so, you know, there's no built-in, you know, added revenue off of delivering the service or whatever. The only thing we can rely on is the sales tax once it's delivered to the ultimate customer. And for those reasons, we would be opposed to the bill because it would be a significant hit to our General Funds. I'll try to answer any questions. [LB336]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB336]

JACK CHELOHA: Thank you. [LB336]

SENATOR CORNETT: Next opponent. [LB336]

JOE KOHOUT: (Exhibit 3) Chairman Cornett and members of the Revenue Committee, Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing today on behalf of the United Cities of Sarpy County. I'm passing around a letter from the mayors stating their opposition to LB336 and much like the city of Omaha, our opposition is strictly based on impacts on revenues. You have a list there of the impact on those cities of what a reduction would mean. And so we submit the letter for your consideration and would try to answer any questions you might have. [LB336]

SENATOR CORNETT: Seeing none, thanks. Next opponent. Is there anyone here to testify in a neutral capacity? Senator Friend, you're recognized to close. [LB336]

SENATOR FRIEND: Thank you. Thank you, Madam Chair. Members of the Legislature I brought this bill, one main reason, and that was to expose what I think is an inequity. And it's not just an inequity in this area of law, it's an inequity with our sales tax code. You're tired of me, you're tired of me saying it, you're tired of hearing about it. I'm going to be gone some day but the inequity in our sales tax code is going to be around. I may not be able to fix it. Some of you may. And I think it should be addressed some day. Let me sum up here. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease or rental of and the storage, use or other consumption in the state, in this

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state of subsection (3) sales and purchases of water used for irrigation of agricultural lands, for the manufacturing purposes. Right now those are exempt. We've got problems down in the Republican River Valley, correct? A lot of it deals with, to a degree, our overuse. I just wonder what happens if they were taxed, what happens if the use of that water down there was taxed to a certain degree? Taxation drives certain types of behavior. And you know, look, the bottom line is, a sales tax should reflect some equity too, just like an income tax does. Hopefully, just like we try to strive for in our property tax. I don't think we have it, folks, and I think this bill is a perfect example of the fact that we don't, so that would be it. Thank you. [LB336]

SENATOR CORNETT: Thank you, Senator Friend. That closes the hearing on LB336. Senator Langemeier, you're recognized to open on LB210. [LB336]

SENATOR LANGEMEIER: Chairman Cornett and members of the Revenue Committee. Thank you for this opportunity to come before you today. I'd like to sit here and say I have a simple bill but after serving on Revenue Committee for two years, there is no bill that is simple within this committee or in the Legislature. LB...excuse me, my name is Chris, C-h-r-i-s, Langemeier, L-a-n-g-e-m-e-i-e-r, and I'm here representing District 23. LB210 proposes to change the state aid formula for Natural Resources Districts. It would allow each...first of all, the way it works is each district sets their levy each year. They take the total levy then levied divided by the levy amount for a particular NRD district, and that is the percent of the state aid formula you get to NRDs. This bill would exempt bonds from your calculation of the base. And the reason that is, is because the higher the levy you have, the more state aid you get. So if you're an NRD, some now have bonding, some don't, so those that have bonds outstanding then have a higher number which skews the money towards them. So this would remove any bonding from the base to compensate for state aid still based on property tax and not a bonding. And that is what it is. Are there any questions? There's got to be lots of testifiers behind, or several testifiers behind me but I would take any questions if there are any . [LB210]

SENATOR CORNETT: Senator Adams. [LB210]

SENATOR ADAMS: So Senator Langemeier, if I understand it correctly, what you're attempting to do is, the state aid is going to be designed more to reflect the general operating budget of the NRDs rather than additional costs that any one particular NRD may have taken on and bonded for. [LB210]

SENATOR LANGEMEIER: Correct. [LB210]

SENATOR ADAMS: Okay. [LB210]

SENATOR LANGEMEIER: For example, if we were to give a particular NRD expanded bonded authority and they put in a really, really, really big dam and spent a lot of

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money, that would skew them in the state aid formula to get more money. So this would take that proportion out and it would go back to general operating type expenditures. [LB210]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB210]

SENATOR LANGEMEIER: Thank you very much. [LB210]

SENATOR CORNETT: First proponent. [LB210]

DANIEL SMITH: (Exhibits 4 and 5) Senator Cornett and members of the Revenue Committee, my name is Dan Smith, D-a-n S-m-i-t-h, and I'm the manager of the Middle Republican Natural Resources District. I'm offering testimony in support of LB210 on behalf of my district and the Nebraska Association of Resources Districts. LB210 impacts only Natural Resources Districts and would change the formula by which subdivision aid is computed. It does not increase our state aid and it does not affect similar calculations for other governmental subdivisions. Senator Langemeier's opening covered almost all that I think needs to be said. I don't need to repeat all that for you. We were one of the districts that had a bond in 2007. Because of that bond, our state aid in the following year, this current year, doubled. And the only way that can happen is if those dollars come from some other district. We introduced this resolution in our September conference and it was voted on again in January at our legislative conference, and in both times through the Nebraska Natural Resources Districts meetings, this resolution was adopted unanimously 115 to zero. So there is support from the other NRDs. I think we all recognize the impacts we have on each other. This bill would simply level the playing field, take away some of the fluctuations in there, and I think it's reasonably well receptive. If you will look at my written testimony, I have included page 1 of a budget form and I've highlighted a box there that is called real, a personal and real property tax. That's where the numbers come from. Currently, the party pulling these numbers together to determine state aid would look at the total number, the third line there, the total personal and real property tax required. What this bill would do would say, no, don't do that. You just look at the line that says, in this case, all other purposes. The second handout I sent around is the last three years of state aid. And I think you can see on there, there's some fluctuations. People's budgets go up and down in a given year and ours in that '07, '08 year for the Middle Republican is the calendar year we had the bond in, and we went from \$27,000 in state aid up to \$50,000 the next year. Like I say, the only way that happens is it comes from some other district, so. You also see on the bottom of that total page, that the pool of money that we're working from is fixed. It hasn't changed and this bill will do nothing to affect that, so. Thank you for the opportunity to testify. I'd certainly try to answer a question if there may be one. [LB210]

SENATOR CORNETT: Senator Utter. [LB210]

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SENATOR UTTER: Thank you, Senator Cornett. Mr. Smith, so we're to understand that every NRD in the state is in full support of this bill? [LB210]

DANIEL SMITH: Yes, sir. That was reflected in the voting that put this resolution forward and the one that moved support for the bill at our legislative conference, yes, sir. [LB210]

SENATOR CORNETT: Senator Adams. [LB210]

SENATOR ADAMS: I know you don't have this on the form, but I'm just wondering if you know in curiosity, how much deviation do we have across these NRDs in property tax rate? High to low. [LB210]

DANIEL SMITH: It's probably going to vary from just over, I want to say the lowest district is about 2.5 cents and there are two or three districts that are pretty close to maxed out at the 4.5. Now those of us that have groundwater management activities or fully overappropriated have some additional cents of revenue that were available and they will still reflect in the General Fund portion of this. [LB210]

SENATOR ADAMS: Anywhere, 2 to 5, 2.5 to about 5. [LB210]

DANIEL SMITH: Yes. Almost 2.5 to almost 8 cents, sir. [LB210]

SENATOR ADAMS: I see. Okay, thank you. [LB210]

SENATOR CORNETT: Senator Hadley. [LB210]

SENATOR HADLEY: Senator Cornett. Mr. Smith, is there anything else that we should be looking at that skews the distribution besides just the bond interest and principal. Is there any other calculation that is unfair in determining the distribution? [LB210]

DANIEL SMITH: I would say, no. The bond...not everybody has bonding authority. You know, some districts as was touched on here, a larger district, one of the big three, if you will, big four, had a large bond, they could almost wipe out the governmental subdivision aid for the rest of us. So smoothing that out by taking that bond feature out of the calculations, keeps it pretty much level. We know it's going to change. It's going to fluctuate by maybe a thousand or two every year but when it changes by twelve or fifteen thousand, then there's something that needs to be smoothed. [LB210]

SENATOR HADLEY: Thank you. [LB210]

SENATOR CORNETT: Senator White. [LB210]

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SENATOR WHITE: Can you...and you may not know, what's the history? Why was the bond feature in the bill in the first place? [LB210]

DANIEL SMITH: The bond that we were able to use was the LB701 bonding authority for the three Republican NRDs. We levied the taxes. We never got around to issuing the bond because it got tied up in the court cases. But that...those numbers were included on our budget sheet, went forward there. You know, they were...the taxes were levied. They were collected. They're being held in escrow right now. But those two numbers on that sheet went forward to this year's notice of subdivision aid for us and it jumped from the \$27,000 to \$50,000. [LB210]

SENATOR WHITE: I guess I'm asking why would bond numbers, were they included in calculating subdivision aid numbers in the first place. [LB210]

DANIEL SMITH: Because they were property tax dollars involved in that bond. We were allowed to use up to 10 cents of property tax in the LB701 process. [LB210]

SENATOR WHITE: So the system was set up, the higher you utilized property taxes the higher aid you would get as a local effort kind of concept? [LB210]

DANIEL SMITH: Yes, sir. The total budgets are put together, then it's divided back out based on the individual budgets. So each year that, under a normal situation, routine situation, they don't vary by more than about a percent. But like I say, in our case that one year, they doubled and that, because it took dollars away from other districts. [LB210]

SENATOR WHITE: Papio NRDs are lobbying hard to get the authority and I think it's come out of committee to, and Senator Langemeier can correct me, but when they were here a couple years ago they were asking for \$650 million in bonding authority. Are they all right if they get that bonding authority? Are they supportive of this bill that that number would not be calculated in giving up state aid? [LB210]

DANIEL SMITH: Yes, sir, they were one of the districts that voted twice in support of this bill. [LB210]

SENATOR WHITE: It's an interesting position for them to come to the people of Omaha, my district, and say, not only do we want to raise your property tax, we now don't want any state aid to help reduce the property tax increase we're going to give you. [LB210]

DANIEL SMITH: To a certain extent, I think, and we NRDs talk with each other, we know each other's problems and I think it comes down to a fairness issue. You know, just because you can, you don't need to take dollars away from somebody else in this

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type of a fund. And that's the net impact of that bond. It's not like we want to take somebody's authority completely away. It still goes along with the General Fund portion of the budget, so. [LB210]

SENATOR WHITE: Thank you. [LB210]

DANIEL SMITH: Thank you, sir. [LB210]

SENATOR CORNETT: Senator Louden. [LB210]

SENATOR LOUDEN: Thank you, Senator Cornett. Mike, how do you go about getting these bonds? Do the board members decide to buy the bonds or do you take a vote of all the voters in the district in order to do this bonding? [LB210]

DANIEL SMITH: Through the LB701 process those bonds could be decided on by the board of directors, yes. [LB210]

SENATOR LOUDEN: Right, but this deal what you're going for which... [LB210]

DANIEL SMITH: There is no new bonding in here. This simply takes the bonding ability or the bonding number off of the property tax form for governmental subdivision aid calculation. [LB210]

SENATOR LOUDEN: Okay. And that LB701 was mostly for that Republican River deal and that's all down the tube. (Laughter) Down the river. [LB210]

DANIEL SMITH: Not completely down the tube, sir. (Laughter) [LB210]

SENATOR LOUDEN: What I'm wondering is, is how do...you know, yeah, you pass this, but how do the rest of the NRDs do bonding authority? Because, you know, like the Papio and all of them, they're all wanting to do bonding, some bonding to build dams or something like that, so how do they get that bonding? Do they do it with a vote of the people or a vote of the board members? [LB210]

DANIEL SMITH: I can't tell you that, sir. I'm not sure what the structure of 160, whether that requires just the board vote. That's the only other bill I know of right now that would expand bonding authority for the districts. Now the only other type of posted bonding that comes by is through the improvement project area and that's voted on by the participants in that particular area. And IPA's have been on our books for a number of years and would be available to all districts for the specific types of projects, so. But it doesn't give anybody additional authority for bonds. It doesn't expand anybody's addition to current authority. [LB210]

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SENATOR LOUDEN: Yeah, I know this don't, but I was just wondering what the authority was now because if their authority would have quite a lot to do with what you do with this on what authority you already have for bonding authority. I would think that would be quite important. [LB210]

DANIEL SMITH: But it's the fund that pays back those bonds that impacts this. If your bonding is going to have a property tax provision, then that's going to impact your budget. [LB210]

SENATOR LOUDEN: How many NRDs have bonds now? Do you know off hand? Besides you people down there? [LB210]

DANIEL SMITH: I can only say the three of us right now, the three Republicans. [LB210]

SENATOR LOUDEN: Because I thought at the time that was the only ones that gave any bonding authority to was those three because it was, there were bills introduced or discussion about helping out the Omaha area with their dam building, I guess, is what the Washington County people called it. (Laughter) And they were wanting bonding authority to do that. Now as far as I knew that never got through but... [LB210]

DANIEL SMITH: Now I think there is some revenue bonding that is available for someone who is working with, say rural water district. But that would...the payment for those bonds would be the fees associated with the delivery of water... [LB210]

SENATOR LOUDEN: With the people that were in... [LB210]

DANIEL SMITH: ...not with the property tax. [LB210]

SENATOR LOUDEN: Yeah, and it would be the people that were using the water. [LB210]

DANIEL SMITH: Yes, sir. [LB210]

SENATOR LOUDEN: Yeah, whether it was pipelines or whatever it is, they would be their own entity doing that more or less. [LB210]

DANIEL SMITH: Yes, sir. [LB210]

SENATOR LOUDEN: Okay, thank you. [LB210]

SENATOR CORNETT: Seeing no further questions, thank you. [LB210]

DANIEL SMITH: Thank you, ma'am. [LB210]

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SENATOR CORNETT: Next proponent. We'll move to opponents. Anyone in a neutral capacity? Senator Langemeier, you're recognized to close. [LB210]

SENATOR LANGEMEIER: I'll be brief. Senator White brings up a good point. If you look at the, one of the sheets that I believe was handed out by the last testifier, you can see in the state aid to Papio, for example, due to the bonding within the Republican, the three Republican basins, they're the only NRDs in the state that have bonding. As you see, they did go down. So Papio suffered a loss on that. The NRDs have met, they did vote it 115-0 to continue to support this concept. I think it gets back to just the fairness of the basic budget in that state aid formula. The state aid formula started back in the '70s. It replaced when we got rid of property tax on...a portion of property tax and that's how we got to this. So with that, we'd ask that you advance LB210 out of committee. If there's any other questions, I'd take them. [LB210]

SENATOR CORNETT: Seeing none, thank you, Senator Langemeier. [LB210]

SENATOR LANGEMEIER: Thank you very much. [LB210]

SENATOR CORNETT: That closes the hearing on LB210. Senator Wallman, you're recognized to open on LB466. [LB210]

SENATOR WALLMAN: (Exhibit 6) Good afternoon, Chairman Cornett and members of the esteemed Revenue Committee, huh? And my name is Norm Wallman, W-a-l-l-m-a-n. I'm here today to introduce LB466. Kind of ironic, we're talking about the Republican Basin here. And LB466 repeals the excise tax on the sale or delivery of corn and grain sorghum levied under 66-1345.01 effective December 31, 2012. The bill also states the intent of the Legislature to increase General Fund transfers to the Water Resources Cash Fund from \$2.7 million to \$10 million for fiscal years 2012 to 2013 through 2018 to 2019. Current law sets the excise tax effective October 1, 2012, at three-fifths of 1 cent and directs the revenue to the Water Resources Cash Fund. Excise taxes on commodities have been traditionally used to fund programs designed to stimulate utilization and demand for the commodity including research on innovative new uses. And diversion of checkoff revenues to the Water Resources Cash Fund is the first time checkoff revenue would be used for other purposes. The checkoff is paid by corn and grain sorghum producers statewide, including dryland producers, while the use of the Water Resources Cash Fund is limited to the fully appropriated portions of the Republican and Platte Basins. Farmers outside the Republican and Platte Basins have no more interest in the water challenges to those two basins than any other Nebraskan outside the basin. So I see, I think it's unfair to ask them to contribute more than other Nebraskans to addressing the challenges. With the checkoff, funding to address the state's water challenges leans too heavily on agriculture. Including the cost of regulatory reductions being required of irrigated agriculture, and the contributions through local

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property tax collections, agriculture is being asked to carry too much of a burden again in addressing the state's water challenges. All Nebraskans have an interest in resolving our water challenges, and additional general fund dollars are needed to better balance the funding. And I'm a corn producer myself outside the basin and so I realize we have to pay for these issues some...I see Kansas is in the paper again, you know, in resolving this water issue. So I'd appreciate your support on this. And any questions? [LB466]

SENATOR CORNETT: Senator Louden. [LB466]

SENATOR LOUDEN: Thank you, Senator Cornett. Well, Senator Wallman, like you said, you've walked a corn furrow or two. (Laughter) I'll ask you a question and see if you can answer it for me. When you take your corn in to an elevator and sell it to the elevator you pay checkoff, right? [LB466]

SENATOR WALLMAN: Yes. [LB466]

SENATOR LOUDEN: If you took that load of corn out and fed it to your cattle out there, would you pay checkoff on that corn? [LB466]

SENATOR WALLMAN: Not on my own cattle, no. [LB466]

SENATOR LOUDEN: Yeah, and unless there's a sale, that corn doesn't have a checkoff. [LB466]

SENATOR WALLMAN: No. [LB466]

SENATOR LOUDEN: All these huge commercial feedlots that farm several thousands of acres and stuff and they bring that corn in themselves and put it in their own silo or whatever they do with it, usually with corn, they don't pay any checkoff with that. [LB466]

SENATOR WALLMAN: Right. [LB466]

SENATOR LOUDEN: What about these farmers that, some of these big farmers that farm their corn and then they take their cattle into one of these commercial feedlots and then they bring their corn into that commercial feedlot, do they pay checkoff on that corn? [LB466]

SENATOR WALLMAN: If it's my own corn, no. [LB466]

SENATOR LOUDEN: Okay. That's what I thought. All corn isn't equal. [LB466]

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SENATOR WALLMAN: No. [LB466]

SENATOR LOUDEN: Okay. Thank you. [LB466]

SENATOR CORNETT: Seeing no further questions, thank you, Senator Wallman. First proponent. [LB466]

STEVE EBKE: (Exhibit 7) Yes, Madam Chairwoman and members of the Revenue Committee. My name is Steve Ebke, and that's spelled, last name is spelled E-b-k-e. I'm a corn producer from Daykin, Nebraska. I'm here today representing the Nebraska Corn Growers Association. The Nebraska Corn Growers Association supports LB466. This bill appropriately places the responsibility of meeting a state obligation on all members and citizens of the state. Nebraska's corn checkoff programs were established at the request of and with the consent of Nebraska's corn producers. The language and intent of the corn checkoffs is to provide Nebraska's corn producers with self-help programs, programs specifically to increase demand for corn within Nebraska, thereby creating more marketing and profit opportunities. The corn checkoff specifically implemented to provide funds for ethanol development within Nebraska was written with sunset provisions. When the specific ethanol production incentives are fully funded, the collection of the ethanol directed corn checkoff is to cease. LB701 extends the current ethanol corn checkoff beyond its scheduled expiration in 2012. Checkoff funds collected after the intended expiration date are now to be deposited into the Water Resources Cash Fund. LB701 and the Water Resources Cash Fund are intended to be used to assure Nebraska's compliance with the Republican River Compact of 1943. Our members question the logic which attempts to make compliance with the Compact an obligation of a particular region or industry. The Nebraska Corn Growers Association believes any obligation of the Compact is an obligation of the entire state of Nebraska. In Garey v. Nebraska Department of Natural Resources, the Nebraska Supreme Court opinion stated "The state has acknowledged that compliance with the Compact is the state's responsibility by entering into the final settlement stipulation resolving litigation which was initiated by the state of Kansas in 1998." Language throughout the opinion clearly states compliance with the Compact is a state obligation, and that LB701's legislative history clearly shows the law's purpose is to ensure compliance. Production agriculture has a responsibility to assist with the determination of a long-term workable solution which addresses Nebraska's water issues. However, this difficult challenge, which is compounded by the current economic situation, must be resolved without unfairly taxing a particular region or industry. The Nebraska Corn Growers Association has consistently objected to the use of a corn checkoff program to fund what is clearly an obligation of the state of Nebraska. With passage of LB466 this committee and the entire Legislature will remove that portion of LB701 which circumvented the original legislative intent and sunset provisions of the ethanol directed corn checkoff. The Nebraska Corn Growers Association requests that the committee advance LB466. Thank you. [LB466]

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SENATOR CORNETT: Senator White. [LB466]

SENATOR WHITE: I have a question, sir. With regard to the statewide purpose, could this state have ordered all the irrigators in the Republican River Valley to shut off their wells as a method of dealing with Kansas, which is what Kansas is asking for. [LB466]

STEVE EBKE: And sir, I'm not able to answer that question. I think within LB701 there may be a mechanism that if compromises can't be reached, the Department of Resources might be able to do that. But I'm not... [LB466]

SENATOR WHITE: Would the corn board accept a fee placed on anybody who irrigates inside of that watershed to pay Kansas? [LB466]

STEVE EBKE: At this point, you know, we...and when you say corn board, I represent the Growers Association. [LB466]

SENATOR WHITE: I'm sorry, Growers Association. Would you accept that while the people using the water in the disputed basin are paying a cost of complying with Kansas? [LB466]

STEVE EBKE: I believe that as our testimony goes, we believe that it should be a broader base. [LB466]

SENATOR WHITE: Can you explain to my constituents in Omaha, Nebraska, why they should pay Kansas for water that was used by irrigators to make a profit? Because they ask me that all the time. [LB466]

STEVE EBKE: Again, Senator, I guess I have to look to what happened in the fact...in the regard that the state entered into that agreement. [LB466]

SENATOR WHITE: I understand the state... [LB466]

STEVE EBKE: And they agreed that they would settle that litigation. So again, we go back to the fact that we believe it's an obligation of the entire state. When we get into discussions about who may have used too much or not enough, I'm not able to comment on that at this point. [LB466]

SENATOR WHITE: Well, but the agreement was made that we'd use X amount of water. The NRD in that district, rightly or wrongly, allowed a number of wells to be put in. They allowed the water to be pumped. Kansas now claims we owe them money. I've got people who are struggling hard in Omaha making it on very low wages. Please, if you can, explain to me why it's their obligation to pay for water that they never got the

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beneficial use of, never got the profit from. Because, I mean, if we can explain it, if it's really a state obligation, I mean, I want to understand how and why. [LB466]

STEVE EBKE: I guess in that regard, there was a study, and I believe it was prior to LB701 being introduced or there were predecessor bills, there were studies that were completed determining the value irrigation contributed to the Nebraska economy. And that study, I don't remember exactly, and if you'd like a copy of that we certainly can get it for you. But I believe in the essence, the study determined that about 35 percent of the benefit of irrigation accrued to those producers, utilizing it, and 65 percent accrued to the overall economy of Nebraska. So I guess, you know, we might have a discussion on whether or not the use of that water benefits solely those people in that district or whether it made a contribution to the entire state. [LB466]

SENATOR WHITE: Thank you for your thoughtful responses. [LB466]

SENATOR CORNETT: Senator Hadley. [LB466]

SENATOR HADLEY: Thank you, sir. In reading LB466, it seems like everything does not start until 2012, I believe. Is that correct? [LB466]

STEVE EBKE: That's correct. The original checkoff used for ethanol incentives was to end, I believe in October of 2012. And, of course that, I'm not sure what that balance is. It's to be there until those incentives are fully funded and then it was to cease. [LB466]

SENATOR HADLEY: I guess the sentence that I was...one sentence I was looking at, but it says that but in beginning in FY '12, '13, there would be an additional general fund revenue loss of \$7,300,000 as a result of the additional transfer. So I'm wondering, why would we be wanting to make this decision now when we would have two more years of knowing where we stand in the economic situation, knowing where we stand with the water suit with Kansas. I guess the question I have is, what is the...is there a hurry in passing LB466 versus waiting until the next biennium to look at it with more facts in the two-year period? [LB466]

STEVE EBKE: I guess our support of LB466, number one, is a philosophical situation in that checkoffs of all commodities are with any, most industries are, you know, voluntary, self-help programs to support that the...in our case, marketing, and to develop new markets. And we don't see, from a philosophical view, that checkoffs should be on particular commodities, should be used to satisfy general fund obligations. Now, you know, we've opposed this as it's moved along. And, I guess, we believe that there is a sense of urgency to try to eliminate that as a funding source. And then, as I try to suggest, for everyone to get together and try to determine reasonable means, you know, broad-based means to supply the necessary funds. And so we'd like to know where we stand and we'd like to get started trying to find an alternative. [LB466]

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SENATOR HADLEY: Okay. Thank you. [LB466]

SENATOR CORNETT: Senator Louden. [LB466]

SENATOR LOUDEN: Yes, thank you for your testimony today. I kind of remember some of this, is this LB701. You've kind of pinned it to LB701 that water. But when was that, do you know when that Water Resources Cash Fund was set up? That was set up long before LB701 ever came down the pike, wasn't it? There was money used out of that to purchase water a few years before LB701 came along and there was always about two or three million dollars in that cash fund. And if I remember when they cranked out LB701, there was two or three bills put into that. One of them was Senator Carlson's, I think LB458 that was vegetation management. And I think there was one that the Governor had was to get this cash fund money because of the Platte River recovery program which was slated to cost \$150 million over a period of ten years. And if I remember correctly, they wanted to know where he was going to get the money and the Governor, this is where the Governor pointed out to get the money and the problem or else the question posed to the Legislature was, if you can find it someplace else, go ahead. The Legislature put it on there with the intentions of by 2013 they'd find someplace else. And evidently you're the first one in line to start trying to find it someplace else. Now, I don't know if you've found it or you just want to do away with it. I guess, I'll let you answer that. Which do you want to do? Try and find the other or you want to do away with it? (Laughter) [LB466]

STEVE EBKE: Well, I think that, you know, to address that question first, obviously we would like to unburden a checkoff and allow it to sunset as it was intended. But, you know, all through those hearings on the various bills that ended up being rolled into LB701, you know, we...our testimony was at that point that we'd be glad to, you know, help in that, seeking that, compromising that alternative. But I suppose at this point or in that instance also, no one was willing to step forward with that first item to be placed on the table. Everybody's waiting for someone else to start. As far as...I can't answer you on the history. My remembering or my thought is that LB701 did create that cash fund. Now there might have been...the one that we speak of, there might have been some other funds and those were rolled in. I don't know. [LB466]

SENATOR LOUDEN: Before we had LB701 they used that to buy, I think, buy water off of Bostwick for a couple of different years to send down there in the first years of that Republican River deal. Anyway, if I remember correctly, well, first of all, would your organization support putting 1 cent a gallon tax on ethanol to fund water? [LB466]

STEVE EBKE: I suppose that, you know, that has been discussed in the past too. And at this point, we wouldn't see that as being much different than expecting corn to pay for the entire fund. [LB466]

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SENATOR LOUDEN: Then the next thing is, would you want to have an excise tax on irrigated water whether it's surface or whether it's groundwater. Because, I mean, if you're talking about water, it's the water you're putting on a crop, whether it's corn or sorghum or alfalfa, or whatever, so somewhere along the line you're going to have to find some money to take care of the Platte River. Which one, which evil would you prefer? [LB466]

STEVE EBKE: Well, I'm not going to pick an evil today. I would just say that, as I've mentioned before, our group has been willing to talk and compromise. But we're looking for something that's fairly broad, and if that were proposed and, you know, we might be inclined to look at that but we would expect that it would be across all water users within the state, not just the irrigators. [LB466]

SENATOR LOUDEN: Okay. Well, as I pointed out to Senator Wallman, I agree that the corn checkoff isn't fair because not all corn is treated equal, so. And I thank you for your testimony. [LB466]

SENATOR CORNETT: Senator Utter. [LB466]

SENATOR UTTER: Thank you, Senator Cornett. The checkoff on corn is scheduled to cease in 2012. Is it the feeling of the Corn Growers Association that it's done its job, and that they're just going to let the thing die or is there going to be an attempt to extend that checkoff or what's your feelings on that? [LB466]

STEVE EBKE: Okay. I need to delineate a little bit. There are two checkoffs currently collected in Nebraska on corn. One is a quarter of a cent that goes to the Corn Utilization and Marketing Board. Okay. And that's been in existence for, in excess of 25 years. And that one specifically is for market development and new uses. Okay. And that one does not have a sunset provision. Okay. Then right now there is a seven-eighths cent checkoff that is used to provide funds to the Ethanol Production Incentive Credit Fund. And that pays...those funds then are used to provide production incentives on, I don't recall how many, but a number of ethanol plants who met the criteria in a particular time frame. And that is the one that is to, was to expire in '12, and was utilized by LB701 to go on. And I'm not sure how that fund balance is working right now because that thing will continue until there's adequate funds to pay those incentives and then it sunsets. And so it may take an extra year. I don't know, but we're, you know we're willing to do that. As far as would we look to continuing that type of a checkoff for ethanol incentives in the future, we'd have to look at it. Probably our position was that those would be the last round. [LB466]

SENATOR UTTER: Thank you. [LB466]

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SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you. [LB466]

STEVE EBKE: Thank you. [LB466]

SENATOR CORNETT: Next proponent. [LB466]

DAVID MERRELL: (Exhibit 8) Good afternoon, Senator Cornett and members of the Revenue Committee. My name is David Merrell, spelled M-e-r-r-e-l-l, and I'm a farmer from St. Edward, Nebraska, and a member of the Boone County Farm Bureau. I'm here today on behalf of the Nebraska Farm Bureau Federation in support of LB466. I want to thank Senator Wallman for introducing the bill. Since the passage of LB701, which included the extension of the corn and sorghum checkoff to provide funding for the Water Resources Cash Fund, agriculture has been discussing the merits of the use of the checkoff in funding the solutions to the state's water challenges. And since you've had a pretty extensive review of the background on the checkoff, I will just skip to the important part of what I wanted to say. The checkoff is paid by both irrigated and dryland corn and sorghum farmers when they sell their grain. And it is paid by corn and sorghum farmers across the entire state. Farm Bureau has three concerns with the use of the checkoff for the Water Resources Cash Fund. First, excise taxes on commodities have been traditionally used to fund programs designed to stimulate utilization and demand for the commodity. Farmers view these programs as self-promotion or self-help tools to stimulate demand for their product. The diversion of the checkoff revenue to water programs is the first time, to our knowledge, that checkoff revenue would be redirected to other uses. It sets a precedence that we don't feel is a good one. Second, the checkoff only applies to farmers who raise corn and sorghum, when other crops raised in Nebraska which use water like soybeans, sugar beets, dry beans and alfalfa are not taxed. Finally, with the checkoff, the funding contained in LB701 leans too heavily on agriculture to address the state's water challenges. Farmers will be contributing through regulatory reductions on water use, occupation taxes on irrigated acres, and other local taxes. As such, we do not believe it is appropriate to single out agriculture through the checkoff to fund the Water Resources Cash Fund at the state level. And again, the checkoff is paid by all farmers across the state. Farmers located outside the Republican and Platte River Basins fail to see why they are asked to contribute directly, while other citizens are not. For these reasons, Nebraska Farm Bureau supports LB466. I would be happy to answer any questions. [LB466]

SENATOR CORNETT: Senator White. [LB466]

SENATOR WHITE: One of your main objections are that people that aren't being benefited by the use of water are being required to pay for it. For example, alfalfa growers, or dryland corn farmers, correct? [LB466]

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DAVID MERRELL: That's right. [LB466]

SENATOR WHITE: Then you probably have sympathy with my constituents who wonder why they should pay for it at all, since they don't farm at all. [LB466]

DAVID MERRELL: Right. As a citizen of Nebraska, a citizen in Omaha, they feel the benefits of irrigated agriculture in Nebraska as much as somebody in the...a dryland farmer in the northeastern part of the state. [LB466]

SENATOR WHITE: I agree with you, but you don't want the dryland farmer to pay this fee. [LB466]

DAVID MERRELL: Well, we feel it should be more equitable, it should be spread out. I mean, the dryland farmer hasn't got as much of a stake as an irrigated farmer and a dryland farmer, they may not have as much a stake in it as a citizen in Omaha. [LB466]

SENATOR WHITE: Then would you support Senator Louden's idea that there be an either excise tax on ethanol or a fee for the use of water for everybody. I mean, whether it's home, whether it's industry or when it's ag, on an equalized gallon per use basis. [LB466]

DAVID MERRELL: Well, currently Farm Bureau policy opposes a tax on water use. Now we have had discussions at our state meetings about alternative ways of collecting the money to fund the Water Resources Cash Fund. But as of right now, the policy that Farm Bureau has opposes that. [LB466]

SENATOR WHITE: Thank you. [LB466]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. Next proponent. [LB466]

PETE McClymont: Madam Chairman, members of the Revenue Committee, I'm Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. Our board voted to support this bill. And so I guess the only point I would like to add in addition to the previous testimony, to Senator White's question, you raise good points because we have talked about this within our house of how we feel about this issue on a statewide basis. Obviously, Omaha is going to have storm water runoff issues, if I'm not correct from east of 72nd, like a lot of cities in the country are and so if that has to be addressed on a statewide basis, I cannot speak for the board but that's something as we look at a more broad base to address that, people in our area go to Omaha and shop so it's also in our belief that to support that on a state basis would be proper, so. [LB466]

SENATOR WHITE: It may not be a very good deal for your constituents. The EPA has

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ordered Omaha to separate their sewer system. The low end estimate is one billion dollars, high end estimate is 1.5 billion dollars. Heretofore, it's been considered a local problem. I mean, that's the question we've got. I mean, in that situation we've got the federal government telling the state, get in compliance. I mean we've looked at it on how do you zone it, how do you do it through local property taxes, through the NRD, and through the county and through the city, MUD rates, whether or not we put a runoff fee on big box stores and big parking lots. We've been looking at it as though it is a local issue. Now, if runoff and pumping are both state issues, you know, okay, but I'd be careful before you throw in. [LB466]

PETE McCLYMONT: It is, as I said, we haven't made policy on that. But by the same token, it's also our opinion that as farmers are part of Nebraska, so are people in municipalities. And so if we're one Nebraska, we would address it from that level. [LB466]

SENATOR WHITE: Thank you. [LB466]

SENATOR CORNETT: No further questions, thank you. [LB466]

PETE McCLYMONT: Thank you. [LB466]

SENATOR CORNETT: Are there any further proponents? Are there any opponents? Anyone in a neutral capacity? That closes...oh, excuse me. Senator Wallman. Senator Wallman waives closing. Senator Dierks, you're recognized to open on LB587. Senator Dierks. [LB466]

SENATOR DIERKS: (Exhibit 9) Thank you, Chairwoman Cornett, members of the Revenue Committee. My name is Senator Cap Dierks. That's spelled C-a-p D-i-e-r-k-s, and I represent District 40. I am here today to introduce LB587. This bill is designed to bring an issue before the Revenue Committee, allow the committee to hear what has happened to several of our state's veterinarians, and clarify an issue. Recently, the Department of Revenue has audited several veterinarians. The department has levied fines for not paying sales taxes on what the department called grooming services. You will hear from one of the audited veterinarians shortly, I think. State law is confusing on this matter. In Section 77-2701.16(4)(G), gross receipts for providing a service means "gross income received for animal specialty services except (i) veterinary services". If a veterinarian or a vet tech performs grooming services while caring for an animal, is that considered grooming or veterinary services? My goal today is to provide clarity on this issue for the veterinarians in this state and to try to prevent further fines being assessed against members of this profession. Thank you, Madam Chairwoman and members, and I will try to answer any questions you may have at this time. [LB587]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you,

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Senator Dierks. [LB587]

SENATOR DIERKS: You betcha. [LB587]

SENATOR CORNETT: First proponent. [LB587]

KIM ROBAK: (Exhibit 10) Senator Cornett and members of the Revenue Committee, my name is Kim Robak, R-o-b-a-k. I'm here today representing the Nebraska Veterinary Medical Association in support of LB587. I want to clarify, as several testifiers had in the past, that this is not an exemption. Actually, it's not a new exemption at all; it is a clarification of the existing law. I wish I could write the one-liners; they're a little bit like headlines, because it gives an impression as to this bill that is inaccurate. What's being passed out to you is a statute that Senator Dierks had mentioned. In addition to the statute are the current regulations from the Department of Revenue. And I just want to give you a little bit of background on how this thing started. In 2003, the Legislature was looking for some revenue. We generally don't tax services in Nebraska, but at that time the Legislature determined that we were going to tax what are called animal specialty services. So a new service tax was created called animal specialty services and as Senator Dierks indicated, that's set forth in 77...in front of you...77-2701.16, Section 4 (g). And it specifically says gross receipts for providing a service means: gross income received for animal specialty services except...and veterinary services are not taxed; so animal specialty services are, veterinary services are not. And if you turn the page you will see the first regulation from the Department of Revenue defines animal specialty services: animal specialty services include, but are not limited to...and it has a whole list of things including grooming, boarding, etcetera. And then 102.03: Animal specialty services do not include: 102.03A Professional services, including hospitalization by a veterinarian, as defined in another reg. So let's go to that reg and see how professional services are defined. Regulation 1.078 says, if you look first at 078.02: Veterinarians are primarily engaged in the business of rendering professional services to animals through care, medication, and treatment of those animals. And charges for those professional services rendered by veterinarians and veterinarian clinics are not taxable. Then if you go up to 078.01E, defining what a professional service is: a professional service occurs when a veterinarian has established a doctor-patient-client relationship with the client. So clearly, animal specialty services are taxed; veterinary services are not. So you're looking at me like, why are you here? Because this seems pretty clear. The reason I'm here is that the department, in some of their audits, has taken the position that if a vet performs an animal specialty service, grooming, then it's taxable. And the problem comes in that some, and you'll hear this from the gentleman who was audited, some vets itemize their bills more than others. So one vet might say, clipped toenails; another might say, examined paw--in which he clipped toenails. In this instance, someone's taxed for grooming; in this instance, they're not taxed because they didn't list it out on their bill. In one instance they may have clipped ear hair, which is grooming, for the purpose of a service; and another instance they did not. And so they're being taxed. All

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we're asking for is that good tax policy should be clear. People who are audited have not collected that tax, and so they're paying it out of their own pocket. The veterinarians don't care, specifically, about how...what gets taxed: that's the policy of the Legislature. But what happens is because we have this law in place they don't think that they should have to pay it. It is not the policy today of the Legislature that veterinary services be taxed. But because of the interpretation of the department, they are being taxed. I should point out to you that the fiscal note on this bill is quite small. I don't think, actually, that there should be any fiscal note because it shouldn't be taxed in the first place, based on even the rules and regs of the department. But the fiscal note...it says \$35,000 in the first year and \$47,500 in the second year, so it's a small amount of money. Even if the department is correct that this should have been taxed, then we won't be taxing it in the future. With all of the big issues that you deal with, this is a relatively small one. And it's been referred to as the toenail bill, and if anyone says that you have a dog of a bill you can get a laugh; but to the people that end up paying the tax it's a big deal. And quite honestly, from the tax policy perspective it is one that should be fixed. So I would urge you to advance LB587 and I'd be happy to answer any questions. [LB587]

SENATOR CORNETT: Senator Louden. [LB587]

SENATOR LOUDEN: Is anyone paying the tax now, or are there some are and some aren't, or does anybody know who is and who isn't? [LB587]

KIM ROBAK: If somebody is grooming, completely grooming; if it's a grooming service, the tax is paid. Veterinarians... [LB587]

SENATOR LOUDEN: I mean on these veterinary clinics and stuff. [LB587]

KIM ROBAK: Yes, yes, and you'll hear from an individual right after me who was audited and received a letter saying that...and he has specifically a letter from the department that says all grooming services, no matter who performs them--a vet or not a vet--is taxed. [LB587]

SENATOR LOUDEN: Okay, thank you. [LB587]

SENATOR CORNETT: I, when we first discussed this bill, talked to a couple of different veterinarians because I'm carrying another bill for them, and from my understanding of this, if you bring a dog in for grooming--to have its nails clipped and a bath--that should be taxed. But if they bring the dog in for a medical procedure and they have to clip their nails to be able to do the procedure, then that shouldn't be taxed. But what they're looking at is if they just...they might have put clip nails as part of the procedure, and that is what the department is interpreting that should have been taxed. [LB587]

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KIM ROBAK: That's a large part of it, Senator, but the other side of that is in that process of bringing the dog to the vet, and you perform the other services, if the vet does clip the toenails, based on the law as it's written today... [LB587]

SENATOR CORNETT: It should be... [LB587]

KIM ROBAK: ...it should not be taxed. [LB587]

SENATOR CORNETT: Because the veterinarian is the one that did it. [LB587]

KIM ROBAK: It's because it is a veterinary service, and veterinary services are not taxed. [LB587]

SENATOR CORNETT: Okay, thank you. [LB587]

SENATOR HADLEY: Is this something that you could work out with the Department of Revenue, or is this something that we... [LB587]

KIM ROBAK: We would love to work it out with the Department of Revenue. I think that if the Department of Revenue would be willing to do that. That would be wonderful. I think that their interpretation, Senator, is that it is...I don't want to put words in their mouth and I believe that the department will testify at some point in this, yet this afternoon, and they will tell you that it's really the province of the Legislature to determine the policy and then they will enforce it. I did read a big stack of legislative history on this bill; there's very, very little legislative history. It was simply said: animal specialty services shall be taxed. So I don't blame the department; they don't have a whole lot of guidance. But we do need clarity for people and the clarity, based on the regs, ought to say that veterinary services should not be taxed if a vet is performing that service. [LB587]

SENATOR HADLEY: Okay. [LB587]

KIM ROBAK: Thank you, Senator; appreciate that. [LB587]

SENATOR CORNETT: Senator White. [LB587]

SENATOR WHITE: Thank you, Ms. Robak. Is this a recent change in policy that prompts this bill or has this been a long-term problem? [LB587]

KIM ROBAK: Since the bill was...the law was changed to create this new tax in 2003, it's a fairly new problem. But I can say that there is the concern that vets are not being treated equally. Some vets, depending on who your auditor is, or depending on how you actually set forth your billing...so if I'm very specific in my billing, I am likely to get taxed.

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If I am not specific in my billing, I am unlikely to get taxed. And not that anybody would encourage someone not to be specific, but it does lend itself to inequities in that regard. So it's not new from that standpoint, Senator White, it's, because the law just passed in 2003 and so we're just now getting in that first stage of audits, as I can tell. [LB587]

SENATOR WHITE: So it's the audits coming back that they're now interpreting this in a manner that your clients didn't understand. And you wouldn't ask for retroactive help so it wouldn't help anybody who... [LB587]

KIM ROBAK: It wouldn't help anybody who had already paid the tax. [LB587]

SENATOR WHITE: Or not paid the tax... [LB587]

KIM ROBAK: Or not paid the tax. [LB587]

SENATOR WHITE: ...and is being audited. [LB587]

KIM ROBAK: Right, right. [LB587]

SENATOR WHITE: Thank you. [LB587]

KIM ROBAK: Um-hum. [LB587]

SENATOR CORNETT: Senator Utter. [LB587]

SENATOR UTTER: Thank you, Senator Cornett. I appreciate your bringing this bill, but it's raising a question in my mind about our dog's groomer talk to me about this tax that she has to charge on grooming services that were not taking place in a veterinary clinic. How do you propose I explain this to her? [LB587]

KIM ROBAK: Well, I would say in 2003 the Legislature made a determination that some services would be taxed and that... [LB587]

SENATOR UTTER: She's going to tell me this is hokey-pokey. [LB587]

KIM ROBAK: ...and the service that was determined to be taxed in 2003, as a policy, was the service of animal specialty services. That would be grooming. [LB587]

SENATOR UTTER: And she's going to say that that's what she provides, is an animal specialty service. [LB587]

KIM ROBAK: And she has to pay the tax. Actually, she doesn't pay the tax--you pay the tax, Senator. [LB587]

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SENATOR UTTER: Yeah (inaudible). But she's upset about me having to pay the tax. And actually we make the dog. (Laughter) [LB587]

KIM ROBAK: Actually, if you wanted to exempt that tax that's what it sounds like this one-liner is. You could do that as the Legislature. That's not what this bill's attempting to do. [LB587]

SENATOR UTTER: I'm not really in the mood to exempt these people (inaudible). (Laughter) [LB587]

KIM ROBAK: That's right, and that's not what this bill attempts to do. And the legislative policy at the time... [LB587]

SENATOR UTTER: But it seems to me like maybe there's going to be a fairness issue between, more than likely, the person that grooms that dog and a veterinary clinic that's a groomer. [LB587]

KIM ROBAK: And then that person would pay the tax. If it is a groomer in the vet clinic, they pay the tax. [LB587]

SENATOR UTTER: But now we're getting down to a definition. I've kind of got a hunch that very few veterinarians actually do the grooming. [LB587]

KIM ROBAK: And then the tax would be collected any time anyone other than the vet, or the vet tech with the vet, perform the service. If anybody else in that clinic performs that service, it's taxable. [LB587]

SENATOR UTTER: So can you define for me a vet tech? [LB587]

KIM ROBAK: I believe it's defined in statute. [LB587]

SENATOR UTTER: Sandy's going to just raise cane with me when... [LB587]

SENATOR WHITE: Is that your dog or your groomer? [LB587]

SENATOR UTTER: No, that's the groomer. Putter's (Phonetic) the dog. [LB587]

SENATOR WHITE: Putter (Phonetic) won't mind. (Laughter) [LB587]

KIM ROBAK: Excuse me, Senators, she pays that...or again, she will submit that tax today as will any groomer in the veterinary clinic. They will also submit the tax. There is not an inequity from that standpoint. All groomers wherever they're located, in a vet

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clinic or not, will pay the tax. The only thing that it would be different...it actually isn't different, it ought to have been the way anyway... [LB587]

SENATOR UTTER: Well, you handle this very well and I'm going to tell Sandy to get in touch with you. (Laughter) [LB587]

KIM ROBAK: Thank you, Senator. I'd be happy to talk to Sandy. [LB587]

SENATOR CORNETT: Generally what we're talking about, though, is when a veterinarian does a procedure that is normally considered grooming... [LB587]

KIM ROBAK: Right. [LB587]

SENATOR CORNETT: ...in the course of treating the animal that is there for a medical condition. [LB587]

KIM ROBAK: Right. [LB587]

SENATOR CORNETT: One of the instances was clipping the hair around the ears--to clean the ear out which the veterinarian was doing, but had to clip the hair--was then considered taxable because clipping is typically a grooming technique, even though it was done to treat. [LB587]

KIM ROBAK: And in this instance, the gentleman who follows me listed it out as hair clipping as one item, and then below that... [LB587]

SENATOR CORNETT: Instead of listing it as a procedure. [LB587]

KIM ROBAK: Exactly. [LB587]

SENATOR CORNETT: Okay. [LB587]

KIM ROBAK: And so he was taxed on it when somebody who wouldn't list it that way was not. [LB587]

SENATOR CORNETT: But anyone working in his clinic that was doing grooming... [LB587]

KIM ROBAK: Would be taxed. [LB587]

SENATOR CORNETT: ...would be taxed. [LB587]

KIM ROBAK: That's correct; thank you, Senator. [LB587]

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SENATOR CORNETT: Senator White, I believe you had a question. [LB587]

SENATOR WHITE: The confusion, on a technical basis, is we tax the same service differently depending on who provides it. And that, technically, is a little unusual in a sales or service tax. I mean, normally we strive to tax the same thing without regard to the person providing it. But your clients are arguing there's an exemption based not on what is done, but who does it. [LB587]

KIM ROBAK: Because in that... [LB587]

SENATOR WHITE: Are there other examples you're aware of in the tax code where an exemption's created by who does it rather than what is done? [LB587]

KIM ROBAK: I would argue that it is not...while it appears to be who does it, it is a veterinary service. It is the service that's performed by the veterinarian, and it is...while it may be the same type of service that's performed by a groomer, if the vet is clipping the toenails while he's examining the foot or when he clips the toenails, examines the foot, and notices that there is an abscess or a cyst between the toes, then that vet has the ability to take care of it. So even though it is a part of what...it may be a comparable service, if it...I don't know because we don't tax other services. For example, if a dentist or a dental hygienist performed a service we don't tax those services. So I can't compare the two. We don't tax doctors; I can't compare that. [LB587]

SENATOR WHITE: If the vet, though, just does a grooming--no treatment other than grooming--your position would be it's a vet...as a vet who's doing it has a patient--not to clear out ear mites, not to treat a cyst--just because I want my poodle to look hot going down the sidewalk; that, if a vet does it, you would say that's a veterinarian service--your clients would--and therefore that's taxable. But if Senator Utter has the same poodle, the same desire, but has Sandy do it, that's not taxable and there's no treatment in here. [LB587]

SENATOR UTTER: It's the other way around. [LB587]

SENATOR WHITE: Oh, sorry. [LB587]

KIM ROBAK: I'd have to agree with you, Senator, because that's the way the law is drafted. That's the way the law is written. [LB587]

SENATOR WHITE: And that's the question. It's not just...your answer was to a question I didn't ask. Your answer was, well, these are usually done in conjunction with other services, which I get. But it's further than that. You're saying, flat out, it depends if just a vet does it then it's not taxable; but if a non-vet does it, it is taxable, even if there's no

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treatment involved. [LB587]

KIM ROBAK: Because...and that is correct. [LB587]

SENATOR WHITE: Okay. [LB587]

KIM ROBAK: That is correct. And I believe that is actually the way that, not only the law is drafted today, but the rules and regs are drafted. [LB587]

SENATOR WHITE: Then isn't your argument with the courts and not us? [LB587]

KIM ROBAK: In theory, you're right, Senator. It could be, but it's not...but that's why you also exist. It's not that the courts have to be the only ones that would take a case. The Legislature is also...at least I learned in law school that there are two ways to change a law: one in court and also taking it to the legislature and to their representatives. [LB587]

SENATOR WHITE: Our doors are always open to you, Ms. Robak. (Laughter) [LB587]

KIM ROBAK: I appreciate that, and... [LB587]

SENATOR UTTER: If you go to court you've got to file your request within 90 days. (Laughter) [LB587]

SENATOR WHITE: (Inaudible) to get your money back. (Laughter) [LB587]

KIM ROBAK: You may not get the reimbursement. (Laughter) [LB587]

SENATOR CORNETT: Okay, we digress. (Laughter) [LB587]

KIM ROBAK: Yeah. But Senator, I would also say that those instances that Senator Cornett mentioned are also being taxed; those instances that are veterinary services that are periphery to other treatment, those are also being taxed today. [LB587]

SENATOR CORNETT: Seeing no further questions. Next proponent. [LB587]

WILLIAM COLLINS: (Exhibit 11) Good afternoon, Madam Chair and members of the committee. I'm William Collins, W-i-l-l-i-a-m C-o-l-l-i-n-s. I'm here in support of LB587. I am a practicing veterinarian in Lincoln here; have been so for 23 years as a companion animal practitioner. I think...certainly for me there's two areas of salient discussion. One is on clarification, which I know Ms. Robak had went over quite eloquently, I think. What we're asking for, as a practitioner who had went through an audit, is that there was a significant amount, we feel, of ambiguity to the situation which then caused us to then

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go to the Department of Revenue for clarification, and unfortunately there was a problem with that. Because, for example, the letter that's being passed out is the response that my accountant got from the supervisor of the auditor, and one of the things that is noticed in there is definitions and terms and I think, here again, I've heard some good discussion about what really should be clarified as to grooming services and veterinary professional services, and I can certainly appreciate that and I'd be happy to address those. The other part that I would really emphasize is the fairness of the application of the tax because certainly in our situation when my accountant would discuss with other accountants, okay, that had clients going through an audit there was a significant amount of well, they didn't assess us for this, but they did for this. And so there was an awful lot of, here again, ambiguity leading back to the first where it was difficult to know based on, here again, some of the ways that the service was invoiced. Certainly, as an example I would use clipping the hair in an ear canal--anybody who's got one of the fuzziest creatures, like a cocker spaniel, sometimes you can't even see into the ear canal with a scope until you get a lot of the hair clipped and cleaned out. And so some of our invoices were more greatly detailed. We feel like we owe that to our clients; to explain to them what they are being charged for. So that was interpreted by the auditor as a grooming service when, in fact, it accompanied...and we questioned that, and as you can see with the letter it came back as a denial. The other thing too is I think when we're asked to be tax collectors by proxy I think that it's owed to us, in a degree, to know exactly the definitions under which we're supposed to collect tax. And certainly some of them are very clear. And I would emphasize that in our practice, for example, we have a grooming department and a boarding department, if you will. And we understand we need to collect tax on that. But when we have...and in our practice we have four doctors...when we have doctors that are trying to, in the process, do a treatment and it happens to be, for example, clipping hair around the ear canal we feel like that, here again, that should not be considered a grooming. Now one could argue that clipping hair for an abdominal surgical procedure is grooming. And certainly, I suppose if you want to get down to the fine points it could be considered that. But it's in the process of a treatment and in a procedure. And I would also say that in the vast majority of veterinary clinics...I don't know too many veterinarians that are actually doing grooming per se for the cosmetic end of grooming, but for the medical treatment end of grooming. That's really all I have. I'm open to questions. [LB587]

SENATOR CORNETT: How would you feel if we separated it where any type of grooming procedure done in conjunction with medical treatment is exempt but grooming, straight grooming, done by a veterinarian would be taxable? [LB587]

WILLIAM COLLINS: Well, I think, Senator, that that is certainly part of the clarification issue. [LB587]

SENATOR CORNETT: Okay. [LB587]

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WILLIAM COLLINS: And I think that's fine. Here again, we need some guidance. Because otherwise what's occurring, those of us that are being audited and tax assessed, is that we're then paying for tax that we would have been happy to collect from our clients, but unfortunately now we're saddled with that burden, and that's thousands of dollars. [LB587]

SENATOR CORNETT: So just double check... [LB587]

WILLIAM COLLINS: Yes. [LB587]

SENATOR CORNETT: You would be...you understand that what I'm saying: as long as the procedure... [LB587]

WILLIAM COLLINS: Um-hum. [LB587]

SENATOR CORNETT: ...is done in conjunction with medical treatment... [LB587]

WILLIAM COLLINS: In conjunction. [LB587]

SENATOR CORNETT: ...it would be tax exempt. But if it's strictly for the purpose of grooming, then you would have to collect the tax on that. [LB587]

WILLIAM COLLINS: Correct. [LB587]

SENATOR CORNETT: Okay. Senator Friend. [LB587]

SENATOR FRIEND: Thank you, Madam Chair. Also, for the record, you wouldn't have any problem if we totally exempted all grooming services, because in 2003 I thought that was ridiculous that we did it and I still think it's ridiculous. So I'm assuming everything would be just fine if we said pets can be groomed and there's no tax associated with it. [LB587]

WILLIAM COLLINS: I would agree, Senator. [LB587]

SENATOR FRIEND: Okay; good. [LB587]

WILLIAM COLLINS: I think it just addresses Senator Utter's point that the groomer's saying hey, this is...what's the difference? And I would agree with that because we have a groomer. Part of the issue too is, obviously, when we're doing things like examining...with a nail trim, for example, as was one of the examples used, we're expected to do at least a cursory exam of that foot. You can only imagine the implications, the legal implications, if we didn't discover a tumor or some other type of a problem. We have licensure that we are obligated through the confidence that the

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people of the state of Nebraska have given to us to make sure that we're doing a good job and that we're being something more than a groomer. There are a lot of things that we have had, thankfully, that groomers have given to us and said hey, this looks like a problem, doc. And we say, yeah, it's great; I'm glad you brought that to our attention. But they didn't know what the problem actually was. That was under our auspices. [LB587]

SENATOR FRIEND: Okay, thanks. [LB587]

SENATOR CORNETT: Senator Louden. [LB587]

SENATOR LOUDEN: Thank you, Senator Cornett. Doctor, when you...when animals come into your clinic now, I presume you're mostly small animal practice. [LB587]

WILLIAM COLLINS: That's right. [LB587]

SENATOR LOUDEN: If they come into the groomers they just go in, get groomed, and that sort of thing. [LB587]

WILLIAM COLLINS: Um-hum. [LB587]

SENATOR LOUDEN: If they come in for an examination, now, how do you...what kind of a fee do you have? You do have like a consultation...well, the veterinarians in my country I call it a benediction fee, because...(laughter)...but they have that flat fee on there you know, but anyway, do you charge that then for your...when you...when they bring an animal in and you examine the animal and that sort of thing? [LB587]

WILLIAM COLLINS: We do have fees for an examination, if you will, slash office visit. [LB587]

SENATOR LOUDEN: But I mean, is there a flat fee: you bring one in it's going to be ten bucks, fifteen, or something? [LB587]

WILLIAM COLLINS: No. Actually, I think, here again, part of this is precedence that's been set in some areas of veterinary medicine. Obviously, the large animal practitioner has the farm call and that kind of thing. In our situation, no; typically we wouldn't...yes, if they came in for an ear examination there would be office call examination and then clipping of the ear in order to take a look, so. [LB587]

SENATOR LOUDEN: What I'm wondering is, that right there would sort out what was medical and what was grooming, wouldn't it? Because if you're charging that type of a fee when you bring that animal in then that would be a medical bill. [LB587]

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WILLIAM COLLINS: Exactly. [LB587]

SENATOR LOUDEN: Yeah, so it isn't that hard for you to decide that. Well, now, when they bring that animal in and you charge that fee are you also charging them sales tax on it? [LB587]

WILLIAM COLLINS: Not on that, as a professional service. If it...here again, if it is separated out as grooming or boarding, certainly we do. [LB587]

SENATOR LOUDEN: Then you're probably already separating it out. [LB587]

WILLIAM COLLINS: Correct. [LB587]

SENATOR LOUDEN: Yeah. Okay, thank you. [LB587]

SENATOR CORNETT: Senator Utter. [LB587]

SENATOR UTTER: You know I hate to even suggest this, Doctor, particularly with the Commissioner sitting in the back of the room, but it sounds to me like this is clearly a problem: you provide too much information on your bill. [LB587]

WILLIAM COLLINS: Yeah, well, (laugh) you know, here's the thing: I feel like that is probably why it's not been applied as equitably as it could and should be. And I do think it puts the Department of Revenue in a difficult situation because, here again, depending on how this looks, they pick up key words and okay, this seems to apply. But, you know, and that's where part of it...part of me, I do have some compassion from their end because here again, without guidance, if I don't give guidance to my staff it's pretty tough for me to expect them to always do it properly. [LB587]

SENATOR UTTER: Well, I don't know whether it will help you or not, but that was really nice of you to kiss up to the Commissioner. (Laughter) [LB587]

WILLIAM COLLINS: Well, you know, I'll tell you what: I think everybody's got their place and I certainly, as I've said many times before, and have always had good advice from our legal counsel, and that is make the money, pay the tax. And I'm fine with that, but I have to know when I'm supposed to collect the tax. And since I am, by proxy, a tax collector that's all I'm asking for. [LB587]

SENATOR UTTER: And I understand that and I appreciate that. [LB587]

WILLIAM COLLINS: Certainly, certainly. [LB587]

SENATOR CORNETT: Seeing no further questions, thank you. [LB587]

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WILLIAM COLLINS: Thank you. [LB587]

SENATOR CORNETT: Are there any further proponents? Opponents? Neutral? [LB587]

DOUG EWALD: (Exhibit 12, 13) Here we go. Chairwoman Cornett, members of the Revenue Committee, my name is Doug Ewald, D-o-u-g E-w-a-l-d, Tax Commissioner for the Nebraska Department of Revenue. I appear before you today to provide neutral testimony on LB587. In fact, what's being passed out here I don't necessarily think...I'm only going to focus on one item. And because the testimony of Ms. Robak provided before is right on with everything I think that we view in the Department of Revenue, with the exception of one item. And let me start off by saying I don't have a dog in the fight. (Laughter) I have no opinion as what should or shouldn't be taxable... [LB587]

SENATOR WHITE: You're not barking up the wrong tree with this (inaudible)? (Laughter) [LB587]

DOUG EWALD: I'm not barking...(laugh)...correct; exactly. It's a policy decision for the Legislature and it is the Department of Revenue's position or job to implement what the Legislature does. With respect to that, a couple of the regulations that Ms. Robak referred to...and the one I want to focus on here in particular is under Exhibit 3 and...the very first one, Regulation 1-078 Veterinarians and Veterinary Medicines, focused on the fact before that we have a client-patient relationship here and that 078.02 talks about "charges for professional services rendered by veterinarians and veterinary clinics are not taxable." And I wish I could stop there. We would be done. But if I go to the top of the second page there, I go to 078.05, it goes on to say: Veterinarians or veterinary clinics that sell veterinary medicines, agricultural chemicals, feeds, feed supplements, veterinary supplies, equipment, other products, or that provide...or that provide animal specialty services, apart from the rendition of professional services, are required to collect sales tax from their customers unless such sales tax are otherwise exempt. And it goes down there below that too; below is 078.05B. We have the regulation that was referred to earlier with respect to animal specialty services of which, basically, our position at the Department of Revenue is that it's an animal specialty service, the grooming, those type of things, that are performed by a veterinarian--in our eyes, based on this regulation, there is no difference in our eyes whether it's performed by a groomer or by a veterinarian. It's that simple to us. [LB587]

SENATOR CORNETT: Senator White. [LB587]

SENATOR WHITE: So if my vet sells halters for my horse, it also sells the medicine that I need to treat him for worming him or the dog; then because they're selling a good as well, instead of just treating the animal, then they're subject to this tax. [LB587]

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DOUG EWALD: Now the item if you...a collar or something like that, yes, that's subject to sales tax. Now if it's a... [LB587]

SENATOR WHITE: No, I know that's subject to, but... [LB587]

DOUG EWALD: If it's a heartworm pill or something like that, that is not. [LB587]

SENATOR WHITE: Okay, well, but are you saying that if the vet sells out of his store anything that's not medicinal, then all of the services with regards to cutting hair and stuff... [LB587]

DOUG EWALD: No. [LB587]

SENATOR WHITE: Are taxed? Well, then I didn't understand why that separate definition makes a difference (inaudible). [LB587]

DOUG EWALD: What I'm saying is that's...under the reg we view that as...there's a separate reg for animal specialty services. And... [LB587]

SENATOR WHITE: But now you're having the general eat the specific, which is opposite of normal interpretation. Normally, if the Legislature creates a specific exemption and then there's a general, broader category, the specific exemption applies to the activity outlined in the exemption, and the general is considered to carve out the general. By that lines we say all income's taxable except what we just said all income's taxable. Doesn't matter that we said except before that. See what I mean? Normal statutory interpretation would read the former as an exception to the latter because it's narrower. [LB587]

DOUG EWALD: I guess that's a potential way of looking at it. That's not the way that we've interpreted it; that's not the way that the reg, you know, obviously we wouldn't be here if not for that. [LB587]

SENATOR WHITE: Okay. [LB587]

DOUG EWALD: But that's, I mean, that's honestly that's where we're hanging our hat. That's been a specially enumerated specialty service and it doesn't matter who's performing that service. [LB587]

SENATOR WHITE: Even though it's specifically exempted if a vet does it. [LB587]

DOUG EWALD: Well, I don't know that I view that as a specifically...if it's...is it a...I guess the question is, is it a professional service that you would take to go to the vet?

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[LB587]

SENATOR WHITE: No question. [LB587]

DOUG EWALD: Right. [LB587]

SENATOR WHITE: But then there's also language that says: grooming except provided by a vet is taxable. So you just wrote all that language out of the bill by that interpretation. [LB587]

DOUG EWALD: Well, I don't know if we have or haven't there, I guess (inaudible). [LB587]

SENATOR WHITE: Fair enough. Thanks, Commissioner, as always appreciate you coming to play. [LB587]

DOUG EWALD: Like I said, I don't...we don't have an opinion one way or another. That's how I guess I'd provide a clarification on where we're hanging our hat today. [LB587]

SENATOR CORNETT: Senator Dierks. [LB587]

SENATOR DIERKS: Doug, as we were going through the testimony today I was interested in the act of trimming toenails. Many times if the toenails are black and you can't see where the blood vessel ends, it's got just about be a veterinarian that takes care of that, to trim the toenail, because it is almost a surgical procedure. If you get too close why you can get a real (inaudible) hemorrhage. So the black toenails are especially difficult. As I was thinking about this, I was thinking what do you do with farriers--people who go out and trim your horse's feet? Is there a tax on them? [LB587]

DOUG EWALD: I guess I don't know, really; would a vet come out and do that? You can help me here. [LB587]

SENATOR DIERKS: Well, once in a while veterinarians do that. But most of the time they're people who are trained to be, they call them farriers, and they just go out and they have a job and they just come out to your ranch...we got a farrier comes to our place and trims horses. [LB587]

DOUG EWALD: I don't believe...to my knowledge that's not specifically identified as a taxable activity. [LB587]

SENATOR DIERKS: But it is somewhat the same thing; they're taking care of a horse's foot... [LB587]

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DOUG EWALD: Sure. [LB587]

SENATOR DIERKS: ...rather than a dog's foot, and... [LB587]

DOUG EWALD: Absolutely. [LB587]

SENATOR DIERKS: I'm not trying to give you any extra business. (Laughter) [LB587]

DOUG EWALD: Right; no, no, I don't know that I'm looking... [LB587]

SENATOR UTTER: Thanks, Cap. (Laughter) [LB587]

DOUG EWALD: I think I've had enough testimony this year to give me enough business for awhile. (Laugh) [LB587]

SENATOR CORNETT: Senator Louden. [LB587]

SENATOR LOUDEN: Thank you, Senator Cornett. Commissioner, who makes these regulations, these regs? Where do these come from? [LB587]

DOUG EWALD: These...what happens, Senator, in this process is once the Legislature in 2003 passed the law, made the statute, we hold a regulation hearing and we draft what we believe to be the interpretation based on testimony. And as you heard Ms. Robak's...there was not a lot of testimony with respect to this particular item. And we have a public hearing where anybody who cares to come in and testify or provide the department with their view of this particular item would be allowed to come in, testify verbally or submit written testimony, and all those things are compiled together, and what ultimately becomes the regulation which then goes over to the Attorney General's office and they say yes, we think you're okay; no, we don't think you're okay. If everything's okay then they...it basically gets published out there as a...this is a correct interpretation. [LB587]

SENATOR LOUDEN: In other words, you people drafted it. Well, can your people change them? [LB587]

DOUG EWALD: Sure. We could... [LB587]

SENATOR LOUDEN: Then how come...if you have a problem with this 78-05, why don't you delete it and hell, we can all go over to Billy's this afternoon? (Laughter) [LB587]

DOUG EWALD: Well, I don't know that we have a problem with it. [LB587]

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SENATOR LOUDEN: Well, that's because you told me that was your hang-up; if we quit right here on 78.02 then we would...if we quit there then we'd be all right. So I'm wondering why you don't change it and we can go that route? [LB587]

DOUG EWALD: Well, I guess I can't...you know, back in 2003 I wasn't here, but I can't speak to why it was written that way to begin with. [LB587]

SENATOR LOUDEN: Yeah, but you're here now. [LB587]

DOUG EWALD: But I'm here now and you're wanting me to fix it, right? (Laugh) [LB587]

SENATOR LOUDEN: Yeah, and you can lead out. [LB587]

DOUG EWALD: And hey, maybe it's as simple as doing some of the codifying the regulation or doing some of the suggestions that were made here earlier. [LB587]

SENATOR LOUDEN: Okay, thank you. [LB587]

SENATOR CORNETT: Seeing no further questions, thank you. [LB587]

DOUG EWALD: Thank you. [LB587]

SENATOR WHITE: We'll clip your testimony. [LB587]

DOUG EWALD: Thank you. (Laugh) [LB587]

SENATOR CORNETT: Is there anyone else in a neutral capacity? Senator Dierks, do you want to close? Senator Dierks waives closing. That ends the committee hearings for today. [LB587]

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

Revenue Committee
March 12, 2009

Disposition of Bills:

LB210 - Placed on General File.
LB336 - Indefinitely postponed.
LB466 - Indefinitely postponed.
LB587 - Placed on General File with amendments.

Chairperson

Committee Clerk