

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

Revenue Committee
March 20, 2009

[LB385 LB386]

The Committee on Revenue met at 1:30 p.m. on Friday, March 20, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB386 and LB385. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Mike Friend; LeRoy Louden; Dennis Utter; and Tom White. Senators absent: Galen Hadley. [LB386]

SENATOR CORNETT: Good afternoon, and welcome to Revenue. I'm Senator Abbie Cornett from Bellevue; to my left Senator Cap Dierks from Ewing will be joining us; to his left is Senator Greg Adams from York; Senator Hadley from Kearney will be joining us; research analyst is Bill Lock; committee clerk, Erma James. On my far right is Senator Utter from Hastings; Senator Louden from Ellsworth; Senator White from Omaha, I believe, will be joining us, as will Senator Friend. To my right is legal counsel Shannon Anderson; our pages today are Rebecca Armstrong, and...it's Miss Connealy, correct? I can't remember your first name; and Elsie Cook. Before we begin the hearings today, could you please turn your cell phones to either off or vibrate. Sign-in sheets for testifiers on the tables by both back doors and need to be completed by everyone wishing to testify. If you are testifying on more than one bill, you need to submit a form prior for each bill. Please print and complete the form prior to coming up to testify. When you come up to testify, hand your sheet to committee clerk. A special note today: Senator Pahls will be allowed to take each bill separately, however testifiers may testify on both bills by testifying on either. That is, if you choose to testify on one, you must first register on the sign-in sheet for both bills. Secondly, when you testify, you must mention that you are testifying on both bills. This will not be automatically be assumed by the clerk. If you follow these two steps, your position will be recorded on the record for both bills, so that will save you from having to testify on both. There are clipboards at the back of the room 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 on the door today. The introducer or representative will present the bills followed by proponents, and opponents, and neutral. Only the introducer 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 of the handouts for committee and staff. If you do not have copies, we will make copies for you. With that we will begin today's hearings. Senator Pahls, you are recognized to open on LB386. [LB386]

SENATOR PAHLS: (Exhibit 1) Thank you, Senator Cornett and members of the Revenue Committee. My name is Rich Pahls, P-a-h-l-s. I represent District 31, the... [LB386]

SENATOR CORNETT: Senator Pahls, could you...the mike is apparently...there you go. [LB386]

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SENATOR PAHLS: Okay. Can you hear me now? [LB386]

SENATOR CORNETT: I can hear you now. [LB386]

SENATOR PAHLS: We could do a commercial. (Laughter) Okay, I will repeat: my name is Rich Pahls, P-a-h-l-s. I represent District 31, the Millard of Omaha. Today I would like to begin the first testimony dealing with LB386. I'm going to ask the...we did send this packet of information to all of the members ahead of time, but I'm going to ask the pages to hand these out. And if you already have one, please, I would like to have it back to be honest with you, because I have had the opportunity to speak to a number of groups and I sort of use this as my template. And I thought if I would speak from this information packet it would make the testimony probably go a little bit faster. Just to let you know, in 2007 I served on the Nebraska Tax Policy Commission, and this commission consists of eight senators, the director of the Department of Economic Development, the Tax Commissioner, and six private sector representatives. The commission's mission was to conduct a comprehensive study of the state tax policy and issue a final report. To me, it was an eye-opening experience. And I know, probably, all of your offices have this but this, basically, is the study that we did in 2007. And some of the information that I'm discussing today was pulled from this study. So if you do not have this, I'm sure we can get some copies. Because when we decided to have a commission, there was some concern that this was going to be another commission--all we do is gather information and we let it sit. Because they said we did that with the Syracuse Study that occurred, I'd like to say 20-some years ago. So again, I'm trying to show you that we are using that information. In fact, if you look, some of the past changes we did on corporate income tax and inheritance the last couple years came primarily from the information that we gathered on this study. So we are using that information, hopefully to the benefit of all people. LB386 shows you what we could do if we decide to repeal all the sales tax exemption. My bill does not broaden sales taxes to new services. It doesn't contain any tax increases. It just repeals the list of sales tax exemption. What I would like to have you do is, if I could, is take a look at this packet of information and I'll just walk through this because I think this will give us some idea or some place to start some of the questions, if needed. If we would do this, if we would exempt...if we would do away with all of the exemptions, this is what we could do...are some of the things that we could do. And I'll just read a couple of them. LB386 repeals all the sales tax--it raises enough revenue, if we repealed everything, it raises enough revenue to reduce property taxes to zero. It would reduce motor vehicle fees and taxes to zero. It would reduce corporate income tax to zero. And it would lower the sales tax rate from 5.5 to 4.73 or some similar number, because all it would depend on probably how we compute that. And if you say no, I'd rather do income tax, well, if you put income tax in there something else would have to go. But if...I know a number of you can recall at least two years ago when we had a number of new individuals in the body, almost every one stood up and said we need to reduce property tax. So that's one

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reason why I emphasize this. And I just want to point out that, number one, we collect enough sales tax for the state of Nebraska; we collect \$2 billion--\$3 billion we exempt. So I'm asking you today, would you rather be in the \$3 billion group or the \$2 billion group? So if we would exempt all of that would allow us to have enough money to cause these other things to happen. Number two, it says corporate tax is suspended--that's \$230 million. The Property Tax Credit Act passed in 2007--that would be replaced with a \$2.5 billion. We would use the property tax credit to send that money back to the counties and then you can see the motor vehicle taxes would be repealed to \$300 million. Now I've set some of the dates of...in there 2010, 2015. Now those dates are just something for us to talk to. It doesn't mean this is the direction that we necessarily have to go. Now what I'd like to have you do is just flip the pages--Exhibit B. These are all of the exemptions, starting on page 4, 5, 6, 7, 8, 9, and 10. Add all those up you get close to \$3 billion. Now here's the interesting factor: you'll see N/A on some of those. The state doesn't even require anybody to report that, so we do not know actually how much extra money is sitting out there, because they do not require any type of report. So I'm assuming that that means there would be more dollars available. Again, that's if you would eliminate everything. Now I'm just going to show you the power of this committee. Let's take a look at Exhibit C, page 11. Now if you would take a look what we have done as a body from 2006, 2007, and 2008, those is what we have done the last three years. And if you add all those figures up that's around \$4 million. That \$4 million is gone forever from our General Fund. Forever, unless we would remove those exemptions. Now I have to be honest with you, there's a possibility that I voted for some of those exemptions. I'm not saying exemptions are wrong, I'm just saying this is sort of enlightening what has happened in the past. Now if you flip on page 12, Exhibit D; 12, 13, and 14--these are the bills you've heard this year. Now I notice that some of you actually even brought some of these bills. I'm not saying these bills are wrong, bad, but it's another example how we are chipping away from that \$2 billion moving over to the \$3 billion. And I know as...at one of my meetings it was pointed out to me that some of these bills that have been introduced, actually, this has been the first year that the Revenue Department or the Department of Revenue has said we need to start collecting some of those, and have also listened on some of the things--just by one or two words makes a difference of how you're going to be taxed. I found that out like if it's being processed, etcetera, etcetera. So even in these bills, one word is so important to some of these individuals. Now again, I'm not saying these bills...or it's anything wrong with them, but I'm just saying this is another direction...let's say they've just averaged a million dollars apiece. I'm not saying they are--that's just approximate. That could be, what, another 10, 12 million dollars that we would remove totally from the General Fund, now and forever. Again, it adds more to that \$3 billion. Now just on Exhibit E on page 15, these are just to show you the potential of what is happening in 2007 and 2008 and what could happen under this bill. I mean, I'll just start with the number one, because I don't plan to go down every one of these. Number one: state sales except on motor vehicles--right now it's 1.3; under this bill would be 3.9. And as you go along that would...you can see how we would start collecting our money. Now

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I'm going to go flip over to page 16, and I apologize if some of you have read this thoroughly ahead of time; I just at least want this to be a talking point. Now this is...if you take a look, this is just reorganizing all of the exemptions. Under motor vehicles, occasional sales, fuel, food, business and industry related, ag, government, on and on. Now I'll just...here's an example how this...you have to be cautious with some of the decisions that we would make, because now I'm going to have you flip back to page 17. Page 17, about two-thirds of the way down, if you read: food or food ingredients which are purchased, and the last two words are very important--food coupons. Now if we would exempt that, if I read the fiscal bill correctly, we would lose a lot of federal dollars in the tune of millions of dollars. So chances are that would be one we wouldn't exempt, because for that \$5 million we would lose possible 20 or 30. So some of these exemptions are there for a reason, and that goes to some of the things that we need to take a look at. And I think a little later on you're going to see why, in another bill, why I think some of these things are appropriate. Now, okay, then I'm going to have you flip to page 21. This...basically, these are the time line. Would we adhere to that? Not necessarily, because if we move the bill, different things could happen. And there's been a concern on how would we distribute all of the money that the state has collected? And we do have avenues already in place. I mentioned earlier the property tax credit would be one way of getting the money back to the counties. Not only that, I've talked to the Department of Revenue and they told me they have not come up with ways, because just like all of us, they want to make sure things have merit or pass the muster before they get all involved. But they said this could be done. So...and I'd just like to say, just to give you an idea, the property tax credit and motor vehicle fees and somebody may say well, geez, some of these fees would hurt the Highway Trust Fund. Well, with the extra money we would...occur from the \$3 billion we would just put that back into Highway Trust Fund. So any group that we'd hurt initially, that extra money we have here we would send that back to that particular group. That's, in a nutshell, is basically what this bill is trying to get across--showing the power of the exemptions, what we could do if we would choose to eliminate all of the exemptions. Now practically, being practical, we all understand you probably couldn't do all of them, but we need to take a look at them. With that I will close my opening and entertain any questions if you have any. [LB386]

SENATOR CORNETT: Senator Adams. [LB386]

SENATOR PAHLS: Yes. [LB386]

SENATOR ADAMS: Thank you. Senator Pahls, you brought us some interesting information. As I look at this, one of the things I wonder about from a tax...my first question is a tax policy question. If we went in this direction, lock, stock, and barrel as you're prescribing, do we become too dependent on sales tax which becomes cyclical in nature? And then, do we find ourselves in economic environments like we're in now, I suppose, adjusting the sales tax rate or slowly slipping back into that, well, schools are

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hurting so let's let them have a little property tax again, and cities need a little bit and, I mean, this is all very hypothetical, but at some point do we end up right back where we were, to some degree? [LB386]

SENATOR PAHLS: Yes, and I cannot deny that could happen. But if things get that desperate, even if we wouldn't change and if the economy goes down, we are going to have to do something. And it may be cutting services. It may be increasing taxes, if that's what we need. So no matter what direction we go, if we stay the way that we are and the economy continues to go down we are going to be, still, in desperate straits. [LB386]

SENATOR ADAMS: I guess you're right, you know, that we do that now. But I guess what I'm wondering is, if we increase our dependence on sales tax, which tends to be more sensitive to cyclical moves of the economy, do we find ourselves doing that more often? [LB386]

SENATOR PAHLS: And, like I say, not having all of the futuristic things that are going to happen to me I see the potential of that. Again, it all depends on what type of body we are. If we're going to open up the gates and just let things happen--and I don't see that in the state of Nebraska. I don't see the Legislature just saying, okay, we have this money here and because you can feel the resistance to any of the bills now. I think that resistance would still be there because of your feeling, hey, the sun may not always be shining, but I do see the potential of that. [LB386]

SENATOR ADAMS: May I ask another...one more question and I'll get out of this, but...all right, you indicated--and I would agree with you--we would probably exempt something. [LB386]

SENATOR PAHLS: Yes. [LB386]

SENATOR ADAMS: And I haven't looked at the list here, but would we continue, for instance, would you envision us continuing to exempt medicine, for instance? You know, sales tax tends to be regressive... [LB386]

SENATOR PAHLS: Yes. [LB386]

SENATOR ADAMS: ...in nature and one of the ways we avoid some of that regressiveness is to exempt things like that. Would you continue to do that? [LB386]

SENATOR PAHLS: Yes, I...to be honest with you, the idea of saying we're going to remove everything was so to let you know the power if you would remove everything: all the money that you could be dealing with. But you have to look on the other side--is that fair? Is that what we should be doing? But see, what you're asking me would actually

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even lead into the next bill that I'm bringing up is how we would take a look at this on a regular basis. And we would have to defend why we are doing that and, you know, why that exemption would stay there, why it should go. But the common sense tells me that there would be some of these exemptions that we probably would leave in the bill. [LB386]

SENATOR CORNETT: Senator Dierks. [LB386]

SENATOR DIERKS: Thank you. Senator Pahls, I'm just a little bit envious because you almost got up to the same fiscal note that I did with the one I introduced to do about the same thing. I've still got you beat by a billion dollars, I think. (Laughter) [LB386]

SENATOR PAHLS: Yeah, yes, but...and I hear you (laughter); I was told that also. But I think if you take a very serious look at this fiscal note, they show that at one part we'll grow 2.5 percent in one area, then in another area we'll go 7.5 percent--like the cost of houses. And I don't see the property tax going up 7.5 percent. [LB386]

SENATOR DIERKS: Well, see, I am interested whenever we talk about reducing property taxes. It's got to be an extremely onerous problem across the state; it isn't just for farmers and ranchers, it's also for homeowners and for businesses. And my contention is we use those funds...the property tax dollars should be used, I think, to protect streets and homes and courthouses. I'm not so sure they should be used for paying transportation costs to school and for teacher salaries. And so when I say we need to come to the General Fund to get those dollars, then somebody says well, you're going to lose all your local control. Well, I think we already lost our local control so I don't think it makes a bit of difference whether you get it from property taxes or from the General Fund, as far as the local control issue. Do you...you didn't say anything in here about sales tax on food. [LB386]

SENATOR PAHLS: That is exempt right now, but we'd probably have to take a hard look and say is that something that we want to eliminate? I mean, do we want to start taxing food? And probably the general feeling of that would be we ought to really rethink that. But that's in here; that's exempted. But... [LB386]

SENATOR DIERKS: Well, we need to get together and drink a cup of coffee over this issue sometime. [LB386]

SENATOR PAHLS: Yeah. Well, that's what I'm asking you to do is make this a larger issue than just with the group of us sitting around here. Some of these questions of the one you proposed about where does property tax belong and the idea of local control, that question was asked of me under...by Senator Adams in another meeting--on the Education Committee. And I do think that local control is an issue but not like...it's not the major thing anymore; I think there are too many other variables. [LB386]

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SENATOR DIERKS: Thank you. [LB386]

SENATOR CORNETT: Senator Friend. [LB386]

SENATOR FRIEND: Madam Chair says that with such anxiety. I...Senator Pahls, I appreciate this information. I wanted to run something by real quick and I'm not going to take long--don't worry about it. We...I can go on all day here with you on this. But one of the assertions that I've made to the displeasure, I think, of everyone that's been within earshot is the dysfunctionality of our sales tax system. I don't even think that we have a sales tax code. My question for you is if we...has analysis been given, not just to excluding the exemptions, I mean, has your analysis included...because here's my contention: it's not just necessarily getting rid of exemptions. You can have a sales tax, but we don't have a code for it. So in other words, if you have a use tax...some state entities will have codified a use tax. They said, all right, if you're going to provide an exemption, there are certain criteria you're going to have to meet to achieve that exemption in your use tax code. Or, if you're going to have an exemption for a product, there are criteria and parameters you have to meet to have the exemption for that particular product. Instead of taking a route where you say, you know what, let's tax everything, why don't we just codify this thing? Why don't we say we have categories and we have parameters wrapped around our sales tax code. Has that...did that go into some of your analysis? Or is your assertion that because our sales tax code, or because we have no sales tax code, or our sales tax is dysfunctional, we just need to go grab everything that we have and tax it? And I was going to ask that of Senator Dierks earlier in the year, but I guess I never really got to it. I think there's a difference, is what I'm saying, between what you're asking here and maybe the analysis of the system and then trying to create a real code with real parameters around it drawn in for the Department of Revenue to deal with. Is that a fair question? [LB386]

SENATOR PAHLS: Yes. [LB386]

SENATOR FRIEND: I think there are two distinct things that we're talking about here. [LB386]

SENATOR PAHLS: Yes, there are, and part of my intent here is to get that conversation going. Even though this bill may not direct how we are going to code things, at least that would be brought up and people would start thinking about that because I don't think a lot of people think about it. [LB386]

SENATOR FRIEND: Okay, okay, because the point is, let's say that there are a bunch of nonprofit churches... [LB386]

SENATOR PAHLS: Right. [LB386]

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SENATOR FRIEND: ...or people to compensate. You know what, come on. I mean, their argument would be this is double taxation. We have a bunch of people in our congregation that are already taxed for X amount of stuff by our sales tax system, but yet now you're going to tax them again for products they're going to use in this particular environment. If we had a code... [LB386]

SENATOR PAHLS: Yes, yes. [LB386]

SENATOR FRIEND: ...we could exclude them without calling it an exemption... [LB386]

SENATOR PAHLS: Yes. [LB386]

SENATOR FRIEND: ...is what I'm saying. [LB386]

SENATOR PAHLS: No. [LB386]

SENATOR FRIEND: Here, we're not really...I'm not going to criticize your bill... [LB386]

SENATOR PAHLS: No, no. [LB386]

SENATOR FRIEND: I'm saying here we're not differentiating. I still don't know...I guess my question for you is, are we creating a code or are we just taxing everything? [LB386]

SENATOR PAHLS: We are removing the exemption that you may have. If you'd fall under one of these categories, if we would decide as a group this exemption should go, it would go. Or if we say no, this exemption should stay, this is a fair exemption, I think that's... [LB386]

SENATOR FRIEND: Yeah. [LB386]

SENATOR PAHLS: ...that's a dialogue that we need. [LB386]

SENATOR FRIEND: Okay. [LB386]

SENATOR PAHLS: Because you realize a lot of these things started in '67 when our state had our first sales tax. And keep that in mind that, at that time, we had an additional...and I'm going to say we had additional group of...pile of money come into the state and I think some people said well, we ought to exempt this and this, and certain things were and certain things weren't. That was in '67. Some of these go back; these exemptions go back. And not only with this bill, but with the bill coming up which let's take a look at that. [LB386]

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SENATOR FRIEND: Okay, I was...okay. [LB386]

SENATOR PAHLS: Yeah. [LB386]

SENATOR FRIEND: Thanks. [LB386]

SENATOR CORNETT: Let's go in order: Senator White. [LB386]

SENATOR WHITE: Thank you, Senator Pahls. As drafted, would this be a tax increase or a tax shift? [LB386]

SENATOR PAHLS: I think the people who'd come behind me would say this would be a tax shift. [LB386]

SENATOR WHITE: Okay. One of the reasons I'm interested in your bill is the recent Nebraska Supreme Court opinion put a lot of the property tax basis, the existing structure, into question. They indicated that in the Republican River Valley we could not use property taxes to pay off Kansas as part of the compact, because it's a state purpose but it's a local tax, even though it was for water in that area. The state Constitution puts the obligation to educate K through 21 years of age on the state. Now if you extend the logic of that opinion, we may lose property tax as a basis for K-12, which, of course, would be absolutely cataclysmic... [LB386]

SENATOR PAHLS: Sure. [LB386]

SENATOR WHITE: ...for the current structure. And we would then immediately have the obligation to fund all K-12 through general tax revenues, if the court tells us that. That, to me, is a backdrop that makes what you're proposing particularly timely because we may not have a choice. I mean, if the Supreme Court tells us, you can no longer use property tax because the State Constitution says you've got to pay for education through General Fund money--similar to what Cap is arguing, I guess. Would we have any alternative to this? [LB386]

SENATOR PAHLS: Yeah. [LB386]

SENATOR WHITE: And if not, what will we...what kind of thinking will we have time to do? [LB386]

SENATOR PAHLS: Well, see, and I think that sort of tells me that we need to be discussing something like this in preparation if something like that does happen. We may even want to move some of these things off to the side and say let's save it for another day, but I think those days are coming closer and closer to some issues that you're bringing up. And I think if we have a discussion on the floor about all these issues

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that, in the future, if these things need to happen we would have a foundation to base some of our judgments. [LB386]

SENATOR WHITE: And just so you're clear, if I vote to put something...this out, or something like this out, I could never accept taxing medicine or food. [LB386]

SENATOR PAHLS: Yep. [LB386]

SENATOR WHITE: I mean, I just couldn't. And I would generally worry about the regressive nature of sales tax. [LB386]

SENATOR PAHLS: Right. [LB386]

SENATOR WHITE: But I also see a real risk that if we don't start talking about this, we could end up with no options and no time to really think it through. [LB386]

SENATOR PAHLS: Yeah. And I appreciate your thinking there. And again, I think the majority of us would look at some of these exemptions...it would not take us long to say common sense tells me, or you, or the body...and it would be interesting to see where the body is. I'm assuming, just by our discussion, the body would probably agree with us on some of these issues because they're pretty up front, so. [LB386]

SENATOR WHITE: Thank you. [LB386]

SENATOR PAHLS: Thank you. [LB386]

SENATOR CORNETT: Senator Louden. [LB386]

SENATOR LOUDEN: Yes, thank you, Senator Cornett and thank you, Senator Pahls. As I'm trying to look at this thing and, I mean, this is a vast idea. [LB386]

SENATOR PAHLS: Yes. [LB386]

SENATOR LOUDEN: And I'm wondering if it's a "half-vast" plan to make it work. I remember the Tiemann taxes, we called it; I think Norbert only served one term over it... [LB386]

SENATOR PAHLS: (Laugh) I can recall. [LB386]

SENATOR LOUDEN: ...but that's what it was back then when it first went in. And we put that in. Well, yes, it was on food and everything else and then right away we were looking for things to be exempt. Well, here we were discussing this for 30 minutes and already you're talking about taking food out on your plan. I mean, that was the first 30

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minutes of discussion--we talk about taking food out of there. And then you have your railroad rolling stock, you know, because the railroads will be all over your case like--what would they say? Ugly on an ape, because they're not going to pay any more tax than they have to. And the next part to come along would be, well, manufacturing machinery and stuff. Well, with our LB, Kay Orr and our LB775, we waived a bunch of property taxes so we could get businesses to come into the state. And you'd be the same thing: you're going to waiver that or else, good Lord, we wouldn't be able to get anybody to come in and invest in our state because we'd tax them the sales tax. What I'm wondering is, this is something that's...you're trying to replace property tax, is that your... [LB386]

SENATOR PAHLS: That would be one of the options that I laid out. If you did away with everything...now, I went to the nth degree to show you the power of exemptions. That means property tax could go away, and corporate taxes, or if you wanted to drop the property tax a little bit and do away with income tax, I mean, you'd have that money to work with if you so chose. [LB386]

SENATOR LOUDEN: Now, if you wanted to just drop property tax a little bit you could fully fund education through the state. That would do about 65 percent of your property tax. [LB386]

SENATOR PAHLS: I think that what Senator White was suggesting, that may be the future... [LB386]

SENATOR LOUDEN: That's what we have... [LB386]

SENATOR PAHLS: Yeah. [LB386]

SENATOR LOUDEN: ...is about 65 percent of our property tax is for supporting schools. [LB386]

SENATOR PAHLS: Yes. [LB386]

SENATOR LOUDEN: Yeah. Now, and then you get down to how would you fund counties? Would counties, then, and everybody send in their bill every six months to the state to get reimbursed for how you would operate your counties? Because that's, oh, maybe what: 25, 30 percent of your property tax is county funding. [LB386]

SENATOR PAHLS: When I talked to the Department of Revenue, they said that there are avenues or channels of fulfilling...getting the money in the right place. [LB386]

SENATOR LOUDEN: But, I mean, it's just like our jail fees. They don't fully fund it. And I'm wondering on your counties out here, because we have some counties that are at

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the max and some counties that are about 20, 23, or 24, 25 cents on their funding. Now how do you equalize that? Do you get like a school formula? We get Raikes back in here and figure out a formula to have funding for counties and then so that we're equalized amongst poor counties and rich counties? You know, I mean, how do we plan all this out? [LB386]

SENATOR PAHLS: You're telling me right now what's happening is unfair. [LB386]

SENATOR LOUDEN: Well, I'm wondering how, if you go to this basis, how you take your...trying to lower your property tax, so how do you do that where counties are involved? Or you just go ahead and let the counties fend for themselves and do their own property tax? [LB386]

SENATOR PAHLS: No, the...any dollar that would be...that they would lose through property tax, they would get that returned to them through the state. Nobody's going to...I can't think, right now, of any example to give you, but my understanding...because we did have a conversation, because I think Senator White earlier--a long time ago, I should say--made some comment, he says, well, what's your way of getting the money back? So that's why I did go to him. I cannot answer that now. But again, what I'm saying is on the floor that would be a good question and that would stir people saying hey, you know, this sounds good but, you know, is this doable? And if it's not doable, then, you know, that'd be a part that we'd have to take a look at. [LB386]

SENATOR LOUDEN: You mentioned that little book you got right there. That was that thing that Burling had here a couple of years ago? [LB386]

SENATOR PAHLS: Yes. [LB386]

SENATOR LOUDEN: Yeah, okay. Yeah, I got one and I was in on that too. [LB386]

SENATOR PAHLS: Right. [LB386]

SENATOR LOUDEN: And we spent a bunch of money. We had this dude come in and copy a lot of stuff off the Internet and tell us what he found off the Internet, and when we got done we decided, probably, as times went on they'd worked this stuff over to where most people were satisfied with it. And when you start all over again you're going to be right back where you were: everybody's going to start working for trying to get these issues out of there that are going to kill you if you don't. [LB386]

SENATOR WHITE: I see a lot of lobbyists smiling. (Laughter) [LB386]

SENATOR PAHLS: Yes, yes. You always have the danger of, if you make changes, that people are going to...not to be for that change. But it also may, I'm going to say it: if

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I'm not mistaken, that we did change some of the corporate taxes and I think some inheritance taxes, and part of that was generated from this study. And I do realize the individual...he did do an awful lot of looking at other groups and basically... [LB386]

SENATOR LOUDEN: Well, some of that inheritance tax, that started with Dave Landis, didn't it? [LB386]

SENATOR PAHLS: Yeah, right. [LB386]

SENATOR LOUDEN: Yeah. [LB386]

SENATOR PAHLS: Yes. [LB386]

SENATOR LOUDEN: And then, I guess, one last question. When you do this, where are you going to go with Omaha's and Lincoln's wheel tax? How are you going to... [LB386]

SENATOR PAHLS: That would not...that's not exempted, see. I'm only going if it's exempted, see. [LB386]

SENATOR LOUDEN: Okay [LB386]

SENATOR PAHLS: So this bill would not touch that. [LB386]

SENATOR LOUDEN: You wouldn't have anything to replace that. [LB386]

SENATOR PAHLS: Because that's not exempted right now... [LB386]

SENATOR LOUDEN: Okay. [LB386]

SENATOR PAHLS: ...see? We are only going right now for those things that have been exempted. I live in Omaha. I would still have to pay my wheel tax; I must pay my \$3.50, I think, for registration, because those are not exempted. [LB386]

SENATOR LOUDEN: Okay. [LB386]

SENATOR PAHLS: If...only if this bill only goes exempted. [LB386]

SENATOR LOUDEN: But that's usually what the people complain about with their car tax. Because I think Senator Haar introduced a bill, you know, to do something like that... [LB386]

SENATOR PAHLS: Yeah, yeah. [LB386]

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SENATOR LOUDEN: ...because people were complaining about that tax, but this wouldn't address that problem whatsoever. [LB386]

SENATOR PAHLS: No. Because it's not exempt. Those are not exempted. [LB386]

SENATOR LOUDEN: Okay, thank you. [LB386]

SENATOR PAHLS: Yep. [LB386]

SENATOR CORNETT: Senator Utter. [LB386]

SENATOR UTTER: Thank you, Senator Cornett. Senator Pahls, thank you for bringing this bill, and obviously it's apparent that you've done an awful lot of work on this thing. And I would just say to you, Senator Louden, that I don't think people are pretty well satisfied with this or we wouldn't have heard as many sales tax exemption bills as we've heard this year. So there are still folks that want to work on this tax base. That's one of the things that concerns me is that it seems like down through the years we have exempted away a large part of the tax base and now we've got fewer and fewer people, and fewer and fewer products, and fewer and fewer of everything paying more and more taxes. And I've sometimes felt that it would be much better if the tax base was broader and more people paid less tax; everybody'd be more satisfied. The thing I'm concerned about is that as we get into this and try to rectify past wrongs or to get a fresh start or whatever it is you want to call it, how do we craft this in a manner that we don't immediately, the very next session of the Legislature, have 100 bills to hear that are seeking brand new exemptions again. That seems to me to be the...and I recognize the importance of having to do this. Somehow or another it seems to me like we need to...maybe it's to codify it as Senator Friend has suggested, somehow or another. It appears to me that we need to lock our tax base into some kind of a situation where it isn't constantly chewed away at or shot full of holes. And I think that's a serious problem for the state of Nebraska, to be honest with you. [LB386]

SENATOR PAHLS: And I agree. And the thing...and I'm just going to point around this table. The Chairperson will be gone in two years, or three--or maybe sooner, don't know. (Laughter) I will be gone; Senator White will be gone; there will be new people. And oh, I'm sorry, I'm speaking without a question, but may I continue? [LB386]

SENATOR CORNETT: You may. (Laughter) [LB386]

SENATOR PAHLS: Senator Friend's going to be gone; Senator Louden's going to be gone; there will all be new people in there. So if we do not have something in place, it will be very easy for another group to come forth and say hey, you know, this is a good idea. And it is a good idea. A number of these exemptions are--they're not dastardly, but

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you may want to question the...are they...is this the time? [LB386]

SENATOR CORNETT: Senator Dierks. [LB386]

SENATOR DIERKS: One of the fears I have, and I think that both Senator Louden and Senator Utter touched on it, is where are the dollars going to come from in the future? If we go on like we've been going on, we're going to have to find some more dollars someplace. I foresee, right now, that the other states have got excise taxes from coal and from that sort of stuff--using their natural products. I can foresee the time when we'll be taking an excise tax from water we pump out of the ground. And that bothers me a great lot. So I think it's essential that we find some way to even this taxing situation. And when we talk about being fair, well, everybody says well, fair for who? But it's just absolutely essential that we do this--take a look at this product and try to come up with some answer for the people that will be here in the future. [LB386]

SENATOR PAHLS: Needless to say, I agree with what you have said. Thank you, Senator. [LB386]

SENATOR DIERKS: That's not a question, but that's just a... [LB386]

SENATOR CORNETT: Senator Louden. [LB386]

SENATOR LOUDEN: Yes. One thing I would mention that when you talk about the sales tax bills that we've looked at this year, we spent a lot of time looking at sales tax bills that were bills that actually weren't collecting any sales tax. They were issues that were brought up by an agency or something like that, and this is where we run across it many times, is issues that they weren't taxed and all of a sudden they showed up on a tax scale and this is where the buck stops here, is whether or not they should be taxed, so. Do you think we would have these issues, you know, in the future? They would always be whether or not we exempt or start back again. I think you'd have as many or more bills every year once you start back into it again. [LB386]

SENATOR PAHLS: And I do understand. That's why I said earlier, sometimes one or two words are so powerful. So if we would think about the exemptions now and, as you can see in the next bill, on a rotation basis, that would always be to our forefront and we would understand this is not something that we can let sit there for ten years and all of a sudden an agency finds out gee, we should have been looking at this because it allows us to get some more money. I mean, I think that's what part of the issue...and I do understand some of the bills that were brought forth were not just brand new. They're brand new because somebody said hey, this needs to be paid because we're interpreting that you've been getting, basically... [LB386]

SENATOR LOUDEN: Okay. One last thing I was going to...when you mentioned,

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Senator Pahls, about those of us won't be here. When the new bunch comes in they'll do whatever they want to do anyway, because you always want to remember that nobody's life, liberty, or property is safe while the Legislature's in session, so. (Laughter) [LB386]

SENATOR PAHLS: I hear you (laugh). [LB386]

SENATOR DIERKS: Thank you. [LB386]

SENATOR PAHLS: Thank you, Senator. [LB386]

SENATOR CORNETT: Thank you very much. [LB386]

SENATOR PAHLS: Okay. [LB386]

SENATOR CORNETT: With that we will have proponents. Come on up, please. If there are any further proponents, can you move towards the front of the room? You may begin. [LB386]

JOHN S. MCCOLLISTER: Thank you, thank you, Senators. I appreciate the opportunity to speak in support of these two bills. My name is John McCollister, M-c-C-o-l-l-i-s-t-e-r, and I'm speaking as a private citizen. In a matter of weeks, citizens of Nebraska will be paying our income taxes. With that in mind, it's entirely proper that this committee takes up sales tax with consideration of these two bills. With collections of \$2 billion, sales tax is a significant source of revenue for our state. What's even more significant, however, is what isn't collected in revenue, totalling nearly \$3 billion. Elimination of all exemptions would eliminate the need for property tax, corporate income tax, and vehicle taxes in Nebraska. Moreover, it's good public policy. Why? Our current patchwork of exemptions is inherently unfair. Only those industries with political muscle get an exemption while the others pay the tax. Secondly, a significant reduction in property tax or in sales tax would make Nebraska more competitive in comparison of income tax and property tax rates with other states. According to the Tax Foundation, Nebraska is the 12th highest in income taxes. Secondly, our property taxes our second highest in the country. Thirdly, rather than hurting business, eliminating of the sales tax exemptions would help business by eliminating the corporate income tax. That's all I wish to say. If I've still got a few more minutes, I'd like to answer some of the questions that came up from the senators. [LB386 LB385]

SENATOR CORNETT: Sir, the only way that you would do that is if a senator asks you questions you respond to. [LB386 LB385]

JOHN S. MCCOLLISTER: Okay, I understand, thank you. [LB386 LB385]

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SENATOR CORNETT: Questions from the committee? Senator Friend. [LB386 LB385]

SENATOR FRIEND: John, why can't we just put...and here was one of my questions and Senator Pahls answered it, but I'll ask it of you. Why can't we just put better definitions, codifying a sales tax to meet our better definitions in our system in order for the Department of Revenue to operate in a clear and concise manner? To follow our lead; to follow the Legislature's lead; to follow the people's lead. Why do we have to do something like this? Why can't we say, here are the definitions for you. We have a use tax; here is the definition of a use tax; here are the parameters wrapped around a use tax. Here is our sales tax: we tax commodities; we tax products. Here is the definition of a commodity, here is the definition of a product. Now some would say all that's out there, but we've heard three times where they're making interpretations...we don't even think they're breaking the law. The Department of Revenue's out there making interpretations, and to me, they're making interpretations because they don't have the definitions, and they don't know what we're asking them to tax. Why can't we just do that? Why do we need to reinvent the wheel here and just say, simple enough, let's just tax everything. Your answer, I guess. [LB386 LB385]

JOHN S. McCOLLISTER: Well, I've watched with interest the discussion on, you know, death by a thousand strokes. And some of the...I think it would be much easier, in fact, for this body to simply repeal the exemptions and work backwards. Rather than trying to define the fine points, starting from almost the beginning and eliminating things and then working backwards, eliminating whatever exemptions this committee feels would be in the best interest of the citizens, I think, might be an easier approach, but... [LB386 LB385]

SENATOR FRIEND: Okay. [LB386 LB385]

JOHN S. McCOLLISTER: But you would certainly know best. [LB386 LB385]

SENATOR FRIEND: Just one more quick thing, if I may. I don't know that I disagree with that, but what I would say though is you've still got the same problem. Because what you're saying is we don't...the Department of Revenue's sitting out there just because we felt like we've grabbed everything... [LB386 LB385]

JOHN S. McCOLLISTER: Um-hum. [LB386 LB385]

SENATOR FRIEND: ...I'll guarantee we haven't. Because there's somebody out there with a service that--an Internet service or something that they've created. They've figured out a way to make money. And if they've figured out a way to make money, we're going to figure out a way to tax them--that's what the government does. Well, if you don't have the code in place, the Department of Revenue's going to sit there and say well, we're going to make our own interpretation, and by the way, we're not breaking

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the law unless somebody sues us. So we're going to go audit you because this is what we were told we can do, and we're going to go collect this tax. Just because we've done this, and we start working backwards, I would submit to you that there's no possible way that this encompasses everything. From a money making standpoint, this does not encompass everything. And times change. Five years from now, people are going to figure out a different way to make money and we're going to go we don't have this in code; we don't have this in definition. So I would only, if I'm arguing with you--I don't think I am, but... [LB386 LB385]

JOHN S. McCOLLISTER: No. [LB386 LB385]

SENATOR FRIEND: ...I would only say that working backwards will only do us some good if the Department of Revenue has parameters to work with. [LB386 LB385]

JOHN S. McCOLLISTER: Well, by working backwards I'm saying eliminate the exemptions--totally. And then, therefore, the Department of Revenue would have no issue at all. I mean, you have no exemptions. And maybe I'm not understanding the question. [LB386 LB385]

SENATOR FRIEND: No, we can...I can talk to you again. We can take it up. [LB386 LB385]

SENATOR CORNETT: Senator White. [LB386 LB385]

SENATOR WHITE: Thank you for coming, Mr. McCollister. Are you really serious that a family that makes \$14,000-\$15,000 a year, spends almost all of it on food, should have to pay sales tax on it? Just like my family that might make many times that, and you think that's a more just system? Because that's what would happen if we eliminate all exemptions. [LB386 LB385]

JOHN S. McCOLLISTER: I told my wife today I was coming down to testify, you know, favoring complete elimination of the exemptions, and boy, she jumped on me about the food issue as well. I'm thinking that... [LB386 LB385]

SENATOR WHITE: So there is a conscience in your house--it may not be you.
(Laughter) [LB386 LB385]

JOHN S. McCOLLISTER: So I'm sympathetic to the argument and I'm thinking that could end up being one of those areas, just like Senator Pahls indicated, there might be an area that would be, in fact, good public policy to exempt. [LB386 LB385]

SENATOR WHITE: But that's, for me and many others, that's the biggest problem with sales taxes. [LB386 LB385]

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JOHN S. McCOLLISTER: I agree. [LB386 LB385]

SENATOR WHITE: Is that until you reach a certain level, they're regressive, you know. I mean, if a person's buying a brand-new Mercedes limousine every year, I really don't care if they pay a sales tax. But if you're trying to feed a family of four on \$20,000 a year and we're taxing the milk that you're trying to buy so that your kids can grow up with strong bones, I got a real problem with that. And, I mean, if we're really talking about getting rid of all of those and not looking anywhere, then I don't even want this to come out. But if what we're doing is looking...okay, we're going to be civilized, we're going to be humans, we're going to look at this...because truth is I think we may not have a choice. I think the Supreme Court may make a choice for us. [LB386 LB385]

JOHN S. McCOLLISTER: Well, thank you for asking the question because that means I can sleep in the house tonight instead of in the garage. (Laughter) [LB386 LB385]

SENATOR WHITE: But you would support an exemption for food under those circumstances, then. [LB386 LB385]

JOHN S. McCOLLISTER: I believe I would. [LB386 LB385]

SENATOR WHITE: Okay, thank you, and I appreciate your candor. [LB386 LB385]

JOHN S. McCOLLISTER: Thank you. [LB386 LB385]

SENATOR CORNETT: Senator Friend. [LB386 LB385]

SENATOR FRIEND: Thank you, Madam Chair. And Senator White probably...he knows me well enough he knows this is coming now. I have a family of six; well, I include myself. I feel like turning the tap--I need water everyday; I need to drink it. I feel like turning my tap off, going to the grocery store and buying a case of water for my family because I don't get taxed on it. If I turn my tap on...and you're on the M.U.D board, am I correct? [LB386 LB385]

JOHN S. McCOLLISTER: I was. [LB386 LB385]

SENATOR FRIEND: Excuse me, you were on the M.U.D board. If I turn my tap on I'm getting taxed for that water, aren't I? [LB386 LB385]

JOHN S. McCOLLISTER: You're absolutely right. The patchwork of taxes we have on our sales tax laws are... [LB386 LB385]

SENATOR FRIEND: Okay, sorry. [LB386 LB385]

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JOHN S. McCOLLISTER: ...are almost beyond reason. [LB386 LB385]

SENATOR FRIEND: Sorry, and the thing...and this leads to my final point, and tell me if you think I'm wrong. Why...we don't need to go back and say let's hammer these exemptions. What we need to do is say, what is the definition of a life-sustaining item? Give me the definition, because I don't get it. I mean, if the state is not forcing Baker's or Hy-Vee to tax me on that water...I'm trying to listen while...(laughter)...if I go and buy that water at Hy-Vee, I'm ahead of the game. And the reason I'm ahead of the game is because there are no definitions as to what a life-sustaining source is. That's my problem with this whole situation. And we're not handling it here. [LB386 LB385]

JOHN S. McCOLLISTER: Well, you know, I agree with your point; your point's well taken. And not only that, but you're buying a plastic bottle that probably is going to go in a landfill, so you know, buying it from M.U.D and paying the tax is still in your best interest, but it's not fair. Now in the state of Minnesota, all government agencies pay sales taxes. Why is it that we exempt governmental bodies in the state of Nebraska instead of paying sales tax? You know, we talk about the patchwork of sales tax laws that we have but it's...you know, how best to fix that is going to be an interesting thing to follow. [LB386 LB385]

SENATOR FRIEND: Thank you for the consideration. [LB386 LB385]

SENATOR WHITE: I think Minnesota's a bad example. I think they are maybe the highest tax state outside of Massachusetts. [LB386 LB385]

JOHN S. McCOLLISTER: For... [LB386 LB385]

SENATOR WHITE: For any kind of tax. I mean, their tax structure is very aggressive. [LB386 LB385]

JOHN S. McCOLLISTER: That's quite true, although Nebraska clearly is in the highest quartile of taxes in this country, when you take all those taxes together. And it's so ironic, given Nebraska's a conservative state. [LB386 LB385]

SENATOR WHITE: We're also solvent. [LB386 LB385]

JOHN S. McCOLLISTER: That's true, good point. [LB386 LB385]

SENATOR WHITE: Which is also unusual. [LB386 LB385]

SENATOR CORNETT: Further questions from the committee? Seeing none. [LB386 LB385]

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JOHN S. McCOLLISTER: Thank you very much. [LB386 LB385]

SENATOR CORNETT: Thank you. Are there any further proponents? We'll move to opponents. Could I see a show of hands of the number of opponents? You can do it on either. Okay. Anyone wishing to testify on this bill could you move forward so we're...have an idea. Thank you. [LB386 LB385]

JIM CUNNINGHAM: (Exhibit 2) I'm sure that there are others who have concerns about the second bill. My name, for the record, is Jim Cunningham. I'm executive director of the Nebraska Catholic Conference. That's spelled C-u-n-n-i-n-g-h-a-m. The Catholic Conference represents the mutual interest and concerns of the agencies and instrumentalities of the archdiocese of Omaha, the diocese of Lincoln, and the diocese of Grand Island on matters involving public policy and under the direction of the diocesan bishops. The Catholic Conference opposes LB386 for the following reasons. In general, this bill, on behalf of the state of Nebraska, shatters a public trust that has existed since 1967--from the day that the Nebraska Revenue Act was first enacted. Pursuant to that trust, in exchange for all the many ways in which nonprofit religious organizations and privately operated schools serve the common good, provide public and community-based benefits, and relieve obligations that would otherwise fall to government, these entities have been provided with freedom from the financial and administrative burdens of the sales tax. In addition, this bill is especially onerous and objectionable from our perspective because, for the designated five-year period, all of the financial burdens and few, if any, of the financial benefits are imposed on nonprofit organizations, including churches and other religious organizations, and nonprofit, privately operated schools. And let me just interject here, I believe also on public schools, if I understand the scope of the bill correctly. Obviously, for organizations that are otherwise exempt from taxation, to suspend collection of taxes that they don't pay is meaningless. More specifically, our objections to this bill are as follows: First, the bill would repeal Section 77-2704.12 which allows religious organizations and nonprofit, privately operated schools to purchase goods and services without having to pay the sales tax. This is a vitally important and beneficial opportunity for these entities which are comprised of individual Nebraskans who voluntarily organized themselves for worthwhile purposes--purposes that pursue the common good and provide significant public benefits. Repealing this exemption will increase the financial burden on our wide-ranging religious ministries, including our school systems which provide quality academic, social, and value-based education for 30,000 Nebraska youngsters. The current exemption policy respects and encourages entities that enhance the common good. What's more, the current policy allows the full value of contributions made to these nongovernmental, nonprofit, public benefit organizations to be used for the intended purposes. Second, the bill would repeal Section 77-2704.25 and therefore subject to taxation sales made by parent and other school-based organizations when the proceeds of such sales are used to support school activities. School fund-raising is

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a fact of life for both governmental and nongovernmental schools. Fund-raising activities are a social component of the operation of schools, but more significantly, they provide important and necessary supplemental financing. The current exclusion policy accommodates those activities and keeps them unfettered by governmental processes that would otherwise treat them as retailers. From a practical perspective alone, this is an important policy consideration because in a majority of situations in which this exemption applies, these activities are carried out by volunteers. What's more, the current policy allows the full value of payments made for school support purchases to be used for those purposes. Third, the bill would repeal Section 77-2704.10, thereby subjecting to taxation school lunches and other meals and food products served by elementary and secondary schools and postsecondary educational institutions, public as well as private. In addition, it would subject to taxation meals sold by churches at church functions. The need for and importance of providing meals in conjunction with a day-long school program is obvious. It is a matter of convenience and well-being for the children. And the other context that would be impacted by this bill, food and fund-raising are naturally entwined. And let me just interject that I see just a tad bit of irony in this particular provision, given that we're talking about this bill on a Friday during Lent, because fish fries would be impacted. (Laughter) Furthermore, food and meals are a natural element of social interaction that is so inherent and important for church communities. The current exclusion policy recognizes that fund-raising and social interaction conducted in conjunction with food and meals should be neither frustrated nor complicated by rules of taxation. Fourth, furthermore, repealing Section 77-2704.10, more specifically subsection 6 of that section, would subject to taxation fees and admissions charged by elementary and secondary schools, both public and private, and their affiliated organizations. Again, these would become retail sales for purposes of taxation. Public policy should not be modified or changed to frustrate, complicate, or intrude upon these social benefits. Furthermore, a significant amount of the administration and management of school activities, at least in our systems, is carried out by volunteers. Imposing accounting and other administrative obligations and cost by prescribing duties and responsibilities of retailers with respect to tax collection is an unreasonable and impractical expectation. Fifth, the bill would repeal the long-standing portion of Section 77-2701.24 that allows sales occurring during one activity a year conducted by an organization created exclusively for religious purposes to be treated as an occasional sale, which is excluded from the definition of retail sale for purposes of taxation. Church bazaars and festivals are as old as the state of Nebraska. They are important for purposes of both fund-raising and social interaction. And when they occasionally take place they should be allowed to happen such that all the proceeds are derived for the churches and their religious purposes. Finally, during the period in question, this bill would impose the sales tax on food purchased as groceries. And apparently, also, at the risk of loss of federal funds, on food purchase through EBT cards and food stamps. The taxation of unprepared food is a policy that the Catholic Conference has always opposed as a matter of social justice due primarily to the regressive nature of the sales tax. In our view, there are sound reasons why the above

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cited policy changes would be more detrimental than beneficial in relation to the common good in the state of Nebraska. These policy changes are inextricably linked to public benefits and should be kept free from taxation. Therefore we urge that LB386 be indefinitely postponed. Thank you for your attention and consideration. And Madam Chairperson, I also would want to be on the record in opposition to LB385, and I will be submitting written testimony to that effect to the committee, but I won't testify on that bill in lieu of your prior instruction. Thank you. [LB386 LB385]

SENATOR CORNETT: Thank you. Senator White. [LB386 LB385]

SENATOR WHITE: Thank you for coming, Mr. Cunningham. If the Supreme Court indicates that we cannot use property tax to fulfil our constitutional duty to provide appropriate education for everyone under the age of 21, where do you suggest we go? [LB386 LB385]

JIM CUNNINGHAM: Well, we've obviously, over many years, we've been asked that question because we are always here defending the public policy of tax exemption for religious organizations. And we always answer to the effect that we're not the experts; we don't have all of the available information. And obviously, that decision has to be left to lawmakers and policy makers. I think that if we were pushed to identify the way in which the state could, should, could raise further revenue, we probably would look at the income tax as being the most progressive of the taxes and indicate that. But I can't speak officially on that because we've never taken an official position. [LB386 LB385]

SENATOR WHITE: Thank you. [LB386 LB385]

SENATOR CORNETT: Senator Friend. [LB386 LB385]

SENATOR FRIEND: No. [LB386 LB385]

SENATOR CORNETT: Seeing no further questions, thank you very much. [LB386 LB385]

JIM CUNNINGHAM: Thank you, Senator. [LB386 LB385]

SENATOR CORNETT: Next opponent. [LB386 LB385]

THOMAS J. O'NEILL: (Exhibit 3) Senator Cornett, members of the Revenue Committee, I'm Tip O'Neill, that's O-'-N-e-i-l-l. I'm the president of the Association of Independent Colleges and Universities of Nebraska. We are in opposition to both LB385 and LB386. I don't have anything quite as profound as the prior testifier, because we don't have that many bake sales and fish fries in the independent colleges and universities, but it is kind of ironic that we do have a bill that taxes bake sales and eliminates the corporate

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income tax. It's somewhat interesting from my perspective. Senator White, you asked whether or not this was a tax shift or a tax increase, and I think it could be either. But certainly from the perspective of the Independent Colleges and Universities it's a tax increase. We receive about three-tenths of 1 percent of the total state funds expended for higher education in Nebraska. That amounts to about \$2.5 million a year, all in the form of student aid. I was able to get information from Creighton University, for example, on what the impact of having to pay sales tax on purchases would cost that institution. They estimated it would be somewhere around \$8 million a year. I would guess, then, that the total impact on our sector to be somewhere in the neighborhood of \$25 million a year, based on enrollment and purchases. And so there are...I think we don't have any difficulty justifying our exemption. We've been around since the sales tax started--again, in 1967. But I think there are good reasons why we are exempt, and so I would say that we would oppose both of these bills for those reasons. I'd be happy to answer any questions you might have. [LB386 LB385]

SENATOR CORNETT: Thank you, Mr. O'Neill. Questions from the committee? Seeing none, thank you. [LB386 LB385]

THOMAS J. O'NEILL: Thank you. [LB386 LB385]

SENATOR CORNETT: Next opponent. [LB386 LB385]

KATHY SIEFKEN: I wasn't going to come up and testify because I thought other people were going to testify on our behalf, so I'll fill this out and hand it in. Kathy Siefken with the Nebraska Grocery Industry Association, here in opposition to LB386. Taxing food is a very regressive tax policy. It hurts, disproportionately, those people that are lower income. We have always been opposed to taxes on food and on...it doesn't make any difference if it's regular food or taxes or snack or pop taxes; food is food and therefore, we're simply opposed--want to go on record. If you have any questions, I'd be happy to answer them. [LB386]

SENATOR CORNETT: Just very quickly, could you state who you represent for the record? [LB386]

KATHY SIEFKEN: Sorry; Nebraska Grocery Industry Association. [LB386]

SENATOR CORNETT: Thank you. Senator Dierks. [LB386]

SENATOR DIERKS: Thank you, Senator Cornett. Why, Kathy, are you familiar with the food taxing policies in neighboring states? [LB386]

KATHY SIEFKEN: In some of the states there are snack taxes; in other states they do tax food. [LB386]

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SENATOR DIERKS: Those states that do tax food, do they have exemptions for the poor and for the elderly? Is that part of their... [LB386]

KATHY SIEFKEN: In some areas they have a income tax credit, and the problem with that is when people are hungry they need money now to buy food now, and getting a tax credit back at the end of the year doesn't help feed families. [LB386]

SENATOR DIERKS: Okay. Is that the only credit that you're aware of is the income tax credit? [LB386]

KATHY SIEFKEN: That's the only one that I'm aware of. There may be others. [LB386]

SENATOR DIERKS: Thank you. [LB386]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB386]

RON SEDLACEK: (Exhibit 4) Good afternoon, Madam Chair and members of the Revenue Committee. For the record, my name is Ron Sedlacek, the last name is spelled S-e-d-l-a-c-e-k. And I'm here today on behalf of the Nebraska Chamber of Commerce in opposition to LB385, and we are also opposed to LB386 and have entered such into the record. I'd like to preface comments on, although they're common, on both bills, but specifically I'd like to speak just for a moment with the committee in regard to our opposition. We've listened a couple of times, had a couple of occasions to listen to Senator Pahls's intent of the legislation. We understand it, we believe. Our position, nonetheless, is one of opposition to both of the bills. And really, when you take a look at Nebraska's tax code, we all understand and particularly this committee understands, how tax laws can have a revolving body of laws. And as such, the tax policy is regularly reviewed. From time to time the Legislature has initiated, sponsored, or encouraged--perhaps at the behest of other members--tax studies. Two of those studies were referred to before. It seems that some elements of the studies are looked at seriously, others are not. Syracuse Tax Study, for example, suggests that no business to business transactions be taxed; they ought to be exempt from the sales tax because they're just adding cost to the ultimate consumer, making us less competitive. We would agree with that. The study also said look at services as an evolving, at that time--over two decades ago, area of the economy and the Legislature ought to concentrate on that. And the Legislature did, to some extent, but not fully. And in some cases did and had to retreat, thinking of construction labor as an example. So it is a dynamic area of Nebraska law. That's why we have a committee called the Revenue Committee, to continue to review these laws every session, in and out. Every exemption that has been adopted by this Legislature has essentially had a trial of fire. It's been forged through by either a committee or a senator; it's received the public hearing; it's

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had its debate on the floor and either was signed or vetoed by a Governor, and maybe reintroduced three or four times prior to getting acceptance. And the case had to be made. But they were implemented, and there was a reason, and it was justified each and every time. The exemption may have been adopted because it promoted some neutrality so that a particular transaction would not be discouraged. Mr. Cunningham spoke of, essentially, tax neutrality when there is a public benefit for the state. Other times the exemption's adopted for simplicity purposes--it's just too expensive, too complex to tax, to audit. Or there are those cases in economic growth situations. And then there are particular cases, such as agriculture. It's very hard to pick up a farm and move that farm out of the state, unlike a business that may be transitory because of the tax policy and being competitive--where their product or the manufacturer of the product of the service is taxed in this state and not in another. Do we want to incent them to stay by exempting, or do we let the status quo go and see an eventual migration of that business and bleed it out of the state because we're one of the only states that tax it? So it's not an isolation: Nebraska looks at it's neighbors, it looks at all of the states and that's where we get ideas on what to tax sometimes and what not to tax--what to exempt. Now, by all means, we are not challenging or questioning any prerogative of any Legislature now...past, present, future...to reexamine tax policy and certainly can advance and enact this bill; that's within your prerogative and power to do so. But we believe that an arbitrary sunset such as is represented in one bill, or phase outs as in another, really do provide a lot of uncertainty and potential disruption--and very uncomfortable with that. We think that if the committee wishes to review exemptions it can do so without the drastic measures here. Senator Friend mentioned the tax code concept. Essentially, Nebraska's law was enacted so that the burden of proof was on the taxpayer. Everything's presumed to be taxed unless exempted. Taxpayer has to come in and prove up an exemption; it's their burden. And the tax code, as I understand it, it is the Legislature that has the burden, then, to add a tax and to justify it. So it just shifts the burden and responsibilities. And that's why so often we see the situation we have now and that is everything is presumed taxed unless exempted, as opposed to A through, whatever, ZZZ in the list is taxed under these particular conditions. Either way, it always seems to be subject to regulatory interpretation, and that's just part and parcel to implementing legislation, we believe. The other shoe to drop in regard to these issues are the financing mechanism and how would it work in a state such as Nebraska where we have metropolitan Nebraska versus sparsely populated rural Nebraska? Are we going to utilize the per capita argument? Are we going to have to take in all of these different, various, politically contrived, so to speak, factors as to what is rich and what is poor? Then there is the governing mechanism itself. Once that is accomplished, then who is governing each and every political subdivision is now dependent upon state dollars. And third, I notice the fiscal note for the business purposes does not really take into account one item. It seems like it's missing from the fiscal note unless it's not mentioned and assumed. And that is, if you have a business paying a sales tax now, it is a deductible expense on that business income tax so long as the business is liable for income tax. If we're going to tax all these particular products, that is going to have an

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effect on our income tax rates, as well as consumers--individual, potentially. And it just doesn't appear to be addressed. And as Senator White mentioned, there are many marginal areas--not only consumers, but also business taxpayers operating in such a slight margin or such a small business where they cannot generate enough income tax to take a credit from the sales tax. And then it becomes regressive and then they become less competitive to their larger business competitors, so. Those are the particular issues that we're concerned with. In regard to ever an impending disruption due to litigation, for example, as to our property tax system and that, of course, there's always threats, no matter what, in the future. The voters of the state decided that they did not want a state property tax any longer; that may have to be reversed. That's not a policy, that's just a proffered solution. Or that all property, then, is collected or taxed, for state purposes, across the board in order to differentiate between poorer and richer districts and so forth. There's local option taxes; that could be expanded. There are political subdivisions with a greater taxing authority, but hopefully that's for a future Legislature well beyond our time to consider. But at any rate, in that regard we are opposed to both LB385 and LB386. Now the reason I want to stop here for a moment is that I'm also authorized to submit a letter on behalf of a number of associations who felt that they could, each and every one, present their own justification for tax exemptions that might be peculiar to their industries and this committee could be here for a very, very long evening. And rather than doing so, they essentially asked that we just put together a list of those who would be opposed to LB385, since it's a Priority Bill to senators. And so, essentially, many of the points I made were of common interest to each and every one of these particular associations. And I think, in order to save time too, I will not--unless the Chair wants to--but I will not read all 44 organizations that have signed the letter. [LB386 LB385]

SENATOR CORNETT: Mr. Sedlacek, I would appreciate it, as would the rest of the committee, if you would just submit that to the clerk. [LB386 LB385]

RON SEDLACEK: Okay, that's what we'll do then. [LB386 LB385]

SENATOR CORNETT: Thank you. [LB386 LB385]

RON SEDLACEK: Okay. The gist of my testimony is in that letter and I'll be happy to entertain any questions. And that would be on LB385. [LB386 LB385]

SENATOR CORNETT: Thank you very much. Senator Friend, and then Senator Utter. Senator Friend. [LB386 LB385]

SENATOR FRIEND: Thank you, Madam Chair. Mr. Sedlacek, your testimony is you think the sales tax system is functional, then. [LB386 LB385]

RON SEDLACEK: Well, collecting sales tax... [LB386 LB385]

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SENATOR FRIEND: I don't want to put words in your mouth. Do you think that the sales tax system that we have in the state of Nebraska is functional? Correct or incorrect? [LB386 LB385]

RON SEDLACEK: I don't think I have an opinion whether or not... [LB386 LB385]

SENATOR FRIEND: Okay. [LB386 LB385]

RON SEDLACEK: ...it's functional or not, certainly not on behalf of those organizations or the Chamber. [LB386 LB385]

SENATOR FRIEND: Fair enough, but what you did say is the taxpayer has the burden of proof in regard to an exemption. [LB386 LB385]

RON SEDLACEK: That's correct. [LB386 LB385]

SENATOR FRIEND: Let's say that I provide a product to farmers and I've never been taxed, or the farmer has never been taxed--there is no sales tax on that product for the farmer. And let's say...and I'm not picking on the Department of Revenue...let's say the Department of Revenue said, you know what, according to tax law this should be taxed. I don't know what the burden of proof is, I don't care; this is a product that should be taxed. We're going to start audits and we're going to start going to do this in order to start collecting this revenue. Do you think...and I don't think anybody's doing anything wrong here. I think that that is a symptom of a dysfunctional sales tax system. Would you agree with that or disagree with that, under that hypothetical? [LB386 LB385]

RON SEDLACEK: I may disagree with the department's interpretation on whatever particular it might be, however... [LB386 LB385]

SENATOR FRIEND: Well, so might this whole committee. But the point is we have a sales tax system that they're not violating. [LB386 LB385]

RON SEDLACEK: But Nebraska law is such that it is presumed... [LB386 LB385]

SENATOR FRIEND: Open to interpretation. [LB386 LB385]

RON SEDLACEK: ...to be taxed... [LB386 LB385]

SENATOR FRIEND: Yeah. [LB386 LB385]

RON SEDLACEK: ...unless exempted. [LB386 LB385]

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SENATOR FRIEND: But you know what's not open to interpretation, or at least as much? Income tax. It's pretty clear. If you make money you're going to get taxed a certain way, and there are definitions and there are parameters wrapped around it. I don't have any more questions, I'm just venting now. [LB386 LB385]

RON SEDLACEK: But again, there are... [LB386 LB385]

SENATOR FRIEND: I don't have any more questions, [LB386 LB385]

RON SEDLACEK: ...again, just in...just... [LB386 LB385]

SENATOR FRIEND: Ron, I don't have any more questions. [LB386 LB385]

RON SEDLACEK: Okay. [LB386 LB385]

SENATOR FRIEND: Sorry. [LB386 LB385]

RON SEDLACEK: Okay. [LB386 LB385]

SENATOR CORNETT: Senator Friend. Senator Utter, you are recognized. [LB386 LB385]

SENATOR UTTER: Thank you, Senator Cornett. Ron, just a...I did draw from your testimony, at least...at least I felt that you were submitting testimony that says that we're pretty happy in Nebraska with the sales tax situation as it is, and the exemptions as they now stand, and that there's probably not much that can be done to improve that situation. Is that a fair... [LB386 LB385]

RON SEDLACEK: I don't think that that would be any intent of mine to say that we were happy or unhappy. What I'm talking particularly about, and representing today, is that we would be opposed to what is being proposed here. There are many options this committee can always exercise, and that's reduced rates, expanded bases, less exemption, more exemptions. But I'm not really in the position to talk about each and every option at this point, but rather to oppose the bills that are, you know, truly before us. But I would not take away that I'm expressing either happiness or unhappiness, and certainly not on behalf of any of the associations here represented. I'll be neutral on that, essentially. [LB386 LB385]

SENATOR UTTER: I...somehow or another it seems to me like we've got to get around to the point where we evaluate the fairness of the situation. Ten more bills here, this year, asking for additional exemptions from the sales tax. Senator Pahls, in his testimony, pointed out four or five bills that the Legislature passed in the last three years, but probably was more than four or five. I could take a minute to count them, but I

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won't. It just seems to me like we keep chipping away at this base, and one of these days...I'm concerned about who's going to be...I think I'll be gone, you know, because of my age, but one of these days there's only going to be a couple of folks left that's going to be paying all the taxes in this state, and I would rather think they're going to be a little unhappy about it. And so it seems to me like one of these days it's going to be appropriate for us to start addressing these issues, and to address issues that speaks to how we don't continue to erode the tax base. We have tax base bleed, it seems to me. We've heard about border bleed, but I think we've got tax base bleed. I'm not sure that this is totally the Legislature's responsibility to address this issue. It seems to me like a great amount of input has to come into this from the leaders of this state and the folks that are represented by your organization and the folks that are represented by the organizations on this sheet of paper. And I don't think we should wait around until we have reached the crisis point. I think that what Senator Pahls is suggesting is that we damn well ought to get started talking about this, at least, because the time's coming when we're not going to have an option. And I think the business community, political community, the residential community, the citizens of this state all need to kind of have a part in this. And so I guess, in a sense, I...everybody just coming to this committee now and justifying their exemption and that they're happy with it and they want to keep it doesn't solve the problem in my mind. That wasn't a question, Madam Chairman, and I'm sorry about that. I guess it was an editorial; I apologize. [LB386 LB385]

SENATOR CORNETT: Well, let me frame that as a question, because it was something that I was going to...Mr. Sedlacek, with the downturn in the economy that we're seeing now and the reduction in revenues, very likely in the next biennium we're going to be facing shortfalls. Certain basic services can't be cut. Would you agree with that? Out of a government? [LB386 LB385]

RON SEDLACEK: Correct. [LB386]

SENATOR CORNETT: Education, healthcare... [LB386 LB385]

RON SEDLACEK: There are certain obligations... [LB386 LB385]

SENATOR CORNETT: Certain obligations. [LB386 LB385]

RON SEDLACEK: ...that the state is committed to. I would agree. [LB386 LB385]

SENATOR CORNETT: Is this not the time that we should be looking at options if we come to a point where we are unable to fund those basic services because of the economy? In regards to changing how we tax. Wouldn't now be the opportune time for us to at least examine how we tax in this state? [LB386 LB385]

RON SEDLACEK: Well, this being only a personal response and not on behalf of the

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organizations, I think any time is a good time to take a look and provide for the future. It reminds me of, again, the evolving and dynamic nature of the tax code. When cable services were first taxed, the question was wait a minute--isn't this a service? Or are we buying tangible property that is electrons flowing through your home, for example. You know, what is this? And so as technology changes, the economy changes, you always have those types of things to look at. And so you've got that factor, you've got current economic situations and you want to do it in the best way and not disrupt and destroy through, potentially, through a tax. But you, by the same token, have obligations to fund. So those are all the various dynamics that have to be addressed then. I think it's...it should be...it's always an ongoing concern. [LB386 LB385]

SENATOR CORNETT: One of the things that Senator Pahls's bills have brought to my attention... [LB386 LB385]

RON SEDLACEK: Um-hum. [LB386 LB385]

SENATOR CORNETT: ...and, as I probably believe other members of the committee, that, as you say, the tax situation is a continually evolving process and while I would agree with you in regards to new technology and looking at how to improve our business climate through tax exemptions for new and start-up industries, looking at some of the things that we exempted 40 or 50 years ago that... [LB386 LB385]

RON SEDLACEK: Um-hum. [LB386 LB385]

SENATOR CORNETT: ...now are established businesses, should those businesses still be receiving those exemptions, when those exemptions were brought to us because these were new, fledgling companies, businesses that needed that boost that they may not need that now. [LB386 LB385]

RON SEDLACEK: Again, you have to look, as a matter of tax policy--or tax politics, perhaps, but you have to look at not only what's happening here within Nebraska but where do we stack up competitively in other states? And to see where those trends are going too because we're not in isolation. If we taxed custom software and all our surrounding states, or many states, do not--we're one of a handful--is there a reason why custom software isn't being developed in Nebraska any longer, like it was before taxation? And they've migrated instead to Colorado and Arizona where it is tax exempt, where you can do it all electronically anyway. So those are the dynamics. What have we done with the tax policy so far? And has that had an effect? [LB386 LB385]

SENATOR CORNETT: Thank you. [LB386 LB385]

RON SEDLACEK: Um-hum. [LB386 LB385]

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SENATOR CORNETT: Senator Dierks, I believe you had a question. [LB386 LB385]

SENATOR DIERKS: I'm going to just tell you a story then I want you to comment on. I attended a meeting over in the Sandhills--it's been three years ago. And the people that were there were all ranchers, all concerned about property tax. I was not a member of the Legislature at the time, but a friend of mine asked me to come over and visit with him. The average per capita income in that county, that year, was under \$5,000. All they raise is cattle--nothing else--although the corn to feed the cattle, but the only thing they market out of there is cattle. Every per capita income was less than \$5,000. The first guy that set up to talk to me he said, my property taxes are \$9 an acre and it takes ten acres for me to run a cow. So I've got a \$90 bill on that cow before I even start, and that's every year. And it goes up every year. And the story just kept developing--the same thing from everybody that was there. And you suggest that we can't move a farm out of the state, but I know some people at that meeting that moved their ranch operation out of the state. They sold their ranches: one of them moved to Idaho, and one moved to Oklahoma. And both of them have come back and told me you can't believe the difference, Cap, of what it's like to not have to pay those property taxes. So now we got this list of organizations here that are very satisfied with what we're doing, and yet I don't see any form of excepting the problems that we have out there among the rural community. And I don't think it's just rural, I think it's happening all over the state, as far as property taxes are concerned. That's the very single biggest issue that I run into every day I go home, and yet we come here and try to talk about some sort of property tax relief and we get this: everybody's smug, everybody's happy, don't touch it. Tell me what you think about that. [LB386 LB385]

RON SEDLACEK: Well, I can't speak, again, for individual organizations other than on behalf of the State Chamber in that regard. By the same token, in order to be forthright with the question you ask is as I look over the list and I see those, including the very people and their organizations, I don't think I'd want to say that they're satisfied and they're happy, as you mentioned, with the property tax. But certainly, I don't think I can...I know by their presence here that they're not happy with having their sales tax exemptions removed, so. [LB386 LB385]

SENATOR DIERKS: How do we lower property taxes without either increasing sales or income tax? How do we do that? [LB386 LB385]

RON SEDLACEK: I am not prepared to answer that here today. [LB386 LB385]

SENATOR DIERKS: Well, I can't either, but I'm trying to figure out some ways. I thought we had some possibilities here, but they don't seem to fit. Thanks, Ron. [LB386 LB385]

RON SEDLACEK: Um-hum. [LB386 LB385]

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SENATOR WHITE: Ron, on one of the things, just so the audience understands. There's a lot of us who think we need to have an open debate. I very much doubt I could vote for this bill. I'm almost certain I could not, for many concerns. What deals have we struck with people; what industries have we, over the years, carefully nurtured; what are we killing off? Cap's worried about that but ethanol gets taxed and that's essential to so much of ag and that could kill a lot of the ethanol plants. I think we all understand that, but we're also very concerned we haven't looked it globally. We spend...I've been here three years hearing now. And over and over again, it's always "look at this aspect of the tax code and look at this aspect." I think what people want is a chance to invite everybody to step back, we've got needs, how do we do it better, should we do it better or not? Just so you can take that back. And because as Cap said, there are industries desperately hurting. I know you guys have them; I've got homeowners in my district. [LB386 LB385]

SENATOR DIERKS: Any other questions for Ron? Thanks, Ron. [LB386 LB385]

RON SEDLACEK: Thank you. [LB386 LB385]

SENATOR DIERKS: Anybody else in opposition? [LB386 LB385]

JAY REMPE: (Exhibit 5) Senator Dierks, members of the Revenue Committee, my name is Jay Rempe, J-a-y R-e-m-p-e. I am vice president of governmental relations for Nebraska Farm Bureau Federation, here today in opposition on behalf of...just a second--both bills, LB385 and LB386, and I also have a letter here from the Nebraska Soybean Association in opposition to LB385. And I was going to wait until LB385, but I thought I might as well get up now and say my piece now. And I'll try to be brief and short because people have already made a lot points that we have. And I'm going to start with LB385 because it's a little more simple and straightforward from our vantage point. One of the things that, and Mr. Sedlacek already mentioned this, but other things people look for in a tax code is certainty and some stability and continuity and so they can make investment decisions or business decisions and have some reasonable look into the future, I guess, of what to expect in return. One of the difficulties with both these bills is with the sunsets or the off at one certain period or on again is it makes it difficult for that certainty. And as an example, one of the exemptions in play here is on animal life which is eventually used for human consumption, which that means beef cattle, dairy cattle, hogs, poultry. If I'm sitting here today maybe looking at investing in a livestock operation and knowing that there's a sunset on the sales tax exemption as applies to animal life, I don't know two or three years down the road what my costs are going to be in my business. And that's an uncertainty, and I think that will crimp investment. Same thing for farm land. One of the exemptions in play again--it's a lot of inputs for farming: seeds, fertilizer, chemicals, ag machinery. Again, if I'm sitting here today not knowing two or three years down the road what exactly a tax policy's going to be for that, it creates uncertainty and that will disrupt markets. Secondly, and as people

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have already indicated, there's plenty of justification for a lot of the exemptions that are out there. Again, I'll choose animal life as one example. One of the reasons that I've been told, I wasn't here when it was first granted, but one of the reasons was you look at an animal and the number of times that it can be purchased and sold as it works its way through the market and eventually becomes a cut of meat in the grocery store, you could have that animal sold a minimum of four and probably a lot more, and so as you go through that you're adding additional costs each level through the chain, and ultimately if you put the sales tax on food, then, at the final level, you could have four or five times that that product has been taxed before it ultimately gets to the end customer, so. And then finally, as a tax policy the state, I think, has had a policy of trying not to tax inputs into a production process. And you look at that with farming, again, a lot of the things that we have from agriculture standpoint from the sales tax exemption are inputs. So that's more directed at LB385. LB386 has the same concerns with us. It causes a little more dilemma because obviously as the committee's already had the discussion, it's looking at some broader tax issues related to property tax and Farm Bureau is always interested in that discussion. Interestingly, even though we don't like the property tax, our policy doesn't support eliminating it altogether because we have a belief that there is a local function, that there is a role for property tax at the local level. And so primarily the reasons that we oppose LB386 is just the questions it raises, again, with...for a period of time things are exempt or they're not exempt, or we're going to not pay property taxes or we're going to pay property taxes. It just creates a lot of disruption out there, and so for those reasons we oppose LB386 as well. So I'll end there and I'd be happy to answer any questions you might have. [LB386 LB385]

SENATOR CORNETT: Thank you very much. Questions? Seeing none, thank you. [LB386 LB385]

JAY REMPE: Thanks. [LB386 LB385]

SHELLEY SAHLING-ZART: Good afternoon, Senator Cornett and members of the Revenue Committee. For the record, my name is Shelley, S-h-e-l-l-e-y; Sahling-Zart, S-a-h-l-i-n-g-Z-a-r-t. I'm vice president and assistant counsel for Lincoln Electric System here in Lincoln, and I'm testifying today on behalf of the Nebraska Power Association. The Nebraska Power Association represents all of the electric utilities across the state: municipalities, public power districts, rural public power irrigation districts, and rural cooperatives. Our opposition really stems from our concern about eliminating the exemption in Section 77-2704.13. It's a provision that exempts fuel used in the generation of electricity, and our concern is really for our ratepayers--not for us as utilities. We're public utilities so everything we do gets passed through to our consumers. Not all of our consumers pay property taxes, but we send electric bills to nearly every person in the state. Everybody is impacted by an electric bill in one way or another. We have some homeless folks that depend on electricity at our shelters or whatever, but nearly everybody is paying an electric bill. This bill would tax the fuel used

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in the generation of electricity. We would put that in our rate base, by which we set our rates; then we charge rates to our customers, they consume the electricity and then they pay a sales tax on that. So essentially, that fuel is being taxed twice if the exemption is eliminated, which we think is unfair. We think that's a piling on, if you will, to consumers and customers of ours who can least afford it at a time when they can least afford it, and that's really what our concern about the exemption is. Part of what you're asking is for people to come in and justify the exemption and that's what we're here to do. We think it's an unfair shift to some of the lowest paid people in our state, and we would like you to continue that exemption. With that I'd be happy to answer any questions. [LB386 LB385]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. Next opponent. [LB386 LB385]

PHIL PHILLIPS: Thank you very much, Chairman Cornett and members of the Committee. My name is Phillip Phillips, P-h-i-l-l-i-p P-h-i-l-l-i-p-s. I'm director of business retention and expansion for the Greater Omaha Chamber of Commerce, and I'm testifying in behalf of the Chamber. I'm testifying in opposition to both LB385 and LB386. The crux of the reason that we are opposing these bills is similar to some of the arguments that have been made before, but specifically in this case we're looking economic development. We believe that by repealing the sales tax and requiring a sunset provisions, it'll create a level of uncertainty for businesses who may be considering this exemption as a reason to remain or locate in Nebraska. One example of this is the impact that this bill would have on the exemptions provided for manufacturing machinery and equipment. Machinery doesn't last forever and it's very capital intensive. Businesses that have chosen to locate or stay in Nebraska do this in part because they believe they are going to be exempt from the sales taxes. Changing this would make them feel like they had been subject to more or less of a bait-and-switch and this does not send a good message, especially because 45 other states do not tax machinery and equipment for manufacturing. And it's not just large businesses and it's not just businesses considering Nebraska. There are many small, local businesses that face this issue. One example of this is a company that I worked with recently called Interstate Printing--I don't know if any of you are familiar with it. It's a printing company with about seven employees located in north Omaha. They spent a long, hard time considering whether to buy a new press, which would cost \$3 million, to expand their business and allow them to enter some new business lines. It was not an easy decision for them to make. If they had had to pay sales tax on that press, the initial difference in cost would be \$210,000, and there was one of two things they could have done. They could've chosen to relocate outside Nebraska, because outside Nebraska is just few blocks from where they're located; or they could've chosen not to do the project at all. Moreover, because this extends to replacement parts, to solvents, and to other aspects of manufacturing, it would represent a continuing, ongoing increase in expense. Fortunately, Nebraska does not tax machinery and equipment and repairs for

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manufacturing machinery, and the company chose to locate and expand here; to invest and to create new jobs. We think this is part of the reason that Nebraska's economy is doing relatively well, financially, compared to other states in the nation. And we appreciate the policies that the Legislature has adopted to make that the case. We must make sure, though, that we do not send out a confusing signal to companies inside and outside Nebraska, and that we maintain a competitive and consistent tax structure so the companies believe that the tax structure that they bought is the tax structure that they'll be getting. With that I'll ask if there are any questions. [LB386 LB385]

SENATOR CORNETT: Questions from the committee? Senator Adams. [LB386 LB385]

SENATOR ADAMS: Thank you, Senator Cornett. From an economic development standpoint, over the years I've heard from economic development people--we couldn't get this business because the property taxes were too high; we couldn't get this business because the income tax brackets were too high; we almost didn't buy the equipment because maybe we did have the sales tax exemption--boy, if we wouldn't have we would have lost that one. So from an economic development standpoint, what do we tax? [LB386 LB385]

PHIL PHILLIPS: A good question, and I think the main thing is that the taxes need to be consistent so that a company, when it makes a decision, knows that the basis for that decision will remain in effect and that they won't see a shift in the basic factors. We know we can't win them all; we know that we can't eliminate taxes on everything, but we can at least provide predictability so the business has some faith in the decisions that it's made. [LB386 LB385]

SENATOR ADAMS: Okay. [LB386 LB385]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB386 LB385]

PHIL PHILLIPS: Thank you. [LB386 LB385]

SENATOR CORNETT: Next opponent. Are there any further opponents? [LB386 LB385]

LYNN REX: Senator Cornett, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. First of all, I'd like to commend the Senator for introducing these measures, because I think it is always important for the Legislature to look and review the many exemptions that are out there for the reasons that you've stated as well as other senators who've stated. Indeed, over the years, municipalities have faced tremendous difficulties because of exemptions that had been granted to various organizations and others, and I'm not saying those exemptions would not be legitimate and were not legitimate, but indeed, what has

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happened is that the base has been narrowed down significantly. And for many of those exemptions, municipalities as well as local political subdivisions were sure that they would be given a reimbursement for the amount of tax base lost. And in fact, a very low percentage of that has ever been given back to municipalities. And indeed, that's because the state of Nebraska itself has had financial issues that you've had to address. That being said, we obviously have some concerns about these measures, not the least of which is, of course, that LB385 would repeal the local option sales tax. That would have a \$350 million impact on municipalities that...approximately 170 municipalities in this state...that have local option sales tax. We would be very concerned about that. That is perhaps the single most important way in which municipalities have been able to reduce property taxes in the state of Nebraska. That's been done through commitments made on ballot questions voted upon by citizens in these communities and again, it does require a vote to have a local option sales tax. In addition, LB386 has some issues that we're very concerned about with respect to loss of funds for municipalities, and certainly counties and the Nebraska Department of Roads, when it comes to losses. And we're looking at significant losses. When you look at the fiscal statement on LB386, you'll note that there's a total loss of, just on the sales tax of motor vehicles, of \$19 million. In addition, on motor vehicle registration, and additional \$31 million that is shared by cities and counties, municipalities and counties across the state. We're very concerned about that. So in closing, again, I really commend the Senator for introducing this legislation. I think that the time to start looking at what our tax base should be and internal equities is always now--it's never later. So with that, I appreciate your time this afternoon and I'd be happy to respond to any questions. [LB386 LB385]

SENATOR CORNETT: Questions from the committee? Seeing none. [LB386 LB385]

LYNN REX: Thank you very much. [LB386 LB385]

SENATOR CORNETT: Next opponent. Are there any further opponents? Neutral? [LB386 LB385]

GREG LEMON: (Exhibit 6, 7) Thank you, Chairperson Cornett and members of the Revenue Committee. For the record, my name is Greg Lemon, L-e-m-o-n, president of the Nebraska Tax Research Council, testifying in a neutral capacity on LB385 and LB386. I know it's late in the day, somewhat late in the hearing schedule. I'll be brief. I do have a couple of things I'm handing out. One is a study from the Federation of Tax Administrators that looks mostly at services, but sales taxes in other states. The only two states that have done a significant expansion--and this was some time ago--a big expansion of the sales tax base for Florida and Massachusetts in '87 and '90, and those were subsequently repealed. Maryland and Michigan have also done some expansions of their sales tax base which were repealed. As you know, Nebraska expanded in 2002 and New Jersey's done some expansion as well. And I guess...what I'm trying to

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provide you with some information and the lesson to be learned--and I think you guys already understand this very well--is that this is not something that should be done without careful study and consideration, and hopefully the materials I'm providing can help you with that. The other thing I've given is a study the Tax Research Council did last year that I think is relevant to the discussion today, and that looks at the sales, income, and property tax burden on selected households in Nebraska and surrounding states, and it also talks a little bit about some of the sales tax...gives a brief discussion of the sales tax structure in those surrounding states as well. So I hope that information is helpful to you in your deliberations, and if you have any questions I would be glad to answer them. [LB386 LB385]

SENATOR CORNETT: Questions from the committee? Tom. [LB386 LB385]

SENATOR WHITE: One of the questions: South Dakota has an expansive sales tax-based economy and then limits other taxes. How's that working out for them? Do you have any familiarity? [LB386 LB385]

GREG LEMON: You know, my knowledge, you just pretty much summed up my knowledge of it. I do know that they have a broader sales tax base and their taxes are lower on the others. As far as how that's working out for them in the current economy, I haven't looked at that recently. But you are correct; they do have a broader base, including food. [LB386 LB385]

SENATOR WHITE: One of the frustrations on this side of it is we get whipsawed: South Dakota does this better, Wyoming does this better, Iowa does that better. And who do you think does it right? [LB386 LB385]

GREG LEMON: I don't know that I'm ready to answer...I mean, that's a big question. I don't know that I have a good answer to that. [LB386 LB385]

SENATOR WHITE: Thank you. [LB386 LB385]

GREG LEMON: I'm sorry. [LB386 LB385]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. Is there anyone else in a neutral capacity? Seeing none, Senator Pahls you're recognized to close on LB386 and open on LB385. [LB386 LB385]

SENATOR PAHLS: (Exhibit 8) Thank you. I think I will waive my closing and finish up on the next bill. Could I have some help here, please? Again, to help with the dialogue I have some really brief notes here. But let me just point out--you'll believe it or not--this bill is somewhat modeled after one of your bills. Because as I can recall, on LB164 which we sent to Select File, in that bill you recommended that we sunset the economic

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development and tax incentive programs in 2015 so that future Revenue Committee members would have the opportunity to review the programs again. Basically, that's what I want to do on LB385. [LB385]

SENATOR CORNETT: Thank you, Senator Pahls. Questions from the committee? [LB385]

SENATOR PAHLS: I need to say just... [LB385]

SENATOR CORNETT: Oh, I thought you were through. [LB385]

SENATOR PAHLS: ...a couple more things. I did not introduce myself, but since we're moving these things around...(Laughter) What I'm going to have you do, just to move things along because I know it is Friday afternoon and some of you do want to have your fish sandwiches... [LB385]

SENATOR DIERKS: You don't dare take a breath in here... [LB385]

SENATOR PAHLS: Okay, what I'd like to have you do is on the piece of paper that was just handed to you it says LB385, and then I'm just going to really walk it down fast, so this basically is what this bill is all about. This is what we're saying: all sales tax exemptions that were enacted prior to 2005, they will sunset July 1, 2011--with the exception of those in number 3. Now if you'd flip over, you would see in the charts it tells which ones would go in 2011. Number 2: any sales exemption that was enacted or amended since 2005, or if the exemption happens to be listed in a section of law that was amended since 2005 sunsets July 1. And then again I'm showing you, by columns, which ones would sunset in 2012. Number 3: the sunset, again, the year 2013. Number 4: the authorities for cities to enact up to 1.5 cents of local sales tax sunsets in 2014. You can see what happens in 2015 and in 2016. Now for these not to sunset, someone would have to get a senator to introduce a bill saying that we should extend these. And what I'd like to have you know, it's broken down in different sections so there is a number of people would know up ahead of time in a number of years...and let's say in 2011--you could say we will revisit this again in 2020. This is not...we're not going to be revisiting all these every year so everybody out there's going to be caught in a muddle. So every...you can see the year...and I'm willing to negotiate this if we would move the green copy out. If you say those years are too tight, we need more time...but as you can see, I laid this out. It'd be very easy for everyone to understand, and like I said, the columns with the dates and what would be the exemptions that we look at...very clear, everybody would understand that. But if you say that's too soon; we need more time, I would be willing to get an amendment that would clean that up. Basically, there's a system involved--very similar to your system on...that you had developed on to getting the tax incentives. And if we were to hear the same type of argument that we need to keep some of these exemptions in here by the individuals who were here, were sitting in

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this chair not too long ago, I'm sure some of them would have some very persuasive reasons why we should keep that. But in doing this, this means--just like you wanted the Revenue Committee of the future to know, these things are coming up. So anytime somebody says we need another exemption, they'd have to think twice before they come before the committee. It's really...in my estimation, this bill is pretty easy to comprehend because, it's laid out in an outline form. And I'm just going to read one final thing from one of the studies: in an ideal world, every tax exemption would sunset and would not renew itself unless authorized by the Legislature. That came from the study. And there are a number of comments that the study that we did two years ago say that we need to take a look at these. I am open to any question, Senator. [LB385]

SENATOR CORNETT: Seeing none. Nope, okay, Senator Utter. [LB385]

SENATOR UTTER: I'm sorry about that. I know it's getting late. [LB385]

SENATOR CORNETT: That's okay. [LB385]

SENATOR UTTER: Senator Pahls... [LB385]

SENATOR PAHLS: Yes. [LB385]

SENATOR UTTER: It seems to me like advancing something similar to this to the floor undoubtedly would cause a furor. I got that from the folks in the audience today. But it seems to me like it might promote something real valuable, okay; you'd get some people really interested in what's going on. You agree? [LB385]

SENATOR PAHLS: Senator, it will be two years ago when every new senator came up and said property tax, property tax. That is one of the reasons why it was driven by this. And I truly believe that this is an issue in the state; we could discuss this and some of the comments I heard from some of the senators here would be...it would be very insightful to hear what they have to say. And I truly believe if this exemption deserves to be here, that there are strong enough people or groups out there who'd say hey, we need this because of this. You and I are on the same wavelength on this. [LB385]

SENATOR UTTER: I want you to know I appreciate your bringing this legislation and I think it's high time we had the dialogue on it. [LB385]

SENATOR PAHLS: Thank you, Senator. [LB385]

SENATOR CORNETT: Senator Pahls, you and I have had multiple conversations about this... [LB385]

SENATOR PAHLS: Right. [LB385]

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SENATOR CORNETT: ...over the course of a year now. [LB385]

SENATOR PAHLS: Yes. [LB385]

SENATOR CORNETT: And I have told you that I would support your concept out of committee. I do believe this is a dialogue that we need to have on the floor. [LB385]

SENATOR PAHLS: Yes. [LB385]

SENATOR CORNETT: To make the new members of the body aware. [LB385]

SENATOR PAHLS: Yes. [LB385]

SENATOR CORNETT: And I have made that known, I believe, to everybody on the committee. I assume that you will be willing to take suggestions on the floor in regards to this legislation. [LB385]

SENATOR PAHLS: Yes, I would because I do not pretend to be a tax expert who has all the answers. I truly believe that 49 individuals, or 48 including myself, some good things could happen. [LB385]

SENATOR CORNETT: And from the basis of our conversations, that your primary goal with this is for us, as a body, to really examine how we tax in this state. [LB385]

SENATOR PAHLS: Yes. [LB385]

SENATOR CORNETT: Further questions from the committee? Senator Friend. [LB385]

SENATOR FRIEND: You realize if this bill gets on the floor that I'll speak for 12 hours on it alone. [LB385]

SENATOR PAHLS: May I react to that? [LB385]

SENATOR FRIEND: It was sort of tongue-in-cheek. I mean, I have views on it too is what I meant. I think the dialogue can go on for a long time, Rich, I guess that's my point. [LB385]

SENATOR PAHLS: And I would appreciate that. This is a serious issue. This is not...we do need to have that dialogue and I understand. And this could...would really focus you in on this area. [LB385]

SENATOR CORNETT: Senator Pahls... [LB385]

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SENATOR PAHLS: Yes. [LB385]

SENATOR CORNETT: ...one further thing. While you were specifically looking at sales tax... [LB385]

SENATOR PAHLS: Yes. [LB385]

SENATOR CORNETT: ...with these bills, do you believe that overall taxation policy and how we tax as a state is something that we should be looking at? [LB385]

SENATOR PAHLS: It cannot be denied if you take a look at the two past commissions and if you listen to the people who are out there, what I'm saying, working every day: they're talking about taxes. You listen to the businesses, they're concerned about taxes. So I think this would be a time for us all... [LB385]

SENATOR CORNETT: The reason I bring that up is that has been a concern of the committee's when we've discussed... [LB385]

SENATOR PAHLS: Yes. [LB385]

SENATOR CORNETT: ...in exec session tax policy and how we tax in this state. And I think that these bills would be a good vehicle to have that discussion with. [LB385]

SENATOR PAHLS: Yes. [LB385]

SENATOR CORNETT: And your comment on that? [LB385]

SENATOR PAHLS: And I would, and of course you...the individuals here have been listening...I mean, lots of people have been coming in front of you so you're sitting with much more background than I would. I think this would promote some stimulating conversation that would be good for the state of Nebraska. [LB385]

SENATOR CORNETT: Senator Dierks, or was it Senator Adams? I thought I saw a question over there. Further questions...Senator Louden. [LB385]

SENATOR LOUDEN: Yes. Well, Senator Pahls, yeah, you've done a lot of work on this and that's for sure, but as you keep saying, it's property tax. You keep talking about trying to do something about property tax. And we did do something about property tax. We put \$75 million out here, what, a year ago, two years. And we did get some property tax relief. But what happened? Some of these local entities raised the levy up and that evaporated. My property tax is higher than it was two years ago because of the local entities. Our community colleges--they put another cent on. Our local school districts put

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another cent on, so when we're talking about trying to do something here on property tax, property tax isn't controlled by those of us that much in the Legislature--that's controlled on your local levels. If you don't go to your budget hearings for your school districts and voice your opinions then on property tax you're out of it. When we put this on the floor and have all this discussion, yeah, you'll have discussion, you know, for a week . But will anything of value come of it rather than a lot of jaw boning, I guess because property tax isn't controlled by the Legislature to my way of thinking--that's down in your local entities, and with what you've done here, how are we going to address that problem? [LB385]

SENATOR PAHLS: To be honest with you, I do think we need to give credit for those who do raise taxes, but I think what we're doing is you are opening up a dialogue with me right now, and that could be brought up more on the floor and that discussion could be...and I do not leave with the idea that just talking about it nothing happens. I truly believe that people start thinking and say how can we make this better? What can we do? And if we do some of this, of course, property tax would go down if we would do some exemptions, but I think that's in the future. [LB385]

SENATOR LOUDEN: If you're not ready to fully fund community colleges, in other words, the state fully fund them, take them off of property taxes. If you're not ready to pay nearly all of the property taxes on your schools, except perhaps whatever it takes to maintain their football fields and some of the local economic development that goes with schools...if you're not ready to address that and cut that and go that route, I think it'd be an exercise in futility. [LB385]

SENATOR PAHLS: But see, I believe that if that's an issue and if you bring it up, enough people would react to it. And they may say you're right or you're wrong. I mean, they may...the discussion on the floor and all of a sudden when you guys meet again, you're going to say hey, did you hear that? There was only one senator that was saying this, or ten of them were saying this, or one senator said we need to take a look at putting things in certain categories and making sure everybody knows. That should stimulate, when you come back here says oh, I can remember that. I don't think everybody dismisses people. And it is difficult; I know it's difficult. [LB385]

SENATOR LOUDEN: I appreciate your optimism. (Laughter) [LB385]

SENATOR PAHLS: Yeah. I'm counting on this committee to be an integral part of that. [LB385]

SENATOR CORNETT: Seeing no further questions. [LB385]

SENATOR PAHLS: Thank you. [LB385]

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SENATOR CORNETT: Can I see a show of hands...well, first we'll go for people to testify on this bill, either as proponents or opponents? Okay. [LB385]

SENATOR DIERKS: We're done. [LB385]

LYNN REX: Senator, we're assuming, I'm sure many of us, that our testimony before, when you said both bills, would apply to this. [LB385]

SENATOR CORNETT: That was read into the record at the beginning of the hearing. [LB385]

LYNN REX: Okay. [LB385]

SENATOR CORNETT: Okay. Are there any proponents? Opponents? Neutral? [LB385]

SENATOR PAHLS: I approach this with an open mind and willingness to listen and make things happen. Thank you. [LB385]

SENATOR CORNETT: Thank you, Senator Pahls. [LB385]

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Disposition of Bills:

LB385 - Indefinitely postponed.

LB386 - Indefinitely postponed.

Chairperson

Committee Clerk