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Transcriber's Office

Revenue Committee  
January 28, 2010

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[LB893 LR276CA]

The Committee on Revenue met at 1:30 p.m. on Thursday, January 28, 2010, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR276CA and LB893. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Galen Hadley; LeRoy Loudon; Pete Pirsch; Dennis Utter; and Tom White. Senators absent: None.

SENATOR CORNETT: Good afternoon and welcome to the Revenue Committee. My name is Senator Abbie Cornett and I represent Bellevue. To my left is Vice Chair Senator "Cap" Dierks from Ewing; to his left is Senator Greg Adams from York; Senator Hadley from Kearney. To my far right is Senator Pete Pirsch from Omaha; and Senator Utter from Hastings; Senator LeRoy Loudon from Ellsworth; and I believe Senator White from Omaha will be joining us. Our research analysts are Steve Moore to my right and Bill Lock to my left. Erma James is our committee clerk. The pages today are Abbie Green and Ryan Langle. Before we begin the hearings today, I'd please ask everyone to turn your cell phones to either off or vibrate while you're in the hearing room. Sign-in sheets for testifiers are on the table by both doors and need to be completed before coming up to testify. If you are testifying on more than one bill, you need to submit a form for each bill. Please print and complete the form prior to coming up to testify. When you come up to testify, hand your testifier sheet to the committee clerk. There are clipboards in the back of the room to sign in if you do not wish to testify but wish to indicate either your support or opposition to a bill. These sheets will be included in the official record. We will follow the agenda posted at the door. The introducer or representative will present the bill, followed by proponents, opponents, and neutral testimony. 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 for the committee and staff. If you only have the original, please give it to the pages and we will make copies of that. With that, we will begin the Revenue Committee hearings. Senator Pirsch, you are recognized to open on LR276CA. Thank you.

SENATOR PIRSCH: Sure. Thank you, Chairman Cornett, members of the Revenue Committee. I am State Senator Pete Pirsch representing Legislative District 4 in the Omaha area, and Pirsch is P-i-r-s-c-h. I am sponsoring LR276CA. That's a constitutional amendment giving authority to the Legislature to allow for a property tax exemption in whole or in part to a private party willing to donate the use of their property by the state or governmental subdivision of the state for public purposes. The underlying theme, the sum and substance of the bill or the intent with the bill, rather, is that this would be the springboard to allow for savings for taxpayers, and that's the intent here. There are situations, and you're going to hear a little bit more details as described by an Omaha police officer, where the taxpayers would be served as local governments go to provide for services by not...but through the use of this legislative

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resolution in utilizing private party donations for the use of...exclusively for the use of the public. And so this constitutional amendment would allow for, then, the Legislature at a later date to come and pass enabling legislation. They can't do that right now without this change to the constitution. Quite frankly, the devil will be in the details of that further enabling language that would come. And my requirement, it absolutely has to be structured, this later occurring enabling language, in a way that is a win for the taxpayers. That's the underlying purpose behind this or I certainly wouldn't support it here today. And so with that said, I know that there will be others here behind me who will testify as to a specific instance of how the city of Omaha in particular is providing public services through a donation of a private party, and because of this, the taxpayers are saving substantial amounts. And so I will at this point conclude my remarks. [LR276CA]

SENATOR CORNETT: Senator Louden. [LR276CA]

SENATOR LOUDEN: Yes. Thank you, Senator Cornett. Senator Pirsch, as I read this bill, it says that to the state or governmental subdivisions, and then they would be exempt from property tax, is that what the idea is? [LR276CA]

SENATOR PIRSCH: Yeah, that is correct. Essentially, it's this: Governmental entities on a local level need not...you know, because of their nature in serving the public need not remit the property tax. They're governmental entities and so there is instances where though it is in its nature held by a private party, its use is exclusively confined to, for the use of the public. And there will be a testifier, as I mentioned here, who will kind of give a little more clarity as to that dynamic. And since the property is being used exclusively only for the use of the public, that would allow...and because of that, it's occurring in a way that is saving the taxpayers money that wouldn't make sense because of that exclusivity for the public good to impose property tax on that. In its nature, it is behaving, that property is behaving as governmental property. And so, again, the devil is going to be in the details of enabling language that will come down the pike, and I certainly...you know, I guess my point is there is a potential here for this...for legislation to come down the pike that would allow for the taxpayers to save substantial sums, so. [LR276CA]

SENATOR LOUDEN: What about right now some of these public lands they have to pay in lieu of tax. How would that effect that then? [LR276CA]

SENATOR PIRSCH: Say that again? Public lands, is that what you're saying? [LR276CA]

SENATOR LOUDEN: Yeah. Your school lands have to pay in lieu of tax. Some of your Game and Parks lands have to pay in lieu of tax. [LR276CA]

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SENATOR PIRSCH: Well, we could certain... [LR276CA]

SENATOR LOUDEN: Some of your federal lands. [LR276CA]

SENATOR PIRSCH: Yeah, and we... [LR276CA]

SENATOR LOUDEN: And what would happen if Ted Turner decided to give all of his land to some government division, the Game and Parks or something like that? Would all of that then go off the tax rolls the way this is? [LR276CA]

SENATOR PIRSCH: Whatever. It doesn't take away our decision as a body...we as a legislative body can decide whatever we decide as long as it's constitutional down the road. This would just allow for us to begin that dialogue. And obviously, you know, I don't... [LR276CA]

SENATOR LOUDEN: But once this is put in the constitution, it's pretty well chiselled in stone, isn't it? [LR276CA]

SENATOR PIRSCH: This doesn't in and of itself change anything but it allows for us to in whatever instances we decide or choose to either do it or not do it. So it doesn't shackle our hands. We're not in and of ourselves making any decisions here today, but it allows for the possibility. And I agree with you, great caution must be employed in how we choose to do anything, but there are certain situations, certain instances where it can be used for the benefit of the taxpayers. And like anything else, there's instances as you...you know, like any other bill where you want to make sure that you craft it, you know, very tightly so that it can't be used for abuse. [LR276CA]

SENATOR LOUDEN: Now, and as you say for taxation, well, if it's land, then it's property tax is what you're talking about, would that be correct? [LR276CA]

SENATOR PIRSCH: Yeah. I mean, that's what I've envisioned this as property tax. [LR276CA]

SENATOR LOUDEN: Yeah. And then, of course, the state doesn't levy any property tax, so you're talking about revenue that goes to counties. [LR276CA]

SENATOR PIRSCH: Well, right, to the counties for use and...yeah. [LR276CA]

SENATOR LOUDEN: I mean, the counties would be the ones...counties and cities or somebody like that would be the ones that would be the losers on this deal. Well, can't they get tax exemption now on some of that property? [LR276CA]

SENATOR PIRSCH: Not on private property. Keep in mind...and I'll just delve into the

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general nature of what I...the testimony that's going to come, specific instances in this case would involve, say, for example the...and this is what drew my attention to the matter and why I'm bringing it forward here today is, consider a building in Omaha and it sits on the ConAgra campus. ConAgra is a private party, owns the building. The city of Omaha is interested in having patrol downtown. They find that they're most effective with that downtown crowd and having a mounted patrol that exists in other cities. And so they are prepared to make the investment expenditure to have that mounted patrol established which means the city of Omaha must locate downtown prime property, purchase that at a very dear price, and then the city of Omaha must build from the ground up...a stable, a very costly building as well. Well, here you have a private actor, ConAgra, that says: We have the property, you don't need to buy it; we have a structure, you don't need to build it from the ground up, just use it. And we don't need it, we're not going to be using it at all. And the city is, like, we definitely would otherwise have to pay a lot of money to establish that. It seems like there's grounds for the taxpayers to really win here for the city. And so, you know, currently we can't...you know, the city of Omaha currently does use it exclusively, the city of Omaha, for the use of the citizens of the city and they derive great value from that, and yet at the end of the year because they derive value from that, they're not paying any rentals or lease agreements to ConAgra but they do pay...the city of Omaha is paying property tax upon that structure that they're using just for a governmental purpose. And that seems to be where...that's the area that I'm trying to address with this. [LR276CA]

SENATOR LOUDEN: Well, can't they go ahead and get tax-exempt status because, here, let me tell you a story. It goes on right in a little town where I live. There's a piece of ground there and this is privately owned and the building that's on it is probably privately owned, and there's a 99-year lease or something to it for a bowling alley and that's tax exempt. Nobody pays any tax, so I'm wondering why the city of Omaha can't give tax exempt status on that building then if the city is using it. [LR276CA]

SENATOR PIRSCH: Well, I appreciate that. I'm not sure that that's...my understanding is that that cannot exist now under the current Nebraska law. And so that's what this is designed to remedy. Now, if there is...if we can have legal guidance that suggests that my understanding is incorrect and that there is a way to do that, I'd be very amenable to that. [LR276CA]

SENATOR LOUDEN: Has the city of Omaha approached the Douglas County Board to see if they can get that tax exempt? [LR276CA]

SENATOR PIRSCH: I think the problem is the constitution, Senator Louden, and that's why hence the legislative resolution. The only way in which we can...I mean, just between the parties, the city of Omaha and Douglas County, whether both of them agree to it, the constitution forbids it. And so whether they're both willing actors in this instance, it doesn't matter. It's against, as I understand it, the law right now. And so

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that's what we're doing here is changing the shape of the constitution to allow for later legislation to occur that can be carefully crafted in such a manner that in situations where it's clearly a savings for taxpayers and only in those situations can we allow for this type of an arrangement. And so I appreciate your question. [LR276CA]

SENATOR LOUDEN: Okay. [LR276CA]

SENATOR CORNETT: Senator Hadley. [LR276CA]

SENATOR HADLEY: Thank you, Senator Cornett. Senator Pirsch, I just...you started to answer my question, I hope that some other people give examples of...because I'm trying to figure out where this would really work and what the advantage to the taxpayer who has the property would be. So I hope there's some other examples. [LR276CA]

SENATOR PIRSCH: Sure. And like I said, this is my sole interest in this is only in situations where the exclusive use is for the tax...the governmental uses for the public where it is in the benefit, the clear benefit to the taxpayer. And that's the...should be the guiding kind of lodestone of what brings it. Is this helping the taxpayer out? And, again, the devil will be in...you know, it will ultimately, that decision about how to craft that legislation will be primarily in your hands, and I say you as the Legislature, if this constitutional amendment...it will allow for the possibility of this body to consider that, you know, crafting that type of a law, but it won't bind us to making any decisions about what that law should look like or what we'd include. So it would come back to this body and I would say the devil would be in the details. But, again, my...I would not later support any enabling legislation positive law in the future that did not have that single goal in mind, which is furthering the interest of the taxpayers efficiency so that the public services that they're going to pay for anyway can be gotten through a less expensive method, so. [LR276CA]

SENATOR CORNETT: Senator Pirsch. [LR276CA]

SENATOR PIRSCH: Yes. [LR276CA]

SENATOR CORNETT: Can you name another example except the horse barn?  
[LR276CA]

SENATOR PIRSCH: Well, you know, it's only...that was the one that drew my attention to it, but I guess it's not limited to that. Any instance where the governmental entity, the unit, was going to use taxpayer money to do the service or job anyway, and it just so happened that rather than start from scratch and build from ground square, whatever it is, the brick and mortar as it is, that they can piggyback on an already existing structure or existing whatever, you know, land, that entity, and so that it results in a net overall savings to the taxpayer. [LR276CA]

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SENATOR CORNETT: Do you know how many tax dollars we're talking about for that piece of land? [LR276CA]

SENATOR PIRSCH: For the ConAgra piece of land? You know, I don't and those who testify after me should be able...in terms of how much the land itself or how much would be forgiven with respect... [LR276CA]

SENATOR CORNETT: How much the city is paying ConAgra in property taxes to use their land? [LR276CA]

SENATOR PIRSCH: Yeah. That's a great question. I guess for that specificity, I'd refer to...you know, I'd probably defer to those who testify behind me. [LR276CA]

SENATOR CORNETT: Couldn't you achieve this through a limited deed where ConAgra deeds the property to the city of Omaha with conditions? [LR276CA]

SENATOR PIRSCH: Well, and, again, I'll defer that. My understanding is this for whatever reason that would not be a possibility in this particular instance. I think they had...you know, the city had considered that I think but, again, I'll defer those, you know, alternative type of arrangements, considerations to those from the city here who I understand are going to testify after me. But, you know, if there is a different way to skin a cat, you know, I'm very open and receptive. The whole underlying goal to this is saving taxpayer monies. And so whatever the easiest way to do that is, you know, we'll do it, so. [LR276CA]

SENATOR CORNETT: Okay. Thank you. [LR276CA]

SENATOR PIRSCH: Yup. [LR276CA]

SENATOR CORNETT: Any further questions? First proponent. [LR276CA]

TODD SCHMADERER: Good afternoon, committee. I'm Todd Schmaderer. I'm a deputy chief of the Omaha Police Department here on behalf of Chief Alex Hayes and the city of Omaha. For the record, my name is spelled S-c-h-m-a-d-e-r-e-r. I'd like to give you a feel of our mounted patrol building and the benefit it has for the city of Omaha. In 2005, ConAgra Corporation elected to work with us and donate this building to us. What they did was they tore down two existing buildings on their campus, which is about 6th and Leavenworth. They purchased the lots, they tore down two existing buildings, and they built stables which were just over \$3.5 million. They allow us the use of this facility. They lease it to us for \$1 a year and we pay about \$22,000-a-year in property taxes. This is a state-of-the-art facility. It allows us to house about 18 horses, about 12 personnel. It's downtown right near Old Market area, which allows us to have

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the horses in the downtown area providing a service to all the businesses and the tourists that come to that location. Without ConAgra, we would never be able to have this state-of-the-art facility and provide the level of service that we do. For those reasons, that the city of Omaha Police Department is for LR276CA. I'd be happy to answer any of your questions I can, some of them I may not be able to but I'll give it a try. [LR276CA]

SENATOR CORNETT: Questions from the committee? Would you have the answers to the questions that I asked Senator Pirsch? Were there any other projects that the city has that they're looking at or if there's any other of these in the state? [LR276CA]

TODD SCHMADERER: I don't know if there's any other in the state. We recently were looking into an opportunity for a location to house our canine unit. There's always an opportunity to house our motorcycle unit. And many of the substations that we have are in need of housing or upgrades on that front. [LR276CA]

SENATOR CORNETT: Thank you. Tom, did you...I'm sorry, Senator White. [LR276CA]

SENATOR WHITE: That's right. How much are the payments, do you know, Sergeant? [LR276CA]

TODD SCHMADERER: Our lease payments? [LR276CA]

SENATOR WHITE: Yeah. Well, how much is the city of Omaha paying in property tax on this property per year? [LR276CA]

TODD SCHMADERER: Roughly \$22,000 a year. [LR276CA]

SENATOR WHITE: Do you know what it would cost... [LR276CA]

TODD SCHMADERER: The lease payment is \$1 a year is what we worked out with ConAgra. [LR276CA]

SENATOR WHITE: One of the concerns I have and I've been a big supporter of the mounted patrol since Sergeant Campbell was in charge of it. But one of the concerns I have is the cost of a constitutional amendment, just putting it on the ballot, it's very significant. And one of the concerns I'm going to have is other cities or projects that this could affect because it will cost a lot of money to print the ballots and get them out across the state. So if you do have any other situations, that would be helpful. [LR276CA]

TODD SCHMADERER: Okay. [LR276CA]

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SENATOR CORNETT: Seeing no further questions, thank you. [LR276CA]

TODD SCHMADERER: Thank you. [LR276CA]

SENATOR CORNETT: Next proponent. [LR276CA]

JACK CHELOHA: (Exhibit 1) Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Jack Cheloha, the last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha testifying in support of LR276CA. First of all, I'd like to thank Senator Pirsch for introducing this bill on behalf of the city of Omaha. We appreciate your efforts on this item. The page is handing out a resolution passed by the Omaha City Council, approved by the mayor seeking to go forward with this idea. As you heard from Deputy Chief Schmaderer, what precipitated this was last summer during Omaha's public hearings on the 2010 budget, we were...council member Franklin Thompson was alerted that the police department had a line item in their budget that went to ConAgra to pay property tax. And so as we looked into it a little further, we were hopeful of trying to come up with something a little bit more amenable to even save the police department a little more money despite the fact that we think we're getting a pretty good deal now though: a \$3.5 million facility, we get the use of it for \$1 a year and \$22,000 in taxes. Yet at the same time, the council member thought about it for more of a statewide idea and thought this may precipitate more public/private partnerships, if you will. And if we were willing to...unfortunately it did call for a constitutional amendment, though, in order to proceed and try to get these types of property tax exemptions. And so we decided that we would bring it forward and bring it to this committee and see what you think of the idea, maybe generate some discussion, see if there's interest from other parties. It seems to me just as we were, you know, brainstorming on this, other communities may come across a building that's privately owned which they may be able to utilize ultimately for a city library or, you know, things along those lines or there may be land available that could be...the use could be donated for the purpose of a public park or soccer fields or other things along those lines. And we thought it was a win-win because, you know, the government entity would have it, it would be allowed to be used by the public for a public purpose and, likewise, the donor would gain some type of benefit because they would be able to not...get a break or an exclusion on their property tax. And so for those reasons, that's why we're here today. We're asking you to consider it. As I stated, it would require change in the constitution, and then ultimately as Senator Pirsch said, we'd have to have implementing language where we could, you know, draw it as broadly or as narrowly as you would like within the parameters of whatever the voters approved. One last thing before I go. I'd like to say maybe just to make this a little bit tighter, on page 4 of this bill under the ballot language itself, maybe in line 7 after the word "state" we should include the word "exclusively" so it would be exclusively for a public purpose. That means, you know, that it tightens it up, it keeps it narrow. The land, once it's donated to a public entity, a local subdivision, or the state would have to be used and open to the public. So

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that's all I have. I ask for your favorable consideration. I'll try and answer your questions. [LR276CA]

SENATOR CORNETT: Senator Hadley. [LR276CA]

SENATOR HADLEY: Thank you, Senator Cornett. Not being an income tax expert, does the...would ConAgra in this case get a tax deduction from the fair value every year that they donate to the city also? [LR276CA]

JACK CHELOHA: I'm not sure, Senator. I couldn't answer that. [LR276CA]

SENATOR HADLEY: Well, I guess what I'm trying to figure out, what is the benefit to ConAgra for doing this? Just a civic duty? We love Omaha? [LR276CA]

JACK CHELOHA: Well, I think that is part of it. I mean, they want to help out the city of Omaha. They're a good corporate entity that has their, you know, international headquarters right in Omaha and they want to be helpful as much as they can. Yeah, but the bottom line is they are a business and I think they, you know, may...you know, I just don't know enough about it but I think you get to depreciate, you know, your property but I'm not certain on that. [LR276CA]

SENATOR HADLEY: Thank you. [LR276CA]

SENATOR CORNETT: Senator Adams. [LR276CA]

SENATOR ADAMS: Jack, this sounds like, as you said, a win-win deal, but let me create a hypothetical. If I'm not thinking right, just shut me up. Wouldn't it also be a win-win deal if you continued to lease it for one year and pay \$22,000 in property taxes which gets you a building cheaper than if you owned it or built it, and yet the other political subdivisions like the ESU and OPS get their property taxes? [LR276CA]

JACK CHELOHA: Right. You're correct and your assumption is correct there. At that point it does, you know, take away, if you will, revenue from some of the other taxing entities, if you will. But yet I guess at the same time, you know, sometimes we do that and the Legislature has granted authority in other areas of law, if you will. For instance, if we do tax increment financing. You know, we can set aside the property tax to do, you know, up-front improvements, if you will, and then ultimately, you know, the return there is that it will get back on the tax rolls at a higher dollar amount. You know, maybe we could limit these to a number of years in terms of the benefit, if you will, not an ongoing one, you know, forever in perpetuity. That may be more amenable to people. Yet at the same time I guess all these other taxing entities also would be eligible to, you know, do these public/private partnerships to maybe gain some benefits, if you will, for schools, for athletic fields, or things they may want to pursue. [LR276CA]

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SENATOR ADAMS: Okay. Thank you. [LR276CA]

SENATOR CORNETT: Senator Louden. [LR276CA]

SENATOR LOUDEN: Yes. Well, I've got a question and a couple of observations. Has the city of Omaha contacted Douglas County to see if they can get any tax exemption on it? [LR276CA]

JACK CHELOHA: We've looked at it and worked through it but as we've read the constitution, I mean, it must be land that's actually owned by the political subdivision in order to be exempt and because of that, we wouldn't qualify. [LR276CA]

SENATOR LOUDEN: Well, like I said, here's my observations: We've got this bowling alley in Ellsworth and that's what you drove by there, and I've helped write the exemptions certificate to the county commissioners to get that bowling alley exempt from the property tax. I've wrote those. Now, how do we do it out there and you guys can't do it down here? [LR276CA]

JACK CHELOHA: Are you saying the bowling alley is still privately owned? [LR276CA]

SENATOR LOUDEN: No, the bowling alley is community owned. [LR276CA]

JACK CHELOHA: Oh, community owned. [LR276CA]

SENATOR LOUDEN: Yeah. [LR276CA]

JACK CHELOHA: Well, I think that's the difference right there, Senator. [LR276CA]

SENATOR LOUDEN: Well, isn't this...this is owned by the city if that isn't...or the city is renting that building, so if that isn't a community operation, then how would you classify it? [LR276CA]

JACK CHELOHA: Well, in Omaha in our example, Senator, these stables and the buildings that house the stables are owned by ConAgra. [LR276CA]

SENATOR LOUDEN: Yeah. [LR276CA]

JACK CHELOHA: Right, and is privately owned. We only lease them from the... [LR276CA]

SENATOR LOUDEN: Well, all they would have to do is give some type of a lease. Don't you say you pay a lease for \$1 a year lease? [LR276CA]

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JACK CHELOHA: Right. Uh-huh. [LR276CA]

SENATOR LOUDEN: Well, that's the same thing out there. The land is privately owned and that building, but there was a perpetual lease put on it back in the late forties. It's been like that ever since. The other observation I'd make is if you can go with Pahl's idea of city and counties all combining, if you would combine Douglas County and Omaha together, then you wouldn't have a problem. (Laugh) [LR276CA]

JACK CHELOHA: Okay. [LR276CA]

SENATOR LOUDEN: Thank you. [LR276CA]

JACK CHELOHA: Thank you, Senator. [LR276CA]

SENATOR CORNETT: Jack, you've been around the Legislature a long time now. [LR276CA]

JACK CHELOHA: Yes, ma'am. [LR276CA]

SENATOR CORNETT: And you know how much constitutional amendments cost. [LR276CA]

JACK CHELOHA: Right. [LR276CA]

SENATOR CORNETT: Just the printing... [LR276CA]

JACK CHELOHA: Right. [LR276CA]

SENATOR CORNETT: ...for the ballots is over a million dollars if I remember right from when I was in Business and Labor... [LR276CA]

JACK CHELOHA: Wow. Okay. [LR276CA]

SENATOR CORNETT: ...for the printing for the constitutional amendments... [LR276CA]

JACK CHELOHA: Right. [LR276CA]

SENATOR CORNETT: ...on the ballots. How many other projects do you know of or places could utilize this because if we're looking at saving the city of Omaha \$22,000 and costing the state five times that... [LR276CA]

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JACK CHELOHA: Right. [LR276CA]

SENATOR CORNETT: ...it doesn't make much...well, actually more than five times but it doesn't make much sense. [LR276CA]

JACK CHELOHA: Right, right. I guess I appreciate that. And that's something that we always have to weigh is the cost-benefit analysis of any legislation. I guess we came here with a particular problem and, based on the advice of our city law department, they said, gee, we'd have to change the constitution to get any benefit, but we think there's potential for others. Will they step forward and talk about it, I don't know and I haven't heard any other examples right now. [LR276CA]

SENATOR CORNETT: That's what I was going to say. [LR276CA]

JACK CHELOHA: Yeah. [LR276CA]

SENATOR CORNETT: Do you have any other examples? [LR276CA]

JACK CHELOHA: I don't right now other than I know we're seeking to ultimately maybe continue with library expansion in Omaha. Whether we would seek a donor of a building, it's been talked about but yet nothing has been solidified. So it's just another example that might help but we don't have any definite plan other than the stable issue. [LR276CA]

SENATOR CORNETT: I was going to say, it would be very difficult to support a constitutional amendment just for one city. [LR276CA]

JACK CHELOHA: Right, right. Nope, I understand that. [LR276CA]

SENATOR CORNETT: Okay. [LR276CA]

JACK CHELOHA: Thank you. [LR276CA]

SENATOR CORNETT: Any further questions from the committee? Seeing none... [LR276CA]

JACK CHELOHA: Great. Thank you. [LR276CA]

SENATOR CORNETT: Next proponent. [LR276CA]

LYNN REX: Senator Cornett, members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. We do support this measure and we do believe that there is a need across the state of Nebraska to provide this kind of

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flexibility, especially in these tight, financial times. We can foresee that municipalities, schools, even counties, and other entities would need to perhaps do some partnering with the private sector, and instead of going out and having to buy the property because they don't have the money to do it, they would be able to have this kind of an arrangement. In fact, this is just something that came to mind as I was listening to the discussion earlier, LPS is in the process of building numerous buildings, school buildings. And I can tell you that in the past, at least, they have taken schools, the students, the teachers and everybody and put them into other buildings, private sector buildings while they are waiting for the renovations to happen on property. That happens for maybe a year. Try to get private sector companies to agree to do something like that I would imagine is somewhat problematic. But I can tell you for cities when you're dealing with any number of projects, having the flexibility to be able to do something like this...and, again, we would strongly support the amendment that Jack proposed which is on line 7, page 4 inserting the word "exclusively" so that the property would have to be used exclusively for public purposes. It may very well be that whether it's family land and the person doesn't want to sell it...and we've had cities that have looked at building public-safety-type buildings, but in order to do that they need a location. It's all about location, location, location, and that's true whether you're building a fire hall, whether you're building any type of thing dealing with public safety. So when you're doing that, if you can find a private sector person who's able to...or entity willing to work with you on this, it would seem to make a lot of sense and save taxpayer dollars. And, again, I think Senator Adams' issue, as other questions that have been raised today, are all very legitimate, but this would also apply to schools, it would also apply to others who could do the same thing. And I do think in the end you could look at significant taxpayer dollars, saving those dollars, and provide some flexibility to local governments who are so strapped. Many of them don't have the flexibility to go out and buy the land to do what they need to do. With that, I'd be happy to respond to any questions that you might have. And we appreciate Senator Pirsch introducing this measure. [LR276CA]

SENATOR CORNETT: Senator Louden. [LR276CA]

SENATOR LOUDEN: Thank you, Lynn, for your testimony. When you say there it's going to save money, explain to me how this is going to save any money because you're talking about paying the taxes is what you're talking about. You're not talking about paying rent or anything, the rent is donated. How are you going to save any money if it's paying taxes? [LR276CA]

LYNN REX: Well, because what you're doing is instead of having to go out...for example, and if you take the LPS example and having to go out and buy some place to put a school for a year or two while renovations occur or... [LR276CA]

SENATOR LOUDEN: Yeah, but we're talking about renting and on this deal it doesn't

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talk about going out and buying it; it's talking about renting some property... [LR276CA]

LYNN REX: That's what I'm saying. [LR276CA]

SENATOR LOUDEN: ...and to have it tax exempt. Well, the way I understand it, Omaha is paying \$22,000 taxes or something, well, they're paying it to Douglas County. So if Douglas County don't get the \$22,000, then Omaha gets to keep it. I mean, the taxpayers pick it up either way. You're just moving it from one pocket to the other, aren't you? [LR276CA]

LYNN REX: Well, I don't know. What I'm trying to convey is that you save taxpayer dollars on the front end by not having to go out if Omaha had to go out and perhaps buy that property. And I'm guessing because of the location there was no property to be purchased. [LR276CA]

SENATOR LOUDEN: Yeah, but that isn't what this constitutional amendment is about for them to go out and buy the property. They're talking about getting a tax exempt if they're renting it, aren't they? [LR276CA]

LYNN REX: What they're talking about is getting it tax exempt so they don't have to go out and buy the property, so that they can partner with a private sector individual or corporation so they wouldn't have to go buy the property. And I'm submitting to you that I think Senator Adams' point which is that when you have...when you take any property off the tax rolls, Lincoln being the primary example, I think over 30 percent of all property in Lincoln is tax exempt, whether it's the university or public schools or city property or county property, it's tax exempt. So the other way of looking at it is, if the city went out and bought it, it's still going to be tax exempt. The other entities would not be doing that. This bill relates to the fact that this would allow for public/private partnership, would not require a city, a county, a school, whatever the political subdivision may be, to actually go out and make the investment in the land or make the investment in the building but rather having lease arrangement. [LR276CA]

SENATOR LOUDEN: Okay. Well, my understanding is we're talking about tax exempt in that... [LR276CA]

LYNN REX: Exactly. [LR276CA]

SENATOR LOUDEN: ...the taxes is what's it's all... [LR276CA]

LYNN REX: Without having to pay the \$22,000. If this bill... [LR276CA]

SENATOR LOUDEN: Without...and yeah. [LR276CA]

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LYNN REX: If this constitutional amendment was in place, and... [LR276CA]

SENATOR LOUDEN: And my other question is... [LR276CA]

LYNN REX: I'm sorry. [LR276CA]

SENATOR LOUDEN: ...is why can't you do it now? [LR276CA]

LYNN REX: Well, you can't do it now because obviously it's... [LR276CA]

SENATOR LOUDEN: How come we're doing it out there in western Nebraska at Sheridan County, have been for 40 years? (Laugh) [LR276CA]

LYNN REX: I would submit to you, you may want to talk to some legal counsel about the propriety of that. [LR276CA]

SENATOR LOUDEN: Okay. [LR276CA]

SENATOR WHITE: You're going to drive up the cost of bowling in Sheridan County. (Laughter) [LR276CA]

LYNN REX: I would never want to do that, Senator White. But I'm not a bowler, but I wouldn't want to do that. [LR276CA]

SENATOR CORNETT: Senator Hadley. [LR276CA]

SENATOR HADLEY: Senator Cornett. Lynn, just a follow up on what Senator Louden. You know, for every dollar of tax we have in property taxes, it's basically divided up among a number of entities. Schools take, I think, the significant share. I don't know what percentage they take statewide of every dollar of property tax, but I would guess it's in the 60, 70 percent...70 cents. And if I remember from my experience, the city like Kearney got about 6 cents out of every dollar of property tax and the county got about 19 cents, give or take. So I guess I have a concern that somebody who gets 6 cents out of every dollar of property tax has the ability to take property tax revenue away from the other people who are in that equation. Because the \$22,000 in Omaha, \$22,000 a year, just assume my figures are right, Omaha is getting 6 percent of the \$22,000, right, about \$1,200 the city of Omaha gets for property taxes. Douglas County gets about 20 percent of that, about \$4,400. And let's say that the school district gets about 60 percent. So they get about \$12,000, \$13,000 of that \$22,000. If the city has that ability to take that off the tax rolls, there's \$12,000 less to the school district to fund their schools. We have a formula. That formula works. Needs minus resources. The resources have gone down. The state ends up then picking up part of this exemption. At least if I...you know, just on the surface of following it through. And maybe that's okay.

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I'm not saying that's bad, but I think this does have, what would you call it, hidden ramifications that we would certainly want to look at as we go through, the ramifications on other taxing entities who share that same property tax dollar. [LR276CA]

LYNN REX: I think there's no question that this needs to be carefully considered. It's not self-executing. The Legislature would have to come back, if this would pass with the voters, the Legislature would have to come back and pass enabling legislation. But what I am trying to underscore here is that, for example, if Kearney needed to do a building for public safety purposes, Kearney could do one of two things. They could do what Omaha is doing now, which is see if they could find someone to partner with on the private sector and offer to pay their taxes for that, or Kearney could go buy the land and do it themselves and that would obviously take it off the tax rolls. Either way you're talking about having a tax implication here. So what this would allow if this was law and if the Legislature passed enabling legislation, we would hope it would be tightly construed and obviously only for exclusively public purposes. And, in fact, you would end up with a situation where local governments would have more flexibility, not less, in terms of how to go out and fund these types of projects because there are entities across the state that are financially strapped yet they have the mandates to deal whether with storm water or whatever the other issue may be that they've got to provide certain services for their folks. The same would apply, Senator, if a school itself decided to go out and partner. That would mean the city and the county and other political subdivisions would not have that kind of money in the same way that if the school went out and bought the land and did it, that would be off the tax rolls too. No matter how you cut it if this would pass, it could be off the tax rolls. I mean, Omaha certainly could have made the investment up front, I'm guessing, if they had enough money to probably purchase land, some other type of land in downtown Omaha. Maybe not. Maybe it was just price prohibitive, and maybe that's why ConAgra was prepared to do this. But at the end of the day, it seems to me that when you have certain types of public projects like this that do need to be done, this would be yet another option. But if the political subdivision went out and bought the land, no question about it, it would be tax exempt no matter what. And how they're doing what they're doing in Sheridan County is beyond me. [LR276CA]

SENATOR HADLEY: Thank you. [LR276CA]

SENATOR CORNETT: Senator Adams. [LR276CA]

SENATOR ADAMS: Lynn, when you mentioned, and I think Jack did, too, about putting the word "exclusive" in and I didn't open up the bill to see where, but it...and maybe this answers my question. I mean, we certainly don't want a situation where somebody says, well, the city of Omaha needs a thousand foot of office space and I've got this building with 10,000 foot of office space, how much of this is going to be tax exempt? Now, can I get my whole building? Which leads me then to a question that I don't know that any of

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us can ever answer. I look at TIF as an important tool to cities, one of the only ones they really have and this, obviously, has the same flavor as TIF in a lot of ways. Do you think we can write enabling legislation that screws this down enough to take the gamesmanship out of it? I mean, we can never...there's probably not a bill in this body that we can ever pass that somebody doesn't figure out an angle to work it, but that would be one of my concerns. [LR276CA]

LYNN REX: Well, clearly this would have to be tightly drafted to prevent that very issue, and I think that's why Jack's recommendation to you on page 4, which is the last page of the bill, to include the word "exclusively" so that it has to be used exclusively for public purposes. [LR276CA]

SENATOR ADAMS: Do you think that would eliminate that problem then? [LR276CA]

LYNN REX: Oh, I do. [LR276CA]

SENATOR ADAMS: Okay. [LR276CA]

LYNN REX: I do. But do I think that the legislation, enabling legislation would have to be very, very carefully drafted? Absolutely, whenever you're dealing with taxation to make sure that there is fairness. [LR276CA]

SENATOR ADAMS: Um-hum. Thank you. [LR276CA]

SENATOR CORNETT: Senator White. [LR276CA]

SENATOR WHITE: Ms. Rex, is that land and the specific parcel we're talking about is the horse barn in downtown Omaha dedicated to a long-term agreement to the city which only generates a dollar or so a year, is that land going to be valued at a lower value because its use is locked up? [LR276CA]

LYNN REX: I don't know how long the lease is for, what period of time. If someone would indicate that, I could state it on the record. It's an indefinite lease. But I guess the question is, how would that deal with...how would that address the valuation of that property. [LR276CA]

SENATOR WHITE: Well, the property can't be used for any other use arguably than that. [LR276CA]

LYNN REX: That's right. [LR276CA]

SENATOR WHITE: And I'll be real honest with you, the economic value of horses downtown and stabling them there isn't real high. Now, the value of what the horse

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patrol does is enormous. I mean, that's the biggest tourist attraction in the state, the Old Market and they largely patrol it. Incredibly important and it helps with...you'd be amazed at the tourists that love to see police officers on horseback. But in terms of the value, isn't that property going to be valued at a lower value because it's dedicated to that use anyway? [LR276CA]

LYNN REX: I would think so. [LR276CA]

SENATOR WHITE: So isn't the city getting some relief right there? [LR276CA]

LYNN REX: I would think so. I think it's a legitimate point. [LR276CA]

SENATOR WHITE: Thank you. [LR276CA]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LR276CA]

LYNN REX: Thank you for your time this afternoon. [LR276CA]

SENATOR CORNETT: Next proponent. Are there any further proponents? We'll move to opponent testimony. Is there anyone here in a neutral capacity? Senator Pirsch, you're recognized to close. [LR276CA]

SENATOR PIRSCH: And I'll be very brief. Thank you. I just want to thank you of your time and your questions. I think they're excellent ones. Yes, there are certain logistical problems that would absolutely have to be addressed in any enabling language to address the concerns that you brought up. And without addressing those concerns, I certainly wouldn't support it. And I think you're right. There is a threshold question about just due to the initial cost of a ballot question which as you mentioned, Chairman, does have a high initial cost so you'd have to think about it and say in a typical instance like this where there's a savings of \$22,000 to the taxpayer for one incident, now you're talking about you'd have to have ongoing into the future. If it's a million dollars, say, initial cost on the ballot, you know 50 instances where you could reasonably predict that that would happen. And so, you know, that may break down to over the course of five years, ten incidences a year before you break even, but. So, yeah, you definitely have to meet that initial threshold cost. The whole underlying idea or precept behind this bill is that there is finding savings for the taxpayers. And so these would all have to be taken into consideration. I certainly look forward to working with the committee to make sure that this would be possible as far as advancing this legislative resolution. Thank you for your time. [LR276CA]

SENATOR CORNETT: Thank you very much, Senator Pirsch. That closes the hearing on LR276CA. Senator Christensen, you are recognized to open on LB893. Welcome to the Revenue Committee. [LR276CA]

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SENATOR CHRISTENSEN: (Exhibit 2) Thank you. Thank you, Madam Chair and members of the Revenue Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. I'm here today to introduce LB893. LB893 would allow for the option of refunding any unexpended real or personal property tax, occupation tax, or assessments that have been declared unconstitutional by final court judgment order. This bill is modeled after LB681 introduced in 2009 and heard in this committee last session. As I testified before you last session in LB681, I believe LB893 is a bill that rightly addresses philosophical position and idea that good government has an obligation through the law to treat its taxpayers with fundamental fairness. Therefore, when government has taxed a taxpayer and then the taxes are adjudged unconstitutional, our laws should have a fundamental fair mechanism by which taxes paid during the litigation of such tax can be refunded to the taxpayer in a consistent and equitable manner. In my opinion as a taxpayer, this is the only right thing to do. Again, as I said last year, it's obvious that this issue came to light during the recent litigation challenges challenging the constitutionality of property tax levied in Republican Natural Resource Districts. When I looked into the current law during this litigation, I become convinced that if the state lost, the state needed additional remedy for providing the taxpayer with a refund in a consistent and equitable way for this kind of scenario. I still believe this. In addition, I told my constituents I would work to get a law in place that would provide a means for everyone to get their money back now, in this current situation and similar situations in the future. So I'm making good on what I've told my constituents. LB893 makes three changes to last year's LB681 in hopes to address some of your concerns. First, the political subdivision is not required to refund such tax, assessment, or penalty but may refund such tax, assessment, or penalty. This was changed to lessen incentive to bring lawsuits that tie up funds of government subdivisions and allow for the flexibility in future situations. Second, it limits the refunding of such unconstitutional tax, assessments, or penalties to those funds not expended. So not only does LB893 limit the refund from the year the lawsuit is commenced to the year of the judgment, or ordered declaring such tax, assessment or penalty unconstitutional was given, it limits it only to unexpended money. The third change makes it clear that the refund may be applied to satisfy any tax levied or assessed in the county. This gives political subdivisions another option in how to refund the taxpayer. As I mentioned earlier, such tax, assessment, or penalty may be refunded for the year the tax, assessment, or penalty is declared unconstitutional for prior years beginning with the year of the lawsuit challenging the constitutionality was commenced. In addition, the refund would be made to the person paying the tax without the need for filing a claim for a refund. In discussions with Nebraska Association of County Officials, NACO, there was concern about directing the refund to the person paying such tax instead of the owner of record. I have provided an amendment for your consideration that addresses their concern. If the tax or assessment declared unconstitutional is applicable throughout the state and beyond the geographic boundaries of the court, making the declaration of unconstitutionality, the bill requires that Nebraska Supreme

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Court must enter the final judgment or order. The provision provided by LB893 would be supplementary to the refund provisions to recover illegal taxes provided currently pursuant to Nebraska Revenue Statute 77-1735, Cumulative Supplement 2008. Such refunds may be made under LB893 in a similar manner to Nebraska Revenue Statute 77-1736.06, or applied to satisfy any tax levied or assessed in the county. I urge you as colleagues and members of the Legislature to provide a good sound policy for people in this state which creates a consistent and equitable mechanism to refund taxes, not just for those affected in my district but also for similar situations in the future. I encourage you to advance LB893 to General File and thank you for your consideration. With that, I'd try to answer any questions you have for me. [LB893]

SENATOR DIERKS: Thank you. Questions for Senator Christensen? Senator Hadley, please. [LB893]

SENATOR HADLEY: Senator, thank you. Senator Christensen, you know for the first reason when you talk about may refund such tax, assessment, or penalty and you explained why. I guess I...is there a disconnect when we've had the taxes or assessments declared unconstitutional and then the taxing agency says, we're not going to give them back to you? From a fairness standpoint, is that a fairness? [LB893]

SENATOR CHRISTENSEN: I agree totally with you. The situation comes in when you're dealing with counties, schools, anything you want to look at, if the money has been spent and it's unconstitutional, how are you going to come up with them funds? You know, everybody is on tight budgets, everything is locked up. So they become an issue of tying up resources people have, and so I was hoping to address that by this concern. The fairness issue you bring, you're absolutely correct. But the situation comes back, you can't tie the hands of ongoing counties, schools, government, anything, just because of a court case being filed. [LB893]

SENATOR HADLEY: Then, if I'm hearing you right, Senator Christensen, we could have a situation where we have a tax levied and two years later somebody files a lawsuit, it takes two years to go through the courts. So four years after the initial tax, it's found unconstitutional, the taxing authority may have spent it, it's gone, they have no means of... [LB893]

SENATOR CHRISTENSEN: Correct. [LB893]

SENATOR HADLEY: Okay. Thank you. [LB893]

SENATOR DIERKS: Other questions? Senator White, please. [LB893]

SENATOR WHITE: Senator Christensen, the bill remains a concern for me on a number of levels we've discussed in the past. But one of them still is, a lot of our taxes are

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actually basis for bonds. And you have to sell those bonds largely in New York in the financial markets. Personally, I think if this is passed, you won't be able to sell a bond because if it's a school bond or any other bond and they challenge the purpose, it's not properly issued or whatever, the bondholder would have to say, hmm, well I know right now this school board likes it, but what will the next one do. And you create an uncertainty in the financial instruments that are going to make them virtually...we won't be able to sell them. At least as a bond counsel, if I were the bond counsel, I would tell my clients, don't touch it because there's this uncertain risk, you don't know who's going to file it, you don't know when they're going to file the challenge, and then if they win, you might get paid back or they might have to pay it back or not. [LB893]

SENATOR CHRISTENSEN: Senator, I don't believe there's any difference here between...because if this is dealing with a bond, is found to be unconstitutional, payment is going to stop right then and there. So the bonding company has got the exact concern they do there or if I start paying it for two years and then there's a judgment against it, if they have spent it between the time of judgment and when they're filing, they're...if that's already spent, they're not going to get that the bonding company did and from here forward you got the same concern. Because if I file suit against a bond and it's found unconstitutional, nobody is going to pay from there forward if that's what was guaranteeing that bond. It's no different... [LB893]

SENATOR WHITE: Senator, I'm not sure that's accurate because under existing law right now, you only have a certain amount of time, 30 days, to protest that assessment or you lose your right to that assessment. [LB893]

SENATOR CHRISTENSEN: Correct. [LB893]

SENATOR WHITE: That's what you're complaining in this situation. So the bond...the NRD had bonds. Those bonds were to be sold. We held it up in this but they were to be sold. If they had been sold those bonds would be enforceable under existing law. [LB893]

SENATOR CHRISTENSEN: Correct, but their funding source would be gone if it's found unconstitutional. [LB893]

SENATOR WHITE: No, only as to the people. Only as to the people who protested, and that's the problem. The folks in the Republican River Valley could have protested those property taxes and could have preserved their rights. They had to do it in 30 days. Only six did it, I think. And the people who didn't file under existing law are upset. [LB893]

SENATOR CHRISTENSEN: Okay. But follow this. If you sign a 15-year bond and only three file, six file protests, then six can get it back now but has anybody...and it's filed on the second year. Is anybody going to pay years three through fifteen on that bond?

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It's unconstitutional, no. There's no difference here. [LB893]

SENATOR WHITE: Well, Senator, we...I'd invite you get a lot of green and we'll meet in court. [LB893]

SENATOR CHRISTENSEN: (Laughter) [LB893]

SENATOR DIERKS: Other questions? I think that's it. Thanks, Mark. [LB893]

SENATOR CHRISTENSEN: Thank you. [LB893]

SENATOR DIERKS: First proponent, please. Is there a proponent for LB893? [LB893]

JOEL BURKE: Good afternoon. My name is Joel Burke, B-u-r-k-e. I'm an attorney from Imperial, Nebraska. I'm here representing the NARD, the Lower Republican Natural Resource District, the Middle Republican Natural Resource District, and the Upper Republican Natural Resource Districts. My comments will be more directed towards what is currently happening with the funds held as a result of the decision on the property tax issue in LB701. As you know, the NRDs, the three NRDs are currently holding those funds and need some direction as to what to do with those funds or how to disburse those funds. All three of the districts and the association believe that it's fair and equitable to return those funds to the taxpayers. And from the media that appears to be also true, from the Governor and also the senators in the Basin. In trying to accomplish that goal, we were unable to find any statutory authority that would authorize the NRDs to return those funds. As a result, the three NRDs took the time and expense to file lawsuits, declaratory judgment actions, asking the court to determine whether the NRDs under the current statutory schemes have the authority to return those funds to the taxpayers. That matter was argued on summary judgment last week and the judge is taking it under advisement. A couple of things I'd like to point out that have to do with the lawsuit but also should be considerations in regard to LB893 is, first of all, the unique factual situation that involves...that's involved in this matter. The vast majority of cases in this area deal with taxpayers suing a political subdivision attempting to recover payments, tax payments already made. This case is the opposite in that it's the NRDs versus the taxpayer in the declaratory judgment action asking for authority to return those funds. So the structure of the lawsuit is a little bit different. Also one of the reasons given, and I believe it was brought up earlier this afternoon, is that the chaos that can result to public finances. If there's no limitations, then how does a public entity know when or how much of those funds are ever going to be under protest? Under the current system, 77-1735 provides the 30-day period when the taxpayer must file a written appropriate notice of protest that that payment was made under protest. What that does is give the political subdivision an opportunity to earmark those funds, set them aside as they do their budgeting and planning, with the idea that they know at some point they may have to refund those tax proceeds. The interesting thing about the

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NRD situation is, once the challenge was made on LB701 to the property tax issue, the NRD set aside all of the funds derived from the property tax levy. So it's not just setting aside the ones that were made under protest, it was all the funds that were derived from that unconstitutional provision. I guess the problem is that we still don't know, as far as the NRDs, what to do with the funds. There's an opportunity for Judge Urbom to make a decision on those cases, but there's also plenty of outs for him to leave the matter. I think a lot of issues addressed in the lawsuit are within his discretion and how he rules on that, no one will know. I'm sure he doesn't even know at this point. But it's important from the NRD standpoint to know what they can and cannot do with those funds and this bill appears to be one way or one remedy to allow for the disbursement or the return of those funds. I would entertain any questions. [LB893]

SENATOR CORNETT: Questions from the committee? Senator White. [LB893]

SENATOR WHITE: Now, you're asking the Legislature to pass a law to affect the outcome of a lawsuit that's already been filed and submitted to a judge, correct? [LB893]

JOEL BURKE: Correct. [LB893]

SENATOR WHITE: So what happens if the judge rules and says, okay, the money stays with the NRD and then we pass a law. Do you file another lawsuit? And can the Legislature reverse the judge? [LB893]

JOEL BURKE: I think one would be...the law that you would be talking about would be retroactive to that decision. [LB893]

SENATOR WHITE: Yeah, but it's going to be res judicata. It's going to be decided certainly by the time this law became enacted. [LB893]

JOEL BURKE: But the crux of the issue, as far as the NRDs, is direction. I mean, the end result ideally from their perspective would be to return the funds to the taxpayers. But otherwise, if there's some direction, that's going to be better than what there is now which is no direction. [LB893]

SENATOR WHITE: Well, actually there is a direction. The direction says that the taxpayer gives up the right to a refund of taxes unless they protest in 30 days, correct? [LB893]

JOEL BURKE: Or is the prevailing party in a lawsuit. [LB893]

SENATOR WHITE: Well, there's a direction. The folks down there don't like the direction but there is a direction. [LB893]

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JOEL BURKE: That's correct. [LB893]

SENATOR WHITE: Okay. Now, they did not put in a claim in time for that money. Rightly or wrongly, and I'm...you know I understand their frustration, believe me. But they didn't and that money went to the NRD. Now there's a statute right on point that says when somebody abandons property in that situation, they abandon the claim to get it back. It's gone. I mean that money belongs to the NRD at this point because they blew the statute of limitations to protest it. So now the question is, really, aren't you asking this body to pass a law to say property that belongs to a political subdivision or the public, money can be given to a special class of people who have no legal right to it right now. And that's pretty problematic, don't you think? [LB893]

JOEL BURKE: I agree and disagree with a couple of your comments. First of all, what we're dealing with is a statute that's null and void and we're asking... [LB893]

SENATOR WHITE: No, the statute of limitation is on the 30 days. [LB893]

JOEL BURKE: Exactly. [LB893]

SENATOR WHITE: Okay, but... [LB893]

JOEL BURKE: I understand that but what the property tax proceeds were derived from, that portion was determined unconstitutional. [LB893]

SENATOR WHITE: That's happened before, though, and that's why the 30 days was passed. When the 30 days was shortened during the last property tax qualification when the Nebraska Supreme Court said it had to be equalized, and the properties that were being taxed not equalized were unconstitutional, and that's why they put in a short trigger on the statute of limitations so they didn't bankrupt all of the subdivisions. [LB893]

JOEL BURKE: And that's...you're correct, Senator, but that's why I tried to point out that this situation specifically is different in that not bankrupting the NRDs because those funds have already been earmarked and set aside. They've taken proactive steps to avail the taxpayers what they believe is unequitable... [LB893]

SENATOR WHITE: Let me give you a concern because it's a big deal. If I, right now, am in Sarpy County and I've got a lawsuit saying the learning community is an unconstitutional exercise in sharing of finances, among other reasons, because there's disparate valuations between Sarpy and Douglas County, constitutionally violating the equal protection, the equalization provision of the statute. Pending right now, okay. They need to bond that money. Right now, not a big deal because only if the number of

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the few people that have actually filed protests on their property to get the money back, not big enough to affect the viability of the bond. But if we pass this, it only takes one person to file a constitutional challenge to a big project like that and having basically frozen the whole thing. Now you say, oh, well, only if they put the money aside. Can I go get an injunction and say, all that money you're collecting put it in escrow. I want it back. [LB893]

JOEL BURKE: And again, my standpoint if from the NRDs and LB701 and I really couldn't speak on any more than that. But initially, the funds that were derived from LB701 were to be used exclusively to pay the bonds, the river flow enhancement bonds. [LB893]

SENATOR WHITE: Right. [LB893]

JOEL BURKE: None of those bonds were ever issued because of the challenge and the uncertainty that was raised by that challenge. [LB893]

SENATOR WHITE: Exactly the point. They didn't issue the bonds, so if I've got any kind of project in the state if this bill goes through, I just challenge it, don't I put every subdivision trying to issue a bond in a pickle saying, don't issue those bonds? I'm going to get an injunction telling you don't issue those bonds, I've got a constitutional challenge. [LB893]

JOEL BURKE: I guess I'm not tracking all the way because what...the ultimate change or the amendment later, the following year was that those proceeds could be used to pay the bonds or to repay the state. So there is another option there so I'm not sure that getting an injunction...I'm not tracking exactly... [LB893]

SENATOR WHITE: Well, right now I know that if a guy doesn't file a protest on his property in 30 days and I'm a bondholder or I'm an attorney for a school board or for a county, I know he has no right to come back and get money back. [LB893]

JOEL BURKE: But there is case law also that has happened where some six years later a taxpayer has been issued a refund. [LB893]

SENATOR WHITE: I haven't seen that case law. They just gave it to them? [LB893]

JOEL BURKE: It's a 1976 case, your honor, or excuse me. [LB893]

SENATOR WHITE: Before, which preexisted this statute, the 30-day statute because this passed, was it not, in the '90s? [LB893]

JOEL BURKE: But you're correct but the predecessor is almost identical to it that there

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is... [LB893]

SENATOR WHITE: Well, if you've got that case law, then you don't need this. [LB893]

JOEL BURKE: But there's a contradiction in the case law. [LB893]

SENATOR WHITE: You don't see this in good faith as opening up a can of worms that really could eat alive the property tax base and bonding base of the very subdivisions of the state? [LB893]

JOEL BURKE: Again, Senator, to be honest, my perspective is from the NRDS and LB701. [LB893]

SENATOR WHITE: You're trying to help your clients and I get it. I appreciate that, counsel, I do. Thank you. [LB893]

JOEL BURKE: Yes. Thank you. [LB893]

SENATOR CORNETT: Why can't the NRD repay the people that filed the protest and then use the remaining money to lower the rate across the entire taxing area for the other taxpayers and return the money through a lower rate? [LB893]

JOEL BURKE: I think there's probably two issues there. Again, initially... [LB893]

SENATOR CORNETT: Well, first of all, you still owe the money to the people that filed the protests on time, correct? [LB893]

JOEL BURKE: Right, or prevailed in the lawsuit. [LB893]

SENATOR CORNETT: Has that money...yes, have they returned that money yet? [LB893]

JOEL BURKE: I couldn't answer that. Not that I'm aware of. But again, I think that's up to the taxpayer to take certain actions if... [LB893]

SENATOR CORNETT: They filed... [LB893]

JOEL BURKE: ...the refund isn't made. If they have filed a valid timely claim... [LB893]

SENATOR CORNETT: Which I believe three people or five, six people filed? [LB893]

JOEL BURKE: If they have, then the statute provides another 90 days for the county board to, or the board to act on that. [LB893]

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SENATOR CORNETT: And you don't know whether they've acted. [LB893]

JOEL BURKE: And I have no idea whether they have or not. [LB893]

SENATOR CORNETT: So then you have the pool of money sitting there minus the money owed to the six that filed, correct? [LB893]

JOEL BURKE: Correct. [LB893]

SENATOR CORNETT: And that is the money that we're talking about how to return. What would the issue be in regards to lowering the rate across the NRDs? [LB893]

JOEL BURKE: Because at the time those funds were collected, the only purpose in statute was that those funds were to be used to repay the river-flow enhancement bonds. [LB893]

SENATOR CORNETT: But there are no bonds. [LB893]

JOEL BURKE: And none of those bonds were never issued. [LB893]

SENATOR CORNETT: I was just going to say, those bonds aren't issued and by not filing the protest, those funds are forfeited back to the NRD, am I not correct? [LB893]

JOEL BURKE: I'm not...they're in limbo, I believe, is the NRD's position. [LB893]

SENATOR CORNETT: Okay. Thank you. Further questions from the committee? Seeing none, thank you. [LB893]

JOEL BURKE: Thank you. [LB893]

SENATOR CORNETT: Next proponent. [LB893]

RITA ERICKSON: Yes, my name is Rita Erickson, E-r-i-c-k-s-o-n, and I'm the Hayes County Treasurer from Hayes Center. And I don't know whether I'm a proponent, a neutral, or what on this, but...okay, I've heard a lots of comments on this LB701. What I'm here to do is try to figure out how to get the money back to the taxpayers in a way that is not real costly. And we're thinking as a group out there that it would definitely be better if the NRDs could lower their levies for the next year and then...and granted, the land may have changed hands in that time, but it's just like this tax credit that we've gotten for the last couple of years. That's changed hands, some of that land but it's gone with the land as a tax credit. And this would be done in the same way. Just have the NRDs lower their levies. This would save the counties a lot of money in postage,

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envelopes, extra help. And some of this, we're talking cents. I mean, you know, we're not talking a great amount, so I'm thinking with the people that the land has changed hands, we're not talking an outstanding amount. Now the occupation tax, that's a little different but that has not been ruled unconstitutional yet. But...or the judge, you know, hasn't done anything on it. But on the LB701, I guess I think one of the best ways would be to have the NRDs lower their levies. That would come out the next year on everybody's tax statement, save a lot of money for the counties, and a lot of hassle for a lot of people. So are there any questions at this time? [LB893]

SENATOR CORNETT: Rita, that's the point that I was trying to get to a moment ago. [LB893]

RITA ERICKSON: Yes, I heard you say that a minute ago and that's... [LB893]

SENATOR CORNETT: Do you feel that that money is in limbo or that it is clear in law currently that if you do not file the protest that money goes back and... [LB893]

RITA ERICKSON: Well, I tell you what. If we're talking about the protest...okay, if we're going to do it this way, we're going to have everybody that pays any kind of a tax every year, you better have stacks and stacks of papers so they can write protests for every piece of ground they're paying taxes on. Because, you know, that could happen. And these people paid this in good faith. And it's been ruled unconstitutional. It is not a constitutional tax. So it belongs to these people. [LB893]

SENATOR CORNETT: I was going to say, no one here, at least as far as I've heard from this committee or in the body, feels that that tax should remain or that that money shouldn't go back. But how we disburse it back is the question. And like I said a little bit ago, wouldn't it be just the easiest way to do it by reducing the levy? [LB893]

RITA ERICKSON: I definitely think so. I mean that...I definitely agree with you. [LB893]

SENATOR CORNETT: Senator Adams and then Senator Pirsch. [LB893]

SENATOR ADAMS: If we did it that way, and I think it's becoming clear to me as I listen to this testimony with that 30-day window for protest, that having expired, then we don't need to worry about Joe Smith getting his amount right down to the penny, if Joe Smith was not one of the original claimants within that 30-day window. So now, all of a sudden, the levy reduction is beginning to make more practical sense to me as well. What about increases and decreases in valuation on those parcels? Does that... [LB893]

RITA ERICKSON: Well, I mean, you know, that's with anything, anytime you buy a piece of ground it's going to, you know, maybe decrease in value and the next Joe Blow

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that buys it, it may increase, you know. And that's just a chance you take. You know, I mean, you're talking about the valuation might have went up quite a bit on some... [LB893]

SENATOR ADAMS: Exactly, and somebody else dropped, and... [LB893]

RITA ERICKSON: Yeah. And yes, it's went up some but I guess, like I say, we're talking about a minute amount. [LB893]

SENATOR ADAMS: And I suppose within the same context that we say we don't have to hand it back to the penny because they weren't one of the original protesters, maybe we also don't have to worry about the change in valuation that may have occurred on a parcel. [LB893]

RITA ERICKSON: No, because we're talking about a minute amount, is the way I look at it. [LB893]

SENATOR ADAMS: Okay. Thank you. [LB893]

RITA ERICKSON: I mean, I suppose if you were talking about...if this was a school levy and you were taking 60 percent of the tax dollars, you may not want to do it this way. But we're talking about a \$200,000 parcel, possibly \$20 to \$25, you know. And if we, as county treasurers, would have to write checks for all that, I mean, you know, we're talking about some of them a cent to two cents. We're talking about an astronomical amount of money. I mean, you know, for doing that, which...I mean, I'm all for saving money folks. (Laugh) I think in this day and age we have to watch every penny we spend, stamps, envelopes, you name it. [LB893]

SENATOR CORNETT: Senator Pirsch. [LB893]

SENATOR PIRSCH: Just a question. So we're looking for the best possible way, I think, Senator...Chairman Cornett, points out, that somehow to the extent we can, returning these funds to...I guess the best goal would be from whence they came. But I think Senator White has expressed reservations with respect to being able to get those funds back to the exact taxpayers. And those constitutional concerns notwithstanding, you know, is the next best method decreasing the levy tax. You know, you had mentioned that somehow the tax credit that went with the land afterwards, the distinguishing factor would be that unlike the tax credit, everybody was aware of that, right? It was transparent. So if you transfer the land, you understood that you'd be foregoing the tax credit that you would ordinarily receive if you held onto the land, is that correct? Such that, in this case it wasn't transparent. I appreciate your analogy, but the tax credit you can factor that tax credit into the purchase price of the land or however you're transferring that, right? [LB893]

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RITA ERICKSON: Oh, yeah, I suppose you could look at it that way. Let me tell you, though, most of the taxpayers out there have no clue what the tax credit is. (Laugh) I mean, they're like coming in there like, what is this, you know? I mean, you know, really they don't have a clue. And yes, I think to be fair you definitely need to tell people that. I mean, you know, I'm not saying you shouldn't, but I guess...there's nothing going to be the ideal world here. [LB893]

SENATOR PIRSCH: Sure. Oh, sure. [LB893]

RITA ERICKSON: I mean, to begin with this whole water deal has turned into quite a mess. We all know that. [LB893]

SENATOR PIRSCH: And towards making that decision about what the best realistic constitutional method is then, you said not a lot of property changed hands in that point of time or the time that it (inaudible). Is there any way that you can quantify that? I mean, do you have a guesstimate or is there any...? [LB893]

RITA ERICKSON: And I'm not...no, I'm not. I couldn't tell you that. But, of course, in our small county it would be not a lot, you know, in our small county. But, you know, in the bigger counties it might be. Although, you know, we don't have any real big counties that we're talking about here, Red Willow being probably the biggest part of...Lincoln County is in it but not the North Platte area itself. It's the southern part of Lincoln County that's in the Middle Republican. [LB893]

SENATOR PIRSCH: In terms of percentage of...because the difference would be if the land changed hands, right? [LB893]

RITA ERICKSON: Right. That would be the difference because the person that paid the taxes, you know, and then the guy that has it now might be different. [LB893]

SENATOR PIRSCH: All right. And so do we know...you said the majority of time the landowner is the same from the point in time that they paid and the point in time of this refund. [LB893]

RITA ERICKSON: Right. Right. [LB893]

SENATOR PIRSCH: Do we have kind of...I mean, is it 95 percent, 99 percent...? [LB893]

RITA ERICKSON: Oh, in my county I would say, yeah, maybe 98 percent most of the land is still the same. [LB893]

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SENATOR PIRSCH: Okay. Same, holder as it...? [LB893]

RITA ERICKSON: Yes, the same holder. [LB893]

SENATOR PIRSCH: Thank you. I mean that's a relevant factor that we need to know. Okay, thank you. [LB893]

SENATOR CORNETT: Senator Louden. [LB893]

SENATOR LOUDEN: Yes, now which county do... [LB893]

RITA ERICKSON: I'm Hayes, which is very small, very small. Understand. [LB893]

SENATOR LOUDEN: How many parcels do you have in the...? [LB893]

RITA ERICKSON: I have 2,600. [LB893]

SENATOR LOUDEN: Twenty-six hundred parcels and that's of your property tax parcels, if that what you're saying? [LB893]

RITA ERICKSON: Uh-hum. That's what would have been levied with this. [LB893]

SENATOR LOUDEN: Okay. And how much money was involved in Hayes County, do you know? [LB893]

RITA ERICKSON: In the...for the NRD 701, oh, I really can't tell, you know. [LB893]

SENATOR LOUDEN: But I guess what I'm wondering with the 2,600 parcels, how many dollars apiece will that average or what's the biggest check you'd probably have to write out to somebody? [LB893]

RITA ERICKSON: Well, I'm telling you, like on a \$260,000 valuation, which that's about what, you know... [LB893]

SENATOR LOUDEN: You had to charge \$60... [LB893]

RITA ERICKSON: Okay. Well, let's say a pivot. A pivot might be...one pivot might be at that particular time might have been valued at \$160,000, okay. So then that would have been like...this would be approximate, approximate probably about \$17 to \$18. [LB893]

SENATOR LOUDEN: Seventeen or eighteen? [LB893]

RITA ERICKSON: Yes. [LB893]

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SENATOR LOUDEN: Looks like much ado about nothing. [LB893]

RITA ERICKSON: Yeah, much ado about nothing. That's what I'm saying and I mean, there will be a lot of penny checks, a lot of 5 cent checks, and then you're going to write all this stack of checks and nobody is going to cash the 5 cent checks, nobody is going to cash the 50 cent checks. [LB893]

SENATOR LOUDEN: Well, or even at \$17, every check is going to cost you \$10 or \$15. What I'm wondering is, how come they can't...I think one of these...we had some people right in here that said to just turn it over to the NRD and they'd lower their tax levy next year. [LB893]

RITA ERICKSON: Yes, that's what I'm proposing. [LB893]

SENATOR LOUDEN: And go from there. When there isn't...I don't think anybody is going to go to supper very many times on the checks, that's what I'm wondering about. [LB893]

RITA ERICKSON: No, I don't think so. (Laugh) Not on the LB701. Now occupation, we've got another deal there, but... [LB893]

SENATOR LOUDEN: That hasn't been settled yet, has it? [LB893]

RITA ERICKSON: No, that has not been settled. We're talking about the NRD 701, LB701, so. [LB893]

SENATOR LOUDEN: The tax levy that was declared unconstitutional. [LB893]

RITA ERICKSON: Correct. [LB893]

SENATOR LOUDEN: Okay. Thank you. [LB893]

SENATOR CORNETT: Senator Hadley. [LB893]

SENATOR HADLEY: Senator Cornett, thank you. If I remember right when we had the hearing for LB681, some people raised the equity issue in regards to just lowering the levy because you have some people who did not pay the original tax, is that correct? People within the cities and such as that, did they pay the original? [LB893]

RITA ERICKSON: Yes, yes. [LB893]

SENATOR HADLEY: They did. Okay. [LB893]

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RITA ERICKSON: Everybody paid on NRD LB701. Everybody paid on it. I don't care whether you had a house in town, what you had. Now occupation tax, that's only the irrigators. But everybody, everybody paid on... [LB893]

SENATOR HADLEY: So we would not have the issue of inequities because everybody paid it. [LB893]

RITA ERICKSON: No, if you had a parcel of ground you paid on NRD LB701. [LB893]

SENATOR HADLEY: So if the NRDs were to lower their tax levy... [LB893]

RITA ERICKSON: And everybody pays on that. [LB893]

SENATOR HADLEY: ...and everybody may not get back, they may have a cost of 5 cents and they get back 3... [LB893]

RITA ERICKSON: That may be right. (Laugh) [LB893]

SENATOR HADLEY: ...you know, but we're not writing checks, we're not... [LB893]

RITA ERICKSON: We're saving a lot of money is the way I look at it for the counties and for...and that filters down then to the state. I mean, that filters down. That filters down to the government. You know, people are tired of us, you know, spending their tax money on things that really it doesn't have to be spent on. That this would be a more reasonable way of doing it, I think. [LB893]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you very much. [LB893]

RITA ERICKSON: Thank you for your time. [LB893]

SENATOR CORNETT: Next proponent? [LB893]

JASPER FANNING: Thank you, Senator Cornett. [LB893]

SENATOR CORNETT: Just real quick. Just because we got a little mixed up on proponent, opponent and neutral here...don't worry about it. How many people do we have to testify as proponents yet? Okay, go ahead. I just want to make sure we we're in proponent. [LB893]

JASPER FANNING: Thank you, Senator Cornett and members of the committee. I really wasn't planning on testifying today but it seems like we're kind of dancing around

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this issue a bit. My name is Jasper Fanning, J-a-s-p-e-r, Fanning, F-a-n-n-i-n-g, the general manager of the Upper Republican Natural Resources District. The issue here is find out what we can do with these funds and certainly it's a hot political issue but not all that hot because your spot on that not many people filed a protest and quite frankly, I think, a lot of people out there really want these funds to be used for what they were originally intended for. But the few that did file the lawsuit kind of messed that up for us and we had to deal with that unconstitutional ruling. To me the crux of the issue is, we're holding funds, as Senator White correctly identified under current statute, are to be retained by the NRD for use. Unfortunately, current statute LB701 said we could only use those to pay river-flow enhancement bonds, which were never issued, projects that are not yet underway. So we have these funds that are restricted by statute for a specific purpose and/or to repay the state. And the question is, can we use those funds because there's, as was previously testified to, I think the will of those in the issue is to use these funds to just pay back the people in an equitable fashion and use the occupation taxes to pay back the state, therefore, putting the burden on the irrigator. And I think that's the policy decision, if you will, that we're dancing around a little bit is, can we use these funds in the fashion that's being discussed today? Which seems to be, can we just use the funds and lower our levy? Well, the current statute restricts us from using these funds for general operations. The things that it restricts us to, ultimately there's only one option left and that would be to remit these funds to the state to repay the loan under LB1094, I believe. And in no way are we saying that we're not going to repay that loan, but the intent is to use the occupation tax funds to do that, not necessarily these funds. So with that, I would address any other questions. Senator White. [LB893]

SENATOR CORNETT: Actually, when you said it's your intent to use the occupation tax, that hasn't been settled in court yet, am I correct? [LB893]

JASPER FANNING: That is correct. Those funds are also being held in escrow and there's nothing to say that we won't be back here in the future... [LB893]

SENATOR CORNETT: I was going to say, is that kind of counting your chickens or eggs before they hatch to assume that you're going to use that money to...for a purpose, when it's being litigated. [LB893]

JASPER FANNING: Yes, I think so. But even if the occupation tax isn't found to be unconstitutional, then we're left with both hands tied behind our backs. We're going to be back to the Legislature finding another funding mechanism. [LB893]

SENATOR CORNETT: Senator White, I'm sorry to interrupt. [LB893]

SENATOR WHITE: No problem. One of the concerns I have about this is whatever is done is done and it's in the court text. Legislatures almost never or do or allowed to go

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backwards to try to change law back in time. We pass a law, the courts determine what is the law and how it works out at that time. Isn't the remedy asking the court system right now, okay, please declare the status of the funds we have in our hands? Who owns them? What can we do with them? And the court will tell you the remedy. Isn't that the appropriate way to handle this? Now, if we were going forward, all right, talking about problems in the future, we'd pass a law, but our laws don't generally apply retroactively. And one of the concerns I have is, if we determine that under the laws that existed at the time we passed that and the tax was collected, that that money, for example, if it doesn't belong to the NRD, it could escheat to the state. But we don't have the constitutional power to make a gift of public funds to private individuals. And if they don't own that money, that's what we're doing. So, I mean, the real problem here is, I don't think the answer lies in this body for the money already in the hands. You need to get a court order, because even if we passed a law, I might be a taxpayer said, that's an unconstitutional statute, go to the courts, you're going to have the courts anyway. [LB893]

JASPER FANNING: I don't disagree with you, Senator White. I think you raise an important policy question there. But I think what we, ideally, if we want to be able to use those funds for general operations and use a reduction in our levy as an equitable way, if you will, of making things right with the people, that would be great, but that's going to require a statutory change. [LB893]

SENATOR WHITE: Well, yeah, but that would only apply going forward, not to the funds in the current hand. The court is going to have to determine what the status of those funds are. You've collected them under statute, you have them in your pocket. The court might say, well, we declared that statute unconstitutional, those are general funds, since the property owners didn't protest them, they're just general funds in your hands and you can be free to use them as you wish, which means lower your levy. Which is what I suspect they will do, if you ask them. Because they'll say the limitations went away, the individuals right to get them back are only instances they can use, disappeared when they declared that law unconstitutional. But those folks don't have the right to money back. You have them. That, or they may tell you, you get to turn them over to the state. [LB893]

JASPER FANNING: Those alternatives are all in front of the court through our declaratory judgment. [LB893]

SENATOR WHITE: And it doesn't make any sense for us to stick an oar in that water right now. [LB893]

JASPER FANNING: I still see some issues that need to be addressed, even...well, first of all, my limited experience with the court is when there are multiple things in front of them, they won't answer any of them or only one of maybe the three questions that we

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do need answered. And... [LB893]

SENATOR WHITE: Well, we're pretty good at that here in the Legislature too.  
(Laughter) [LB893]

SENATOR CORNETT: Senator Pirsch and then Senator Utter. [LB893]

SENATOR PIRSCH: Would you refresh my recollection (inaudible) In respect to what the statute, we're talking about the original LB701 authorized what has been deemed now by the courts to be unconstitutional in LB701. But if you were to take the express black and white language of that and look at the permissible uses, what were those statutory permissible uses as drafted as approved by the Legislature? [LB893]

JASPER FANNING: In LB701 it was for river-flow enhancement. To pay the cost of river-flow enhancement bonds which were associated with river-flow enhancement projects, typically streamflow augmentation or surface water leasing. [LB893]

SENATOR PIRSCH: Is that...and then the court wholly unconstitutional they said it was the method of collection that was unconstitutional or (inaudible) by which it was. [LB893]

JASPER FANNING: The Supreme Court ruled that that section of LB701 was unconstitutional on the grounds that we were collecting a property tax for a state purpose. [LB893]

SENATOR WHITE: You are aware that the only... [LB893]

SENATOR CORNETT: Wait, Tom, I think Senator...I'm sorry, Senator Utter was... [LB893]

SENATOR WHITE: Oh, I'm sorry. Pardon me. [LB893]

SENATOR UTTER: Thank you, Senator Cornett. Mr. Fanning, your NRD is the Upper? [LB893]

JASPER FANNING: Correct. [LB893]

SENATOR UTTER: Can you...are you here representing all three of the NRDs that are involved with this or are you talking to us about specifically the Upper or can you...I guess my question basically is, does everybody agree with you folk's approach? [LB893]

JASPER FANNING: Let me clarify that Mr. Burke was here representing all three of us. I was not planning on testifying for all three of us. So I am only representing the Upper

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Republican Natural Resources District for the record. But, yes, we generally all agree on this. [LB893]

SENATOR UTTER: Okay, thank you. I missed Mr. Burke's testimony so I'm sorry if I'm repeating the question. [LB893]

SENATOR CORNETT: You stated to Senator Pirsch that the permissible language in the original bill that was passed in LB701 allowed for the clearing of the streambeds, and so forth and so on, but isn't it also to repay the debt to the state? [LB893]

JASPER FANNING: That was not in the original LB701 language. That was... [LB893]

SENATOR CORNETT: Can this money be used to repay the debt to the state? [LB893]

JASPER FANNING: Okay, that's...I believe by the plain reading of the statutory language that was not in LB701 but came, I believe, with LB1094 when the loan was made, allows this money to be used to repay the state. [LB893]

SENATOR CORNETT: So? [LB893]

JASPER FANNING: The legal question that is out there that has not yet been filed is, is repaying the state a state purpose. And I...I hesitate to say things on the record that will be later used against me in the court of law, but (laugh) [LB893]

SENATOR CORNETT: I see...I mean we have statutes in law that say you have to have filed the claim within 30...or your protest. You have six people that have filed. You have this reservoir of money sitting there, one of the purposes could be to pay back the debt to the state. Is there a particular reason why the NRDs have not looked at doing that? I mean, I would assume paying back a debt that you owe would be a state purpose. [LB893]

JASPER FANNING: Forgive me, what was the last part of that, about state purpose? [LB893]

SENATOR CORNETT: I assume that repaying a debt to the state would be a state purpose. [LB893]

JASPER FANNING: I would think so and the Supreme Court ruled that it was unconstitutional to use property taxes, which these are for a state purpose. [LB893]

SENATOR CORNETT: Okay. [LB893]

JASPER FANNING: Because those funds were used to lease surface water. It's

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muddled, at best. [LB893]

SENATOR WHITE: Understand how big this issue is. The state constitution, to my knowledge, identifies one specific purpose for the state. Among them is, to provide for an appropriate education for every child under the age of 19. Okay. That's an articulated state purpose in the constitution that we use property taxes for, overwhelmingly. I just want you to know how big the bear is, you're all poking, is. [LB893]

JASPER FANNING: And I respect that, Senator. [LB893]

SENATOR WHITE: Thank you. [LB893]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB893]

JASPER FANNING: Thank you. [LB893]

SENATOR CORNETT: Next proponent. [LB893]

PETE McClymont: Good afternoon, Chairman Cornett and members of the Revenue Committee. I'm Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I am vice president of legislative affairs for the Nebraska Cattlemen. I am simply here as our board voted last week in support of this bill and we wanted to be on the record to state that on LB893. [LB893]

SENATOR CORNETT: Questions from the committee? Seeing none. [LB893]

PETE McClymont: Thank you. [LB893]

SENATOR CORNETT: Are there any further proponents? Are there any opponents? Is there anyone here...oh, I'm sorry, go ahead. Anyone here to testify in a neutral capacity? Sorry, Larry, I thought you were getting up as an opponent. [LB893]

LARRY DIX: I knew my time was coming. Senator Cornett and members of the committee, for the record my name is Larry Dix, spelled D-i-x. I'm executive director of the Nebraska Association of County Officials appearing today in a neutral capacity. Certainly, I would say our county treasurer from Hayes County, we appreciate her making the trip in here to testify. And from a county perspective we're, as you can tell from the hearing, we're really, really sort of caught in the middle here because we were the collecting entity of those funds. But I would tell you there was a lot of discussion about, you know, do we offset the levy, do we refund it? I would tell you it's very much...it's not a perfect system and the further we go down the road, probably the more difficult this gets. One thing to keep in mind, I know some people have voiced some

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concern about, if down the road the property belongs to someone else at a later time, similarly, I think, I believe this is correct, if I were to purchase a property from somebody that would have a 100 percent homestead exemption on the property, for a small period of time I would get the benefit of that 100 percent exemption until the next tax year. So again, I state it's not a perfect system. We don't go back and try to do that in that fashion. So the homestead exemption is really an example of that. I would tell you there are other examples of that where through different reasons some folks have levied an incorrect amount, and when that happens that stays on the books for a year because people pay the tax, and the following year that levy is reduced and people come back and pay a different amount. And in subsequence the following year a number of those parcels have turned over and different folks own them and things like that. So that's not unprecedented. I think what we're looking at here, it may look a little bit larger because now we're looking at almost a four year period of time. But that's not unprecedented. Those things do happen. And so, you know, we certainly are here willing to help through that process in any way, shape or form. But at the end of the day, you know, I think we've just got to do what's right to the citizens. We're very much aware of the court case that's going on and anxiously awaiting to see what happens, the outcome of that case. So with that, I'd be happy to answer any questions anybody might have. [LB893]

SENATOR CORNETT: Seeing none, thank you. [LB893]

LARRY DIX: Yeah. [LB893]

SENATOR CORNETT: Is there anyone else in a neutral capacity? [LB893]

LYNN REX: Senator Cornett and members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities, and we're here today in a neutral capacity. Our concern is simply that the bill in its current form would, we think, impair ability to sell bonds in the future. So that's why we're here and we're concerned about that. We are very sympathetic, however, to the issues that have been brought forward to you by proponents. We just don't think this is the answer. I'd be happy to respond to any questions. [LB893]

SENATOR CORNETT: Seeing none, thank you. [LB893]

LYNN REX: Thank you. [LB893]

SENATOR CORNETT: Are there any further opponents or neutral testimony? That closes the hearing on LB893...oh, I'm sorry. No, Mark, I was just going to...(Laughter) [LB893]

SENATOR CHRISTENSEN: Thank you. I think this has been much better discussion than we had on the LB681 and I guess what I might state is the fact that, to Senator

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White, I think the court could elect not to rule on this and declare a remedy. Because they could say, you know, there's a statute that says if you didn't apply for it within six months, then you have no rights to that money. We still would have said in the situation, who does the money belong to? That has been a question of the NRDs. If we could say that it...if this committee could even make the declaration, send it to the floor that says this money will escheat to the NRD and that the four things that it's supposed to be spent for, bonding, for the bonding. It doesn't have to be used for repayment of bonds which was for vegetation, surface water, by (inaudible) augmentation, acre retirement, if it doesn't have to be used for specific purposes, then it belongs to the NRDs, then they could lower the levy and send it back. Every one would have it very clear what they got to do. This thing would be over and done. Is there anyway this committee can make a declaration that would say that this money escheats to the NRDs so we clearly knows where it goes, that the repayment of river-flow enhancement bond does not apply because it's unconstitutional, then this could be reduce the levy other than the ones that deserve their check back that applied for, this whole issue would be over. [LB893]

SENATOR CORNETT: Senator Christensen, why didn't you bring us a bill that said that basically, that a tax that was collected unconstitutionally reverts back to the taxing authority? [LB893]

SENATOR CHRISTENSEN: I guess I didn't think about taking it that direction. [LB893]

SENATOR CORNETT: Senator White. [LB893]

SENATOR WHITE: Senator Christensen, there may be an issue right now because property always belongs somewhere and there's a statute on point that says if the owner of property can't be found, it's deemed abandoned property and it belongs to the state. So if, for example, NRD doesn't own it and can't use it, and the taxpayers have lost their right to get it back, it's the property of the estate. So... [LB893]

SENATOR CHRISTENSEN: Or does it go back to the treasurer for unclaimed property? [LB893]

SENATOR WHITE: Well, exactly. [LB893]

SENATOR CHRISTENSEN: Well, if it's unclaimed property, then they could get it back through there. [LB893]

SENATOR WHITE: Well, the NRD can't. The state of Nebraska gets it. Now the state of Nebraska may decide, for example, that they would forgive part of the debt based on the unclaimed property. I don't know the law about that. But the real issue here is, this property may already belong to the people of the state of Nebraska, and we're being asked to give it back to somebody who doesn't have a legal claim to it and that's

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unconstitutional. Anymore than the state of Nebraska, we could just pass a law say, give Joe Furnorki a million dollars out of the treasury because we like him. We can't do it. [LB893]

SENATOR CHRISTENSEN: Right. [LB893]

SENATOR WHITE: So if it's already gone, that's why I'm really concerned that the courts have to tell us, okay, what's the status of the property. Now going forward, if this happened again, could we pass a law to make it more clear in the future? Probably, certainly. But I don't know that we have the power to dispose of property that's already in limbo like this. I think it's in the hands of the court. [LB893]

SENATOR CHRISTENSEN: Well, my concern is the court may not rule. [LB893]

SENATOR WHITE: Well, let's cross that bridge when we come to it. I think if somebody asks them, if, for example, they have a ruling and they say no, you know whatever it is, then what happens, the NRD says, what do we do with...what are we entitled to do with the money? And then you'll get a ruling. You ask that question. [LB893]

SENATOR CHRISTENSEN: Well, that question has been proposed and... [LB893]

SENATOR WHITE: Then we'll find out what they say. [LB893]

SENATOR CHRISTENSEN: Attorney Burke that's here is the one that led that for all three NRDs. [LB893]

SENATOR WHITE: Let's just hope the court does it's job and tells us. [LB893]

SENATOR CHRISTENSEN: So my fear was, and that's why I brought this, was were not going to get the right ruling because he's going to say, here's the statutes for six months, that's it. We still don't know who it belongs to. [LB893]

SENATOR CORNETT: At that point I think it's what Senator White's point is, it would be unclaimed property and would go back to the state. [LB893]

SENATOR CHRISTENSEN: So I'm not sure...I've had several people read that statute and I'm not sure everybody agrees with that either. I think that's a little unclear. [LB893]

SENATOR WHITE: That's what courts are for. [LB893]

SENATOR UTTER: Spoken like a true high dollar lawyer. (Laughter) [LB893]

SENATOR CHRISTENSEN: So you know, I guess...you know, I'm a little bit confused

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what to even ask for here because, you know, if we can't get some type of declaration of who does it really belong to, then we're still sitting in the same situation. If the court doesn't do it a year from now, I've got to try and think of something else to bring back because we're still in limbo, or they got to try and file another lawsuit. And that's the last thing we need is another lawsuit. We need to get this settled. So that's what I'm asking for. I'm just here asking for help. How can we settle this issue, determine who has it, or how it can be returned? Thank you. [LB893]

SENATOR CORNETT: Thank you. Thank you, Senator Christensen. I move we go into Executive Session for a minute. Senator Utter had some questions yesterday. [LB893]