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Revenue Committee
February 25, 2010

[LB802 LB917 LB1066]

The Committee on Revenue met at 1:30 p.m. on Thursday, February 25, 2010, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1066, LB802, and LB917. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Galen Hadley; LeRoy Louden; Pete Pirsch; Dennis Utter; and Tom White. Senators absent: None. [LB1066]

SENATOR CORNETT: Senator Abbie Cornett, and I'm from Bellevue; to my left, Senator...Vice Chair, Senator Dierks who is introducing the first bill; to his left will be Senator Greg Adams from York, and Senator Galen Hadley from Kearney; on my far right is Senator Pete Pirsch from Omaha; Senator Dennis Utter from Hastings; Senator LeRoy Louden from Ellsworth, and Senator Tom White from Omaha. The research analysts today are Steve Moore to my right and Bill Lock to my left. Committee clerk is Erma James. The pages today are Abbie Greene and Ryan Langle. Before we begin the hearings today I'd advise everyone to please turn their cell phones and pagers to either off or vibrate while in the hearing room. Sign-in sheets for testifiers are located by both back doors and need to be completed before coming up to testify. If you're testifying on more than one bill, a form needs to be completed for each bill. Please print and complete the form prior to coming up. When you come up to testify, please hand those forms to the committee clerk. There are clipboards at the back of the room to sign...with sign-in sheets if you do not wish to testify but wish to have either your support or opposition to a bill indicated in the record. We will follow the agenda posted on the door. The introducer or representative will present a bill followed by the proponents, opponents, and neutral testimony. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, please state and spell your full name for the record. If you have handouts, please bring ten copies of those handouts for the committee and staff. If you do not have copies, we will make them for you. When you come up to testify, hand the copies to the pages. With that, we will begin the hearings on LB1066. Senator Dierks, you are recognized to open. [LB1066]

SENATOR DIERKS: (Exhibit 1) Thank you, Chairwoman Cornett and members of the Revenue Committee. My name is Senator Cap Dierks, spelled C-a-p D-i-e-r-k-s, and I represent the 40th Legislative District. It's a pleasure to introduce LB1066, I think, to the Revenue Committee. (Laughter) You may remember that last year I introduced LB583, a bill that would have taxed all services except medical services. That bill also included a tax on food, which is probably the most controversial provision in that bill. My purpose in introducing LB583 was to expand the sales tax base and use the revenue to reduce property taxes. The bill I'm introducing today, LB1066, takes a more limited approach to taxing services. It is still my intention to reduce property taxes with this additional revenue. I've asked for an amendment, AM1997, to be drafted which was handed out to the committee. The amendment creates the property tax relief fund and money collected through this bill would then be used for property tax relief. LB1066 was drafted

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

Revenue Committee
February 25, 2010

to include the services taxed by our neighbor state of Iowa. Some of these services are already taxed by Nebraska but most of our services we don't tax in this state. The significant expansion of services taxed under this bill include barber and beauty shops, automobile repair services, dry cleaning and laundry services, lawn care, and home remodeling services. During my 20 years in the Legislature, the number one request I receive from constituents and citizens all over the state is for property tax relief. Farmers and ranchers in particular are telling us how much they need our help. We heard their pleas for help last year at all three of our interim study hearings, Bloomfield, Hyannis, and Scottsbluff. I want the dialogue on tax relief to continue. I want to find a way to provide real property tax relief and I appreciate the committee's attention to LB1066. When I visit with my constituents we talk about the tax issue. I tell them that there are probably two ways to reduce property taxes. One is by reducing the need for the tax, and the other is by doing a tax shift. Well, we can't reduce the need because the services we get that we pay the taxes for continue to go up. Salaries go up every year whether it's in schools or whether it's at the county level. Supplies go up every year, just like they do on my ranch. So we're not reducing the need and I don't see how that can be reduced. So then we'll look at the tax shift and that's what this bill does. That's what the bill did last year. We think that we were fairly careful in getting this bill put together by including the taxes that are only collected by Iowa, a neighboring state. So it would be difficult for someone to say, well, we're going to have problems with border bleeding because we won't because we're doing the same thing that Iowa is. I know that there are a lot of people who were upset with this. It just follows that nobody likes increased taxes. My whole purpose is trying to figure out some way to remedy the property tax problem we have. I know that the bill is not going anywhere. It's not prioritized. This is just more or less my day in court and I know we'll hear from lot of people that will give me a good lesson in my court today, (laughter) but with that I'd quit and take any questions you might have. I think I can tell you there probably won't be anybody here in support of the bill, but... [LB1066]

SENATOR CORNETT: Senator Pirsch and Senator Hadley. [LB1066]

SENATOR PIRSCH: Just briefly and I appreciate the summary of the bill that was handed out to us. It says that significant additions to Nebraska sales tax law that would be found in the bill include auto repair, barber and beauty services, dry cleaning, solid waste, and recycling services. Do you know which industries really would be most affected by the bill or in terms of dollars where you would collect, which industries would because of the nature (inaudible) you know, the scope of the industry would be contributing the most in terms of dollars? [LB1066]

SENATOR DIERKS: I really don't, Senator Pirsch. We just put all of them into the bag and shook it up and this is how it came out. We do have a little information available on the fiscal note if you look at that. They don't tell you each individual service that you're asking about but they tell you that the revenue collected they think would be about \$44

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

Revenue Committee
February 25, 2010

million. [LB1066]

SENATOR PIRSCH: The total when you add them all up together? [LB1066]

SENATOR DIERKS: Yeah. And that's the first year and \$92,000 the next year. [LB1066]

SENATOR PIRSCH: Ninety-two million. [LB1066]

SENATOR DIERKS: Ninety-two million, I'm sorry. But the point being that there's a lot of money that's available there and this isn't all the sales tax that we have. That's just this particular sixty or so items that we have. And then, of course, the argument is going to be, well, so what if we did adopt your bill and we started collecting these taxes and put them into a fund to take care of property taxes. The needs are going to continue to go up. It's not going to stop. It's going to get bigger and bigger and bigger, and so it's just kind of a stopgap measure. [LB1066]

SENATOR PIRSCH: And do other surrounding states, you know, Kansas, Missouri, Iowa, South Dakota, Colorado, do they...how do they approach these services in terms of whether they're taxed or not? [LB1066]

SENATOR DIERKS: You know, I'm not sure about the property taxes in those states. I know that there's a problem in Kansas because I've lived there and I know they have a big problem. I think there's a problem with property taxes in South Dakota. But South Dakota doesn't even have an income tax. [LB1066]

SENATOR PIRSCH: Sure. The property tax is what you want to help out or remedy but with respect to the taxes that you're proposing expanding here to cover industries that have not to this point or services that have not yet been covered, do other states routinely tax those services in nearby states? [LB1066]

SENATOR DIERKS: Someplace I read where all the states around us do that but I know for a fact that Iowa does and that's what we patterned this bill after. But I've heard other information that I've got says that this same thing is done around us. So I don't think we're in an island by ourselves by doing this. No one likes it and I don't blame them. That's just...they don't like taxes but somehow or another we've got to find some way to remedy the property tax issue. And I'm not concerned about the personal property tax thing. I'm concerned about the real property tax thing. [LB1066]

SENATOR PIRSCH: Thanks. [LB1066]

SENATOR CORNETT: Senator Hadley, then Senator Utter. [LB1066]

SENATOR HADLEY: Senator Cornett, thank you. Senator Dierks, thank you. I...just in a

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

Revenue Committee
February 25, 2010

nutshell, Cap, why do you think there's such a concern on the property taxes? Is it an equity issue, a fairness issue between ag and city, is it just that people just don't like that form of taxation or...? [LB1066]

SENATOR DIERKS: Well, the whole thing is based on the formula, I think, Senator Hadley. And I think we've tried to restructure the formula but we can't get it done. It's just hard to do that. You know, if we could copy some of our neighbors' property tax...I'm not sure I could direct you to the right neighbor to do that, but I think there are places out there where it does work. But this becomes so onerous that...when we went across the country with our hearings, you know, I asked several places when the people came in and testified how terrible this property tax thing was, I asked...I remember asking a rancher out at Scottsbluff, I said, if you were making a profit on your ranch operation today, if your cow-calf operation was making a profit, would you even be here complaining about this tax? He said, probably not. But it's just gotten so overwhelming and the profitability in ranching today is not very good. So it's just ganging up on them, that's what's happening. [LB1066]

SENATOR HADLEY: Thank you. [LB1066]

SENATOR DIERKS: Yep. [LB1066]

SENATOR CORNETT: Senator Utter. [LB1066]

SENATOR UTTER: Well, thank you, Senator Cornett. Senator Dierks, is this an exact copy of a bill, of a list of the services that are being taxed in Iowa? [LB1066]

SENATOR DIERKS: Pretty much exact. And actually we have some services in here that we are saying would be taxed that already are taxed. We got a list of those from the Department of Revenue the other day so we know some taxes that we listed... [LB1066]

SENATOR UTTER: There's some duplication then maybe in here. [LB1066]

SENATOR DIERKS: Yeah. Yeah, yep. [LB1066]

SENATOR UTTER: You know, your statement is well taken with the property taxes and I think it's largely become an economic issue, frankly, with some of the folks in the rural areas. I guess I would just report that the statement I think that really came home to me was the rancher, I think it was in Hyannis who had figured out what his tax burden was per calf produced. And it was approaching \$90 a calf. Well, he said that was the biggest single item, single category of expenses on his ranch. And I can understand where the problem is and I commend you for your work in trying to solve that problem because I think it is a burden that needs some adjustment. I don't think there's any question about that. Whether or not this is exactly the right way or not, I guess that remains to be seen.

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

Revenue Committee
February 25, 2010

But I appreciate your work on this. [LB1066]

SENATOR DIERKS: Well, you know, it's not going to be popular. I don't expect a lot of support for the bill but I want people to be able to come and talk about it. This is one of the beautiful things about our Unicameral system, I think, that the citizens can come and raise hell with us if they want to. They can praise us if they want to but that's their opportunity to come and express themselves. And I appreciate...I think that's so important for us to have that. [LB1066]

SENATOR UTTER: I agree. [LB1066]

SENATOR CORNETT: Senator Adams. [LB1066]

SENATOR ADAMS: Thank you. I didn't know they could also praise us. (Laughter) I've not heard that half. Senator, I realize and appreciate your motives with the bill and so forth. Let me ask you a broader question, a tax question, something that when Senator Pahls brought his ideas forward I've been thinking about a lot and maybe you have a response and maybe you don't. But let's say that we were to pull out the package of services and start looking at them and however we go. Let's say we tax all these services or we decide we're going to tax all of them and then we start backing off on some for some rationale, either because if it's food it's regressiveness or whatever it may be. Border competition may be another one. If we were to do something like this, do you also think that we also have to consider this idea of border bleed in a different way and that is, are there services out there that it really doesn't matter whether Iowa is taxing them or not or if Nebraska decides to and Iowa doesn't because if I wanted to have my tax return prepared, the reality is I could walk down the street to the person in York that I have do it or I could probably pick up the phone and call anybody in the United States and have it sent to me via computer, bingo. There are no borders on things like that. And should that be a consideration when we're...when and if we were going to look at something like this? [LB1066]

SENATOR DIERKS: Well, I think you have to consider it. You know, a number of years ago when Stan Schellpeper was still in the Legislature and he introduced the sales tax bill for Nebraska and he did it based on what South Dakota did, and his was going to tax even medicine. Well, it came home to haunt him that that wasn't going to work because South Dakota had to even come back in special session after they passed this kind of a bill and removed the medical profession from the taxes. Another thing that happened a few years ago and I think most of you have heard about it, but I introduced a piece of legislation for some people that was called the transaction tax. And I've kind of forgotten how much it was but I think it was a penny for each sale for both the buyer and the seller. And they had it figured out that that...and that included bank transactions, that included every sale transaction in the state. Kind of like a flat tax. And it would have...as I recall, they done quite a lot of calculating on it. As I recall, that 2 cents that was

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

Revenue Committee
February 25, 2010

collected for that total sale would take care of all of our property and income taxes. Get rid of all of them. That particular tax would take care of all of our needs. Now, that's pretty drastic, you know, but that's what they came up with. So, I mean, there's some other things you can talk about. But I wish we could figure out some way to reduce the need. If we can't reduce the need, we need to find some way to find relief for the people that have to pay for that need. [LB1066]

SENATOR WHITE: Any other questions? Senator Louden. [LB1066]

SENATOR LOUDEN: Yes, thank you, Senator White. Well, Senator Dierks, I admire what you're trying to do. All of us have our issues. I've been working on small schools and roads ever since I've been down here and you've been working on property taxes and I commend you for it. As I see your bill, I remember here about what, two or three years ago when we did \$75 million for property tax relief and everybody got about \$75 back on every hundred thousand dollar valuation. And that worked for what, a year or so, and about the next year they raised their valuation up and the \$75 million evaporated. And as you say, to find, take care of the needs and until we find a way of controlling usually in most of our areas it's school spending because that's about 65 to 70 percent of our property taxes goes for funding schools, whether it's community colleges or the local schools. So somewhere in there unless we get a handle on that, whatever we do I don't think seems to be of any value because as we've pointed out, a lot of these ranches and stuff about anywhere's from 25 to 30 percent of their gross income is going to property taxes now. And I can attest to that from the operation I run. So somewhere along the line, I mean, this is fine if you can get it to work, but somewhere or another along with it we certainly have to have a way of cutting the needs down. Have you done any work on cutting the needs? Is there...should we set it up so that there's only so much per pupil that these school districts can get from the state or how much should the state furnish for education? [LB1066]

SENATOR DIERKS: Well, those figures are available but I don't know if that answers the question because if the need is there and there's not enough money in the General Fund to take care of the need, we're going to have to go to property taxes and that's what we seem to have done. And I agree with you, and I said early on, so what if we did something like this? How many years would it be before we were back behind the eight-ball again, you know. It's a never ending situation but some way we've got to come to grips with it and I'm hoping that we can use this bill if nothing else...I know it's not prioritized, I know it's going nowhere and I know that, but I just wanted to be able to talk about it before this committee and maybe use it as a stepping stone for an interim study and keep us working on that issue. [LB1066]

SENATOR LOUDEN: Thank you. [LB1066]

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

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

Revenue Committee
February 25, 2010

[LB1066]

SENATOR DIERKS: Thanks, folks. And thanks for your continued patience. I think it will take a little. [LB1066]

SENATOR CORNETT: With that, we will open the hearing to proponent testimony. Are there any proponents? Opponents? [LB1066]

RON SEDLACEK: (Exhibit 2) Madam Chair and members of the Revenue Committee. For the record my name is Ron Sedlacek, and that's spelled S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce. Also have been asked to speak and to sign in on behalf of the Omaha Chamber of Commerce and also the Nebraska Grocers Association to save the committee a little bit of time and less repetitive testimony. We would, just for the record, like to enter our opposition at this time to several of the service taxes that are being proposed. As the committee statement of intent mentioned there is a little over 60 some services that would be proposed to be subject to a service tax in Nebraska. And in reviewing these we've identified probably 34 to 35 of those 60-plus services that would be what we would consider business to business transactions. And that's where we usually run afoul in regard to legislation when we're taxing various incremental portions of a business, because those are all added to the cost and we've always felt that when there is a service tax that we take a look at what has been previously studied by the Legislature, which the recommendations seem to be fairly consistent that is to tax the ultimate consumer as opposed to the various transactions so as to avoid pyramiding of taxes. The...and in particular, this is, has more sensitivity to our smaller businesses because quite often they are not able to afford inhouse services but rather will contract those services out. So as opposed to having them as employed services, they do need to engage others. Also, I have a letter that the Iowa Nebraska Equipment Dealers Association asked me to hand out to the committee members. And essentially their position is that all surrounding states exempt sales tax on farm equipment repair. So this would make Nebraska an anomaly in this regard. In looking at some of these taxes that are being proposed, the committee should be aware that there are a number of items here that would possibly be subject to two or more and in one case, four. It would be the fourth additional layer of taxes. For example, leased cars. Right now, rental, if they're subject to registration, it says in the bill they already pay a sales tax on that car. And then they also pay the motor vehicle taxes which are equivalent to property taxes. If it's 30 day or less rental, you pay a daily rental fee at the state sales tax rate. This would apply to those 60 or less in rental, so there would be an additional tax, we assume, on that particular service. So that seems to be just a little bit too heavy on that particular part. On warranties, when you say buy a new car or appliance and you buy a warranty or you purchase an extended warranty and it's all part of the entire sales price, the sales purchase then...those repairs you pay sales tax on that warranty. And then those repairs are not subject to sales tax because you've applied the package...you've already

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

Revenue Committee
February 25, 2010

prepaid the sales tax essentially on that. Not sure how this would work but it appears that it would be subject to a separate tax. The question in regard to solid waste refuse collection and recycling services is problematic in the sense that we want to incent people to use our solid waste disposal sites, not to avoid that, and to encourage recycling and not subjected to additional taxes. There are a number of areas where, although these are not necessarily business related, the committee might just take a look at those. They're more retail operations, let's say, tanning beds for example are here. Well, they're already subject to sales tax. It's actually an admission tax that's being paid right now and that is equivalent to the state sales tax rate, so we essentially have the admissions tax plus then the sales tax in that regard. Also just point out, service charges of all financial institutions. And the way...this is very...I'm not sure exactly how it works, but if we were to interpret it somewhat broadly and without further refining, we're not only dealing with let's say ATM type transactions, but all processing charges, interchange fees. They would appear to be subject then to the sales tax and that's something that, again, I just want to point out to the committee. So without going into extraordinary detail, one other...I just wanted to mention that did prompt some telephone calls and that was investment counseling services. Again, if you go to a commissioned agent and they do counseling contingent on the sale, then there would really be no tax in that regard, but if you went to someone purely on a counseling basis, there would be sales tax imposed. So there's a little bit of problematic areas there. And again, this is an area where border bleeding would obviously present a policy problem for the Legislature. With that, I'd be happy to entertain any questions. [LB1066]

SENATOR CORNETT: Senator Hadley. [LB1066]

SENATOR HADLEY: Senator Cornett. Ron, thank you for being here. I...and I know you're maybe not representing, but we had the letter from the Iowa Equipment Dealers and I was struck by one sentence, all states surrounding Nebraska currently have exemptions on sales tax on farm equipment parts. As basically an argument of why we shouldn't do it. If you use that argument, then states around us that do tax services, shouldn't we tax those same services? You can't have it...I guess I'm asking, you can't have it both ways. You can't say, other states don't tax something so we shouldn't do it. [LB1066]

RON SEDLACEK: Well, Wyoming doesn't tax income. Does that mean we should not tax income? [LB1066]

SENATOR HADLEY: Well, and South Dakota doesn't. [LB1066]

RON SEDLACEK: Right. [LB1066]

SENATOR HADLEY: Second question. On business to business costs, I guess I think of costs when I'm talking about double taxation is what I'm concerned about. You know

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

Revenue Committee
February 25, 2010

from an accounting standpoint, we talk about inventoried costs. A cost that actually goes into the...actually goes into the part, an integral part of the product that we shouldn't be charging taxes on. Because that does like refuse, would you argue that a business shouldn't pay sales tax on their garbage pickup because that's a business to business cost? [LB1066]

RON SEDLACEK: It's part of the cost of doing business. The...what it really comes down to, it also...but it needs to be taken into consideration that each of these business component, the tax is going to also be deductible expense on that business as income. Now how does that relate and what is the effect in that regard to? So, I mean, there's a carryover effect too. [LB1066]

SENATOR HADLEY: Okay. One last thing. I guess we heard a bill yesterday from Senator Pahls and his main argument is, and I'll use the garbage as example, a consumer at home may pay tax on garbage. I don't know if they do or not but we exempt...or [LB1066]

RON SEDLACEK: No, it's not paid. [LB1066]

SENATOR HADLEY: Well, okay. But we get into a situation where a business might not have to pay tax on something and the consumer at home does. And that was Senator Pahls argument. And I'll just leave it at that. [LB1066]

RON SEDLACEK: Well, it's just...that's a matter of policy for the Legislature to consider and that's whether you want to tax those component parts that make a product separately as an example. If you're a consumer and you're putting something together and you go to the hardware store here and you go to the general merchandise store there and you're trying to cobble something together, you're paying sales tax on all those parts. You are the ultimate consumer. If you're a business and you're trying to put together a number of parts to make a car or whatever it might be, or implement, should each and every one of those parts and each and every one of those transactions be subject to tax. Well, the result is that the ultimate consumer is going to be paying a greater price for that product and I'm not sure why they would want to do so if they can go to...you know, if they can find that same product or manufacture that product, process that product in another state without paying those taxes and to be more competitive nationwide. [LB1066]

SENATOR HADLEY: Thank you, Senator Cornett. [LB1066]

SENATOR CORNETT: Senator Pirsch. [LB1066]

SENATOR PIRSCH: Just briefly. Could you outline for us what if any current service taxes are imposed now in the state. [LB1066]

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

Revenue Committee
February 25, 2010

RON SEDLACEK: I probably could not accurately outline them. I'm not prepared to do that but I'd be happy to get that information and certainly this committee has that, I believe, has that information inhouse as well as it's posted on the Internet as I recall. [LB1066]

SENATOR PIRSCH: Yeah, sure. And that's what I'm saying. I just... [LB1066]

SENATOR CORNETT: We can provide that to you, Pete. Actually, Senator Louden, then Senator Utter. [LB1066]

SENATOR LOUDEN: Okay. Thank you, Senator Cornett. Well, Ron, since you're testifying and the State Chamber of Commerce sees a lot of people, the reason we have a tax is to finance a need. Now, since our biggest need in our property tax is schools, has the Chamber of Commerce come up with any solutions on how we can finance those schools with less need? [LB1066]

RON SEDLACEK: Interesting question. We've weighed in on, over the decades, on that issue. And, as you know, it continually evolves. [LB1066]

SENATOR LOUDEN: Should these schools be financed? [LB1066]

RON SEDLACEK: The definitive solution to answer your question has always been somewhat elusive because there have been a number of attempts in which to provide property tax relief. And one of the major initiatives was additional state aid. And to go through, although we're not involved in the formulation of state aid, certainly, and probably Senator Adams is happy to hear that because he has enough of a constituency to...in that regard, to resolve. The bottom line is that there have been several attempts in which to provide property tax relief. We just continually and perennially come back and say we need more property tax relief. And we'd be happy to be part of other constituencies in trying to give our opinion on it, but I'm not here today nor prepared to give you an answer as to how to achieve that elusive goal. [LB1066]

SENATOR LOUDEN: Do you think that the formula is or the way the system is nowadays is actually fair, because I mean... [LB1066]

RON SEDLACEK: I'm not going to comment on that at this point. [LB1066]

SENATOR LOUDEN: ...since I've been down here, it's went from .95 to \$1.05 and we fought like thunder one year there to keep it from going to \$1.07 and every time they do that the state gets out of paying part of the school funding and it goes back on property tax. Should we look at moving that formula back to 50 cent tax levy or someplace like that? And then the state would have to come up with the money or find...or else have

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

Revenue Committee
February 25, 2010

control of the needs, one or the other. Where would the State Chamber weigh in on something like that? [LB1066]

RON SEDLACEK: I cannot answer that question because I don't know of any particular policy to point to. It would only be speculation on my part. [LB1066]

SENATOR LOUDEN: You don't even think about that when you lay awake nights?
(Laughter) Thank you. [LB1066]

SENATOR CORNETT: Senator Utter. [LB1066]

SENATOR UTTER: Thank you, Senator Cornett. Ron, the...the...I'm not sure exactly how to form this question. But I think it's become painfully obvious to this committee that the property tax, particularly in some areas, is placing a real burden on Nebraskans, particularly in the ag arena. So is the...has the State Chamber weighed in at all with any suggestions as to any ways to alleviate that, to change our tax structure that would relieve what has become a real burden for a lot of our producers? [LB1066]

RON SEDLACEK: Well, it's not only agriculture, when you take a look and although it's going to vary from county to county obviously, so it's not...you take a look at aggregate figures, statistics, as you know, you can use them in different ways. But property tax as far as payment is concerned, when you take a look at the raw dollar amount, you'll find commercial property is much greater than you would suspect and so certainly it's a concern. [LB1066]

SENATOR UTTER: And I think also, there's probably some homeowners out there that also think property tax are a concern. [LB1066]

RON SEDLACEK: Sure. Absolutely. Absolutely. [LB1066]

SENATOR UTTER: So I guess the next step is, is that if we truly believe these things are of concern, some how or another we have to open up a dialogue where we come up with some ideas and I think that dialogue has to extend beyond the doors of the Legislature. [LB1066]

RON SEDLACEK: Right. And this is not a business only driven issue. Obviously, you know, we're dealing with agriculture and homeowners and the business community all have to weigh in and they all may have various different approaches in that regard. We've been supportive of initiatives in the past in which legislators have tried to encourage, for example, consolidations of particular services through interlocal cooperation agreements, to facilitate potential, and again, the voluntary mergers of local governments or services to be shared. So there are a number of issues that we have taken positions on. [LB1066]

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

Revenue Committee
February 25, 2010

SENATOR UTTER: In your testimony, Ron, you indicated that there was 34 of the taxes in the list in Senator Dierks's bill that you thought were problematic. Are there any places in that list, are there any taxes in that list where the State Chamber would say, there's something you ought to be taxing? [LB1066]

RON SEDLACEK: No, there is none. [LB1066]

SENATOR CORNETT: Further questions from the committee? I guess with that last statement, I've got to ask. What would the State Chamber recommend we tax to set to...to fulfill our needs? Would you just want it all on income and property? [LB1066]

RON SEDLACEK: Well, when I made that last statement there's no particular tax. I'm not going to single out one industry... [LB1066]

SENATOR CORNETT: Oh, nothing that you particulary... [LB1066]

RON SEDLACEK: ...or say, okay, well let's just throw this, you know, in there. I'm not prepared to do that. [LB1066]

SENATOR CORNETT: You made a statement earlier about the implement dealers and I've worked with the implement dealers over the course of the last six years. I do understand that the states around us don't tax but it's somewhat unfair to make it...to say that it's just...we don't tax or they don't tax implement dealers because South Dakota has a much broader sales tax base than we do and currently is taxing most of the services that are on this list. Am I correct? [LB1066]

RON SEDLACEK: I believe so. Many more than that's on this list. [LB1066]

SENATOR CORNETT: Pardon me? [LB1066]

RON SEDLACEK: Many more than are on this list, as I understand. [LB1066]

SENATOR CORNETT: Yes, so they may have made a policy decision not to tax implement dealers but they've also made the policy decision to make up that money by taxing a much broader list of services than we're looking at. [LB1066]

RON SEDLACEK: Uh-huh. Uh-huh. [LB1066]

SENATOR CORNETT: Okay. Further questions from the committee? Seeing none. Next opponent. [LB1066]

RON SEDLACEK: Thank you. [LB1066]

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Revenue Committee
February 25, 2010

SENATOR CORNETT: Thanks, Ron. May I see a show of hands for the number of opponents? Thank you. [LB1066]

JUSTIN BRADY: (Exhibit 3) Senator Cornett and members of the Revenue Committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. And I appear before you today as the registered lobbyist for the Nebraska State Home Builders Association, the Nebraska Society of CPA's, and Enterprise Rent-A-Car. I also was asked to submit a letter by the New Car & Truck Dealers Association and to go on record in opposition from the Lincoln Chamber of Commerce. I'll be really brief. Just kind of go back to the homebuilders. They saw the affect putting a tax on their industry had a few years ago and how it really slowed down the building of homes. Given the economy now, they would see that same affect probably ten-fold on how their business would really be hit hard by starting to tax those services. With respect to the CPA's, that goes to Senator Adams comment on, you really could go anywhere in the country to get that done. And, therefore, that's just not, oh, I'm close to a border, that's if I'm close to a computer or a phone call and you could call and have that service leave the state. And Enterprise was the example that Ron Sedlacek spoke about, that right now there are currently three different taxes placed on rental cars. There's the sales tax when you register it, the wheel tax, and then there is a separate rental car tax that this then would then place a fourth tax upon that. And typically your first thought is, well, rental cars, those are people coming in, why not tax the people who are visiting the state? In reality, the majority of rental cars, at least with Enterprise, are rented by Nebraska citizens, either when their cars break down or when, you know, they have family in town and they need an extra car in that process. So with that, I'd try to answer any questions. [LB1066]

SENATOR CORNETT: Questions from the committee? Senator Louden. [LB1066]

SENATOR LOUDEN: Did you say you're representing the PTA? [LB1066]

JUSTIN BRADY: No. [LB1066]

SENATOR LOUDEN: What did you say? [LB1066]

JUSTIN BRADY: CPA's. [LB1066]

SENATOR LOUDEN: Okay. TPA, that's... [LB1066]

JUSTIN BRADY: CPA. [LB1066]

SENATOR LOUDEN: Who is that? [LB1066]

JUSTIN BRADY: Certified public accountants. [LB1066]

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

Revenue Committee
February 25, 2010

SENATOR LOUDEN: Oh, okay. And that's because they don't want the accounting to be taxed? [LB1066]

JUSTIN BRADY: Right. And that would be one of those services that really is portable. I mean, not just get in your car and drive to Wyoming. I mean, you can stay at home and call somebody in any other state and have them prepare your tax returns. [LB1066]

SENATOR LOUDEN: Okay. Thank you. [LB1066]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB1066]

JUSTIN BRADY: Thank you. [LB1066]

SENATOR CORNETT: Next opponent. [LB1066]

KATIE ZULKOSKI: (Exhibit 4) Senator Cornett and members of the Revenue Committee, my name is Katie Zulkoski, Z-u-l-k-o-s-k-i. I'm testifying today on behalf of 12 of our clients who are opposed to expanding sales tax on services. I've provided a list to the committee. That's being handed out. I'd be happy to read that to you unless in the interest of time you'd like to just read those on your own. I'm also testifying today on behalf of the Nebraska Bankers Association. I will not repeat most of the testimony that has been said earlier. I did just want to bring to your attention in the report that was issued to this committee that was written in this December the...it was in that report included that Nebraska already has a relatively high number of services that are taxed compared to other states that are using the retail tax system. Nebraska is counted as taxing 77 services already, which is according to the ranking of states using retail tax, that that is a high number of services that are already taxed. [LB1066]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. Next opponent. [LB1066]

JULIA PLUCKER: (Exhibit 5) Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Julia Plucker, J-u-l-i-a, last name, P-l-u-c-k-e-r. I'm a registered lobbyist for the Nebraska Credit Union League. The League represents 96 percent of the state's 72 credit unions and their 420,000 members. We come in opposition to this bill today because of the specific provision of service charges on financial institutions. Like a previous testifier, we're not exactly sure what's captured in that, but we would consider that a tax increase on our 420,000 credit union members, so, therefore, we oppose. I'd be happy to answer any questions. [LB1066]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB1066]

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

Revenue Committee
February 25, 2010

JULIA PLUCKER: Thank you. [LB1066]

SENATOR CORNETT: Next opponent. [LB1066]

PATRICIA HANCOCK: (Exhibit 6) Senator Cornett and members of the committee, I'm Patricia Hancock, H-a-n-c-o-c-k. My husband and I have Bob's Body Shop, Inc. in Grand Island, Nebraska. And I have quite a few things that I want to share with you that are really, I guess I would say, out in left field in some aspects. In other words, I've got some suggestions and some information to provide to you to possibly look at other ways of raising revenue. So if you don't mind, I'll kind of read through this so it won't take so long to give you the presentation of what I have. Right now, definitely, is not a good time in terms of raising taxes. And as everyone knows with the uncertainty of the U.S. economy, the consumer and the small business owner is overwhelmed by increasing expenses, lower income, and unemployment. By adding sales tax on almost everything performed by small service businesses, a reversal effect on sales tax revenue for the state could be taken. The sky is falling. Small businesses are the backbone of democracy and the sky is falling because they are disappearing. And I'm going to give you an example in terms of a disappearing. Okay, we have two commercial buildings as of the first of January. They are no longer rented. What has happened is those two commercial businesses have downsized. One of them downsized to a smaller building. Another one went to a residential area. Okay, with this downsizing of these two, number one, my income has been lowered, so by lowering my income the state's revenue in terms of income tax is going to be lowered. Okay, the other thing is, is by downsizing these businesses, the utilities which have been extremely high, which has sales tax on it, when you've downsized generally speaking, your utilities are going to be less so you've lost sales tax there. And not only that, when you downsize generally speaking, your sales have downsized so you've lost sales tax there. Now, these are some major concerns that I have about the downsizing of businesses in the state's revenue. And I'm making reference in terms of all the revenue. These downsized businesses may not have proper permits or documents to collect sales tax and reimburse to the Nebraska Department of Revenue. Another thing that we could run into is these downsized businesses will never comply with the requirements on EPA rules and regulations, fire codes, tax laws, never receives penalties or fines, and will compete for years against small commercial businesses complying with rules and regulations set by the government. Comply, can't compete with noncomplying and as you can tell, there are a lot of areas in here where revenue is raised for the state on those scenarios. Another thing with decreasing of the businesses are the increasing number of purchases on the Internet. Okay, anything that deals as purchased on the Internet, why the sales tax is more than likely paid at the time of the purchase and no sales tax will be collected or paid to the state. Another thing that we find in terms of downsizing of businesses that a lot comes about is like barter. Barter or easy to hide transactions and you know when you've got barter, it's very difficult to get your taxes or any revenue on that. Kickbacks.

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

Revenue Committee
February 25, 2010

Some people, you know, in normal businesses and everything, why we know the rumors and all that in terms of kickbacks. When you downsize your businesses you aren't going to be hearing about the kickbacks. And one of the kickbacks that happens in the collision repair industry that comes about in terms of if you operate a tow truck. Okay. It's a common practice for the insurance company to require no tow or storage charges if the collision repair facility is repairing the vehicle. Now with this type of a kickback or barter, however you want to look at it, why you have no gross sale showing up then on the towing and you don't have any also showing up on storage. Towing already is a taxable item. So from these types of little things that are happening with downsizing of businesses, what I've done is I've tried to put together like a goal scenario. And the goal would be like to increase state revenue by coordinating resources in government departments to: A. Provide the incentives for small commercial businesses to remain in business by not increasing taxes; B. Enforce regulations on small businesses operating as residential or noncomplying, and when I'm say noncomplying I'm usually looking at oh, one to three type of members and they're in a small, you know, commercial type building scenario and they have a very easy way of escaping because nobody checks on them or anything like that, so those are the types of businesses usually they're not complying with any of the laws and things; C. is collect sales tax on taxable items purchased on the Internet. And I'm afraid, I think that one really has to be looked at seriously because I think you're losing an awful lot of revenue all over because of not having some ways of taxing on the Internet; and D, this is the real sticky one and it causes a whole lot of problems and everybody gets all excited and all this type of thing but I'm sorry, we're needing to regulate the insurance industry. And I have a whole packet that I will leave with you in terms of information concerning the need of regulation and the lack of regulation of the insurance industry. And it has in there, it has correspondence, outlines, CDs and documentations exemplifying and requesting the regulation of the insurance industry. Now, I throw that out and the reason I throw that out is because I'm just going to briefly give you...and I'm sorry, I'm shaking but it's one of those things I'm trying to get done so that I don't take so much time, is that here are four insurance practices that are resulting because of the lack of regulation and you have lost revenue. A lot of it's, most of it's sales tax revenue on this. Okay. One, in 2002 the refinishing operations sales tax law came into being. The insurance company had an awful time and cannot determine as to how to make that law work. They miscalculated sales tax on everything that was put into there. Constantly. I took it to the Department of Insurance. I said we need to get this all clarified. The Department of Insurance never got it clarified. I went to the Department of Revenue. I asked for the Department of Revenue help in terms of trying to get this paid properly by the insurance industry. They said that they could not help me because it was not in their jurisdiction. I sent a letter to the Governor asking for this to be resolved. I mean, this is the law. They should be doing it. You know, they aren't above the laws, as far as I'm concerned. Okay. The Governor just passed my plea on and passed it back to the Department of Insurance. Here we are back to the circle again. The Department of Insurance wasn't getting it accomplished. To date the Department of Insurance still does not have it

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

Revenue Committee
February 25, 2010

accomplished because just a couple of weeks ago or maybe it's a little longer than that, I sent another letter to them because they still are not paying sales tax properly. So I'm sorry, it's a touchy area but to me they are not above the law and this really needs to be looked into these types of things because you have things in existence right now that will raise revenue if it is being regulated. Okay. The second example that we have in terms of lack of regulation with the insurance industry happens to be the insurers have labor rate surveys have manipulated market based competition and current collision repair labor rates are not fair and reasonable. In our area, collision repair labor rates are at least \$15 less than your small mechanic labor rates. Collision repair labor rates and mechanical labor rates were competitive in 1995 and since then they have just gone completely apart. Now, what does that do? Paint labor is already taxed. So look at how many dollars you're missing right there in terms of the fact that our labor rates have not remained competitive with the mechanicals because in our area you're looking at a \$15 per unit or per labor unit on that. The third way in terms of lack of regulation and again it goes back to the insurers surveys, the insurers are not paying a fair and reasonable amount on paint materials. And these paint materials are according to the industries accepted and impartial reference guide and plus they go ahead and put caps or thresholds on it. So what they've done is they have determined, okay, there...you can basically only charge like say \$34 per paint unit and that's how much you can charge for your paint materials. They don't care what kind of documentation the industry has at all as to whether that's enough or it's not enough. And then they go so far as to say, but, when you get to X number of dollars, say, like \$300, that's it. You can't go above or beyond that even though the survey that they said is going to be so many units per hour on that type of thing. Now, I can tell you from this that in the packet that's on the left-hand side over there, because the right-hand side is all in terms of regulation that I gave her, the left-hand side has got a document in there called, Fraud in the Massachusetts Auto Insurance Industry. And what they did in Massachusetts is they used one insurance company and using that they predicted, by not paying paint materials properly all the number of dollars that was lost in revenue to the state on that scenario. The fourth one that we have in terms is the practice is, some insurers are requiring vehicles be repaired using after market parts without proof that these after market parts comply with Title 210, Chapter 45, After Market Parts Regulation. Since aftermarket parts are less expensive than OEM, there is a sales tax loss on the revenue. Now this just recently is finally coming to a head in terms of the aftermarket parts usage. For years the repairs, the experts in the industry have been saying, whoa, whoa, whoa, these aftermarket parts, you know, there's an area that's scary on some of the things, some not. Okay. The experts have known all along but nobody has been able to take the bull by horns, as you want to say, and do something about it. Well, finally, it has gotten so bad the insurance industry is requiring aftermarket parts to such an extent that the industry is saying, uncle. So the industry has put out the money and they have done some testing and they have found that the aftermarket parts are, some of them, are not equal to OEM and the consumers safety is at risk. So now we've got that in terms of a scenario also. We've got all of these aftermarket parts being put on

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

Revenue Committee
February 25, 2010

vehicles and were basically in the same scenario as Toyota because they're finding that some of these are definitely putting consumers at risk. For more complete information as to this that I've been rattling off and everything, it's on the left-hand side of the packet that's over there. But basically in summary what I'm saying is that you need to use government officials communicating and regulating. The state has the opportunity to implement these suggestions or goals and the ones that I mentioned again were to provide an incentive for small commercial businesses to remain in business by not increasing taxes, enforce regulations on small businesses operating as residential or noncomplying businesses, collect sales tax on taxable items purchased on the Internet, and regulate the insurance industry. My whole kick has been for quite a few years now that if the checks and balances are restored in these suggested areas, the state's revenue increases without passing LB1066. Thank you. [LB1066]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. Next opponent. Are there any further opponents? Is there anyone to testify in a neutral capacity? Senator Dierks, you're recognized to close. Waive closing. That closes the hearing on LB1066. Senator Coash, you are recognized to open on LB802. [LB802]

SENATOR COASH: (Exhibit 7) Thank you. Good afternoon, Chairman Cornett, members of the Revenue Committee. I'm here today...my name is Colby Coash, C-o-a-s-h, and I represent Legislative District 27. Here today to introduce LB802. LB802 addresses an issue that was brought to me by a constituent, Don Daringer, owner of Nebraska Sod. He brought this, attention to me, earlier this year and LB802 is the result of those discussions. LB802 is a very simple bill. It exempts tax on the labor of sod installation. Through our research we have found that Nebraska is one of the only states in the nation which charges sales tax on the labor of sod installation. This is despite passage of LB968 which was passed in 2006. LB968 repeals sales tax on contract labor on remodeling and home repairs. However, sod installation was not included in this exemption repeal. This is because sod layers at the time were not considered contractors. I believe that sod layers are contractors. LB802 rectifies this matter by classifying as contractors those who incorporate sod into real estate. As Don Daringer from Nebraska Sod brought this intent to me, I will defer some technical questions to him. He's going to tell you about problems that he's had with customers in this area. He's going to tell you about his experience in laying sod in other states, and then finally he'll talk a little bit about the necessity of sod. And in closing, I just wanted to thank members of the Revenue Committee staff who assisted us in researching and drafting this bill. Thank you. [LB802]

SENATOR DIERKS: Thank you, Colby. Are there questions for Senator Coash? Senator Louden, please. [LB802]

SENATOR LOUDEN: Well, at the present time are live plants, if you have a tree planted in your yard, the tree is sales taxed, but is the labor to put it in sales taxed? [LB802]

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

Revenue Committee
February 25, 2010

SENATOR COASH: I believe both the sales tax on the product, the tree, is subject to sales tax and also the installation of the tree as this bill only addresses the installation of the sod. And we looked at that and as Mr. Daringer will explain, sod is a necessity for soil erosion. I mean, you wouldn't be able to build a home and not put sod on your property. But if you want to put a tree or something like that, that would be more of an aesthetic kind of thing and that's why we left the nursery types of things off of this particular bill. [LB802]

SENATOR LOUDEN: Well, most of the types of stuff you buy through nurseries, you pay a sales tax on it, isn't that correct? [LB802]

SENATOR COASH: Correct. [LB802]

SENATOR LOUDEN: Yeah, and the sod you'd pay a sales tax on the sod. If you put it in yourself, you wouldn't pay a sales tax on labor. [LB802]

SENATOR COASH: If you put it in yourself, yeah, the labor is on yourself. [LB802]

SENATOR LOUDEN: Same way if you plant a tree because that's the reason I asked. If you have a tree planted, then you pay sales tax on planting that tree? [LB802]

SENATOR COASH: That's correct. [LB802]

SENATOR LOUDEN: Okay. Thank you. [LB802]

SENATOR DIERKS: Other questions? Senator Hadley. [LB802]

SENATOR HADLEY: Senator Coash, thank you for being here. And I don't know the answer to this. If I decide that I want to be old fashioned and use seed to plant my yard and I want to have somebody do it for me, is that labor taxed? [LB802]

SENATOR COASH: I believe it is at this point. [LB802]

SENATOR HADLEY: And would that be exempted under this bill. I don't know. I guess, I'm just asking. Is it something we... [LB802]

SENATOR COASH: This bill addresses only sod. [LB802]

SENATOR HADLEY: Only sod. [LB802]

SENATOR COASH: And if you pay only installation of sod and Mr. Daringer is going to address that issue and I may have spoken incorrectly. [LB802]

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

Revenue Committee
February 25, 2010

SENATOR HADLEY: Okay. [LB802]

SENATOR DIERKS: More questions? I guess not. Thanks, Colby. [LB802]

SENATOR COASH: Thank you. I may waive closing. I'm going to head back to Judiciary. We've got a big one going on there today. [LB802]

SENATOR DIERKS: Okay. Thank you. Anything going on there? [LB802]

SENATOR COASH: Yeah, it's a little busy over there. (Laughter) [LB802]

SENATOR DIERKS: First proponent for LB802, please. [LB802]

DON DARINGER: (Exhibit 8) Good afternoon, my name is Don Daringer. I own Nebraska Sod Company here in Lincoln and we do work in Omaha too but this is... [LB802]

SENATOR DIERKS: Could you spell your last name for us, please? [LB802]

DON DARINGER: It's D-a-r-i-n-g-e-r, Don. [LB802]

SENATOR DIERKS: Go ahead, sir. [LB802]

DON DARINGER: First of all, Senator Hadley you asked the Senator if the bill was seeding, if you hired someone to seed the yard taxable. No it is not taxable because they don't consider when you drill the seed in and the seed hits the ground that that's a living plant. So I've never understood that myself as comparison. (laugh) Anyway, what I wanted to talk to you about is the sales tax on the installation of sod and some of the problems that I'm encountering. You got kind of a copy of a letter and I'll just kind of go through that and summarize it. I won't take a lot of time. But it is frustrating. I have people, I'll name names, from the Department of Revenue that I automatically give them their number and tell them to call them because people don't want to pay you for it. They're saying that when they did the bill back, LB968 in 2006 that all labor was exempt and they don't consider our labor, labor that is exempt from sales tax. And I've never understood it. But anyway, I'll go ahead and get started. There's really two points I would like to address in regarding LB802. The first point will be to get Nebraska sales tax on labor of installation pertaining to new construction only to match that of our neighbor states. Currently, Iowa, Colorado, Kansas, South Dakota charge sales tax on the material of the sod but Nebraska, whereas pertaining to construction, currently Iowa, Colorado, Kansas charge sales tax and we do not in Nebraska...as we do in Nebraska, excuse me. But they don't charge sales tax on labor of the installation of sod. The Turf Producers International, a national organization, sent out a request to various farmers

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

Revenue Committee
February 25, 2010

from various states asking them how they handled the sales tax on the material and the installation of sod along with some other trucking issues, etcetera, but various other tax issues. The report indicated that Nebraska was the only state that was charging sales tax on the installation of sod. And there were several states there that didn't even charge sales tax on the material. It's exempt. Here in Nebraska of April, 2006, our government signed what they called LB968 which repealed the sales tax on labor on remodeling and home repair. We feel the sod should have been removed along with those changes and I feel it was an oversight and I am trying to correct it now. Now we have some builders that don't want to pay sales tax on the sod installation because they feel they don't owe it. And for some reason, all labor on all new construction whether it be from painting a house, framing, brick laying, etcetera, is exempt from sales tax. But labor from sod installation never received this exemption. So I mean I get a lot of phone calls, people are really upset and they refuse to pay. And I'll tell you right now, times are tough for us in the sod business because housing is down. You know I end up paying the sales tax on it to keep a customer happy in a lot of situations because it's a matter of survival. The second point will be to do with the new federal mandated erosion control regulations. Sod has become more of a necessity than just a luxury. And what I want to talk there just briefly that the government's requiring that, for example, on construction of a house or whatever it be that they got to have like a 70 percent ground cover on that dirt. And I think we got a few farmers in here that if you plant a lot of native grass, which probably should be planted on a lot of these, it takes, you know, two, three years to get a stand of grass. And that's not what they want to hear. So anyway, the feds are requiring more guidelines for the cities, the states, everyone to follow and I really feel that sod is becoming more and more a necessity than anything and it provides, in so many words, immediate relief from soil erosion. In large municipalities this is becoming a larger problem because of the EPA. See the Clear Water Act, Civil Penalties, Attachment B. And that's going to show you some of the fines that have been issued to people for not controlling this problem right here in Nebraska. It shows you what people are noncompliance. Pay close attention to the ones marked with an asterisk. Please note on these attachments who it is that is being fined. You're probably shocked to see how many of our cities and state departments are being fined for noncompliance. If we could just eliminate this, this would probably more than offset the sales tax that the state will be losing. I'd like to thank you for considering this bill. What I'm asking is that three words be added to the current statute, except for sod, which is line 10, page 2, on the bill. We feel in the industry that we are being singled out from the other people in the trades and we would like to be more considered, making us more like with the other tradesmen in the construction industry are doing. And I guess I'd like you to look at the...some of the fines that have been issued and I think you see the state of Nebraska is one of the bigger ones on there. But with that I would answer any questions you have. I apologize I'm not used to doing this here, so bear with me. [LB802]

SENATOR DIERKS: Thank you, Mr. Daringer. Are there questions for Mr. Daringer?
Senator Louden. [LB802]

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

Revenue Committee
February 25, 2010

SENATOR LOUDEN: Do people that do landscape work do they charge sales tax on their labor? [LB802]

DON DARINGER: You know, I...as far as, you know you probably should ask someone from the tax department but as I understand, labor is taxable for landscaping such as for trees, shrubs, bushes, they have to charge sales tax on the installation of labor. I'm saying from the sod industry, you can put a tree in your yard anytime you want to put a tree, but these builders and contractors, I think you have a few who maybe come up for you and tell you what happens if the dirt washes out on the street or on the neighbors property or into a pond or whatever, what's happening, so it is a problem. [LB802]

SENATOR LOUDEN: Now, do you...when you put that sod in then do you work through the person who is doing the landscaping or do you do it as a separate item with the homebuilder or the construction company yourself? [LB802]

DON DARINGER: Yeah, that's a good point. I would say, it's a combination of both. So many people call sod landscaping but as far as people that grow trees and shrubs, they're really a separate group of people from people that grow sod. We just do sod, they just do trees and shrubs. And like when a nursery will call for a particular job, they'll ask for a bid. They don't grow sod. [LB802]

SENATOR LOUDEN: Well, I realize that. They don't even grow the trees. They usually ship them in... [LB802]

DON DARINGER: Well, whatever. [LB802]

SENATOR LOUDEN: ...from some place. And because the reason I know this is, my daughter is a landscape designer and that's the reason and usually they...someone contracts for them to landscape the yard and they do the trees, the sod, the whole works. And that's the reason I'm wondering, are you doing business with that homeowner or are you actually doing business with whoever is contracted to do the landscaping? [LB802]

DON DARINGER: What we mostly do, it's probably 95 percent of our work is with contractors like builders, commercial buildings that they build. Usually, once in a while, we'll work with a landscaping company. They'll call and ask for a bid and we'll give them a bid but I would say that 95 percent of our work or 90 percent of our work is where we work directly with the builder or the homeowner. [LB802]

SENATOR LOUDEN: Okay. Thank you. [LB802]

SENATOR DIERKS: Other questions? Senator Utter, please. [LB802]

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

Revenue Committee
February 25, 2010

SENATOR UTTER: Senator Dierks, thank you. Mr. Daringer, so let me get this straight. Are you asking that just the labor be exempt from taxes or are you asking for the sod and the labor be exempt? [LB802]

DON DARINGER: I am asking for the labor to be exempt. [LB802]

SENATOR UTTER: Just the labor. [LB802]

DON DARINGER: Just the labor. [LB802]

SENATOR UTTER: Okay. Then my next question would be, if you contract with a homebuilder to install the sod, how do we separate out the labor for installation from the cost, the actual cost of the sod? [LB802]

DON DARINGER: That's a good question. On our invoice we break down material and we break down labor. So if the builder wanted to buy the sod and do it himself, that's fine, he's going to have to pay tax on the material. If he hires us to go ahead and install it, we have to break down, there's a charge for that too. So it is broken down so we do know. But a good question. [LB802]

SENATOR DIERKS: Senator Hadley. [LB802]

SENATOR HADLEY: Thank you, Senator Dierks. A quick question. I don't know, Mr. Daringer, whether you were involved in, what 2006, whenever this other bill was put that exempted contract labor. Do you know kind of the reasoning that we exempted the contract labor from sales tax? [LB802]

DON DARINGER: You know, I was not involved and I am a member of the Home Builders Association and they worked very closely on it and I think they could answer. I mean, I was always understanding that it also included sod too, and I think they were too. But the president of the Home Builders Association, Lincoln, is here and I think that he would be a good one to answer that question rather than me. [LB802]

SENATOR HADLEY: Okay. Thank you. I will. Okay. Thank you. [LB802]

DON DARINGER: I'm just an old farmer here trying to make a living. (Laughter) [LB802]

SENATOR DIERKS: Other questions? [LB802]

SENATOR HADLEY: I bet your crop only grows about this high, right? No. (Laughter) [LB802]

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Transcriber's Office

Revenue Committee
February 25, 2010

DON DARINGER: Sometimes. (Laughter) [LB802]

SENATOR DIERKS: I think that's all, Don. You're...thanks for coming over. [LB802]

DON DARINGER: Okay. Thank you. [LB802]

SENATOR DIERKS: Anyone else in support of LB802? [LB802]

MIKE REZAC: (Exhibit 9) Good afternoon. My name is Mike Rezac, R-e-z-a-c. I am president of the Lincoln Home Builders Association here in support of LB802. LB968 signed by Governor Heineman in April of 2006 repealed the sales tax on labor on remodeling and home repairs but due to an oversight, labor on the sod was not included. LB802 would correct that oversight by exempting the labor on the sod. We would mirror what is done in Iowa, Colorado, Kansas and South Dakota. These states charge sales tax on sod, the material, but not on the installation. In addition, because of the federally mandated erosion control regulations, sod has become a necessity, not just a luxury. Sod gives immediate relief from soil erosion and protects the environment. I would ask you to consider passing LB802. Housing is what drives the economy and provides homes and securities for our family. Thank you. And I'll take any of your questions. [LB802]

SENATOR DIERKS: Thanks, Mike. Questions for Mr. Rezac? Senator Hadley. [LB802]

SENATOR HADLEY: I'll ask you the same question. What was kind of the policy behind exempting the contract labor? [LB802]

MIKE REZAC: And I wasn't directly involved in that aspect of it but, you know, I think just that whole labor...as far as tracking was the issue of keeping track of how you were going to track all of that labor on all those different aspects, it was just...it was going to become a total nightmare and it was for a short period of time for the housing and for subcontractors. [LB802]

SENATOR HADLEY: If I could ask one other quick question also. This is in no way just an interpretation by the Revenue Department as to what they are going to tax in contract labor and not. I guess I'm asking...and I haven't had a chance to completely read it, but this isn't the Department of Revenue just saying we're going to tax sod labor? Did that question make sense? [LB802]

MIKE REZAC: And I'm not sure. I guess... [LB802]

SENATOR CORNETT: It's not an interpretation. It's just not there in the law. [LB802]

SENATOR HADLEY: It's just not there. It's not a determination. Okay. [LB802]

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Transcriber's Office

Revenue Committee
February 25, 2010

SENATOR CORNETT: No, I was on the committee when we passed that. It's not...wasn't included in it. [LB802]

SENATOR HADLEY: Okay. That answer the question. Thank you. [LB802]

SENATOR DIERKS: Other questions? I guess not. Thank you very much. [LB802]

MIKE REZAC: Thank you. [LB802]

SENATOR DIERKS: Next proponent, please. [LB802]

DAN KUBR: Thank you for the opportunity to address you. My name is Dan Kubr, K-u-b-r. I'm a local builder, developer. Sorry to say, you'll find my name on that list that Don provided you with fines for surface runoff and mud on the street and stuff from a project we did. And I want to concur with him on the fact that getting ground cover in is more important than ever because of all the things that are happening federally. I'd like to address a little bit of the confusion that having one item of labor for sales tax in our budget or bid budget, if you want to call it, for the construction of a new home when...the way the industry does it is most things are quoted without tax. We know to add tax on our materials because everything is taxed typically in Nebraska as far as the material. We also know as an industry that labor on construction has not been taxed and we've thrown one item in here and it becomes a problem for us too, because we have to manually add the tax to most of our quotes for everything because the suppliers don't want to do it because it makes the cost of their material look higher, so they...you know, it's not...they're not getting that money so they don't include it on an estimate or bid sheet. And so, obviously, we also don't see that. So then when we order sod and we get a bill and there's tax on there, whether it's a time and materials job that we're passing on to our client or the fact that we hire employees, we have estimators, we have that, they're going to miss that because it's one item. We consider it a necessary item to finish the construction. One of the things that got missed is, you know, really the banks want it done to complete the construction. So it's a very confusing thing. And typically, it gets absorbed by us because the homeowner won't pay it because it wasn't in the original estimate or some of us, obviously, have put the burden on our suppliers and said we're just not paying it. I personally haven't done that but I know people that will. So that's all I have to say. Thank you. Anybody have any questions? [LB802]

SENATOR DIERKS: Thank you very much, Dan. Questions for Dan? I think you did a good job. [LB802]

DAN KUBR: Thank you. [LB802]

SENATOR DIERKS: Next proponent. Is there anyone in opposition? Opposition,

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

Revenue Committee
February 25, 2010

anyone? Neutral testimony on LB802? Neutral? Well, I believe that Senator Coash waived closing, didn't he? That will close the hearing on LB802 and we'll be opening on LB917. [LB802]

TYANNE HUNDT: Good afternoon, Chairperson Cornett and members of the Revenue Committee. My name is Tyanne Hundt, T-y-a-n-n-e H-u-n-d-t, legislative aide for Senator Rogert and I'm here today to read a brief introductory statement on LB917, on behalf of Senator Rogert, representing the 16th Legislative District, as he cannot be here today. LB917 is legislation that provides for a sales and use tax exemption for the sale and purchase of water if it is provided by a municipal water supplier in Nebraska. This concept was introduced by Senator Friend in LB336 in 2009. The purpose for bringing this piece of legislation once again to the Revenue Committee is to revisit the public policy question of whether it is appropriate to impose a sales or use tax on tap water when no other water may be taxed in this manner. I understand that due to a revenue concern there may be difficulty in advancing this piece of legislation. However, I believe it is important to revisit the issue in order to keep the discussion going purely in terms of sound public policy. And with that, Doug Clark with the Metropolitan Utilities District is here and I will defer any questions regarding this piece of legislation to him. [LB917]

SENATOR DIERKS: Thank you. [LB917]

SENATOR CORNETT: Thank you very much. [LB917]

TYANNE HUNDT: Thank you. [LB917]

DOUG CLARK: Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Doug Clark, D-o-u-g C-l-a-r-k of the Metropolitan Utilities District. I am vice president of marketing and government affairs and the district...this is the second introduction of this piece of this legislation. It was introduced last year by Senator Friend. Our board at the beginning of the year held a meeting and asked me to have this reintroduced to keep the issue and the discussion in front of the Legislature. Currently, in Nebraska the only water that is taxed is that that comes out of your tap and if you're on a municipal system. In a sales tax policy question, is it fair that only the municipal water users of the state pay the tax on water? And that is the position my board is taking and I'd be happy to answer any question you might have regarding this bill. [LB917]

SENATOR CORNETT: Questions from the committee? Senator Hadley. [LB917]

SENATOR HADLEY: Senator Cornett. Mr. Clark, happy to have you here. Without getting into a long-winded discussion, are the materials that you use to get that water to the ultimate consumer, the pipe and such as that, do you pay sales tax on that, the cost

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

Revenue Committee
February 25, 2010

of those items? [LB917]

DOUG CLARK: Yes, sir, we do. We pay sales tax on...as if we were a private company. We're not treated in the same way as cities are on sales tax. [LB917]

SENATOR HADLEY: So if you pay sales tax on that, ultimately part of the cost of that water then is that sales tax that you're paying on those items? [LB917]

DOUG CLARK: Yes, sir. [LB917]

SENATOR HADLEY: And then we're turning around and charging sales tax on that sales tax to the ultimate consumer. [LB917]

DOUG CLARK: Yes, sir, that would be accurate. [LB917]

SENATOR CORNETT: Further questions from the committee? Senator Adams. [LB917]

SENATOR ADAMS: This question may have been asked and answered on a prior bill but tell me again. So if a city rather than MUD, if the city was buying the water pipe, would their system...would it be sales tax exempt? [LB917]

DOUG CLARK: As testified to, to the city of Omaha, this committee this year, the answer to that question is yes. [LB917]

SENATOR ADAMS: Okay. [LB917]

DOUG CLARK: Yes. [LB917]

SENATOR CORNETT: Senator Pirsch. [LB917]

SENATOR PIRSCH: So there's a distinction, you're saying, between the two types of water, municipal water and bottled water, etcetera. But what...how long has this...I mean, has this been in effect for a long time, this...? [LB917]

DOUG CLARK: It is a part of the fabric of our tax policy and it's been there a long time. How long, I, fortunately for me, I'm not old enough to know. (Laugh) But I'm getting there. [LB917]

SENATOR PIRSCH: In other jurisdictions they probably don't have the exact setup then in other states as we do here. So I would assume that it's more like the city might be tax free in other states. [LB917]

DOUG CLARK: Yes, and there are states that have their utility bills that are tax free, but

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

Revenue Committee
February 25, 2010

that's, you know, that's a policy that needs to be established by the Legislatures of each and individual states. [LB917]

SENATOR CORNETT: Mr. Clark, how much water is taxed in Nebraska? [LB917]

DOUG CLARK: Roughly 1 percent or less. [LB917]

SENATOR CORNETT: And the only water that is taxed is water that is on a municipal system? [LB917]

DOUG CLARK: Yes. [LB917]

SENATOR CORNETT: So all the water for irrigation and all the water from wells and all bottled water and all other types of water is not taxed, correct? [LB917]

DOUG CLARK: That would be correct. [LB917]

SENATOR CORNETT: Okay. Thank you. Senator White. [LB917]

SENATOR WHITE: Let me get this right, Mr. Clark. This can, which is like a pipe, isn't taxed nor is the water in it either when the company buys it, puts it together or when they sell it to me? [LB917]

DOUG CLARK: Right, I believe the can would be considered a wholesale transaction between two businesses and it would be taxed at the retail end. [LB917]

SENATOR WHITE: Thank you. [LB917]

SENATOR CORNETT: Further questions from the committee. Seeing none, thank you. [LB917]

DOUG CLARK: Thank you. [LB917]

SENATOR CORNETT: Next proponent. Opponents? [LB917]

GARY KRUMLAND: Senator Cornett and members of the committee. My name is Gary Krumland. It's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in opposition to LB917. As the fiscal note mentions, this will have a fiscal impact on both the state and the local governments and considering the current economic times, we just...cities right now just can't afford to lose any more revenue and that is a big concern. I do want to clarify some questions about taxes on water systems. Local governments do have a general exemption for taxes. However...and this is from the Department of Revenue regulations, it says, the

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

Revenue Committee
February 25, 2010

exemption granted to any governmental unit does not include any departments or portion of the government unit that sells electricity, gas, heat or water. And they specifically provide that governmental units, and that includes all city water systems, must pay tax on all purchases, materials, supplies, and other property or services used in providing water. So a city water system would also pay taxes on the purchases that they make to supply the water. There are about 160 cities and villages right now that do have a local option sales tax. Their voters did vote to put that on themselves so they have voted for this tax. So I guess with our concern about the fiscal impact right now, is why we oppose LB917. [LB917]

SENATOR CORNETT: Questions from the committee? Senator Adams. [LB917]

SENATOR ADAMS: Just let me clarify again, Gary. So then what you're saying is, if the city of Seward goes out and they've got a distribution plan for water and they go out and they buy 12 blocks worth of 6 inch main and they buy hydrants, etcetera, is the city of Seward paying sales tax on those materials as they are delivered to the city of Seward? [LB917]

GARY KRUMLAND: Right, under the Department of Revenue rules. [LB917]

SENATOR ADAMS: Thank you. [LB917]

SENATOR CORNETT: Further questions from the committee? Seeing none. Next opponent. [LB917]

JACK CHELOHA: 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 want to testify in opposition to LB917 this afternoon. From the fiscal note, the city of Omaha was requested to say what impact this would have. I think we submitted some numbers, about \$750,000 estimated in fiscal year '10-11 and, you know, \$800,000 in fiscal year '11-12. Out of concern over lost revenue we oppose the bill. If we would lose this portion of sales tax we'll be forced to, either they'll cut spending or to raise their property tax. That roughly would be about, I think, \$800,000 is roughly about four-tenths of 1 cent or .4, a little less than one-half of a cent to make up the difference. One last thing, I mean, from a previous testifier, I guess we're only talking about 1 percent of the amount of water used, but for various reasons previous Legislatures saw the need to exempt water used for irrigation, water used in manufacturing, but for some reason we've kept the tax on it. So I think the proponents make a good point in terms of policy. You know, I guess on one hand I could see the amount of water that you actually use for human consumption but maybe, you know, it would be easy to get...to say, absolutely, we should have an exemption for that but how do you split the amount that comes into a home tap for instance that's used to water your lawns or to wash your car in the front yard or, you know, things along those lines. Things that we think of as, you know,

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

Revenue Committee
February 25, 2010

maybe human necessity now but I guess they're still considered, you know, part of a luxury or a quality of life thing. And I'd say for those reasons, most of the tap water that does come into a home is probably used for things like that, like washing clothes and water...particularly, I think, watering the lawn is what I've heard is what the major use comes from. And just because of the cost, the city of Omaha opposes LB917. Try to answer any questions. [LB917]

SENATOR CORNETT: Questions from the committee? Senator Hadley. [LB917]

SENATOR HADLEY: Thank you, Senator Cornett, Mr. Cheloha. Just so...I guess I'm wondering why the city would oppose it because if you didn't...the consumer is paying the tax now. If the consumer didn't pay the tax, you could raise the rates and the consumer would be paying exactly the same amount as they're paying now and you could get the money through just a rate increase, so it could be absolutely revenue neutral for the city. [LB917]

JACK CHELOHA: Well, I'd had to clarify that for you because in Omaha we're unique in the sense that the city of Omaha does not provide utilities of gas, water, or electricity. We've created these separate political subdivisions called the Metropolitan Utilities District and the Omaha Public Power District that supply those utilities, and so we couldn't make up the difference that way. [LB917]

SENATOR HADLEY: Okay. [LB917]

SENATOR CORNETT: Senator Adams. [LB917]

SENATOR ADAMS: So I think I've asked this question before on Senator White's bill earlier this session, but then just again as a matter of clarification to me, so for the city of Seward their sales tax collected on their water bill is going into a proprietary fund for their water infrastructure, whereas, given the situation you have in Omaha, the city sales tax you collect on water is going into your general fund, into the city of Omaha's general fund versus Seward's sales tax they collect is staying within that proprietary fund for water infrastructure development and rate pay. [LB917]

JACK CHELOHA: Right. It gets somewhat complicated if...I'm vaguely familiar with that bill that you brought up here, Senator. But for instance, the sewer use fee is subject to sales tax right now. If I understand LB952 correct, what we're trying to do there is exempt the raise and increase in the fee that will be used to pay for our combined sewer overflow project. And under existing law that would be subject to sales tax. But under LB952 it would become exempt. [LB917]

SENATOR ADAMS: Do you see what I'm doing? [LB917]

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

Revenue Committee
February 25, 2010

JACK CHELOHA: I do. [LB917]

SENATOR ADAMS: In my own mind, I'm just trying to draw a distinction between...
[LB917]

JACK CHELOHA: Right. [LB917]

SENATOR ADAMS: ...apparently what the structure Omaha has created versus the ones that I'm more familiar with in municipalities. [LB917]

JACK CHELOHA: Right. Right. Exactly. [LB917]

SENATOR ADAMS: Or if I collect the sales tax on a water bill or the wastewater bill, it stays in the water fund. [LB917]

JACK CHELOHA: Right. If you have a...right, a proprietary fund. [LB917]

SENATOR ADAMS: Versus in this case where what you guys collect is going to general fund. [LB917]

JACK CHELOHA: Right and for instance on the tap water, that would go in the general fund. I would say...I'll have to ask my finance director but I think, you know, any general, local sales tax we'd put in at the top of our ledger into our general fund. [LB917]

SENATOR CORNETT: Senator White. [LB917]

SENATOR WHITE: So, the citizens of Omaha are unique in that the sales tax on waters they pay go not to defray the cost of the water like they would in Seward or anywhere else, they go to the city general fund. So one could argue, the only people in the state are the customers of MUD that are truly paying sales tax on water. [LB917]

JACK CHELOHA: I can't answer that because I don't know what other cities do, if everybody has their own water utility that's owned and operated by the municipality or not. I'm not certain on that. All I know is the state has said that this is a taxable item and we'd prefer to keep it that way just because of the tough economic times. [LB917]

SENATOR WHITE: Actually, the Department chair, the Department of Revenue, the commissioner has said that. It hasn't been litigated, for example, in court yet has it, Mr. Cheloha? [LB917]

JACK CHELOHA: Not that I'm aware of. [LB917]

SENATOR CORNETT: Mr. Cheloha. [LB917]

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

Revenue Committee
February 25, 2010

JACK CHELOHA: Yes, ma'am. [LB917]

SENATOR CORNETT: Did I hear you correctly in the beginning of the testimony where you said that maybe if things weren't so bad, this is something we should look at. I mean, if things being that our city of Omaha not having financial troubles, the state not having financial troubles, that you recognize that there is a differentiation in the way certain people are being taxed on water and other people. And that that is something that as a policy standpoint at some time in the future we should look at. [LB917]

JACK CHELOHA: I did say that but I was under the preface too, though, that somehow if we could draw it out where we could actually pinpoint the amount used for human consumption, but... [LB917]

SENATOR CORNETT: But we don't do that for any other water usage in the state. We don't say this water only has to go to people for drinking, not bathing, washing clothes, irrigation, feeding cattle. [LB917]

JACK CHELOHA: Yeah, I think it's a definitional problem, you know, because we exempt out the bottles, I think that you would buy individually. And it's assumed it's for human consumption. I mean, so it's exempt. At least that's what we've been told, right? If you buy a bottle of water, it's exempt from sales tax. [LB917]

SENATOR CORNETT: Yeah, but you were saying that there was a problem and that it was okay to separate it out for consumption, correct? If we can find a way to separate it out for consumption... [LB917]

JACK CHELOHA: Right. Right. Right. I did say that and that... [LB917]

SENATOR CORNETT: ...but we don't separate it out for consumption anywhere else in the state, do we? [LB917]

JACK CHELOHA: But we do definitions by, this is manufacturing, this is irrigation, I guess. I mean, you still try to define it somehow. [LB917]

SENATOR CORNETT: But we don't tax well water that people use. We're not putting...making meters on their wells and saying, okay, this is going into your washing machine. [LB917]

JACK CHELOHA: Right. Right. I think there's a question of what's practical and what can you track. [LB917]

SENATOR CORNETT: Thank you. Further questions from the committee? Seeing

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

Revenue Committee
February 25, 2010

none, thank you. [LB917]

JACK CHELOHA: Thank you. [LB917]

SENATOR CORNETT: Next opponent. [LB917]

JOE KOHOUT: (Exhibit 10) Chairwoman Cornett and members of the Revenue Committee, Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing today on behalf of the United Cities of Sarpy County. I've provided you with a letter from Mayor McGuire of the city of Gretna in opposition and frankly, the reason is, is the impact on our sales tax, so. And for purposes of clarification, three of our cities, the cities of Gretna, Springfield, and Papillion all own their own water systems but the cities of LaVista and Bellevue are both on the MUD system. So just for purposes of clarification. [LB917]

SENATOR CORNETT: Mr. Kohout, I'm going to ask you the same question I asked Mr. Cheloha. In the future when everyone, when the economy has recovered, do you think this is something we should look at from a policy standpoint? [LB917]

JOE KOHOUT: Boy, that's a tough...I'd have to ask my client that question. I did not ask that question when we took position so I'd be happy to take that back to him and get back to you. [LB917]

SENATOR CORNETT: Thank you. [LB917]

SENATOR ADAMS: At the risk of sounding redundant, let me ask you. On the cities that are not supplied by MUD, do you know the sales tax collected on the water bill, the wastewater bill, it stays and is reused within their water system? [LB917]

JOE KOHOUT: You know, and I didn't ask that question, Senator Adams. I mean, again, the basis of it was strictly when they looked at the financial impact, much like LB336 was last year. Those numbers just were a little much right now, so I'd be happy to get a clarification and get back to you. [LB917]

SENATOR CORNETT: Further questions from the committee? Seeing none. Next opponent. Neutral testimony? Waive closing? All right. That closes the hearings for today. I make a motion that we move into Exec Session for a very short Exec. [LB917]