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Revenue Committee
January 30, 2008

[LB758 LB846 LB881 LB946 LB1040]

The Committee on Revenue met at 1:30 p.m. on Wednesday, January 30, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB846, LB758, LB881, LB946, and LB1040. Senators present: Ray Janssen, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Abbie Cornett; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senators absent: None. []

SENATOR JANSSEN: Good afternoon, Ladies and Gentlemen. Welcome to the Revenue Committee. The committee members that are here with us today are, to my...for the record, my name is Ray Janssen. Committee members: Tom White, to my far right; Chris Langemeier; Ron Raikes; Carroll Burling; Bill Lock; George Kilpatrick. That are the members of the committee that are here today. And our pages are Sarah and Tim, Tim Freburg. Okay. I want to remind you, please turn your cell phones off and pagers while you're in the hearing room because we do have the seats with ejectors in them that will send you right out of the room if I hear one of those things go off. Okay, the sign-in sheets for testifiers are on the table by the doors back there and on the table and when you come up to testify, complete them and drop them in the box right by Erma James over there to my far right. We'll follow the agenda as it's posted. Let's see...we'll take the proponents first and then the opponents and then the neutral. Only the introducer will have an opportunity for closing remarks and as you begin your testimony, please state your name and spell it for the record. Again, if you have handouts, please bring 10 copies for the committee and the staff and if you only have the original, the pages will be very glad to make some more copies for you. With that, we will begin the hearings today with LB846, Senator Fischer's bill. Senator Fischer, welcome to the Revenue Committee. []

SENATOR FISCHER: Thank you, Senator Janssen and members of the committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the senator representing the 43rd District in the Nebraska Unicameral. Last session, I was asked by a number of our colleagues to come forward with a highway funding plan for discussion this session. I took that charge very seriously. LB846 is the product of our research and discussions. Before session began, I invited all senators to meet with me and discuss this proposal. I sent a report on highway funding compiled by the Transportation and Telecommunications Committee counsel to all senator offices, along with a draft of the legislation before this committee today. All of you as Revenue Committee members were provided with a printout estimated additional highway revenue for LB846. This printout covered a full year and it will differ from the fiscal note, which covers from January to June. That brings us to the hearing today. Nebraska has consistently been a pay-as-you-go state in regard to highway funding with highway revenue coming in the form of the fuel tax, sales tax on motor vehicles, and motor vehicle registrations. LB846 is in line with this policy of user fees. Under this proposal, those who use the roads will

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continue to pay for them. LB846 lowers the fixed portion of the fuel tax by 8 cents and imposes a 5 percent excise tax on the gallons sold in Nebraska based on the average wholesale price of gasoline over a six-month period. This will be added to the wholesaler's gas tax bill they pay each month to the state. Let me explain how we envision this wholesale tax to work. In April and in October, the Department of Revenue will look at data from the United States Department of Energy and average out the previous six months of the average wholesale price of gas in Nebraska. This average wholesale price is our index for the next six months. Let's say the average price is \$2.20 over the past six months. The 5 percent wholesale tax is multiplied by this average wholesale price to come up with the tax amount; 5 percent of \$2.20 is 11 cents. The 11 cents would be added to the gas tax that wholesalers currently collect for the next six months on each gallon sold in Nebraska until that average is again revised. Thus, for the six months the gas tax would be calculated as 11 cents, that's the wholesale tax; plus 2 cents, which we currently take off the top and give a penny to cities, a penny to counties under our current gas tax; plus 2.5 cents, that would be the fixed rate, which is now 10.5, and under this bill we lower that 8 cents, so that would be 2.5; plus 10.5, which is the variable rate that we currently have. If you remember, that variable rate was decreased by 4 cents in January when the gas tax fell. I know I certainly didn't see it at the pump; I haven't found anyone who has. But the gas tax did drop 4 cents and that was from the variable side. So, you have 11 cents at wholesale rate plus the 2 cents city and counties plus the 2.5 which would be the new fixed rate under my bill plus a 10.5 which is the current variable. That would give us a 26 cents per gallon tax that the wholesalers will pay on each gallon of gasoline for the next six months unless the variable needs to be adjusted in January or in July as we currently do through the appropriations process. LB846 calls for a decrease in the fixed portion of the fuel tax by 8 cents to offset some of the revenue that we are anticipating will be collected through this new wholesale tax. We decrease the fixed portion because that portion of the gas tax is shared between the state, cities, and counties, and those local governmental entities will receive a portion of the wholesale tax. However, the shared percentages are altered under this bill. Currently, the state receives 53 and one-third percent on the fuel tax and cities and counties divide equally the remaining 46 and two-thirds percent. That remains the same in dealing with our current fuel tax. Under this 5 percent wholesale tax that we're looking at with LB846, that percentage changes. We're looking at two-thirds of the revenue from that tax on the wholesale price, that will go to the state, with the other one-third going to cities and counties. And that will be distributed through the Highway Allocation Fund. To sum up, the wholesale tax adds another component to our current fuel tax. Just as our current variable portion of the fuel tax uses a formula every six months to compute a number, so does this proposal. It differs in that our current fuel tax is based on quantity, it's based on the number of gallons sold times the fuel tax, whereas this new tax we are looking at, that 5 percent tax on wholesale, that's going to be based on price and quantity. You take the average wholesale price times 5 percent times the number of gallons sold. The reason for this change is to keep pace with inflation. As the wholesale price of gasoline continues to rise, so, too, will the

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revenue collected by the state. Under our current system, there is no factor in our fuel tax that accounts for inflation. And as all of you know and have heard about, that's a problem we face because we have construction costs that have gone up over 30 percent in the last 3 years. When you're talking about highway construction costs, you talk about steel, you talk about concrete. We're in competition with other countries on those and we have no current factor in our gas tax that addresses that situation we find ourselves in and we have no way to catch up. This wholesale tax will be collected in the same manner as the current gas tax is collected. Whoever pays the fuel tax now will also pay the wholesale tax. The current fuel tax is collected at the wholesale level. The retailers do not currently pay the fuel tax to the state; it is in their underlying costs that they pay to the wholesaler. The retailers then include the fuel tax in the price of gas that they charge their customers. Both the fuel tax and the wholesale tax will continue to be done at the wholesale level. I wanted to make it clear that this bill does not increase the fuel tax by itself; it will require an A bill to increase the Department of Roads' budget. The Legislature still has the ultimate control over how much the Department of Roads can spend through our appropriations process. If the Department of Roads' budgetary authority is not increased, we will see the variable portion of our current fuel tax decrease to make up for any additional revenue that the state receives from this 5 percent wholesale tax. Currently, Nebraska faces an average of \$330 million a year shortfall projected over the next 20 years in meeting our highway needs. The A bill of LB846 will be introduced to increase the Department of Roads' budget for an additional \$16 million for the second half of the 2009 fiscal year. There's several reasons that I feel this proposal is in the best interest of Nebraska and for all of our citizens: It is compatible with our current system; it is compatible with how we build roads in this state; it's compatible with how we build roads at the state level, at the county level, and at the city level; LB846 can have a symbiotic relationship with our current fuel tax; it's also consistent with our long-standing policy of our highways being paid for by the people who use them. LB846 adds an inflationary factor to our funding system that does not exist under our current system. I believe it improves our current funding structure because it is a mix of revenue based on price and quantity of gas. Without this factor, the gas tax continues to lose its purchasing power. I hope you will take this bill under serious consideration and I would welcome any questions. [LB846]

SENATOR JANSSEN: Are there any questions? Senator Langemeier. [LB846]

SENATOR LANGEMEIER: Thank you, Chairman Janssen, and thank you, Senator Fischer. It was a very good introduction. Just for clarification, your A bill is attempting to be how much? I didn't quite catch that; \$16 million? [LB846]

SENATOR FISCHER: The A bill...I believe the fiscal note is showing \$16 million because it's just for the second half of the fiscal year. The printout that I gave you, the computer printout earlier, it was...was it \$35 million, \$36 million? [LB846]

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SENATOR LANGEMEIER: \$39.9 million. [LB846]

SENATOR FISCHER: Oh, total \$39.9 million? [LB846]

SENATOR LANGEMEIER: \$39.9 million, so I'm assuming you were trying to get half of that. [LB846]

SENATOR FISCHER: That...right, but the \$39.9 million, that was for the state and the cities and counties? Or just the state? [LB846]

SENATOR LANGEMEIER: Yeah, \$38.644 million. [LB846]

SENATOR FISCHER: For the state? Okay. [LB846]

SENATOR LANGEMEIER: For just the state. [LB846]

SENATOR FISCHER: So that's where the \$16 million comes from then. [LB846]

SENATOR LANGEMEIER: Okay. [LB846]

SENATOR FISCHER: It's just the state's share, not cities and counties. [LB846]

SENATOR LANGEMEIER: Okay. Thank you. [LB846]

SENATOR JANSSEN: Any other questions? Ron. [LB846]

SENATOR RAIKES: Senator, you mentioned the gas tax dropped 4 cents in January. That seems a perverse result given your and several other people's proclamations, and I think well founded, that we're not having enough money to do what we need to do to maintain the road system in Nebraska. Why would we drop the gas tax 4 cents? [LB846]

SENATOR FISCHER: I'm sure all of you remember the discussion we had last year on the budget. The Appropriations Committee chose to increase the Department of Roads' budget last year from what was introduced. That increase...when we had the discussion on the floor, that increase was portrayed as an increase in the gas tax of 1.8 cents. At that time, a few of us on the floor were trying to say, that doesn't necessarily mean we're going to see 1.8 cent increase in the gas tax. There's a lot of factors that go into the gas tax and just...you can say a penny on the gas tax brings in \$11 million. You cannot say, just because we raised the Department of Roads' budget by \$11 million, it's going to raise the gas tax 1 cent. And I think what happened in January proves my point. The gas tax could go up, and that's what we were trying to say last year. The gas tax could go up. It ended up we did not increase the Department of Roads' budget. If we

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had increased the budget by \$20 million, we know now...and hindsight is always wonderful, always wonderful, especially when you can say, I told you so. But we could have increased the budget and still seen a 2 cent decrease in the gas tax. So yes, we need more money. We have in place now, I believe, a formula that could work if we as politicians would fund the department on its needs and not by what we perceive will happen with the gas tax. That doesn't seem to be the case. So, I think we need a new option for the Legislature to look at and the more I am in discussions...this is a longer answer than you ever wanted, isn't it? But the more I'm in discussions with you as my colleagues, I'm convinced this will make our funding system for roads in this state better because it does take into account inflation. [LB846]

SENATOR RAIKES: But if I can follow up... [LB846]

SENATOR FISCHER: Did you want me to answer the question? (Laughs) [LB846]

SENATOR RAIKES: Not really. (Laughter) [LB846]

SENATOR FISCHER: Okay. [LB846]

SENATOR RAIKES: The driver is the Department of Roads' budget. [LB846]

SENATOR FISCHER: Yes. [LB846]

SENATOR RAIKES: And if in fact the Legislature is unwilling to propose a higher budget and the Governor is unwilling to not veto a higher budget, then addition of this component to the tax structure won't really help much. I mean, what you'd do is you'd end up dropping the variable rate even more. [LB846]

SENATOR FISCHER: The variable rate could drop to zero if we as senators are not willing to take advantage of the revenue that would be coming to the state from that 5 percent tax on wholesale gas. As you said, it's how we set the Department of Roads' budget. All of us heard last year...almost unanimously it was stated that we need more money for roads in this state. We need more money at the state level, we need more money at the county level, and we need more money at the city level. My charge was to come up with a plan that would help us in getting more revenue for the Department of Roads, and this is the proposal I have before you today. [LB846]

SENATOR RAIKES: Okay, thank you. [LB846]

SENATOR FISCHER: But it still takes political will to meet the needs for the Department of Roads. [LB846]

SENATOR RAIKES: Okay. [LB846]

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SENATOR JANSSEN: Senator Langemeier. [LB846]

SENATOR LANGEMEIER: Chairman Janssen, thank you. And to follow up on that, if it's your intent that the body doesn't have the will to increase \$20 million, which we obviously didn't last year...and this is a two-step process. If we don't have the will to do \$20 million and let the variable just flow where it needs to be, do you think there's a will to do \$16 million? And if there's a will to do \$16 million, let's just do \$16 million and not this with the budget, enter an A bill for \$16 million and let it flow. [LB846]

SENATOR FISCHER: As I alluded to with one of my comments to Senator Raikes, the more I discuss my bill proposal here I have today, the more I think it is necessary. Because if we are willing to take the step and fund our infrastructure to meet the needs, this proposal allows for growth because this proposal you're looking at the price of gas. I assume, and I would think most of you assume, the price of gas is going up, and this proposal will allow more revenue because of that. So, I think it's important, I think it's very important that we have the ability to keep up with inflation. Does this solve our problem? No. I said we're \$330 million shortfall per year for the next 20 years. I'm looking at \$36 million. Does this solve it? No, but at least it puts into place a mechanism that we can use. [LB846]

SENATOR LANGEMEIER: So, you're saying if we put the \$16 million, let's put that portion aside. [LB846]

SENATOR FISCHER: Okay. [LB846]

SENATOR LANGEMEIER: You think fundamentally this is a better system than we currently have and you fundamentally would like to switch to this type of revenue generator? [LB846]

SENATOR FISCHER: No. This...my bill proposal is in addition to the system we currently have. This is in addition to it. We still have a fuel tax that gives 2 cents of every gallon to cities and counties. We still have in place a fuel tax that is going to have a fixed rate; this proposal of mine lowers it, but we're still going to have a fixed rate of 2 and one-half cents. And we still have a fuel tax that has a variable in play that allows us, allows the Legislature, to still have control, if you want to say it that way, still have control over the gas tax. When our current funding system was put into place and when...we hear a lot about expressways this year, there's a lot of bills about expressways...when our current funding system was put into place, senators knew that in order to meet the needs on the 20-year plan that many of our colleagues like to quote, the gas tax was going to have to go up. It was projected that the gas tax would peak at 36 cents a gallon. And today that gas tax, instead of being 23 cents since it went down, we didn't realize that, but since it went down 4 cents, the gas tax today

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would be 30 cents a gallon and we would have the 20-year plan completed. That didn't happen. That's why I make comments about political will. I have found in my district when I'm able to go out, which I did for the past six months, and speak to my constituents about how we fund roads, there's an understanding. If I go out to my district and say, do you want your gas tax raised, I don't raise my hand. I don't want my gas tax raised, and I don't think anybody here or behind me wants a gas tax raised. We don't want any tax raised. But when people understand how we fund roads in this state, I believe they're open to this because I believe all of us realize the importance of roads. It doesn't matter if you're in urban Nebraska or rural Nebraska. You know the importance of infrastructure in a state this size, first of all distances, you know the importance of infrastructure in a state where you have a few areas of the state that are growing at a phenomenal rate and need help in building infrastructure. I think when people understand that and that this is a user fee, and hopefully the media will start referring to it as that, then it will be helpful. [LB846]

SENATOR LANGEMEIER: Thank you. [LB846]

SENATOR JANSSEN: Senator Cornett. [LB846]

SENATOR CORNETT: Senator Fischer, you brought up somewhat of an interesting point when you said that this is the way we fund roads in the state of Nebraska. With your proposal, this will...and I know you hate this when people say it...but this will bring us to Number 1 in the country on the gas tax. Am I correct? [LB846]

SENATOR FISCHER: No, I do not believe you are correct in that. [LB846]

SENATOR CORNETT: Where will we be? [LB846]

SENATOR FISCHER: I'd have to look. I can get back to you on a closing, but last week we were 26th in the nation on our gas tax at 23 cents, and I believe with this proposal, we are maybe 18th or so. That's another thing we hear when we're first in the nation on price at the pump or our gas tax, but we don't see the headline last week that Nebraska was 26th. [LB846]

SENATOR CORNETT: I was going to say...because even you and I discussed at the State Chamber meeting the other day that this could bring us to first in the nation and you weren't sure on that. But regardless, 18th is still fairly high. I'm just asking, do you think that possibly we need to look at a different mechanism for funding roads? [LB846]

SENATOR FISCHER: On the rankings for...state rankings on how we fit in there, there's a lot of different components on those rankings. And the ones that get quoted all the time and which I just quoted, that takes into account our gas tax; it also...I should say fuel tax because it's diesel and everything...but it also takes into account sales tax,

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which this whole sales tax we will then be in that category. What it does not take into account is states that use General Fund money; that is not figured in that. And we need to be aware of that as with any graph, any chart, any data you get, you have to realize what goes into it to make sense on what goes out. Some states bond, some states toll, some states use General Funds. That is not part of my proposal. I don't support those. [LB846]

SENATOR CORNETT: I was just going to say...the question was, do you think we need to look at other mechanisms of funding, but you answered that (inaudible). [LB846]

SENATOR FISCHER: We did look at them, Senator Cornett. In the report that you received that committee counsel put together, we did look at a number of those. In fact, anything we could find that other states use to fund roads, we looked into it and tried to see if that would fit in with how we fund roads in this state. We looked at problems other states are facing because of how they made some decisions to fund roads. Some states bond and now they are bonding to pay off bonds. States that toll are usually more populous states where they have the Pennsylvania Turnpike, things like that. In my opinion, we do not have any highways that we could see any kind of revenue coming in from if we were to toll. Nebraska is not going to see any public or private partnerships. I don't know any private company that wants to come in and lease or buy a stretch of highway and this state and put up tolling. There again, because we don't have the numbers and it takes federal approval to set up a toll on the interstate. They're starting to look at some pilot projects; that's not going to happen here. So, we did look at a number of other options, you know, and as I visited with you, we discussed some of those options. I know there's some other bills out there that you'll be hearing that maybe will discuss those, too. We felt, and from the feedback and from my discussions from my colleagues, that this is the plan that will work for Nebraska. [LB846]

SENATOR JANSSEN: Senator White. [LB846]

SENATOR WHITE: Thank you. Thank you, Senator Fischer. Let me review a couple of things so I get a sense of where we're at and where the history is. Last year, did not the body transfer approximately \$15 million a year that arose out of leased vehicles, both sales tax and property tax, from the General Fund to the Road Fund? [LB846]

SENATOR FISCHER: That's somewhat correct. The bill transferred revenue that was going from the sales tax, not property tax. Sales tax on leased motor vehicles had been going to the General Fund. That is now going to the Highway Trust Fund. It was projected to be a little over \$9 million a year. [LB846]

SENATOR WHITE: Was it \$15 million for the biennium, then? Or not. I guess... [LB846]

SENATOR FISCHER: Well, it would have been more. But the revenue is not coming in

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as expected on that was the last I heard from the Department of Revenue. [LB846]

SENATOR WHITE: The regard to the \$330 million annual shortfall, that was based on a study 25 years ago of projected needs. Is that correct? I mean, whether we could complete that? [LB846]

SENATOR FISCHER: It's based on a study that's updated every year. We like to say that the "Plan" for the department, you know, the "88 Plan" like it's set in stone. It's not. Priorities are changed every year and you have your 5-year plan, you have your yearly plan, and those are changed every year. That is based on everything that is on that plan. As we discussed when you and I met, the only new construction projects that are going to be able to be completed with the current revenue forecasts are the widening of Interstate 80 between Lincoln and Omaha and a Missouri River bridge in Omaha. The rest are not. [LB846]

SENATOR WHITE: That assumes, does it not, that the Federal Highway Trust Fund will be depleted and the federal government will not fund it again, correct? [LB846]

SENATOR FISCHER: That's part of the assumption. My belief is that the \$70 million, \$80 million that I believe we will not be receiving from the federal government is our major problem. It's not. [LB846]

SENATOR WHITE: Okay. Have we...well, we don't know that yet, though, right? We won't know that until...when will that Highway Trust Fund be depleted and when will the, kind of the chickens come home to roost, if Congress doesn't replenish it? [LB846]

SENATOR FISCHER: The Highway Trust Fund, under SAFETEA-LU, it's up for revision or reauthorization this year because the trust fund will be out of money by 2009, the Federal Highway Trust Fund. [LB846]

SENATOR WHITE: So, and Congress is looking at economic stimulus packages and one thing that they're looking at is putting a lot of money in the trust fund, isn't that correct? The Highway Trust Fund? [LB846]

SENATOR FISCHER: The Federal Highway Trust Fund...I just heard this last week about a stimulus package. There are different packages out there. I had not heard that the money was going to be put into the Highway Trust Fund. I heard that the money could be earmarked for highways but not through the Federal Highway Trust Fund. What I have heard on the federal level is that there are discussions going on that the federal gas tax, which hasn't been increased for...I'd have to check...many, many years, that that would be increased 5 cents to 8 cents a year per year over the next 5 years. [LB846]

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SENATOR WHITE: One of the concerns I have about the bill as proposed is it would, obviously, increase gas tax if we fully funded the roads. (Inaudible) fully funded. [LB846]

SENATOR FISCHER: If we fully fund roads under our current system or with the addition of this proposal, yes, the gas tax will go up. [LB846]

SENATOR WHITE: We have approximately...well, over a third of the population living within easy drives of Iowa. Have you calculated what revenue would be lost if we get out of proportion to Iowa, given that, because border bleed, at least before the drop in our taxes and Iowa had raised theirs, was considered to be a major issue in the Omaha area in terms...and of course that is a huge portion of our driving public. Has that border bleeding, the loss of revenue by people crossing the river to buy fuel, been calculated? [LB846]

SENATOR FISCHER: I don't know how you'd calculate that. I do know that the Iowa Legislature is looking at a 5 cent to 7 cent increase per gallon in their gas tax. I do know that the state of Colorado, they are under a variety of challenges because of TABOR that was passed there a number of years ago. But they are...part of their plan, and they have a multifaceted plan, but part of their plan is a 13 cent increase in their gas tax, and I believe they're at 22 cents a gallon right now. Every state is facing the situation that we're in. We're not unique. I was just at a meeting on Saturday with some of my counterparts in other states. Every state is looking at what to do here because all of us are facing shortfall in revenue. I think in Nebraska, we're fortunate because our roads, our highways for the most part are in good condition. We're called a big, square state by some of these other guys, even though we're not a square state; we're a big, square state like Wyoming, Montana, the Dakotas. Our problem is we don't have people. We don't have people to support, not just highway needs, but all the needs we have in this state. Other states are old states. When you look at New York, Pennsylvania, New Jersey; their problems are a little different than ours in that their infrastructure has reached the tipping point. We could see it coming in our state and we want to...I want to, and I know the majority of you want to preserve what we have and build to grow. These old states, their problem is they're seeing bridges disintegrate, and I'm not just referring to the Minnesota one; I'm referring to...if you're in Pennsylvania and you go under a bridge, you see concrete hanging from rebar. You know, there's definitely instances like that. Those are old states. So every state is facing this problem and looking for ways to address it. [LB846]

SENATOR WHITE: As important as highways and roads are to infrastructure, and for my district to jobs, I tend to be very supportive when I can be of these. At the same time, we're looking at carbon gas taxes, we're looking at increased gasoline. They're telling we need to conserve, which will result in fewer miles being driven. Have we reevaluated our assumption on the number of new road highway miles that are actually needed if we have a population that does conserve and does drive less? [LB846]

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SENATOR FISCHER: I think you raise a valid point. As a state, whether it's in our branch of government or the executive branch of government, we always need to be cognizant of change. And I don't believe we can stick with doing something just because that's the way it's been done in the past. However, I don't...just because we're seeing more fuel efficient cars, their tires are still on the road. When the point comes where, I think, as a state and as a country we see revenues dropped by a tremendous amount from gas tax, then yes, we have to look at how to fund roads in another way. I said earlier, I don't support General Funds. We have tremendous demands on the General Fund in this state. Oregon is an example...I can talk about this forever...Oregon, for example, they're looking at a vehicle mileage tax and they've done a pilot program on that. Realistically...and I just, and I just met with their senate transportation chair on Saturday, who's very excited about it, but who also realizes that that's not going to have any kind of impact for another 20 years. He's hoping 10, but you have to have the little boxes put in the cars. I think they had 200-some cars participate in the study and he's very excited on how you can do this. But for one thing, it will have to be phased in, and for another, we just don't have the technology right now. But yes, there's already discussions, I know, among many people and it's exciting to sit in on those discussions and participate because we have to look ahead past the fuel tax. [LB846]

SENATOR WHITE: One last question on that, and of all of them...and thank you to the Department of Roads...indicates to me that 25 percent of our budget goes to the maintenance of I-80. And yet, overwhelmingly the damage to I-80 is done by heavy trucks. It's not done by family vehicles, it's not done by folks. What, if any, studies have we looked at to see whether or not the trucks that...and I'm not worried about trucks that are based in Nebraska that pay property taxes and pay fuel taxes here...I am concerned about trucks that can buy fuel in Wyoming, drive across the state, not buy any fuel here, and then buy it in Iowa. Have you looked at any possibility that the trucks that cause so much of our expense by deteriorating our roads, whether they're paying a fair share through existing systems to compensate for that damage, and if not, how can we capture that? [LB846]

SENATOR FISCHER: I saw a representative of the trucking industry...and behind me here I'm sure she will address that. If I remember the numbers correctly, I believe it's truckers account for...I shouldn't even say, I should let them do it...but I'm thinking they account for 11 percent of the traffic. I'm probably wrong. And they pay for 47 percent of the taxes that are collected. [LB846]

SENATOR WHITE: But is that... [LB846]

SENATOR FISCHER: So I think they're paying more than their fair share. [LB846]

SENATOR WHITE: But is that apples and oranges? I mean, because we have a couple

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of variables. They may account for 90 percent of the damage, all right, which causes the expense. [LB846]

SENATOR FISCHER: Those darn trucks. I know. Those darn trucks. [LB846]

SENATOR WHITE: And the credit that they're getting, how much of that is trucks that are based here and who I don't have a problem with because they're buying fuel here and they're paying property tax here. But what about the trucks that don't do either, but use I-80, which is the single biggest item on our budget? [LB846]

SENATOR FISCHER: I would be interested in discussing that further with you, but I think also as a state we need to be careful and, I mean, we hate to punish our own folks. [LB846]

SENATOR WHITE: Right, right. [LB846]

SENATOR FISCHER: You know, I agree with you on that. But we also need to be careful and not put too heavy a punishment on trucks that travel through this state. They have a huge positive impact on our economy, even though they may just beat the devil out of our roads. [LB846]

SENATOR WHITE: And I don't want to punish them, but I would like to see all people pay a fair share. [LB846]

SENATOR FISCHER: And I would not disagree with you on that. [LB846]

SENATOR WHITE: Thank you for your courtesy and your forthright answers. I appreciate it. [LB846]

SENATOR JANSSEN: Senator Preister. [LB846]

SENATOR PREISTER: Thank you, Senator Janssen. Senator Fischer, as you were doing your explanation, which was very thorough, I couldn't help but thinking, I wondered if you had consulted with Senator Raikes on your formula, but (laughter). [LB846]

SENATOR FISCHER: Do you think I'm crazy? Come on. (Laughs) [LB846]

SENATOR PREISTER: Well, you're jumping in... [LB846]

SENATOR FISCHER: That was rhetorical, wasn't it? [LB846]

SENATOR PREISTER: You're jumping into this with both feet, so. Somebody could question all of our sanity. I appreciate the fact that you and your staff took the time to

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look at what's going on nationwide. Obviously we have this problem, other states have this problem. Part of it is because we're not getting the federal funding that we could use to do all of these things. Therefore, we're all in a situation that's not easy to do. You certainly don't want to raise taxes, I don't want to raise taxes, but we need to provide the infrastructure, we need to find some way to do that. You've come up with a somewhat unique, to me, but creative way to approach this. I like the fact that you've factored in for inflation and I think that's essential. We've got to look at that and you've done that. It probably isn't fair to really do this, but I'm wondering, as you did your assessment, has this been something that has worked most effectively in other states that you chose it, or were there other reasons that maybe you chose this mechanism? And I like the kind of dual adjustment every six months. I mean, both of...the new formula and the existing formula will automatically correct or adjust every six months. I think there's some benefit to that, too. But as you looked at all of those systems, and toll roads probably wouldn't work, this, for what other reasons may have been successful in other states or...what did you see there, if it's even a fair comparison? [LB846]

SENATOR FISCHER: I appreciate your comment, Senator Preister. It was somewhat easy to discount what other states were doing, so I think that was the first step, and there again, looking at historically how we fund roads in Nebraska. I will admit that committee counsel was objective in his report. I am somewhat biased on some of my beliefs, but I believe that committee counsel put together a very objective report. There are nine states that do have a sales tax on their gas; it seems to work. Here again, this...I wanted to fund roads the way we fund roads in Nebraska. Again, as I said, I'm biased on that. I believe there are wise policy decisions...of course, those would be mine...and then I believe sometimes we have unintended consequences when maybe we're looking for a quick fix. And as I said, my proposal is not by any means a quick fix. And I've said, the loss of federal money, it's a serious blow; but that is not the problem, that focuses on the problem. That loss of federal funds, it brought attention to the problem that we have that we don't have enough revenue. But how we came to this, I have to admit that I did speak with Senator Raikes; I worked with Senator Heidemann, the Chair of Appropriations, on it; and this, to me, is what we need. [LB846]

SENATOR PREISTER: And I would just comment that the report was very well done; your staff did an exceptional job on that. I did appreciate getting that. [LB846]

SENATOR FISCHER: Thank you. I will pass that on to him. Thank you. [LB846]

SENATOR PREISTER: Please do. Thank you. [LB846]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. Are you going to stick around and close then, aren't you? [LB846]

SENATOR FISCHER: Oh, of course. [LB846]

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SENATOR JANSSEN: Okay. All right. We'll take proponents first, those... [LB846]

SENATOR FISCHER: Thank you. Thank you very much. [LB846]

SENATOR JANSSEN: Thank you. Those in favor of the legislation. How many do we have, how many proponents do we have? Oh, boy, that's a bunch. Tell us something we haven't heard, all right? (Laughter) [LB846]

LOY TODD: Senator Janssen, members of the committee, my name is Loy Todd, it's L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association. I will try to be as brief as possible. When we looked over the various methods of proposing an increased funding with highways, we looked at this unique approach offered by Senator Fischer and the more we looked at it, the more we liked it. And I want to go back a little bit in history to tell you why. You know, our Nebraska system of funding roads as a user-type fee is unique and terrific. It's really done a great job. It has some inherent problems with it. One of those is that it doesn't really come to the feast when there is a feast. It doesn't share in some of the famine when there is one, but when you understand how the roads budget is really set, I think you see why this is going to be, I think, a fundamental improvement. I wish Senator Langemeier could have remained in the room because that was his question. As I've observed over the years watching how the Roads budget gets set, what appears to happen is that the people in charge, the Roads people take a look at what they expect to get. That is, they look at what federal funding is anticipated coming into Nebraska, and then they look at how much fuel was consumed in the past year and how much more they think is going to be consumed the next year. And then they look at our motor vehicle sales because all of the sales of our motor vehicles goes into the Highway Trust Fund together with the long term leases. And they look at those figures and they say, okay, we think we're going to get X number of dollars. And then they come to the Legislature and say, could you please appropriate the appropriate amount of money, can you set what we think we're going to get? And then the variable kicks in and what the variable does is make that prediction come true. Because if the Legislature appropriates X amount of money for roads and you have a two-year period in which that target is going to be spent, the variable then makes sure that that amount of money comes in. And if revenues start coming in too fast, the variable drops. And so the goal isn't to get the maximum spending on roads or road funding; the goal is to make the prediction come true. And there hasn't historically been a good inflationary figure in there. I think when the original plan was made, there was some thought that the variable was going to work in connection with the Legislature setting a higher figure, saying, now we want to do this in addition or we want to do more, so let's set it higher and let the variable catch up. But you know what happens politically the minute the Legislature says, let's do more; the first question is, how much is that going to raise gas tax? And so we get this pressure to bring it down and that's why we've got all these unmet needs.

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The great thing about...and I think cars used to be the inflationary target. You know, fuel...gallons did increase for a long time; I don't think that's happening anymore. With fuel prices being what they are, gallons are going, I think, continue to be reduced with what my industry is doing. You know, we've just agreed to target a 40 mile per gallon standard in a few years down the road. We're reducing what consumption is going to be used in cars. We have a finite population. I think you're going to see a downward trend in that regard. Also, and this may surprise the committee members, the cost of operating a car is decreasing as a proportion of your living expenses. Well, cars are certainly getting more expensive, they're getting gradually more expensive; and they are not, as an overall cost of your budget, keeping up with the things that are happening like road construction, other kinds of increases. So, with that...and our sales are down, you know, we're down 20 plus percent right now, and so our contribution to roads is diminishing. What we really like about this proposal is that it finally puts in an inflationary figure. It brings in a figure that targets the increases that I think we all anticipate are going to happen, and that is an increase in the wholesale price of fuel. When you have China entering the market, and they can build a refinery anywhere they want anytime they want. I mean, you know, the kinds of competition we're going to be in globally are going to put these other kinds of pressures on those prices. We anticipate they'll increase. And even if they decrease, the variable will kick in and again make predictions come true. And so one of the questions that I think was being asked is, well, how is this any different, because we've still got a variable that goes down as this figure goes up? And where I think this really, her plan really comes into play and really is helpful is in the budgeting process down the road. The next time this Legislature goes through a budgeting process, there is going to be a new method of looking at the incoming taxes, and one of them is going to take into account inflation again. Now they're going...now you as a body and Roads when they come to you are going to say, how much do we expect to get from the feds? How much fuel was used last year? How much do we anticipate being used next year? How much is the fixed part going to be? What are the car sales doing now and how much do we expect to get in that figure? And now there's going to be one more figure, and that is, how much inflation has there been, how much increase has there been in the wholesale cost of fuel? And that figure is going to go up. And now they're going to come to you with anticipated revenues saying, here's what we expect to have happen. And if that's more money, we can take advantage of that, you as a Legislature can take advantage of that and it will help keep up. So, we welcome the introduction of in inflationary figure that really is inflationary, or at least it appears that it will be. So, I think the real benefit from this is not what happens this year, the \$16 million or whatever figure you all choose to utilize. But I think the real advantage of it comes in when the budgeting process repeats a couple years down the road. So, that's one of the reasons we really like this formula. With that, I've already told you more than I know and I'm sure the people from Roads can correct everything I've told you a little later in their neutral testimony. But I'd be happy to answer any questions that you might have. [LB846]

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SENATOR JANSSEN: Any questions? Seeing none, thank you, Loy. [LB846]

LOY TODD: Thank you. [LB846]

SENATOR JANSSEN: Next proponent, please. [LB846]

LARRY DIX: (Exhibit 1) Senator Janssen, members of the committee, for the record my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials here in a position of support. I have a copy of a letter I'd like to introduce on behalf of the Lancaster County Board in support of the concept of Senator Fischer's bill. And I would like to tell you that NACO also supports, we believe this is a step in the right direction, it does take into consideration the inflationary portion. You asked me to talk about something you're not going to hear from anyone else, so I'm going to talk a little bit just about the county side of this bill, the county perspective of it. One thing that I would tell you that makes us a little bit nervous from a county perspective is that the counties have a pretty significant exposure in this bill and that exposure is in the event that consumption drastically decreases or the price of fuel decreases. Now, unlike the state side, which the state has some protection built in because the variable will, of course, go up to protect that. On the county side, there is no variable. And so I would caution and at least want to make sure that we are on record as saying we support this but there is some exposure to county government and that exposure is probably identical for the cities. And so when we, since we have identified that exposure, one of the things that we would ask the Revenue Committee to look at...when Senator Fischer earlier talked about the two-thirds split to the state and the one-third split to the cities and counties, one thing that we would like the Revenue Committee to look at is that percentage split because we do have an exposure there that may not be there on the state side. And in doing so, we would ask that you would take into consideration an adjustment to that to mitigate the exposure that the counties have. So, with that, you'll hear plenty of things. You know all the issues of counties' roads and bridges and our needs and all that. We've talked about that many, many times. So, with that I'd be happy to answer any questions that any of you may have. [LB846]

SENATOR JANSSEN: Any questions? Chris. [LB846]

SENATOR LANGEMEIER: Thank you, Mr. Dix, for your testimony. We're going to jump ahead a bill here. Is it your plan to testify in support of LB758 as well? [LB846]

LARRY DIX: That would be Senator Hudkins' bill. [LB846]

SENATOR LANGEMEIER: Yes. So would you stand in support of anything that got you more money to the counties, blindly to policy? [LB846]

LARRY DIX: No. There are other bills, I think, coming forward that would increase funds

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to the counties that we would not necessarily be here in support of. [LB846]

SENATOR LANGEMEIER: Not ethanol, huh? Okay, thank you. [LB846]

SENATOR JANSSEN: Senator Burling. [LB846]

SENATOR BURLING: Thank you, Mr. Dix. Does this bill that we're discussing now change the distribution between cities and counties and state over what the current distribution is? [LB846]

LARRY DIX: This bill as we read it, this bill is in addition to what currently is there. So, what's currently there, we believe that portion of the formula on the current remains the same. But on the money that this bill brings forward has its own percentages built into it. [LB846]

SENATOR BURLING: Thank you. [LB846]

SENATOR JANSSEN: Tom. [LB846]

SENATOR WHITE: Mr. Dix, under the ordinary rules of the marketplace, either consumption is going to drop or the price is going to drop, but you're not going to see consumption go up and the price go up, especially if what the Motor Vehicle Association is saying, cars become more fuel efficient. So, you're not just concerned, you're looking at a squeeze. You going to come back and ask for more money for counties separately? Or what is your fix for that problem in this bill? [LB846]

LARRY DIX: Well, certainly I can't sit here with a crystal ball because I can't sit here and say, consumption will go down or that price will go down. I mean, but the possibility is there. [LB846]

SENATOR WHITE: Isn't consumption going down what caused the crisis that brings us here? As prices spiked, we saw a drop-off; as they leveled, people got used to them, consumption started raising back up. [LB846]

LARRY DIX: I think, yeah. I would agree that that is what we are seeing in the marketplace today. [LB846]

SENATOR WHITE: Okay, so if we're going to try and do something this big, what's the county's fix for a problem you've identified? [LB846]

LARRY DIX: Well, when we look at this, we look at it and believe that the bill has the possibility to fix it. Although, when you look at, there's a very small amount of money going to the counties in the distribution in this bill, it is an amount. It has the ability to

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increase in future years because of the inflationary cost that is built into the bill. So, that's where our comfort level with this bill comes in. [LB846]

SENATOR WHITE: So you're okay with the bill as it is? [LB846]

LARRY DIX: We would be. What we're bringing forward is the idea that there is an exposure. I want to make sure that everybody is aware that there is an exposure to counties and that there is the possibility that there could be a loss in revenue. County roads, bridges; we need the money, as everybody can attest to, as well as anyone else. But I'm bringing forth the fact to the Revenue Committee that there is an exposure that we have that could possibly cause counties to lose money, unlike what we're seeing in this bill on the state side, which we believe will show an increase in revenue. [LB846]

SENATOR WHITE: But you have no solution. [LB846]

LARRY DIX: I have no solution at this point in time. [LB846]

SENATOR WHITE: Thank you. [LB846]

SENATOR JANSSEN: Senator Langemeier. [LB846]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. To follow up on that...so you're on record to say there is some exposure there and your fear, but without a solution on that exposure. I guess I interpret your putting yourself on record about that exposure so if something does happen in the future, you can come back and say, we told you there was going to be a problem, we want money. So, would it be your testimony that says that's not going to happen because you've declared it but you don't have a solution so we're willing to take that punishment later. [LB846]

LARRY DIX: To assist in the solution, the percentages that you see in the bill are 66 percent, I believe, going to the state, 34 percent to the cities and counties. It is our belief that a solution to that would be to increase the percent going to the cities and counties. If you were to increase that maybe 2 or 3 percent and decrease on the state side 2 or 3 percent, it reduces that exposure, that possibility. So, I guess that may have been what I should have responded to Senator White when he asked that question. [LB846]

SENATOR LANGEMEIER: There you go. Thank you. [LB846]

SENATOR JANSSEN: Any other questions? Abbie. [LB846]

SENATOR CORNETT: Larry, we have a letter here from the City of Lincoln and one from the Lancaster Board of Commissioners, both that address what you have brought up but in different, a little bit different ways. The City of Lincoln is basically requesting

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that with this bill we leave the split as it currently is in the funding, which they have as 53-46. Do you believe that we should adjust those figures? [LB846]

LARRY DIX: Well, I think if we start to go down that path of the 53, which we currently have, and we raise the cities and counties to that point, we've got to understand the base of the problem is and has been for a number of years, there's not enough money in the pot completely. Now, if that is the right figure, certainly somebody from the cities and counties would say, that's a better figure for us, we certainly understand that. But I got to think, and many times you have heard me say, from the county's perspective, we believe this is a partnership within that Highway Trust Fund pool of money. And our working relationship with Department of Roads on many different areas is a partnership, so from the county's perspective, and I can only speak from the counties and not from the cities, yes, we believe that split should be a little higher, but we're willing to live with less than the current 53-47 percent split. [LB846]

SENATOR CORNETT: But you do believe that percent needs to be looked at, maybe not at the numbers that it currently is? [LB846]

LARRY DIX: I do believe that should be looked at, yes. [LB846]

SENATOR CORNETT: Okay. [LB846]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Larry, for being here today. [LB846]

LARRY DIX: Yep. [LB846]

SENATOR JANSSEN: Next proponent, please. [LB846]

BOB STUBBE: (Exhibit 2) My name is Bob Stubbe, S-t-u-b-b-e, and I'm the Public Works Director for the City of Omaha and I want to thank you for this opportunity today. I also will not try to interject everything that you're probably going to hear today, but I just want to make a few statements. I think we all recognize that there's a significant investment that the state of Nebraska and lot of the cities and counties have put into their transportation system, and it's not only to maintain that system but it's also to add capacity to the existing system and that requires financial resources. The City of Omaha over the years has taken other measures to raise funds, whether it be through wheel tax, whether it be through street cut fees or development fees. So we've recognized the need to try to tap into other resources. We support additional funds for roads. Our concern is is that the current proposed legislation would essentially penalize cities and counties because of the distribution formula that's being proposed. And so we would support, and I have a resolution that's included in the packet of information, that says that we would prefer to see the existing formula to be used for any increase that might

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come about because of this bill. The other thing I want to mention to you that I've also included some information in the packet with regard to transportation funding studies that have been done within the Douglas-Sarpy County area. Back in 2004 there was a funding study that essentially noted that existing needs alone equated to about \$371 million. In 2007 the City of Omaha updated that study and really just looked at the City of Omaha as far as what our existing needs alone would be, and that was about \$325 million. So that doesn't even address the needs out to 2025 that were noted in the 2025...would be somewhere in the neighborhood of \$2 billion. So there definitely is a need to continue to maintain our existing system, but also recognize the need of adding capacity to our transportation system. And with that, I'm available to answer any questions. [LB846]

SENATOR JANSSEN: Any questions? Tom. [LB846]

SENATOR WHITE: Mr. Stubbe, you're in Omaha, my home town. [LB846]

BOB STUBBE: Yes. [LB846]

SENATOR WHITE: Well, you know the terrible problem we have with people who don't properly license their vehicles in order to avoid taxes, but use our roads; and also I'm sure you're aware of the number of people who go across the river to buy fuel when it's cheaper there. Do you have any solutions for this committee and the Legislature on how, if we do choose to raise gasoline taxes, we can stop what's referred here as "border bleed," the loss of revenue because our taxes have gone up. It's something you fought, I know, for many years. So, I'd be happy for your insights. [LB846]

BOB STUBBE: I can't sit here and tell you I have any magic formulas for that. I know that the Douglas County Treasurer recently tried to at least get the message out about the need to register your vehicles within the city of Omaha and for people to recognize the fact that there's a significant amount of revenue that's not being gathered within the city of Omaha by people not, you know, registering their vehicles. As far as a way to try to get people from going across the, you know, the river into Iowa, I don't have a solution for you on that. [LB846]

SENATOR WHITE: And just on pure dollars and cents, does anybody to your knowledge have a study that if we raised, hypothetically, gas taxes \$0.10 and it's \$0.10 more expensive than Iowa, how many millions or thousands of gallons do we lose in sales by being that far out of line? [LB846]

BOB STUBBE: I'm not aware that there's any study out there that has looked at that, but I can't answer that for you. [LB846]

SENATOR WHITE: And we're looking at a third or more of the population within easy

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distance of Iowa. [LB846]

BOB STUBBE: Correct. [LB846]

SENATOR WHITE: Thank you. [LB846]

SENATOR JANSSEN: Any other questions? I don't see any. Thank you for being with us today, Bob. [LB846]

BOB STUBBE: Thank you. [LB846]

SENATOR JANSSEN: Next proponent, please. [LB846]

PAT GORUP: Good afternoon, Mr. Chairman and members of the Revenue Committee. My name is Pat Gorup, G-o-r-u-p, and I'm president and CEO of Lyman-Richey Corporation, and I'm testifying in support of LB846. I want to thank you in advance for providing me with the opportunity to testify before you. Today I'm representing the State Chamber and the Nebraska Bankers. I currently serve on the board of directors of the State Chamber. I'll also share my perspective as a business leader of Lyman-Richey Corporation. Recently, the State Chamber approved LB846 after receiving recommendations from the Economic and Taxation Councils last week at our annual board meeting. The State Chamber strongly supports LB846 because it's consistent with our Economic Development Council's mission statement, which is: Developing policies and programs that will stimulate new, improved, and expanded business opportunities and jobs for Nebraska citizens. A number of directors stated their concern about efficiently delivering their products to market. These comments reaffirmed that transportation is viewed as a fundamental component of economic development. With approximately 48 locations throughout Nebraska, including locations such as McCook, Fremont, Omaha, Laurel, Plattsmouth, and with over 400 trucks, Lyman-Richey understands the economic importance of a sound transportation system. An efficient system allows our state to be more productive and compete with other states for retention, expansion, and traction of investment and jobs in Nebraska. From a business funding perspective, we are very capital intensive. We understand that you can't indefinitely delay addressing significant capital costs, so. At our company, I think most companies in our position, we try to maintain or replace our capital assets and expand them over their proportionate useful life. In it's November 2007 report to the Legislature, the Transportation Committee on long-term transportation needs of Nebraska, the Department of Roads reported that Nebraska was at a financial crossroad in facing a multibillion-dollar shortfall in roads funding. We continue to fall further behind and at some point we'll reach the point where we only have funds available for maintenance. Time has proven that our citizens of our state have supported funding sources, the Highway Trust Fund, because they know that it will be used for roads. Currently, funding a future road construction fuel tax revenue will be more challenging in result of recent

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significant increases in fuel prices. Fuel consumption is projected to decrease, reducing fuel tax revenue to the Highway Trust Fund, while construction costs will grow as a result of these same fuel price increases. We support LB846 because it keeps the user base concept in place. You still have an appropriations budget to keep that in check. The long-term nature of the bill...it's really a long-term solution for a long-term problem...it also addresses the anticipated inflationary pressures and reduced consumptions, I think a couple of future trends that will play out. It also provides a level of stability for the program, not only from the state's perspective but also from those folks involved in designing and building the roads. I think the state has benefited from the stability, and that type of environment provides a more competitive environment for those contractors that supply the services. In closing, I think LB846 is a significant step in the right direction; I don't think it's the...it may not be a complete resolution. We understand the needs are significant, both on a state and local level. And we ask that you support LB846. I want to thank you for your time and service to our great state, and I'd be happy to try to answer any questions. [LB846]

SENATOR JANSSEN: Thank you, Pat. Any questions? Senator Langemeier. [LB846]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. And Pat, welcome, and thank you for your testimony. [LB846]

PAT GORUP: You're welcome. [LB846]

SENATOR LANGEMEIER: In the Chamber's committee when you were talking about this bill, did the percentage between counties, cities, and state, did that ever come up as a discussion point at all, or... [LB846]

PAT GORUP: You know, we looked really at a state perspective and didn't talk about percentages. We recognized there's needs at both a state and local level and we, our members are statewide, and you know, from our company perspective, we view it the same way. We're statewide. But we've heard testimony on the needs at the local level also. [LB846]

SENATOR LANGEMEIER: Okay, thank you. [LB846]

PAT GORUP: Um-hum. [LB846]

SENATOR JANSSEN: Any other questions? Tom. [LB846]

SENATOR WHITE: The State Chamber regularly comes to this committee particularly, but all the Legislature and talks about the terrible tax burden on the people of Nebraska and our need to remain competitive. [LB846]

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PAT GORUP: Um-hum. [LB846]

SENATOR WHITE: Is the chamber going to lay off of that if we raise this tax... [LB846]

PAT GORUP: Um-hum. [LB846]

SENATOR WHITE: ...or are you going to come back and say, well, you got to drop taxes in other ways because you're not competitive? [LB846]

PAT GORUP: Um-hum. [LB846]

SENATOR WHITE: And one of those aspects, of course, is gasoline tax. [LB846]

PAT GORUP: Um-hum. [LB846]

SENATOR WHITE: So you kind of put us in a bind, you know. [LB846]

PAT GORUP: I understand, and I view it more as an investment, I mean, very similar to Nebraska Advantage and LB775, which I testified on. I think...you know, and we see it both the State Chamber level and the Omaha Chamber level that when prospective companies are looking at Nebraska or other locations, one of the items on their checklist is infrastructure and transportation, so. I think that's an important part of it and I would view it as an investment. And I think if we can do it right and pay for it as we go and address our needs now, it's going to be less expensive than we will ultimately have to face and hopefully we can benefit from the economic development and the jobs. [LB846]

SENATOR WHITE: Thank you. [LB846]

PAT GORUP: Um-hum. [LB846]

SENATOR JANSSEN: Senator Langemeier. [LB846]

SENATOR LANGEMEIER: One more question, and Pat, I know you have extensive work with companies coming in and your involvement with the Omaha Chamber. And you just, you mentioned something there that they have on their checklist, infrastructure. [LB846]

PAT GORUP: Um-hum. [LB846]

SENATOR LANGEMEIER: Is tax policy higher on that list than infrastructure, or is infrastructure at the top? [LB846]

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PAT GORUP: Well, I don't think you can make a blanket statement of which one is more important. I think you've got to look at both of them in a balance. And you know, we talked about other states. Senator White asked about that; I guess you have to come up with that solution, you have to see what the other states are going to do. But yeah, I think you look at a case by case basis. [LB846]

SENATOR LANGEMEIER: Thank you. [LB846]

PAT GORUP: Um-hum. [LB846]

SENATOR JANSSEN: Senator Cornett. [LB846]

SENATOR CORNETT: What Chris brought up, just...would this plan, you believe, improve our overall business climate based on the increase of the taxes, but the increase in infrastructure; do you think it will leave us status quo or do you think people looking at us from outside the state are going to go, okay, this brings them to adequate infrastructure, but puts them too high in a tax bracket, so overall the climate is not as favorable? [LB846]

PAT GORUP: The fact that I'm testifying, we think it would be more beneficial. And you know, I look at it from our own corporation. You know, we have a 1,750,000 gallons of highway fuel that our trucks will consume and I'm up here testifying in support of that and we're going to pay that tax. [LB846]

SENATOR JANSSEN: Seeing no other questions, thank you for being here. [LB846]

PAT GORUP: Thank you. [LB846]

SENATOR JANSSEN: Okay, Pat. Next proponent? [LB846]

KEITH OLSEN: Keith Olsen, O-I-s-e-n, representing Nebraska Farm Bureau. I'm a farmer from Grant, which is 300 miles straight west of Lincoln. I make that trip almost on a weekly basis, and I understand the importance of quality roads. We are here today testifying in support of LB758 as well as LB846. We believe that a good roads system is extremely essential for Nebraska agriculture. We have seen a shift in agriculture in Nebraska as we develop an ethanol industry. Much corn that used to go out of our state on rail are now trucked from the field to the ethanol plant, and then from the ethanol plant DDGs, dried distillers grains, are hauled to the feed lots. This is a use of our highway that was not there before the ethanol industry was started. But we support for agriculture a very sound highway system. We have a growing concern in our rural counties about the quality of the roads and especially of the bridges that many of our producers have to travel over with their loads of grain and with their equipment, and many of these bridges are deteriorating and we support maintenance and replacement

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of these bridges. As we gathered last fall at the organization to discuss our position on this particular issue, we had good discussion. We looked at the different alternatives. In the end, our members, our delegates voted to support a policy to increase a motor fuel tax as a means to provide additional funding for road construction and maintenance. We are not crazy about asking for an increase in motor fuel taxes. Rural residents travel many miles for essential services such as groceries, doctors, schools; but we recognize the need that we must have a quality road system. Motor fuel tax is a user tax and we support the link between road use and taxes paid. We at the organization are ready to stand and work with the Revenue Committee and the Legislature to develop a package that meets the needs of our state. With that, I'll be glad to answer any questions. [LB846 LB758]

SENATOR JANSSEN: Any questions? Senator White. [LB846]

SENATOR WHITE: I have one that concerns me. As a kid I had to grow up out in a rural area; right now, agriculture get exemption for a lot of fuels that are used on the farm. [LB846]

KEITH OLSEN: Right. [LB846]

SENATOR WHITE: We're moving to a wholesale tax. Is agriculture going to walk away from that exemption and are your members foursquare that they will now start paying taxes on wholesale fuel that they use on the farm? [LB846]

KEITH OLSEN: It is our understanding that as the bill is written that the exemption for non-highway use tax would still be available to producers. [LB846]

SENATOR WHITE: Even on wholesale? [LB846]

KEITH OLSEN: Yes. [LB846]

SENATOR WHITE: And if that weren't true, would your membership still support it? If, in other words, that part of the bill, that exemption goes away... [LB846]

KEITH OLSEN: That would be part of the package that we will work extremely hard for, and if it's not in there, we will have to reevaluate. [LB846]

SENATOR JANSSEN: Senator Raikes. [LB846]

SENATOR RAIKES: Keith, we are talking here about raising more revenue, gas taxes, to support road maintenance and construction. In your view, are overweight trucks a problem in terms of road maintenance? [LB846]

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KEITH OLSEN: Overweight, you mean illegally overweighted? (Laughter) [LB846]

SENATOR WHITE: (Laughs) Maybe we're just setting the weight limits too high. [LB846]

KEITH OLSEN: Or do you just mean... [LB846]

SENATOR RAIKES: Well, let me ask you this. If a truck has 35,000 and they go over scale, they will get fined. [LB846]

KEITH OLSEN: Right. [LB846]

SENATOR RAIKES: Should they not be fined unless they weigh 42,500? [LB846]

KEITH OLSEN: You know, it's an interesting question because, you know, you... [LB846]

SENATOR RAIKES: It was intended to be. (Laughter) [LB846]

KEITH OLSEN: At one time we could buy a permit to be overweight, and apparently if you bought that permit, you no longer did damage to the roads. (Laughter) So, we have support in the past, we support the exemption that from field to first point of delivery, that trucks can be a certain percentage over the legal weight and we had supported that in the past. Do those trucks create more damage to the road than one that's 15 percent less? I don't know, I do not know. I can't answer that. [LB846]

SENATOR RAIKES: Well, if that's an unknown, it would be unfair to fine a non-grain trucker for being over 34,000, wouldn't it? [LB846]

KEITH OLSEN: Well, you know, that's possible. I don't know where the damage starts on a road. Does it start at 34,000, does it start at 45,000, I don't know. [LB846]

SENATOR RAIKES: Well, let me ask you, then, about the enforcement policy. I think you're exactly right, that there once was a permit required, but there no longer is a permit, am I correct? [LB846]

KEITH OLSEN: Right, that is correct. [LB846]

SENATOR RAIKES: And so the argument is that you are hauling your grain from the farm to the, is it the first buyer or the (inaudible)? [LB846]

KEITH OLSEN: First point of delivery. Right. [LB846]

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SENATOR RAIKES: Okay. And so isn't it the case that really that's morphed into a situation where most any grain truck going anywhere is not subject to enforcement? [LB846]

KEITH OLSEN: Probably, yes. [LB846]

SENATOR RAIKES: Is that something we should take a look at given the difficulties we're finding coming up with money to fund the maintenance and construction of roads? [LB846]

KEITH OLSEN: To increase the fine or to increase the license or to restrict the ability to load the trucks? [LB846]

SENATOR RAIKES: Well, I guess the latter is my specific question. [LB846]

KEITH OLSEN: Yeah. We have a struggle of having enough trucks, enough vehicles to haul the grain from harvest field to first point of delivery. If you lower the weight that can be hauled in a truck, you will need to have more trucks out there. Will more trucks create more damage than an overloaded truck? You know, that thing I don't have the answer to, but I know it's a big issue. My neighbors would not be very happy if they couldn't load their trucks up. Would they pay extra to be able to fill their trucks? I don't know. That's a good question, one that we could have that discussion on. [LB846]

SENATOR RAIKES: Okay, thank you. [LB846]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Keith, for being with us today. Next proponent? [LB846]

JOHN K. HANSEN: Chairman Janssen, members of the committee, for the record my name is John K. Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union. We are in support of LB846. We have looked at this issue for some time and have thought we've been losing ground relative to funding of roads. We think this mechanism is flexible, accommodates the traditional system but also brings in inflation as a factor, and so we think as a funding mechanism, it's perhaps a better mechanism. But in the end of the day, we agree with the assessments that it still comes down to political will and priorities. And we have a huge interest, obviously, in having good roads and an appropriate infrastructure. And so we think this merits consideration and would be glad to work with the committee in any way that we can to try to...and Senator Fischer...to do it, my experience down through the years, I have the third-third-third view of legislative activity: About a third of the bills are pretty much the same old bills, just different runs at the same old issues and ideas; about a third of the bills are fixing up what we unintentionally messed up last year or in past sessions; and about a third are new ideas. And so this is in the new idea category and we recognize it's going to take some

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time to perhaps work all the bugs out, but we commend Senator Fischer for bringing forth a new idea. And with that I would close my testimony and answer any questions if I could. [LB846]

SENATOR JANSSEN: Thank you, John. Any questions? Senator Langemeier. [LB846]

SENATOR LANGEMEIER: Chairman Janssen, thank you. John, thank you for your testimony. And you talked about you've seen this coming on for years and years. Last year in our budget debate on the \$20 million that was discussed, did your group take a position on that expenditure of \$20 million in the budget? [LB846]

JOHN K. HANSEN: We did not specifically. We have generally supported the whole idea of spending more dollars on roads and we realize that it's, you know, where do you set the bar, is always a legitimate point of contention. But we've felt like the last five to ten years we've been losing ground and we've needed to increase the total amount of dollars that we spend. [LB846]

SENATOR LANGEMEIER: Okay, thank you. [LB846]

JOHN K. HANSEN: So, we were in general support. [LB846]

SENATOR JANSSEN: Senator White. [LB846]

SENATOR WHITE: John, if we earmarked money from taking away the exemption for fuel used on the farm towards rural roads, would the rural community support that? So you get more money, you lose your exemption, but it's directly earmarked to improving roads to market. [LB846]

JOHN K. HANSEN: I really don't know. It's not one of the...in terms of the policy discussion that we had, I suspect it was fairly similar to Farm Bureau's, but we never really got into that. But going to an earlier question, it is our understanding that the same folks who are paying now would be paying under this proposal. That was one of the first questions I asked Senator Fischer. I knew what my guys would ask, and so covering that base with that understanding we were willing to take a look at this new proposal. [LB846]

SENATOR WHITE: Thank you. [LB846]

JOHN K. HANSEN: You bet. Thank you. [LB846]

SENATOR JANSSEN: Any other questions? Thanks, John. Next proponent? How many more proponents do we have? Who's going to bring in dinner this evening? (Laughter) Not too many takers. Go right ahead, sir. [LB846]

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GREG WOOD: All right, Senator Janssen. I did revise our statement a little bit to try to cut down on some of the things that are being repeated... [LB846]

SENATOR JANSSEN: Good, good. [LB846]

GREG WOOD: ...so if it doesn't really flow very well, that's the reason why. [LB846]

SENATOR JANSSEN: Tell us something we haven't heard, you bet. [LB846]

GREG WOOD: All right. I'm Greg Wood, I'm a professional engineer in the state of Nebraska. I'm also representing the American Council of Engineering Companies. We believe that Senator Fischer's bill is a move in the right direction, it raises awareness to the problems in the roads funding. Simply maintaining and preserving Nebraska's existing roads will require approximately \$2 billion over the next 10 years. It was originally pointed out that several major transportation initiatives are not being met. This includes the 170 miles that remains on the expressway system that was originally identified, I believe, in 1988. I was with the department at the time, and if I remember right it was a very ambitious program and they thought they were going to have it completed by 1999. Currently, there's still 170 miles left to do that, to complete the system. The construction of the six-lane interstate system between Lincoln and Grand Island and other key highway widening projects such as the Lincoln South Beltway, Highway 133 from Blair to Omaha, and the Kearney East Bypass are needed due to safety and capacity reasons. All these are on indefinite hold due to funding problems, yet NDR's budget keeps dropping while our roads continue to age and new roadways are not being built. The current highway program is \$341 million; in 2006 it was \$390 million. One of the things we see, we're seeking county engineers for a lot of cities and counties across Nebraska and as we work with them on the 1- and 6-year highway programs, due to the increased cost on construction...it was mentioned earlier...a lot of their projects are being pushed further and further out. A project that they may have scheduled for two years down the road, while they're still getting the same percentage of money they've received in the past, they're not getting...the buying power is significantly decreased. We believe transportation infrastructure is not an expenditure; it's an investment, it's an investment that promotes economic growth. We cannot support a 21st century economy on 20th century infrastructure. It's an investment in the citizens of our state, our roadways connect us with our family, friends, colleagues throughout the state and beyond. It's an investment in the safety and welfare of all of our citizens and the guests to our state as they travel our roadways. We encourage the committee to support the funding mechanism, use it as a tool in our toolbox for increasing road funding. The sure hope that the Nebraska's transportation crisis will require a creative vision and financial commitment before we can claim success. Senator Fischer's bill is a move in the right direction. We urge the Revenue Committee to advance LB846 and we thank Senator Fischer for her leadership on this issue and

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thoughtful consideration of the options that are being addressed and the magnitude of the problem. I'd be happy to answer any questions you may have. [LB846]

SENATOR JANSSEN: Any questions? Seeing none, thank you, Greg, for being with us. [LB846]

GREG WOOD: Okay. [LB846]

SENATOR JANSSEN: Next proponent? [LB846]

DAVID BROWN: Mr. Chairman, members of the committee, my name is David Brown, B-r-o-w-n, and I am the president and CEO of the Greater Omaha Chamber of Commerce. I'm testifying on Senator Fischer's proposal as a proponent, though I cannot say the chamber has of yet endorsed this particular measure or any of the other proposals that are going to be in front of you, but believe it's a really good step in the right direction. I'll say we're drawn to this particular proposal as it presents an intriguing measure of innovation. I'm a firm believer that if we're going to solve this relatively large problem, it's going to take some innovation on everyone's part to develop a great proposal, and still it would continue our tradition of a dedicated and predictable funding source for road improvements. The Omaha Chamber, especially through our transportation council, has wrestled with this issue over the last few years as it has become more and more apparent that we are not keeping pace with some of the pressing needs of our road and highway system. We've made progress in recent years by ensuring that transportation-related revenue is placed within the Highway Trust Fund. We know that it is time to address this matter in a more holistic fashion. Though I can't offer you a definitive blueprint, I can say this is among the Omaha Chamber's top economic development priorities and our board is prepared to provide whatever staff and volunteer resources necessary to help craft with you and assist you in developing the best plan for the state. We believe, though, that as communities we can't come in here and ask the Legislature to solve all of this problem for us. We think a strong local effort is essential for this; Omaha has demonstrated in the past few years through our Arterial Street Program that's providing an estimated \$3 million annually for our area local roads. In 2006 the extension of the Omaha wheel tax in the city's planning jurisdiction provided another \$2 million a year for area road maintenance. And in 2006 Omaha voters approved new bond issues totalling \$103 million, more than half of which is for road construction. This is with the proviso that these would not result in a tax increase but would rather use existing tax levy for that purpose. The street and highway bonds are currently providing about \$10.5 million per year for road projects in the city, and yet the needs of our community and the state remain great. You as Revenue Committee members know that I'm in a particularly strange position here. I've come before you for the past each of the last four years looking for more ways to make our state more competitive. The first couple of years we talked a lot about the Nebraska Advantage Act and necessary incentives to reduce the lack of competitiveness of our

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tax structure. The last couple of years we've supported the Governor's efforts and yours to reduce tax liability in this state for businesses and for individuals, and yet I find myself here in a situation, as does our board, of trying to figure out, how do you ultimately fix the huge road program problems that we have in this state without also looking at ways to increase revenue? We haven't figured that out yet; we hope that you will, but assume that you probably will not. And so in our position we've said, no, this is really an investment in economic development similar to incentives. We believe that every dollar we invest in roads will generate significant dollars back into the state in economic development and jobs, and know that if we do not do something with reference to road projects eventually, failing infrastructure will become a disincentive to development here in the state. So if the time has come to do it now, how do we do it? Is it this bill, is it any of the million of other bills that you're probably going to hear about in this committee and others? We should probably explore all of those options, perhaps even thinking about bonding in the future...which I know the b-word is never well accepted in many places here in the state. However, there are places in this country that have figured out a way to do this and we think maybe by looking at some of their examples we can figure out a way to do it, too. These are all big ideas for us to consider, but we're pleased that Senator Fischer and others have presented a framework for this discussion and we look forward to actively participating. Thank you for your time and your service to this state. I'd be happy to answer any questions you might have. [LB846]

SENATOR JANSSEN: Thank you, David. Senator Langemeier. [LB846]

SENATOR LANGEMEIER: Thank you, Chairman Janssen and David, thank you for your testimony. We're going to hear a bill in a few weeks called the Nebraska Super Advantage and I'm assuming you're going to come testify in support of that? [LB846]

DAVID BROWN: Yes, sir. [LB846]

SENATOR LANGEMEIER: If you had one or the other, which one would be your priority? Because I think this is a time to make that decision. [LB846]

DAVID BROWN: Well, I'm not sure it is. I think you're going to hear a number of proposals on infrastructure, a number of proposals on education this year, you're going to hear a number of proposals on economic development. Each one of them has some impact on our ability to be competitive for companies here. I would contend that there is merit in particularly the proposal on this new incentive in trying to find high wage jobs. The question is, is that the right solution and how does that compare to the need to have more roads? I'm not sure that it's an apples and orange kind of discussion. We need great roads, we need great bridges in order to be successful as a state. We also need to be able to have the highest-paying jobs we can have. So sometimes it isn't a choice between one or the other, but how do we figure out a way to do both? [LB846]

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SENATOR LANGEMEIER: Thank you. [LB846]

SENATOR JANSSEN: Any other questions? David, don't they work hand in hand?
[LB846]

DAVID BROWN: Absolutely. [LB846]

SENATOR JANSSEN: Yeah. All right. [LB846]

DAVID BROWN: I don't think any of these can be looked at as in a petri dish all by themselves, you know. They all come together and you end up with a business climate that supports the kind of development we want to have in this state. [LB846]

SENATOR JANSSEN: Especially if you have a geographical state as large as Nebraska. [LB846]

DAVID BROWN: Well, it's a very few of us that have the opportunity not to drive from one end of the state to the other. [LB846]

SENATOR JANSSEN: That's right. [LB846]

DAVID BROWN: It's a significant infrastructure issue for a state this large with as few a population as we have. There are those that say that the gas tax is a user tax that we capture as much of the traffic coming through this state and so we're benefiting from other people paying that tax as well as our residents, which is why our board is willing to consider an increase to see if we can't figure this problem out. [LB846]

SENATOR JANSSEN: Thank you. [LB846]

DAVID BROWN: Thank you. [LB846]

SENATOR JANSSEN: Next proponent. [LB846]

BRUCE BOHRER: (Exhibits 3, 4) Good afternoon, Chairman Janssen, members of the committee. Bruce Bohrer appearing on behalf of the Lincoln Chamber of Commerce. For the record, my last name is spelled B-o-h-r-e-r. The Lincoln Chamber of Commerce supports Senator Deb Fischer's LB846, which proposes, as you know, a 5 percent tax to the calculated average wholesale price index. We do think it is a fundamental improvement to the system we have right now. The issue of adequately funding roads and infrastructure needs is a growing concern across the state and across the country, as you've already heard. We have been engaged on this issue and other infrastructure funding issues at all levels of government for the past several years. And we're engaged in these issues because of what Mr. Brown just mentioned, we believe infrastructure is

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essential to job and investment growth, the job and investment growth that we seek in Lincoln and I believe you all seek across the state. The Legislature and the Department of Roads have responded with new approaches and additional funding over the last several years. We commend you and other senators for the work the Legislature has accomplished on this issue in past sessions. Still, our statewide road funding needs continue to grow and the undermining impacts on the current funding streams continue and with this I mean the inflation factor that Senator Fischer is trying to attempt to somewhat equalize here. The Lincoln Chamber believes LB846 takes an innovative approach to trying to add a measure to stability to our funding stream for roads and we urge your support. I would note, too, I've got a handout of my testimony and for a limited purpose I'm also appearing on behalf of the Professional Engineers Coalition just to submit that letter. But here is my testimony. That would conclude my remarks. I'll be available for any questions you might have. [LB846]

SENATOR JANSSEN: Any questions for Bruce? Seeing none, thank you for being here today, Bruce. Next proponent? [LB846]

LYNN REX: (Exhibit 5) Senator Janssen, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. We do support this measure; we think that this is a major step forward in terms of funding for the Department of Roads and trying to provide and protect our infrastructure across the state. I am handing out to you an editorial that was written by our board president, who is the mayor of Norfolk, Nebraska. And what he does is tie into the very discussion that we're having today, which is the nexus between economic development, investment, infrastructure, and making sure that you can create the jobs that we need for Nebraskans and others. I think this is very important because those folks that have been involved in economic development on the local level will tell you that unequivocally when you have people coming to your municipality to talk about whether or not to locate there, and many times whether or not to stay there, the issues come down to, what is your infrastructure? What are your educational systems look like? And of course, what is the tax policy? These are all interrelated. And of course we did support adding the \$20 million back into the Department of Roads budget last year. Senator Fischer was the lead testifier on that effort and I want to commend her for her longstanding efforts in this area and also for introducing this bill and thinking out of the box and the great staff work that's been done by her staff as well as others to try to put this bill forward. We too are concerned about the exposure that cities and counties have, in particular municipalities, but certainly counties, too, in this effort. I believe that the dropping point is \$2.13 before we would see a loss of funds for municipalities and counties. Notwithstanding that exposure, we certainly support this measure. We hope the Legislature would continue working with us to try to meet the longstanding unmet needs of municipalities and counties. The state of Nebraska has about, according to the 2007 Needs Assessment study and report submitted to you by the Department of Roads, \$7.8 billion, and that's without the inflation factor. So, those are their needs. The city of

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Lincoln, the...Mayor Beutler indicated this morning in a conference call with our executive board, Lincoln is looking at a minimum \$175 million deficit in terms of their infrastructure needs on roads in Lincoln, Nebraska. Obviously Omaha has already testified and presented information to you about that. So again, we just wanted to underscore the connection between infrastructure, economic development...it's not just enough to give the incentives; you have to do something to make sure we can get those products in and out of the state of Nebraska. And we just again want to commend Senator Fischer and her staff and look forward to working with this committee to continue not only stabilizing funds for the Department of Roads, but increasing funds as well for cities and counties. I'd be happy to respond to any questions you might have. [LB846]

SENATOR JANSSEN: Thank you, Lynn. Ron. [LB846]

SENATOR RAIKES: You said the dropping point was what, again? [LB846]

LYNN REX: My understanding, and this is from committee counsel, is...Dusty, (laughs) not your committee counsel...is \$2.13. \$2.13. [LB846]

SENATOR RAIKES: So if gas price dropped to \$2.13... [LB846]

LYNN REX: This is wholesale. Wholesale. [LB846]

SENATOR RAIKES: What is it now? [LB846]

LYNN REX: \$2.30 I think is...pardon me? It's \$2.40 right now, and I think that this bill also is based on numbers between \$2.26 and \$2.30. [LB846]

SENATOR RAIKES: And the reason for your loss would be that this puts more of the revenue for cities and counties at a price quantity or a price component rather than the quantity only. [LB846]

LYNN REX: That's right. And this also...again, I want to also emphasize that along with this is the 8 cent drop in the fixed rate. So whereas the state of Nebraska, the Department of Roads can make that up with the variable, municipalities and counties do not have a variable. That's why we have those kinds of issues. [LB846]

SENATOR RAIKES: Okay. Thank you. [LB846]

SENATOR JANSSEN: Tom. [LB846]

SENATOR WHITE: I just...Ms. Rex, just so everybody understands the nature of the problem we're facing, according to the statement here, current dollar needs for roads is

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\$7.8 billion in today's dollars. If we spent every nickel, forget schools, forget hospitals, forget welfare, forget everything, we wouldn't have enough money to meet current needs if we devoted the entire budget. So at what point are we talking about what we want versus what we really got to have? [LB846]

LYNN REX: Well, I think, Senator, that's a great question and the answer to that is, it is a balancing test. And that's what the Legislature over the years has always had to do, and that's balancing what you need for education, what you need for roads, what you need for incentive programs, and how to make that mix so Nebraska can be competitive with other states. I think that is the answer. So I would imagine that...and I don't know the numbers but Senator Raikes, I'm sure, does...what the unmet needs are in terms of education. But my point is that this is critical. We're also looking at a minimum \$114 million reduction, the state of Nebraska is, from federal funds, that loss of federal funds of which \$80 million of that will go to the Department of Roads and \$34 million to cities and counties. So, this is critical and I just wanted to underscore that. [LB846]

SENATOR WHITE: But they're all critical. The point is, there's \$7.8 billion today dollars. If we spend all the money we get over the next two years, we just meet one need. [LB846]

LYNN REX: We're not asking you to do that. What this hearing today is doing is saying to you, LB846 is a step forward; LB846 provides a mechanism by which you can help stabilize funding in the state of Nebraska with the Department of Roads. That's why we're here today. We understand you're not going to meet all the unmet needs when it comes to roads. But that being said, I think it's important to point that out and that people understand that it is a critical issue. And I was part of the Governor's Transportation Task Force that was put together by Governor Johanns and during that time we had, I believe it was 11 forums across the state of Nebraska. And every place we went people talked about roads that could not meet capacity, trucks that were too heavy for the roads because those roads were built at a time that in fact they didn't have the standards that they have today. So we have a critical issue in the state of Nebraska and this is one of them and it is a balancing test between incentives...which we will support, we will be here supporting the Super Advantage program. We will be here supporting other bills as well. But I do think it's important that the Legislature pass LB846 and we pledge to work with you to also continue trying to find additional funding sources for cities and counties. [LB846]

SENATOR JANSSEN: Abbie. [LB846]

SENATOR CORNETT: When you read the fiscal note on LB846, it seems like an awful lot of money; but in comparison to what our needs are, it's just a drop in the bucket, basically, is what you're saying. [LB846]

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LYNN REX: Well, for example, you know, to me, I mean...you project ahead five years, this bill generates an additional \$56 million. That's, to me, not a drop in the bucket. Is it going to answer all the needs we have? No, but it certainly moves us in the right direction. [LB846]

SENATOR CORNETT: Well, compared to \$7 billion, it's a drop in the bucket. [LB846]

LYNN REX: Yes. Well, but it's moving us in a direction. It's far better off than we are today. So basically...and for cities and counties it's an additional \$9.5 million projecting ahead, again, five years down the road. [LB846]

SENATOR CORNETT: Is... [LB846]

LYNN REX: Now, compared to just alone the city of Lincoln's issues or Omaha's issues, notwithstanding all the other 530 cities in the state of Nebraska, clearly we have a lot greater needs out there, Senator. But at least it's moving us in the right direction. [LB846]

SENATOR CORNETT: Let me ask you the question I asked Senator Fischer earlier. When you look at what this is going to bring in versus what our total needs are, should we be looking at a different funding mechanism? [LB846]

LYNN REX: Well, we are certainly open to that. But I will tell you, I think this is still a significant step forward. We're not saying this is, and I don't believe she's saying, this is the answer to everything that the state of Nebraska may ever need. But I do think it is a significant step forward. I really commend her for thinking outside the box to bring us a new idea. And I will also tell you, we have heard from mayors and others all across the state, as you probably have as well. When the variable dropped 4 cents, I didn't see it. Did you see it? There's a 10 cent differential between stations in Lincoln, Nebraska, southeast and northeast Lincoln. So sometimes I have to wonder about how much of a difference that really is to the consumer. [LB846]

SENATOR JANSSEN: Tom. [LB846]

SENATOR WHITE: With all due respect, Ms. Rex, when I get calls from my constituents that the gas taxes go up, can I give them your cell phone number? [LB846]

LYNN REX: Yes, sir, you may. [LB846]

SENATOR WHITE: (Laughter) They'll let you know how big of a difference it is. [LB846]

LYNN REX: Yes, you may. But thank you. [LB846]

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SENATOR WHITE: Thank you. [LB846]

LYNN REX: Well, I'll talk to you later. Thank you. [LB846]

SENATOR JANSSEN: Thank you, Lynn. I have (inaudible). We've got one more? Okay. We're going on two hours, Ladies and Gentlemen. [LB846]

NANCE HARRIS: Chairman Janssen and members of the Revenue Committee, my name is Nance Harris. For the record, my first name is spelled N-a-n-c-e; my last name is H-a-r-r-i-s. I'm the vice president of the Nebraska Trucking Association and I'm speaking in support of LB846, and I believe I've waited long enough to say, me, too, to all the ideas that have been presented. Association president Larry Johnson is at a meeting in Washington, D.C., but he asked me to convey to you our association's support of this bill. When Nebraska adopted its current and long-successful formula, I think no one could have predicted today's global prices or the global demand for oil. Eight years ago we had a speaker at a Nebraska Trucking Association meeting from the Oil Price Information Service. At that time, he said, "OPEC seems resolved to maintain higher prices. They like the \$22 to \$26 a barrel range. At \$28 a barrel, U.S. oil refineries can drill profitably, so OPEC will hold the price under \$28." You know, had we had this proposal and had we adopted LB846 in 2000, it's quite possible the expressways would be paid for by now. We fully recognize that an addition to the formula does pose political challenges, but we strongly believe the addition is necessary. A formula that relies on the market price of fuel rather than solely on the gallons sold is a better idea. A formula that in essence equates to a cost of building index that we adjust twice a year is what this is, and it's not likely that oil prices will ever return to \$28 a barrel, but it is likely that more motor vehicles will be built and sold to higher fuel economy standards. So with that, we really support LB846 as a concept and we hope you give it your serious consideration and support. Thank you. [LB846]

SENATOR JANSSEN: Thank you, Nance. Any questions? I don't see anything. All right. [LB846]

NANCE HARRIS: Thank you. [LB846]

SENATOR JANSSEN: Next proponent. [LB846]

CURT BECK: (Exhibit 6) Good afternoon, Senator Janssen and members of the committee. My name is Curt Beck, C-u-r-t B-e-c-k. I am the executive director of the Associated General Contractors of Nebraska and I'm testifying today in support of LB846. Our association represents the contractors that build the transportation infrastructure of our state and have been long advocates for improved funding for transportation infrastructure. The revenues are declining, but the needs and demands on the system are significantly increasing. In the past 20 years, motor fuel consumption

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in Nebraska has only increased 31 percent while vehicle miles traveled has increased over 50 percent. Stated another way, highway usage has increased at a much faster rate than revenue generated to support the system. And I will cut my testimony very short just to highlight the need that was addressed in the handout that I have provided; again, really to focus on the situation in which we are faced with is a seriously declining highway construction program. And so with that, I would close and ask for any questions. [LB846]

SENATOR JANSSEN: Thank you, Curt. [LB846]

SENATOR WHITE: One real fast one. [LB846]

SENATOR JANSSEN: Tom. [LB846]

SENATOR WHITE: Will the Governor sign this bill if we pass it? Has your industry gotten that commitment from him? [LB846]

CURT BECK: Our industry has not had that serious of a conversation with the Governor about him signing it or not. [LB846]

SENATOR WHITE: Thank you. [LB846]

SENATOR JANSSEN: Seeing no other questions, thank you. [LB846]

WALT RADCLIFFE: Senator Janssen, members of the committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e. I'm appearing before you today as a registered lobbyist on behalf of a...I hope a growing coalition of cities who are interested in the expressway system; it's known as the Nebraska Expressways for Economic Development. The acronym is NEED. Somebody suggested perhaps it should be WANT. But simply put, they are in favor of getting some more money into the Highway Trust Fund before they can do anything with regards to expressways. I mean, if we don't get some money, we aren't going to be able talk about expressways. I would hope that this committee, I'd urge this committee that if you're going to advance the bill, and I hope you do, that will address the issue of revenue for highways, that you, and I would think you would, try to advance the piece of legislation that probably has the greatest chance on the floor. And that's why I'm appearing in favor of this. Just from what I can tell, and I'm sure you all have your own feelings, but this approach seems to have more acceptance than any others. So I know it's late; I'll quit and answer any questions. [LB846]

SENATOR JANSSEN: Any questions? Senator Langemeier. [LB846]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. Walt, thank you. What efforts is your NEED group doing on the federal level to get Washington to act? Or are

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they just on our door? [LB846]

WALT RADCLIFFE: You know, at this point in time, Senator, they formed about ten days ago. [LB846]

SENATOR LANGEMEIER: Oh, okay. That answers it. [LB846]

WALT RADCLIFFE: And I, you know, if they want to go back to D.C., I'll be happy to go back with them. [LB846]

SENATOR LANGEMEIER: I figured you would. [LB846]

WALT RADCLIFFE: But with our minority membership in the House, I doubt if they'll be able to get a lot done. [LB846]

SENATOR LANGEMEIER: Thank you. [LB846]

SENATOR JANSSEN: Any other questions? Thanks, Walt. [LB846]

WALT RADCLIFFE: You bet. Thank you. [LB846]

SENATOR JANSSEN: Any other ones? That's...all right. How about opponents? How many opponents do we have? One, okay. (Laughter) [LB846]

TIMOTHY KEIGHER: (Exhibits 7, 8, 9) Good afternoon, Chairman Janssen and members of the committee. My name is Tim Keigher, that is K-e-i-g-h-e-r. I appear before you today as the registered lobbyist and the executive director of the Nebraska Petroleum Marketers Association. NPCA represents over 250 petroleum marketers operating in over 1,200 retail facilities throughout the state of Nebraska. I know this will come as no surprise to you, but we oppose this bill. I guess it became clear to me that I feel like the slow zebra in the herd that has been singled out as the lion approaches, thus the striped suit. We would like to thank Senator Fischer for her efforts to find a long-term solution to this funding problem; we just don't agree with it. NPCA appreciates good roads and uses the roads system in delivering fuels to farm, industry, and retail locations. Our major objection to any legislation that would increase the state motor fuel tax in any way is a competitive disadvantage with the surrounding states. As you know, Nebraska state motor fuel tax is currently 23 cents per gallon with a nine-tenths of a cent for the Leaking Underground Storage Tank Fund, also known as LUST. Comparing the motor fuel tax rate, and if you refer to the handouts I gave you, it's showing the motor fuel tax rates and a comparison of just the tax on motor fuel, and in the other one is the total taxes on a gallon of motor fuel including LUST fees and other fees that other states add. As you can see, Iowa is currently at 20.7 cents a gallon plus a 1 cent per gallon LUST fee for a total of 21.7 cents, a 2.3 cent advantage for Iowa retailers. Iowa's

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gasohol tax is 19 cents, 21 cents with the LUST tax per gallon, so thus they have a larger advantage on us. What they do is they have an incentive for facilities that sell over 60 percent ethanol-blended fuel. They are allowed another penny per gallon. Kansas motor fuel tax is currently 24 cents a gallon plus a 1 cent a gallon LUST fee, thus at this point Nebraska retailers have a 1 cent a gallon advantage. Missouri motor fuel tax is 17 cents a gallon with six-tenths of a cent going to their LUST program, thus they have a 6 cent advantage. Wyoming, on the other hand, is at 13 cents per gallon plus a 1 cent LUST fee, in other words a 10 cents Wyoming retailer advantage. South Dakota motor fuel tax is 22 cents per gallon for gasoline and 20 cents for ethanol-blended fuel. The additional LUST fee in South Dakota is 2 cents a gallon, thus a 1 cent advantage on gasoline and 3 cents on gasohol. Prior to January 1 of this year, Nebraska was at a 6 cent per gallon disadvantage on gasoline with Iowa and a 7 cent per gallon disadvantage on gasohol. And you know, we've compared what all the fuel taxes of all the states throughout the country are, where we rank. In the information I got, which I got from the American Petroleum Institute's web site, Nebraska currently ranks 15th highest on just the motor fuel tax. That is just the tax on a gallon of gasoline. Comparing it to..Nebraska ranks 25th highest with all taxes on motor fuel. But I guess it really doesn't make any difference what the tax is in New York or California or New Mexico; all we care is, how competitive are we to the surrounding states? I wish I could quantify to you what a 1 cent a gallon increase in the motor fuel tax does with the border bleeding. I have tried to get some numbers from my members, but being the beginning of the month, they don't have any statistics yet. If I get those available I will be happy to share them with you. One thing I can share with you is, if you look at what happened when Nebraska raised its cigarette tax to create a competitive disadvantage with Iowa of 28 cents a pack, one candy and tobacco wholesaler in the Omaha market told me that his sales of cigarettes, just one brand of cigarettes, a very popular brand, went down 25 percent in the Omaha market and went up 27 percent in the Council Bluffs market. I have asked my members when Iowa raised their cigarette tax \$1 last summer, are they seeing any influx back into the city of Omaha? And yes, they are. They are saying that there's about a 25 percent increase of tobacco sales coming back into the state. Gasoline is the most price-sensitive product there is in consumers' mind today. I mean, there isn't anybody that doesn't talk about the price of gas, how much the price of gas is on the north side of Lincoln, the south side of Lincoln, Council Bluffs, the state of Nebraska. And I don't think it's...it's at all income levels. I mean, people that are making \$25,000 a year are looking at what the price of gas is as they buy it and people that are making over \$100,000 a year are price sensitive, too. So, I guess keep in mind, when a consumer...other than a trucking company who is registered under the International Fuel Tax Agreement, because they pay the tax based upon the number of miles they drive in the state...consumers have a choice of where to buy their fuel. And they're looking to see where that competitive advantage is, and if it's in Iowa they're going to buy it in Iowa. And you don't only lose the two or three cents or the seven cents that's differential between the two states; you lose the entire 23 cents at this point. As I've tried to show you, all we ask is that we remain competitive with the surrounding states

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and, you know, don't let that 23 cents a gallon that we currently have go to Iowa or anywhere else. So with that, I'd...happy to answer any questions you may have. [LB846]

SENATOR JANSSEN: Questions? Senator Langemeier. [LB846]

SENATOR LANGEMEIER: It's getting late, but I have to ask one. Thank you for your testimony. You talk about the competitive disadvantage with just a 1 cent change driving people from Omaha to Iowa, Council Bluffs. [LB846]

TIMOTHY KEIGHER: Well, I haven't got the statistic as to what that is. The 7 cent was, you know...okay. [LB846]

SENATOR LANGEMEIER: But that leads to my question is if there is such a competitive, and all the retailers want to be competitive, how can we see a 10 cent price difference in a shorter distance in Lincoln, Nebraska? [LB846]

TIMOTHY KEIGHER: Sure. [LB846]

SENATOR LANGEMEIER: If they truly wanted to be competitive, there would be a 1 cent difference in Lincoln, Nebraska. [LB846]

TIMOTHY KEIGHER: Good point. You know, I guess anybody that's in the retail business has to be the best alternative to the customer that they're after. It doesn't make any difference whether you're in the gasoline business, the shoe business, the car business, or whatever. But at least the retailer in north Lincoln and the retailer in south Lincoln are paying the same state motor fuel tax, so they're not at a competitive disadvantage. It's their decision as to what price they're going to sell their product at to attract the customer they're after. But in Omaha, up until January 1, Omaha retailers were at a 7 cent disadvantage to start with over their counterpart in Iowa, provided they were paying the same wholesale price. [LB846]

SENATOR LANGEMEIER: All right. Thank you. [LB846]

TIMOTHY KEIGHER: Um-hum. [LB846]

SENATOR JANSSEN: Ron. [LB846]

SENATOR RAIKES: Quick point, Tim. You had at least a couple people saying that the gas tax dropped 4 cents and they didn't see it. [LB846]

TIMOTHY KEIGHER: Well, I mean, I guess, you know, having been in this industry for a long time, my father was in this business...back in the 1980s, the price of gas on the wholesale level used to go up and down a quarter of a cent at the time, maybe two or

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three times a month. Now it goes up and down 10, 15 cents a gallon based upon whether somebody sneezes in the Middle East. So to say that, you know, the price dropped 4 cents, the tax dropped 4 cents and you didn't see that at the retail, I don't know what the price at wholesale did that evening. You know, did it go up more than the 4 cents? Did it go down? I don't know. [LB846]

SENATOR RAIKES: Okay. [LB846]

SENATOR JANSSEN: One thing, Tim. You know, I live in a little town of Nickerson, Nebraska. I buy my gasoline there. It doesn't make too good of sense to me to drive over across the river to Blair to fill my tank up. So I'm going to buy it where I'm at and I think you're going to find that a lot. [LB846]

TIMOTHY KEIGHER: Gasoline is still a very price-sensitive thing. Are there as many people that will drive a distance to buy it as there used to be? I don't think so. But it will amaze you the number of people that do. [LB846]

SENATOR JANSSEN: You know...and I sure do love driving on that expressway. I love going in to Omaha on that expressway, so. [LB846]

TIMOTHY KEIGHER: Sure. [LB846]

SENATOR JANSSEN: You got to pay for them. [LB846]

TIMOTHY KEIGHER: Well, I guess at this point we've been the only ones singled out to pay for it. [LB846]

SENATOR JANSSEN: (Laughs) No, people that are buying your gas are paying for it. [LB846]

TIMOTHY KEIGHER: Well, but if they're buying in Council Bluffs, they're not buying our gas. [LB846]

SENATOR JANSSEN: Yeah, well you're not going to eat that, either, so. Okay. Thank you. [LB846]

TIMOTHY KEIGHER: Thank you. [LB846]

SENATOR JANSSEN: Any other opponents? Seeing none, any in a neutral capacity? One? All right, John. I think you're the Last of the Mohicans. [LB846]

JOHN CRAIG: Good afternoon, Senator Janssen and members of the Revenue Committee. My name is John Craig and I am the director of the Nebraska Department

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of Roads. I appear before you this afternoon in a neutral capacity on LB846. My goal is to provide the committee with background information on challenges facing highway and road construction funding as you deliberate any possible policy changes in this area. The surface transportation system is important not only to Nebraskans but also to the entire nation. Our economy and quality of life are dependent upon a well-functioning transportation system. Our transportation system connects people to jobs, family, medical care, schools, and goods and services we need for everyday life, and it plays a critical role in emergency response and recovery. As the department continues to work to preserve and expand this important asset, it has become clear that financially we are at a crossroad. Over the last few years, we have produced a highway program at the \$380 million to \$390 million level. Our highway program reached its peak at \$390 million in 2006. Since then, we have seen declining trends from \$350 million in fiscal year 2007 to \$341 million for the current year's program. Next year, federal dollars may sharply decline if Congress does not address the negative cash balance projected for the Federal Highway Trust Fund. As a result, our program could drop to an estimated \$270 million. A declining program is not unique to Nebraska; most states, cities, and counties throughout the country are in the same boat. Compounding the effect of declining revenues has been the high rate of inflation for the materials used to build and repair our highways. Over the last three years, inflation has averaged an estimated 11 percent a year based on the Nebraska highway construction price index. Consequently, the buying power of the dollar has been significantly eroded. For example, over the last three years asphalt and cement has risen 87 percent; concrete pavement, 57 percent; and structural steel, 44 percent. Additionally, in recent years the state highway user revenues have fallen short of the appropriation level set by the Legislature due to the volatility in gasoline consumption and in the purchase of motor vehicles. Furthermore, the public has shown little support for any increase in the gas tax or other highway user fees. Declining revenues, increasing inflation has placed us at a crossroad and has forced us to determine the best path for the future. As a result, the department has begun by placing the highest priority on the preservation of the existing state highway system, an asset currently valued at about \$7 billion. The annual cost of that system preservation is approximately \$170 million as a portion of our program. Given this circumstance, capital improvement projects, which are most easily defined as the addition of new lanes of traffic...that's way simplified...have begin to decrease in number and scope and will continue to decrease. The department will continue every effort on behalf of all Nebraskans to meet the funding challenges by spending their highway revenues as wisely and effectively and efficiently as possible. Thank you for your time. You've had terrific questions this afternoon and I look forward to answering any questions that you may have. [LB846]

SENATOR JANSSEN: Any questions? [LB846]

SENATOR WHITE: I have a couple. [LB846]

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SENATOR JANSSEN: Tom. [LB846]

SENATOR WHITE: Mr. Craig, in one of the handouts it's...you are quoted as identifying current needs in Nebraska as \$7.8 billion in today's dollars, 2007 Highways Needs Assessment Report. Is that accurate? [LB846]

JOHN CRAIG: Over the next 20 years. Correct. [LB846]

SENATOR WHITE: So that's not current need, then? [LB846]

JOHN CRAIG: That's what we reported as required by state law by the 1st of December of 2007. So it's as current as we have, yes. [LB846]

SENATOR WHITE: Here's the concern I have: At an 11 percent annual inflation, we're falling, if that's really our current needs, we're falling behind \$840 million a year. This bill would at best raise \$50 million. [LB846]

JOHN CRAIG: If you use that inflation factor... [LB846]

SENATOR WHITE: I mean, don't we have a problem without a solution, not even possible if we devoted the entire economy to current needs? [LB846]

JOHN CRAIG: In general, I don't think I would dispute your point, but it's not going to go away. I mean, we have a basic choice either to turn our eyes the other way or to address it. This... [LB846]

SENATOR WHITE: I don't think anybody is turning away, Mr. Craig, but I'd like to point out to the ladies and gentlemen here, your department identified a need that is so incredibly overwhelming the economy cannot possibly pay for it. Now, is that a realistic statement of what our needs are? [LB846]

JOHN CRAIG: Well... [LB846]

SENATOR WHITE: And if so... [LB846]

JOHN CRAIG: Well, that's a broad statement. I think it's a difficult issue. I don't think it's an impossible issue. [LB846]

SENATOR WHITE: Well, at \$7.8 billion current needs and 11 percent inflation, we're falling behind \$840 million a year, according to your figures. Is that correct? [LB846]

JOHN CRAIG: The difference between the needs and the revenues...and I'm saying this is true for the Department of Roads, certainly true for cities and counties, and most of

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the states if not all...the difference between the needs as calculated and the revenues available, it is increasing. Now, as an example of what you're saying, and this doesn't account for, is that 11 percent or 28 percent inflation that we've seen in this last quarter depends on the snapshot of time in terms of what is the inflation. Now, that was just an example, 11 percent each of the last 3 years. Perhaps five years ago, and I lose track of the time, the difference between the needs on the state highway system alone and the revenues available was estimated to be about \$65 million a year. Not too bad in the big picture. And it was that way about that for some years, we've enjoyed a pretty stable system. The year after that, as I recall, it was about \$100 million a year separation. The next year was about \$200 million a year separation, maybe a little more than that. And this last year when I reported to the Transportation and Telecommunications and Appropriations Committees, the difference between the needs on the state highway system and the revenues available was \$330 million a year. I expect that will get worse. And so the way you characterized it I wouldn't disagree with. It depends on the inflation factor, but it is an enormous problem with an enormous price tag, but it's something somehow we've got to come to grips with. It's a difficult issue, otherwise somebody would have resolved it by now, I suspect. You're absolutely right. [LB846]

SENATOR WHITE: Do you think it might be wiser to wait to look at a dramatic overhaul of how we fund highway transportation in this state until after we understand what the federal government is going to do? [LB846]

JOHN CRAIG: Well, that's a fair question; not so easy to answer. Historically, I'll just speak for Nebraska, I can't speak for every state, most states have some mix of state and federal funds. The state of Nebraska has enjoyed, quite frankly, about...and it depends on the year so don't hold me to this precisely, but most of the time two thirds of our funding has been...first of all, we all pay the same fuel tax. We pay, whenever we buy a gallon of gas, we pay a state fuel tax and we pay a federal fuel tax. That goes to the feds, it just gets put into different pots. We put it in the state pot and we put it in a federal pot. So all of us as individuals are paying both. Within the state of Nebraska, about a third of our revenues come back to us through the Federal Highway Trust Fund and about two thirds are in the state Highway Trust Fund. It has made us pretty stable compared to other states. If you ask, okay, so what? Well, that manifests itself different ways, but if you look at the unit cost for specific materials, we're amongst the lowest. There was a period of time a few years ago where we were in fact the lowest in the country. So that's an example of how that manifests itself. The question of, what is the federal role and what is the federal government going to do, that's a fair question. Well, Congress in the last transportation act established two commissions to answer that question in a form of speaking. And essentially these two commissions were to answer two questions, and the first commission just submitted their report to Congress a couple of weeks ago. The two questions are: For the next 50 years...and this is basically on the 50th anniversary of the Interstate System, a pretty substantial investment, in fact the largest construction project ever done in the world, so it's expensive...that essentially on

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the 50th anniversary of the interstate, what do we need or want as a country for the next 50 years? Oh, and more interesting to watch is: How are we going to pay for it? And so within that commission which met for...that just delivered their recommendations to Congress, there was a document thicker than this stack of paper with a number of recommendations. And their recommendation, and this is really the only recommendation which was a couple of paragraphs in that report, was to increase the federal fuel tax from the current 18.4 cents per gallon to over 40 cents per gallon in addition to that 18.4. Pretty substantial. We can all debate, is that realistic or not, but frankly they have the evidence to support that. That begs the question at the federal level, what are they going to do? And we don't know. They're having the same debate there that we're having here. Last spring, the state of Wyoming was having the same kind of discussion, and (inaudible) they invited me out. They said, well, Nebraska seems to be doing a pretty good job to the east, let's ask them out and pick their brain. So they did that for a couple of hours, exactly the same discussion. We could wait on the federal government. That would be one tact. I don't know that it's necessarily prudent. We share, we have a partnership, and that is a question in itself, will the federal government continue in its present role? And that's talked about in this SAFETEA-LU commission report made to Congress. What is their role and how much are they going to be good for? We don't know the answer to that question, so there are two debates at the state and the federal level occurring on parallel paths. We could wait; I think there are inherent risks in that, but there are risks on almost anything we do. [LB846]

SENATOR WHITE: What percentage of your budget is federal money today? [LB846]

JOHN CRAIG: It's something less than a third. It's probably closer to 30 percent. I mean, it's in the ballpark of being a third, but it's less than that now. [LB846]

SENATOR WHITE: Does the shortfall that we've talked about anticipate the feds will continue to provide one third of your budget? [LB846]

JOHN CRAIG: No. In fact, that dropped from... [LB846]

SENATOR WHITE: Is it in... [LB846]

JOHN CRAIG: We estimate, and it's a little bit of crystal ball, but we're pretty good at it not to...it's not a precise science, but when we look at the revenues we're going to get, we look at both state and federal, a lot of variables described by others that have testified before today. At the federal level, it has been historically...for many years, for the last several decades, the federal government has retained about \$20 billion, and I use that term somewhat loosely, but roughly \$20 billion in the federal budget to help balance the federal budget. And due to most states' urging, including Nebraska, they have put that money to work. In federal fiscal year 2009, which will begin October 1, 2008, it has been estimated for some years that the Federal Highway Trust Fund will

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reach a zero balance. That is, they will still have revenues coming in, but they will not...they'll have \$20 billion thereabouts...actually, it's a little less than that, they'll have \$4.3 billion a year less to distribute to states and cities and counties. The part of that for Nebraska is estimated to be about \$114 million, again, I won't be that precise because the federal government doesn't deal with any real money. And so if you ask...I saw a report, Senator, on the recent month that, well, it's not \$4.3 million, it's something less than that. It's the nature of the beast that our portion is \$114 million loss next year, 2009, \$80 million to the Department of Roads, \$34 million shared between cities and counties. [LB846]

SENATOR WHITE: So the budget shortfalls we're talking about here...assume the federal government will do nothing and that you're trying to cover up a shortfall of \$115 million statewide and we're to assume that the federal government will do nothing... [LB846]

JOHN CRAIG: No. [LB846]

SENATOR WHITE: ...and we're being asked to cover for that? [LB846]

JOHN CRAIG: No. The assumption is that starting next year, and the state and federal fiscal years are not the same, it assumes that that estimated \$80 million drop will result in about a \$270 million program for us. It will drop from \$341 million without going through all the details, \$341 million to \$270 million. That's the best information we have right now. [LB846]

SENATOR WHITE: Okay. [LB846]

JOHN CRAIG: We could well have more better information in an hour...I don't think so. It's what we have right now. Could things change in a month? Might it be two years? We simply don't know. And I don't think anybody else knows. So it's a practical matter for us to do the planning that we need to do for Nebraska. That's the best information we have right now. [LB846]

SENATOR WHITE: I really appreciate your courtesy, Mr. Craig, and also when you came to visit me and the information you provided was most helpful. Thank you. [LB846]

JOHN CRAIG: Thank you, Senator. [LB846]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, John, for being here today. [LB846]

JOHN CRAIG: Thank you. [LB846]

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SENATOR JANSSEN: Anyone else in the neutral capacity? Seeing none. Senator Fischer, would you like to close? [LB846]

SENATOR FISCHER: I'm sorry, yes, I would. [LB846]

SENATOR JANSSEN: (Laughs) That's fine. [LB846]

SENATOR FISCHER: Thank you for your patience. I appreciate your questions. Hopefully I can clarify some of the things that were brought up. First of all, I would like to again thank you for sitting through all this. I'd like to thank the number of people that came up to testify. As you know, they didn't have much time to look at this bill. I worked with my committee counsel, with Senator Heidemann, and we worked with senators on this. You were the first to see the drafts and know about it. A lot of the people who testified today, pressured to be involved in this they were not. So I do appreciate their supporting though they were not involved in drafting the legislation. A few things I would like to maybe clarify. Senator White, you asked the question of Mr. Olsen on the ag question on it. There is no change in that situation. The tax will be collected as it has always been collected, which is at the wholesale level. Also, I think Director Craig just clarified that, that that \$7.8 billion is over a 20-year period and if you look on that chart that I gave you when we met...I don't save everything either, we have more...the graph on that, we can meet and discuss how that is arrived at. Also, you ask if perhaps Nebraska should wait. The Governor asked the same question on this: Should Nebraska wait to see what the feds are going to do? I don't believe we can. I believe we need to move ahead. And yes, that's \$70 million, \$80 million at the state level we're going to lose is a considerable amount of money; but as I said earlier, I don't believe that's our problem. I believe that puts a focus on our problem. When Mr. Keigher came up and talked about the gas tax and compared Nebraska to other states, and there's been some questions on, where do we rank? As I said earlier, other states fund roads in different ways in addition to the gas tax, in addition to their sales tax. They use general funds, they use bonding, they use tolls. I didn't get the note made in time when Mr. Keigher talked about the gas tax in Missouri being lower than Nebraska. But I can tell you that Missouri started...it's called the Smooth Road Initiative, which is a \$400 million bond that is not included in their ranking. Also, I think Nebraska should rank higher when it comes to those rankings because this is how we fund roads in this state. This is where we get the revenue from is gas tax, basically, or fuel tax. So in my opinion, we should be higher on all these different lists of rankings and I think a ranking of 26 shows that we are really low in state rankings when it comes to fuel tax. I think the question would be, and Mr. Keigher brought that up, you know, our reliance on the gas tax. Well then how should we find revenue for our roads? Where is it going to come from? Or do we need to? Do we need to step forward and get any more revenue for roads? What I hear is, yes, we do, it's a priority and we need to fund them, we need to fund them now or we fall further behind. Also Mr. Keigher brought up that we need to be competitive

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and any increase in the motor fuel tax puts Nebraska at a competitive disadvantage. It's been brought up a number of times that the gas tax dropped 4 cents in January. I didn't see a drop at the pump. In fact, those of you in more urban areas know that gas stations within a few blocks of each other have quite a variance in what they charge for gas. I told you my own experience. I'm very fortunate to live in Valentine, Nebraska, where I would say most of the time we have the highest price at the pump in the state. Also, and I don't mean to pick on Mr. Keigher, but also he brought up about the fuel tax and the gas tax and what we have and we never should be at a competitive disadvantage. He did bring up the .9 cents we have with the LUST fund, the Leaking Underground Storage Tank fund. Over the years, that has brought in about \$150 million for wholesale and resale outlets to take care of their leaky underground storage. If the state had not made that commitment, and I believe it is a wise commitment and we should stay with it, but if the state had not made that commitment of .9 cents, that's another \$150 million that would have gone to roads. A main question that was brought up by Mr. Dix with NACO, by the League, by the gentleman from Omaha, dealt with that percentage split that we're changing in this bill. Again, it's only changed for the wholesale tax, but the state would get two thirds, cities and counties get a third. There are many reasons that we did this. First of all, I totally disagree that they feel that they're being penalized by that, that cities and counties are being penalized, and that they are facing a higher exposure. I disagree with that. I don't think they will see that big of a loss of revenue, if any. If you look at the bill on page 20, line 23, 24, 25, that's the part of the bill that puts...I call it the "call" or the "cap" on how much the wholesale price can go up or down, and we put a 25 percent limit on that. And so you have that limit on that, that's protection. It's protection for cities and counties that they aren't going to see...if gas prices drop tremendously, they won't see a tremendous drop in revenue. And it's also a protection for consumers because if the price of gas goes up a great amount, that 5 percent tax will not be on that total amount. It will have that call at 25 percent. Also I think cities and counties in this state receive a huge benefit. They first of all get that 2 cents right off the top with our gas, and even though we are dropping the fixed rate, which they are partners in, that's the main word you need to remember. This is a state tax, the fuel tax is a state tax, and I feel the state of Nebraska has been very generous to cities and counties in sharing that state tax with them. As I said, the 46 and two-thirds percent that they currently receive they will continue to receive under our current system. We are only changing the percentage on the new one. If we give an increase in this 5 percent wholesale tax, if we increase that percentage for cities and counties, I think we need to remember this point: Right now the Legislature, we have the option of controlling how much revenue will be used...well, we will use that revenue from the 5 percent, unless we drop the variable for the state. And we control that by controlling the Department of Roads' budget. You need to remember in this bill, cities and counties will always have access to that 5 percent on the wholesale tax because as a body we do not set any budget for them. So the state, in my opinion, faces a loss possibly of the entire variable depending on the will of this body, where cities and counties will always gain their 5 percent that they receive on that wholesale tax. Another thing we need to

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remember is, if we raise that percentage that cities and counties would get on that 5 percent, we've just given up some of the control that we have on what the gas tax is, what the price at the pump will be. Because, as I said, we don't control any of their budgets like we do the state where we do have that option then to try and control what the gas tax and the price at the pump will be. Obviously I am not in favor of changing those percentages. Another thing to consider when we talk about the cities, some of our larger cities have a large number of miles of state highways within their city limits. That isn't necessarily maintained by their cities. That is a state obligation, and as it should be because they are state highways. But that needs to be considered here, too, when we talk about cities and counties. Lynn Rex brought up the \$2.13 dropping point. That is the average in January 2009 when this would happen and it doesn't take into effect if the number of gallons increases that are purchased; and it also doesn't take into effect that the Legislature, if you see a huge decrease in gallons the cities and counties seem to be afraid of, it doesn't take into effect that the Legislature can come back and raise that fixed price on the gas tax. That can be adjusted and it can be adjusted easily. In fact, it can be adjusted even easier if the price of gas falls for senators to go in and raise the fixed price on the gas tax, when you have low gas prices. So I think that would be a fairly simple point to address. Again, that is why I'm really not in favor of changing the percentages. If you also look at the printout that we gave this committee, I will be happy to discuss this with you later in detail and compare it to the printouts, if you're interested, that we have on how the current gas tax is split with percentages and explain to you why we chose to do it that way. Basically it...right now the way this bill is drafted the locals will have more of a price factor that's built in. As the price goes up, the local...when I say "locals," I mean cities, counties...will benefit more than the state. It puts in a...you know, and investment bankers, they talk about a diversified portfolio, a balanced portfolio. And by setting these percentages as we did, we felt it added a more balanced portfolio on the reliance between revenue received from quantity, our current system, or price and quantity on what we're going to. The percentages become more even between cities and counties and between the state on reliance on that. But I would be happy to go over those with you at another time. Thank you for your patience, Mr. Chairman, and I would be happy to discuss this further. [LB846]

SENATOR JANSSEN: Okay. [LB846]

SENATOR FISCHER: But not today. [LB846]

SENATOR JANSSEN: All right. Thank you very much. [LB846]

SENATOR FISCHER: Thank you very much. [LB846]

SENATOR JANSSEN: That ends the hearing on LB846. [LB846]

SENATOR FISCHER: I appreciate it, thank you. [LB846]

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SENATOR JANSSEN: We move on to Senator Hudkins, LB758. I believe she's...yeah, she's here. Welcome, Senator Hudkins, to the Revenue Committee. [LB846]

SENATOR HUDKINS: (Exhibit 10) Thank you, Senator Janssen and members of the Revenue Committee. This has been a long afternoon. Hopefully this bill of mine will not take that long. (Laughter) I don't want to be here that late, either. I am Senator Carol Hudkins, C-a-r-o-l H-u-d-k-i-n-s and I represent the 21st Legislative District. Today I am introducing LB758. This bill attempts to find a way of financing the ever-increasing costs of maintaining and improving our state highways, city streets, and county roads. I have some graphs that I would like to tell you about and then I will pass them around to the committee. I don't think it's necessary that everyone has their own copy. You won't remember all the numbers, but it's just for your edification. We talk about gasoline taxes and where Nebraska stands in the state scheme of things. Also, diesel taxes and where Nebraska is there in the whole country. Gasoline taxes, which is a combined local, state, and federal...and that's cents per gallon for Nebraska gasoline...is 42.3 cents. If you look at this map, you're going to find South Dakota is higher, Kansas is higher, California and Nevada and Washington and Oregon and Montana and Idaho are definitely higher. If you look at the same thing on diesel taxes, Nebraska's diesel tax is 47.7 cents. That's cheaper than Iowa, cheaper than South Dakota, Minnesota, Kansas, again California and the western coast. If you look at this chart, these two charts, it shows you how Nebraska compares with the national average. On diesel taxes, and this is as of July 2007, the U.S. average tax on diesel was 52.9 cents; Nebraska is under that at 51.7. Gasoline taxes as of July: The U.S. average is 46.9 and Nebraska is 46.3, so we're under the national average. And if you look at this, and really all you need to look at is one sheet and in fact that's all I'll pass around, this comes from the American Petroleum Institute. This was last updated January 9, 2008, and it reflects rates effective on the first of the year. It says here that these were changes from July 2007. The following states increased their motor fuel excise and other tax rates: Florida and North Carolina. The following states decreased rates: New York and, surprise, Nebraska. So I will send these around, you can look at them. Also I have some information here, again just pass it around and view and the committee can keep this if you would like. In a nutshell, however, this bill increases the motor vehicle fuel tax by 3 cents. I know, I know, you're all saying, gas prices in Nebraska are the highest they've been in history and you want to raise the gas tax? Well, I'm passing around these pictures so you can see we're under the average for the U.S. We're not that bad. These pictures were taken last night on the way home. They're of various gas stations in and around Lincoln, and as you can see, the prices at various stations vary by 20 cents and none of these pictures show prices in the southern part of Lincoln, which can be higher. Two of these stations are only one block apart, they're on Cornhusker Highway; one is at Northwest 4th and one is at Northwest 5th. One is a Casey's and the other is a Kabredlo's, which makes no difference, but one is \$2.85. One block down the street it's \$2.79, a difference of 6 cents a gallon in just one block. You know, gas shoppers might

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have to become better gas shoppers. If we raise this by 3 cents, if you would go to the one where it was \$2.79, you're still under what the other station is. What this bill does is increase the base motor fuel tax from 10 and a half cents to 11 and a half cents per gallon for the Department of Roads, cities and counties. That 1 cent is split between those three. The base city/county motor fuel tax would increase from 2 to 4 cents a gallon, which obviously would be used by cities and counties. It also changes the distribution of the sales tax revenue on motor vehicles over the current 5 percent level to be credited to the Highway Trust Fund instead of to the Highway Allocation Fund, which goes to the cities and counties, so they would be getting slightly less from that particular fund. What would this do in terms of dollars? Well, the 1 cent increase would be an increase to the Department of Roads of \$6.4 million and cities and counties would each see nearly \$3 million additional dollars. The 2 cent increase would give cities and counties each an increase of \$12 million. The motor vehicle sales tax would send \$8 million to the Department of Roads, but less for cities and counties. What is the total net change? I've thrown a lot of figures at you. This is the net change: There would be an increase of \$14.4 million for the state; and \$10.8 million for both the cities and the counties. Those that are responsible for roads get the necessary funding and those that use the roads are helping to pay for them. Nebraska is fortunate, and perhaps at the same time unfortunate, in that we have over 10,000 miles on the state highway system. Those are roads that we have to maintain. We're still looking at completing the expressway system. Money spent on streets, roads, and highways is a vital investment in the state's future. In 1919 a lieutenant colonel participated in the U.S. Army's transcontinental motor convoy where they took all kinds of military vehicles from Washington, D.C....don't leave on my account, Senator White. [LB758]

SENATOR WHITE: The rest room calls. [LB758]

SENATOR HUDKINS: The rest room calls. [LB758]

SENATOR WHITE: As fascinating as your testimony is, this takes priority. [LB758]

SENATOR HUDKINS: Hurry back. So this convoy goes from Washington, D.C. to San Francisco. What does that take now? Four or five days? Well, in 1919 it took 62 days. Along the way, military vehicles became hopelessly mired in mud or sand of inadequate or nonexistent roads. Tires were blown, equipment crashed through bridges. During World War II, that same lieutenant colonel, who by this time is a five-star general, saw the efficiency and value of the German autobahn and later that same general, now President Dwight Eisenhower, championed the interstate highway system. Where would this country, and in fact this state, be without the interstate highway system? Can you imagine all of those semitrucks on Highway 30 or Highway 6 or spread between the two? American growth and prosperity have long been tied to transportation. In Nebraska, we are facing growing needs and an aging transportation system. The 2007 State Highway Needs Assessment report identifies current needs of \$7.8 billion and

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current funding mechanisms...you heard this in the testimony on the previous bill...are expected to fall far short of what is needed. As the same time, construction costs continue to increase for asphalt, steel, and cement plus the increase of personnel costs; the people that work on the roads do want a raise now and then. Well-built, well-maintained highways, roads, and streets not only spur economic growth but they help to efficiently move people and supplies where needed in times of crisis as well as reducing traffic accidents. If we let a small problem of a pothole on a city street go, it's just a matter of time before that small pothole is much larger and then it's going to require more material, more time, and more personnel to repair it. If we don't check and maintain our bridges, it's only a matter of time before a tragedy could occur and it could cost lives and definitely more money to replace the entire bridge than it would have to perhaps replace one small part of the bridge, not to mention personal property damage if your car is one of the ones that goes off the bridge, and perhaps lives. So, you can pay a little now or you can pay a lot later. Yes, this bill is going to cost our citizens money, but if you look at the traffic on Interstate 80 and play the license plate game, you'll note that many, many of the vehicles...I've heard upwards of 40 percent...carry out-of-state plates. This is an opportunity to have others help fund our highways. Money spent on our state's transportation system is more than money spent wisely; it is an essential investment in the future. Last year, we talked about a bill very similar to this and at that time we all received a letter from Don Thomas, who is the Lancaster County engineer, and among other things he said that fiscal 2006 represents the third year in a row where he has managed to add only one-half mile of new paving when previously we had been able to pave three to four miles a year. The other important note from this information is that this stagnation in trust fund revenues has shifted the burden over to property taxes. And finally he goes on to say: The counties have not received a gas tax revenue adjustment in 20 years and the time is now appropriate for an adjustment that will increase the revenues and help relieve some of the heavier dependence upon property taxes. During the drafting of this bill, some language was stricken that I believe needs to be reinstated. I believe it starts on page 8, beginning with line 12 and ending on line 16. So if that stricken matter could be reinstated, I think that would be better. That's all I want to talk to you about now, and Senator White, I can tell you all about this later if you so choose. And I would be happy to answer any questions at this time. [LB758]

SENATOR JANSSEN: Thank you, Carol. Questions, please. [LB758]

SENATOR CORNETT: Not so much a question, Carol, it's just I know at least one of the photographs that wide variance in price is for a full-service station only. I've pulled in there by mistake. [LB758]

SENATOR HUDKINS: Ah. Okay. But still, it's a higher price of gasoline. Um-hum. [LB758]

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SENATOR CORNETT: It is, but you're paying for service with that, also. [LB758]

SENATOR HUDKINS: True, true. [LB758]

SENATOR JANSSEN: Any other questions? Seeing none. You're going to stick around and close, aren't you? [LB758]

SENATOR HUDKINS: No, I am not. You have sat through a lot of information today and so just read what I have passed around, consider what I have said, and I'm sure that you will advance this bill to the floor. Thank you. [LB758]

SENATOR JANSSEN: Thank you. [LB758]

SENATOR LANGEMEIER: Can I ask one... [LB758]

SENATOR HUDKINS: Yep. [LB758]

SENATOR JANSSEN: Any other... [LB758]

SENATOR LANGEMEIER: Can I ask one question? [LB758]

SENATOR JANSSEN: Whoa, Chris, I'm sorry. [LB758]

SENATOR LANGEMEIER: Thank you. I don't...see the director of roads has obviously left, so he must not be going to testify in neutral position on your bill. Would I assume that maybe he's more a supportive testifier on the previous bill? [LB758]

SENATOR HUDKINS: I don't know. [LB758]

SENATOR LANGEMEIER: Just a thought. Thank you. [LB758]

SENATOR HUDKINS: I cannot speak for him. Maybe he had a very important appointment at 4:00, I don't know. [LB758]

SENATOR JANSSEN: He's late. (Laughter) [LB758]

SENATOR LANGEMEIER: He isn't going to make it. [LB758]

SENATOR HUDKINS: Four-thirty, then. (Laughter) [LB758]

SENATOR JANSSEN: Thank you. Proponents? How many proponents do we have? Okay, let's hop right up here. And I only see two, so that's not bad. [LB758]

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LARRY DIX: (Exhibit 11) Senator Janssen, members of the committee, my name is Larry Dix, I'm executive director of the Nebraska Association of County Officials. The letter I'm asking to be introduced is on behalf of Lancaster County, a letter in support of LB758. This issue has been before us year after year after year. Certainly in all those years previously, NACO has been pretty consistent. We have supported this concept, it's one of the ones we believe that there is some money from out-of-state going to help pay for our roads. We believe in that. You all know the funding issues, you all know why we're here in a support position as we have been in the past. With that, I'd simply be happy to answer any questions that you may have about this. [LB758]

SENATOR JANSSEN: Any questions? Seeing none, thank you, Larry. [LB758]

LARRY DIX: Yeah. [LB758]

SENATOR JANSSEN: Next proponent? [LB758]

LYNN REX: Senator Janssen, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. And we strongly support this measure. Historically we also have supported this because it gives additional funds to municipalities across the state of Nebraska for roads. And because of the time situation, Senator Janssen, if it would be okay with you, I would like to apply my testimony from LB846 to this measure as well in terms of the reason why we support it. Unless you'd like me to go through that again. [LB758 LB846]

SENATOR JANSSEN: No, no. That's fine. All right. [LB758]

LYNN REX: Thank you very much. [LB758]

SENATOR JANSSEN: You're welcome. Next proponent? Any other proponents? Any opponents? Tim. [LB758]

TIMOTHY KEIGHER: Good afternoon, Chairman Janssen and members of the committee. Again, my name is Tim Keigher, it's K-e-i-g-h-e-r. I appear before you today on behalf of the Nebraska Petroleum Marketers and Convenience Store Association in opposition to this bill for the same reasons I outlined previously on the previous bill for the competitive disadvantage. And with that, I'll spare you the rhetoric. Any questions? [LB758 LB846]

SENATOR JANSSEN: Seeing none, thank you, Tim. Any more proponents? Any opponents? Anyone in a neutral capacity? And we have a neutral. [LB758]

RICHARD HALVORSEN: My name is Richard Halvorsen, H-a-l-v-o-r-s-e-n, and this also applies to Senator Fischer's bill. I don't buy gas in my neighborhood because I'm in

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the south part where the high price is. You know, so I'll drive to the other part of town. I would like...I'm surprised there hasn't, like Senator White alleges, this border bleed, I'm surprised there hasn't been a study. I think there should be a study to find out how much more bleed we do have. Some...you couldn't measure it all, in other words you can't measure how many out-of-staters know that Nebraska's higher and fill up in Iowa before they cross the interstate, that could be hard to measure, but I think you could measure maybe what volume, how much, you know, border bleed we have between...well not only Omaha, but Nebraska City and all other states. And again, I'm surprised there hasn't been a study because I think that's a fact that should be entered into when you have your deliberations. That's all I have. [LB758 LB846]

SENATOR JANSSEN: Okay. Any questions? Seeing none, thank you. Anyone else in the neutral capacity? Seeing none, Senator Hudkins did not want to close, so that ends the hearing on LB758. We have Senator Stuthman here to tell us all about LB881. Senator Stuthman, you've got center stage. [LB758]

SENATOR STUTHMAN: Thank you. Good afternoon, Senator Janssen and members of the Revenue Committee. For the record, I am Senator Arnie Stuthman, A-r-n-i-e S-t-u-t-h-m-a-n, from Platte Center representing District 22. I introduced LB881, which is a bill that would impose a 3 cent excise tax on the production of ethanol in Nebraska. Fifty percent of the tax would be allocated to the Highway Cash Fund for the Department of Roads and 50 percent would be split evenly between counties and cities for road and street construction. It is estimated by the Department of Revenue that this tax would generate \$25,900,000 for the fiscal year 2008 and 2009 and \$50,094,000 in fiscal year 2009 and 2010. The Nebraska Tax Policy Commission recommended in its report dated November 15, 2007, that the Legislature consider imposing an excise tax on all ethanol produced in the state. The production of ethanol consumes a significant amount of Nebraska's agricultural and water resources. An excise tax on ethanol would be equivalent to the severance tax that other states impose on their natural resources. The Legislature should periodically monitor any changes in the markets for Nebraska's ethanol to ensure that Nebraska ethanol remains competitive. I would like to ask the committee to look favorably upon this bill and try to get a revenue source that would be continual for the next number of years. I think this is an option that we also have to take a very close look at. I do know that it is a tax on an agriculture product and I think we should also consider that in trying to generate funds for our much-needed roads highway department. So with that, I am very short with my opening remarks and I would try to answer any questions. [LB881]

SENATOR JANSSEN: Any questions? Chris. [LB881]

SENATOR LANGEMEIER: Thank you, Senator Janssen and thank you, Senator Stuthman. We tax fuel today. [LB881]

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SENATOR STUTHMAN: Yes. [LB881]

SENATOR LANGEMEIER: And a number of our fuel products have 10 percent ethanol in them. So don't we already tax ethanol through our fuel tax, and we could go back to the previous two bills we had and increase those would accomplish the same thing? [LB881]

SENATOR STUTHMAN: Yes, very possible. But...and I will say the reason that I introduced this bill is I wanted to have another alternative on the table for you to look at and hopefully we can come up with some method of generating more income. Yes, I do agree that there is a small portion of tax that is already generated from this. Maybe we need to expand upon that. [LB881]

SENATOR LANGEMEIER: Thank you. [LB881]

SENATOR JANSSEN: Any other questions? Are you going to stick around and close, Arnie? [LB881]

SENATOR STUTHMAN: Yes. [LB881]

SENATOR JANSSEN: Hum? [LB881]

SENATOR STUTHMAN: Yes, yes. [LB881]

SENATOR JANSSEN: Okay. All right. We're going to take proponents on LB881. Proponents? Anyone in favor of Senator Stuthman's idea? Seeing none, any opponents? How many opponents do we have? Okay. The hour is drawing closer to sleep time, so let's try not to be repetitive. I want to give you all a chance to testify, but don't tell us something we have already heard. Thank you. [LB881]

TODD SNELLER: (Exhibits 12, 13, 14, 15) Thank you, Mr. Chairman, members of the committee. My name is Todd Sneller, S-n-e-l-l-e-r. I appear today on behalf of the Nebraska Ethanol Board. I currently serve as the administrator of the Nebraska Ethanol Board. In addition to my own testimony, which I'll attempt to summarize briefly here given the length of the day, I have written copies here. I also have written copies presented by the Nebraska Economic Developers Association that are in opposition to LB881 as well as LB946 and LB1040. While it may not be the Chair's intent to consolidate these, my comments do apply to all of them, Mr. Chairman. I'll attempt to focus just on three specific components of the adverse consequences of this particular bill. As many of you are aware, for about three decades the Nebraska Legislature has had a strong public policy in support of both the production and use of ethanol and that policy has been primarily in the form of incentives as opposed to mandates. The policy collectively has served to propel Nebraska into the second largest producing ethanol

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state today with 20 operating plants. We have about another seven under construction and a number of others proposed by Nebraska communities and developers. One of the reasons that we have been successful with that policy over the course of three decades is that you all have provided some tools for us to use in recruitment of ethanol plants in poor communities to use in recruiting ethanol plants. And so those tools combined with the state and federal public policy in the past decade have really provided the catalyst for the growth that we've seen today and that's been a significant catalyst in terms of the economy of the state today. The ethanol industry in Nebraska is about a \$5 billion per year industry. We today employ over 2600 workers directly and indirectly at these plants. I think it's important to make sure that we understand who those people are. They're not just skilled tradespeople. We have a number of firms across the state that are providing a variety of professional services in addition to skilled trades. The agriculture sector and many other sectors are positively impacted by this. The ethanol produced at these plants today is used in about 70 percent of all the gasoline sold in the state. That lower cost of fuel to Nebraska motorists is the result of using that ethanol will save Nebraska motorists over \$55 million this year alone. That number will increase every year. In addition to that, we have the opportunity here to keep those dollars working within the state's economy, which clearly is an important aspect of what we're talking about today in terms of retaining dollars for economic development and roads construction. I just want to point out that one of the things that I've spent much of my professional career doing is recruiting these ethanol plants, and as all of you know in the economic development game, recruitment is something that's critically important. What we've had today is a very important set of public policies to look back on. As we look forward, though, I think it's very important to understand that a targeted initiative like this is viewed as a punitive tax on ethanol development and it will severely impact our ability to compete for additional plants. I think it's also important to recognize that as we look down the road, the very compelling story that we've seen to date in terms of ethanol development may, in fact, be just a portion of what we're able to see in the future if we continue a set of public policies that support production and use of ethanol in Nebraska. Many of you may be aware that in December of 2007 that Congress passed the Energy Policy Act of 2007, which created a new national requirement for using ethanol in the decades to come. Much of that ethanol will come from corn. We today have about 13 billion gallons of ethanol production capacity that are in place or under construction nationally. About 15 billion gallons will be required with the next couple of years of corn-based ethanol and as we go forward, increasingly larger amounts every year. That means that corn-based plants have an opportunity for perhaps 20 or more new construction starts, a number of which we may compete for in Nebraska. Beyond that, though, this new requirement is for 21 billion gallons of additional capacity of cellulose-based ethanol that must be in the marketplace as soon as 2014 and through 2022 will reach a point of using 36 billion gallons of ethanol and of that amount about 15 billion from corn, the remainder from cellulose materials. So as we look forward, I think it would be important to keep in mind that the public policy that serves Nebraska so well today may well be the model for success in the future to the

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extent that we impose what I view as a punitive tax that's targeted on ethanol. We don't accomplish the goal of having an environment that's conducive to investment, and as many companies will, their spokespeople will tell you today, that's critically important in terms of capital allocation and their decisions on which states in which to make that investment. I'd also asked the page to bring around a map, which I'll just show you here. This map was released yesterday by the U.S. Department of Energy. And what this talks about in this map is the fact that there are a number of companies that have invested hundreds of millions of dollars to build the first ethanol plants made from cellulose...the first ethanol made from cellulose at plants that are based in neighboring states here. The federal government, through Departments of Energy and the Department of Agriculture are at this point allocating literally hundreds of millions of dollars in loan guarantees and other incentives to build these plants. What's obvious from this photograph here is that the state of Nebraska is not able today to compete very effectively for these. Surrounding states have launched new initiatives recognizing that this is a new frontier in terms of ethanol technology and development and they're today capitalizing on this development. So I ask that as you take a look at the bills today, not only the impact that they have on conventional corn plants, but even more importantly looking ahead the impact and the need for trying to target incentives rather than disincentives for additional ethanol development in this state. There is no other state in the United States that has a punitive tax on ethanol such as being proposed. And I view it as punitive because I look at it in contrast to 23 other states that are at this point offering production incentives to encourage companies to locate in their states. Take a look at the number of other states that have offered at-the-pump incentives. Iowa was mentioned earlier today, which is one of the states that is currently trying to encourage additional use in the state. So as we take a look at that combination of incentives to both produce ethanol and use ethanol in a number of the states with which we compete, it seems imperative that we continue to have a public policy framework that encourages that investment. Finally in closing...and I'd just like to make a couple of points for clarity. One is that the Nebraska Ethanol Board and the Nebraska Department of Revenue are, by statute, required to file a report with the Legislature in November of each year talking about the EPIC Fund, the Ethanol Production Incentive Credit Fund, and what the needs of that fund might be over the next two fiscal years. The conclusion of the report filed in November indicated that for the two next fiscal years there is not a need for an additional infusion of cash into that fund. Therefore, the notion that we today need to impose a tax to pay for something that is not a known obligation at this point really discourages ethanol development and at this point is simply not needed. The other point that I'd like to make is that there seems to be a perception that all the plants in Nebraska have received subsidies or incentives of some form, and that's generally not accurate with many of the new plants that have been built. Sure, they are able to qualify for job creation incentives, but unlike many other states and unlike earlier plants, they don't receive direct targeted incentives. And so this is particularly a punitive tax for them that just as they begin operation, they would be exposed to a tax that makes them uncompetitive with ethanol produced in other states. I won't belabor my testimony

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further because there are number of people representing ethanol plants and communities that would like to testify today, but I would be pleased to respond to any questions, Mr. Chairman. [LB881 LB946 LB1040]

SENATOR JANSSEN: Any questions? Senator Langemeier. [LB881]

SENATOR LANGEMEIER: I'll be quick, thank you, Senator Janssen. What I...the testimony that's been handed out to all of us has been for all three bills. Would your testimony you just gave, could we consider that for all three bills in opposition? [LB881]

TODD SNELLER: Yes, Senator. Yes. Yes, Senator. Um-hum. [LB881 LB946 LB1040]

SENATOR LANGEMEIER: Okay. Thank you. [LB881]

TODD SNELLER: Thank you. [LB881 LB946 LB1040]

SENATOR JANSSEN: Thank you. Next opponent? [LB881]

CLIFF MESNER: My name is Cliff Mesner, I'm the economic development director from the city of Central City, Nebraska. I'm here in opposition to LB881, LB946, and LB1040, if I may speak to all three. [LB881 LB946]

SENATOR JANSSEN: That would be fine. Would you spell your last name, please? [LB881]

CLIFF MESNER: M-e-s-n-e-r. [LB881 LB946]

SENATOR JANSSEN: All right, thank you. [LB881]

CLIFF MESNER: (Exhibits 16, 17) As the day has gone on, with every speaker I have scratched a paragraph off of my testimony, so we'll try and shorten it up. While I am listed as an economic development director, I do have some experience on both sides of the table. After making three attempts to recruit an ethanol plant to Central City, we finally recruited one. I was given an opportunity to serve as a chairman of the board of that plant, the chairman of the board of the plant in Ord, Nebraska, and eventually served on the board of directors of U.S. BioEnergy when that company went public. So I've had an opportunity to look at this from both sides. And the first point I want to make is that it's particularly difficult to recruit the ethanol plants, as I can attest, having failed twice before we finally succeeded in Central City. When I got on the board of U.S. BioEnergy, I thought we would have an opportunity to build some more plants in the state of Nebraska. They have just gone through a merger with VeraSun. Right now VeraSun and U.S Bio are building plants in South Dakota, North Dakota, Minnesota, Iowa, Indiana, and Ohio. They are not building any plants in Nebraska. They have never

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built a plant in Nebraska. They own three, which they purchased because the price was right. And I think that we need to understand that we are at a competitive disadvantage with some of our surrounding states in the current environment that we're in right now. These bills that would add a penny or two or three cents to it puts us at a greater disadvantage than we already are. I've been listening to some of the testimony, questioning whether or not people will drive across the river to Iowa to buy gas 3 cents cheaper for a tank of gas. I personally wouldn't do that, but I promise you when Chevron buys 100 million gallons of ethanol, they will go across the river for 3 cents. And it puts us at a terrible competitive disadvantage and we're going to lose some of this business in the state. As an economic developer, we always look to bring business to the state that produces revenue for the state and does good things for the state, and I think it's pretty hard to argue that ethanol hasn't done that. The price of corn is, been driven up because of what has happened with the price of ethanol, the property taxes that are being paid are greater. And I'm not going to belabor that point because I believe Todd Sneller went through that very well. Given the time of the day and the fact that I have a number of colleagues that want to speak, I will cut my testimony off there. Mr. Chairman, I think that Marlan Ferguson had to leave; he had a letter from the Grand Island Economic Development Corporation in opposition to the bills. May I submit that in the record on his behalf? [LB881 LB946]

SENATOR JANSSEN: Yes, you can. [LB881]

CLIFF MESNER: And I'm willing to take any questions. [LB881 LB946]

SENATOR JANSSEN: Any questions? I don't see any, sir. Thank you for being here. Next opponent, please. [LB881]

JOHN CAMPBELL: (Exhibit 18) Good afternoon, Mr. Chairman, members of the committee. My name is John Campbell, C-a-m-p-b-e-l-l. I represent Ag Processing, Inc. We're headquartered in Omaha. We have a ethanol plant in Senator Burling's district, Hastings, along with a vegetable oil refinery and a soybean processing plant. I'm also speaking on behalf of a newly created Nebraska Ethanol Producers Association. I am speaking in opposition to all three bills and this long extensive testimony will be given in only its best tiniest morsels. So, not to worry. Senator Burling, your tax commission report was a wonderful survey of the history and structure of our tax system in Nebraska. There's lots to like and there's lots to dislike in that report. But one thing it makes clear is that Nebraska's impressive growth in revenues is not due to tax increases, it's due to economic growth. And keeping the economic growth is what keeps the tax revenues coming. I'd like to speak in particular to a couple of the targeted funds that a couple of the bills intend to fund. First of all is the Ethanol Production Incentive Fund. As Todd mentioned, the fund is not in need of money. So, if legislators understand that the fund is not in need of money and pursue a tax increase anyway, then that must mean that it's really about changing the structure of the revenue sources.

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The fund was set up to attract new ethanol plants. It's been wonderfully successful in doing that. Now, the Legislature would potentially turn around and penalize those same plants. When these sort of, I will call them "bait and switch tactics" come up, even if they're not enacted, it makes the reputation of the state go down. It makes the, generally the word of politicians go down, and that's not good for our state. I think you're going to hear that the economic situation for ethanol plants isn't what it used to be not so long ago. The price of corn has gone up, in large part because of ethanol. Even with \$100 crude, we can't afford to pay for \$5 corn given the price of ethanol. The economics of ethanol plants has dramatically changed. Investors are jumping ship as fast as they can and plants are being cancelled every day. Let's turn for a minute to the Water Resources Cash Fund. With all due respect, ethanol producers have nothing to do with the obligations of the state under the 1943 Republican River Compact. The problems in the Republican River can be distilled into the following situation: The state has responsibility under the compact, but no authority, to regulate water; the NRDs have authority to regulate water, but no responsibility to comply with the compact. This convoluted situation has been evolving for decades. The notion that new and innocent bystanders like ethanol plants ought to pay for water retirement rights in three of these NRDs just doesn't seem to be an adequate situation. Ethanol plants have received a lot of negative press about the amount of water that we use. We use less than 1 percent, less than 1 percent of the water in this state. Irrigators use over 94 percent. It takes 36 gallons of water to produce a gallon of beer. It takes three gallons of water to produce a gallon of ethanol. It takes as much water to irrigate an 18-hole golf course as it does to power a 50 million gallon ethanol plant. There is more golf courses in Nebraska than there are ethanol plants. I'm not proposing that we tax golfers or beer drinkers; what I'm saying is that we need to put this in perspective. All the plants in Nebraska, when all of them are built and running, where there will be about 2.2 billion gallons of ethanol, all those plants will consume about 8 billion to 9 billion gallons of water annually. In one day, we'll use 7 billion gallons to irrigate in this state, in one day. There's 21,000 new irrigation wells that have been registered in this state since the year 2000, 21,000. That's a 26 percent increase. Nothing against irrigators, but in the NRDs that are subject to the compact, there's been thousands of wells registered since the first year we violated the agreement in 1990. So in conclusion, it seems evident that ethanol plants are being asked to bear the burden for a revenue problem that doesn't exist and a water problem that we have nothing to do with. So we respectfully request that you resist every attempt to put these new taxes on ethanol. Thank you. [LB881 LB946 LB1040]

SENATOR JANSSEN: Any questions? Ron. [LB881]

SENATOR RAIKES: You mentioned the EPIC Fund not needing any money, but didn't the Legislature...excuse me (clears throat) put a substantial amount of money in that last session? [LB881]

JOHN CAMPBELL: Right, and the report that was given to the Legislature indicates that

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the revenue sources match the expenditures, meaning there's no deficit in that... [LB881 LB946 LB1040]

SENATOR RAIKES: But it nonetheless was an expense. I mean, it... [LB881]

JOHN CAMPBELL: Excuse me? [LB881 LB946 LB1040]

SENATOR RAIKES: ...it was an expense that the Legislature took on last session. I think it was...I've forgotten the amount of money. [LB881]

JOHN CAMPBELL: Yes. [LB881 LB946 LB1040]

SENATOR RAIKES: Multiple millions of dollars that was put in that fund last session. [LB881]

JOHN CAMPBELL: Right. [LB881 LB946 LB1040]

SENATOR RAIKES: So it's not like it's not an obligation that the Legislature has ignored. [LB881]

JOHN CAMPBELL: Exactly. And my point was that the... [LB881 LB946 LB1040]

SENATOR RAIKES: Okay, and the other point is, ethanol...how many ethanol plants in the state have been constructed without any use of incentive monies out of that fund? [LB881]

JOHN CAMPBELL: I don't know how many have. [LB881 LB946 LB1040]

SENATOR RAIKES: But a lot, wouldn't you agree? [LB881]

JOHN CAMPBELL: I don't know that. I would ask Todd to tell us how many plants have taken advantage of the fund and how many haven't. [LB881 LB946 LB1040]

SENATOR RAIKES: Well, I, you know, I reject a little bit the notion that we're somehow insincere or doubling back or however you want to call it on our treatment of ethanol or our responding to the obligations we set out as a state. I would argue that we have followed those obligations very closely. [LB881]

JOHN CAMPBELL: That isn't the point I made. That isn't the point I intended to make because I'm abbreviating the testimony. But if you read the testimony, which maybe says it better, my point was, you have funded it. You have funded the obligations of the EPIC Fund. There's no shortfall. So why would we need new revenue? [LB881 LB946 LB1040]

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SENATOR RAIKES: Yeah, okay, and I don't disagree with that except the implication, if there was one, that this is something that the state hasn't had to fund. And the state has had to fund it. [LB881]

JOHN CAMPBELL: Um-hum. No, and I apologize because I have to condense everything I'm saying, but... [LB881 LB946 LB1040]

SENATOR RAIKES: I understand. [LB881]

JOHN CAMPBELL: But my point is, if you then come back and say, oh, we're going to tax you to put money into the fund that's already adequately funded, then what probably would happen is you would say, well, we've got this excess revenue in here. We can't be doing that, we're going to have to cut the revenue from some other source. So it might just ultimately be a shifting of where the revenues come from. [LB881 LB946 LB1040]

SENATOR RAIKES: Okay. [LB881]

SENATOR JANSSEN: Any other questions? I don't see any. Thank you. [LB881]

JOHN CAMPBELL: Thank you. [LB881 LB946 LB1040]

SENATOR JANSSEN: Next opponent, please. [LB881]

CHARLES B. WILSON: (Exhibits 19, 20) Afternoon, Senators. My name is Charles Wilson, that's W-I...I can't even spell my own name (laughter). W-i-l-s-o-n. I'm president of Trenton Agri Products, TAP, and we're an ethanol production facility located near Trenton, Nebraska, in Hitchcock County. We began operations in 2004. I'm here today representing the employees and the ownership of TAP in opposition of all three of these bills, LB881, LB946, and LB1040 and any other legislative attempt to incrementally tax the production or sale of ethanol before it's blended into motor gasoline. Not to be redundant with what's been said or what will be said, but I've got two points I wanted to make. You have my testimony that I've passed out and I, too, will try to abbreviate, so bear with me on that. The first point is, I've seen two senators quoted in the last two months stating that any tax imposed on Nebraska ethanol production would be passed on to out-of-state consumers. And since there is a high percentage of the ethanol that is produced that is sold out of state...actually it's around 95 percent of the state's production is exported out of state...and I want to clarify, or not clarify, I want to correct that assumption and say that it's not correct. There is no way, there is no mechanism in the way ethanol is priced or any commodity is priced where any tax assessment at a state level can be passed on into the commodity marketer and to the free market pricing at another location. We're pricing our ethanol, we're competing with other states, as we

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sell into markets to the west or to the east or southeast or wherever the markets are, and those end buyers, which are primarily major oil companies, don't care what tax has been assessed in the state of origination or let alone what other costs might have been incurred in making that ethanol. You know, there's...our corn cost is higher in Nebraska than it is in the state of Iowa and Minnesota and Illinois and the Dakotas. But that cost, we can't capture that as a premium in our ethanol, I mean, that's just the way the market works. So I just want to make that crystal clear that there is no way to assume that this imposition of a tax can be passed on to people that are in other states. The tax would be absorbed solely by the Nebraska ethanol production facility. The second point that I wanted to make has to do with the...in talking to a couple senators, there is the notion that most of Nebraska ethanol moves to the west and therefore our transportation cost to the west would be cheaper than a plant originating in Iowa or points to the east. Therefore that incremental transportation advantage that we in Nebraska have is in essence fair game to be taxed. That's just an unfair notion. We all have different competitive advantages and disadvantages. We also sell our ethanol to the east, and so an Iowa plant would have cheaper transportation costs to the east. Kansas plants have similar transportation costs that Nebraska plants have moving to the east and to the west. Colorado plants, and there's quite a bit of production there, can move their ethanol obviously cheaper to the west than we can, so. And then again relating to the corn cost issue that if you just focus on one competitive advantage and tried to use that to justify and rationalize a reason to impose a tax really isn't fair because in our original due diligence, you know, in our (inaudible) company, and I'm sure every company here, we looked at all the cost factors, all the competitive advantages and disadvantages in locating not just in the state of Nebraska, but also in our individual site that we located. Where we are we have some cheaper transportation costs, but in western Nebraska we have higher corn costs than the costs are in the eastern part of the state. We have some cheaper natural gas costs. But we look at all the pros and cons in making that decision, and so grabbing just this one component that's one of our competitive advantages and using that as the rationale to impose a tax or that that's...to balance things out, that that's fair game to impose a tax is not fair. And if we go into that area, then it opens up the debate that I would say we need a tax rebate to offset some of our higher corn costs that we have, you know. I don't want to go there, but we could go so on and so on and with that kind of...if we open up that kind of debate. So, those are the two points that I want to make, that we can't...it's a misconception, and I want to clear that up, that you cannot pass this tax on to out-of-state customers; and that you can't look at the transportation, the Iowa-Nebraska transportation advantage as an incremental piece that can be taxed. So, Senators, I respectfully but strongly encourage you to not allow the passage of any of these three bills or any attempt to tax ethanol. Thank you and I'm... [LB881 LB946 LB1040]

SENATOR JANSSEN: Any questions? [LB881]

CHARLES B. WILSON: ...questions? [LB881 LB946 LB1040]

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SENATOR JANSSEN: Ron. [LB881]

SENATOR RAIKES: Has your plant at Trenton received subsidies from the EPIC Fund? [LB881]

CHARLES WILSON: Yes. Yeah, we were...our main operating company is from Kansas and when we decided to look at investing in ethanol, we were first looking at Kansas. We had some assets in southwest Nebraska and the senator out there said, take a look here. And as soon as we developed some interest, Governor Johanns and your former DED just basically begged us to come to Nebraska. We looked at the incentives that were offered in Nebraska, we looked at the incentives that were offered in Kansas. We made a decision to build it in Nebraska. It's 12 miles from the state of Kansas. We could have gone either way and had a lot of the same costs, but the incentives were the inducement that we acted upon, and we held up our end of the bargain. We created jobs. When we put out a call in March of 2004 for 30 positions, we had 300 applications for jobs. We've created multiple jobs indirectly through trucking. We've added probably 10 to 15 cents to the basis on the corn price of the 15 million bushels a year that we buy in that part of the world. We pay our fair share of property taxes. The last I looked, we were about 30 percent of Hitchcock County's budget is financed by the property tax that TAP pays. And we pay our fair share of the income taxes. And we're looking at some lean margins ahead. So we're very, you know, the senator that proposed this bill that we're talking about right now was quoted back in November as saying, I'm interested in proposing this bill but I'm concerned about the harm it will do to this industry. And I agree with his early comments; it is potentially very harmful. [LB881 LB946 LB1040]

SENATOR RAIKES: Approximately how much was the incentive you received? And are you still receiving the incentive? [LB881]

CHARLES WILSON: Yeah, we are still eligible. It's about, as I recall it's a 96-month program and so whatever...three or four years into it. [LB881 LB946 LB1040]

SENATOR RAIKES: And so you, in a sense, have the advantage of that program over any plant that's being constructed now and you got an operation now, is that right? [LB881]

CHARLES WILSON: You could make that assumption. I don't look at the due diligence that other plants are looking at. [LB881 LB946 LB1040]

SENATOR RAIKES: But the incentives are not available to those other plants. [LB881]

CHARLES WILSON: But that is certainly...the plants that were constructed after June of 2004 are not eligible, as I recall. [LB881 LB946 LB1040]

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SENATOR RAIKES: Okay. All right. [LB881]

SENATOR JANSSEN: Any other questions? Cap. [LB881]

SENATOR DIERKS: Mr. Wilson, what is the average salary of the employees at your plant? [LB881]

CHARLES WILSON: It is approximately thirty thousand...you know, I hate to say...I'm afraid I'll say the wrong number. It's between \$25,000 and \$30,000. And I could find out the accurate number and get back to you, Senator. [LB881 LB946 LB1040]

SENATOR DIERKS: And how many employees do you have? [LB881]

CHARLES WILSON: We have 32 employees. [LB881 LB946 LB1040]

SENATOR DIERKS: Thank you. [LB881]

CHARLES WILSON: And we hire a number of high school interns. [LB881 LB946 LB1040]

SENATOR DIERKS: Thank you. [LB881]

CHARLES WILSON: We run 100 trucks every day that don't work for us. [LB881 LB946 LB1040]

SENATOR DIERKS: Do you dry your distiller's grain? [LB881]

CHARLES WILSON: We have a dryer and so it's our option depending on what the market conditions are. We prefer to sell it wet, but if the conditions change or if there's bad weather, whatever, we turn our dryer on. So we sell both products. [LB881 LB946 LB1040]

SENATOR DIERKS: Thank you. [LB881]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Mr. Wilson. [LB881]

CHARLES WILSON: Thank you. [LB881 LB946 LB1040]

SENATOR JANSSEN: Next proponent? [LB881]

KEITH OLSEN: (Exhibit 21) I am Keith Olsen, O-l-s-e-n. I have a letter passed around

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from the Nebraska Chamber of Commerce in which they state their opposition to LB881, LB946, and LB1040. I'm here to give testimony from the Nebraska Farm Bureau, which I serve as president. We are opposed to these three bills, but at the same time I'd like to thank the senators that introduced them, senators that we consider friends. They have done a service to the state, it allowed for some good discussion, it allowed us to analyze an alternative, an alternative I think it was good that we looked at. But we do oppose the three bills and we worked hard and it's been stated many times to attract ethanol production into the state of Nebraska, and it would seem ironic that after we put incentive monies of various types into getting these ethanol plants that we turn around and tax them. We want to make sure that we stay competitive with our neighboring states and would be concerned that if a tax on ethanol would be applied in Nebraska, it could put our plant at a disadvantage. And again, as we said earlier, we believe that especially in LB881, funding for roads come from the user and not from another source, and that's another reason we oppose. We did like in Senator Burling's bill where he would adjust or use the funds to pay the...eliminate the checkoff fund on commodity that LB701 that was passed last year and we oppose that commodity checkoff and still oppose it and we did like Senator Burling's idea there. But in retrospect we must oppose all three bills and we think they would be bad policy for the state of Nebraska. Thank you. [LB881 LB946 LB1040]

SENATOR JANSSEN: Any questions? Ron. [LB881]

SENATOR RAIKES: You mentioned you oppose the checkoff and the checkoff was used, as you know, in part to entice ethanol plants and we just had testimony that the ethanol plant in a particular area had raised the price 15 cents a bushel. Was that a wise decision, to oppose that checkoff? [LB881]

KEITH OLSEN: This is a decision that our members made based on the fact that there are many members that are living a long ways away from ethanol plant. They have not seen the increase of that 10 to 15 cents per bushel that, you know, may be there around ethanol plants. It would also apply to grain sorghum and very little grain sorghum if any is going into ethanol production at this time. [LB881 LB946 LB1040]

SENATOR RAIKES: But nonetheless I think the argument has been made that kind of the water level in all boats have risen as a result of bioagriculture, if you will. [LB881]

KEITH OLSEN: I'm sorry, the water level has... [LB881 LB946 LB1040]

SENATOR RAIKES: Well, even places away from ethanol plants are getting higher corn prices because of the use of commodities and fuel production. [LB881]

KEITH OLSEN: Okay, there's certainly...yes, prices are up because of ethanol production, corn going for ethanol, but there is still a difference in basis between locality

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determined by the distance from ethanol plants that you are. [LB881 LB946 LB1040]

SENATOR RAIKES: Okay. Thank you. [LB881]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Keith. [LB881]

STEVE EBKE: (Exhibit 22) Hello, Mr. Chairman and members of the Revenue Committee. My name is Steve Ebke, and the last name is spelled E-b-k-e. I'm here today representing the Nebraska Corn Growers Association. I serve as the cochairman of their ag affairs committee. Nebraska Corn Growers do not support LB881. Our association has a long-standing policy which opposes a direct tax on ethanol or its coproducts. Mr. Sneller has testified as far as how the industry has contributed to Nebraska's economy, so I won't mention that any further. Mr. Wilson discussed the fact that there has been some information that since we export a significant amount of our ethanol that we're passing this tax on to consumers in other areas and I think he has pointed out that that probably is not correct. We look at it, you know, that it's either going to be absorbed by the plants, or in all likelihood they'll reduce the bid for corn. So we're saying that it's still going to be the corn producers that are going to end up making the contribution. As far as...there was another discussion regarding treating LB881 and the tax there as similar to a severance tax that other states impose on coal and oil extraction, and in our view there is no comparison in this case. We definitely look at ethanol as a renewable resource. Oil and gas reserves will eventually be depleted in those states and so they're attempting to get their revenue while they have an asset. In our opinion, renewable energy has a long and sustainable future and it's going to provide significant contributions to Nebraska's economy during that lifetime. And again, another point, as renewable energy technology evolve, the energy gain and sustainability of ethanol are going to continue to improve and that will again bring a positive impact into Nebraska. And so I guess with that, again, I'll just make a statement that we oppose the LB881 and we would ask that you not advance it out of committee. I'd be happy to answer any questions. [LB881]

SENATOR JANSSEN: Any questions? Seeing none, thank you, Mr. Ebke. [LB881]

STEVE EBKE: Thank you. [LB881]

SENATOR JANSSEN: Next proponent, or opponent? Opponent? [LB881]

MITCH STUHR: Good afternoon, Senators. My name is Mitch Stuhr, S-t-u-h-r. I am here on behalf of Abengoa Bioenergy which owns and operates two Nebraska ethanol production facilities in York and Ravenna. I am here to speak in opposition of these three bills. In addition to the facts presented here today by other producers and opponents of these bills, I would like to speak to the effects that these taxes will have on the future of cellulosic ethanol. In 2007, the U.S. Department of Energy awarded

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Abengoa Bioenergy a financial assistance grant of approximately \$76 million to design, construct, and operate a first-of-the-kind commercial facility to produce ethanol from cellulosic material. The award is part of the DOE program to promote, demonstrate, and commercialization of cellulosic conversion technology for ethanol production and is part of the President's Clean Fuels Initiative. This plant will take the technologies now being tested at our pilot plant facility in York and expand and prove these technologies on a commercial scale. The recent passing, as Todd Sneller mentioned, of the Energy Independence and Security Act of 2007 assures that cellulosic-based ethanol will be a significant component of our nation's energy future, requiring that 21 billion gallons of advanced and cellulosic biofuels be utilized in this country by 2022. My company believes there's tremendous potential for cellulosic ethanol in Nebraska. Currently our DOE award is being used to construct a commercial-scale cellulose-to-ethanol plant in Hugoton, Kansas. After successful completion of this project, Abengoa currently plans to add production using this technology at each of its other facilities, including the two plants in Nebraska. The passing of these bills would make any additional capital investment towards this new technology in Nebraska significantly less profitable and therefore less likely. With the other existing ethanol facilities in Nebraska also being prime sites for colocation of cellulose facilities, the passing of these tax provisions leaves our state vulnerable to falling behind other states in capitalizing on this key element towards our nation's reduced dependence on foreign oil. Thank you. [LB881 LB946 LB1040]

SENATOR JANSSEN: Any questions? Cap. [LB881]

SENATOR DIERKS: Can you tell me the number of employees you have at your plants in Nebraska? [LB881]

MITCH STUHR: We have...in our York location, we have 58 within the ethanol plant. We also have a pilot plant there that employs 12 employees. So a total of 70 in York, and we have 60 at our Ravenna site. [LB881 LB946 LB1040]

SENATOR DIERKS: What would their average salary be? [LB881]

MITCH STUHR: Average salary, I would say, is between \$35,000 and \$40,000. [LB881 LB946 LB1040]

SENATOR DIERKS: Thank you. [LB881]

SENATOR JANSSEN: Ron. [LB881]

SENATOR RAIKES: Did I understand you that you got a \$76 million grant from the federal government to work on cellulosic ethanol? [LB881]

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MITCH STUHR: Yes. [LB881 LB946 LB1040]

SENATOR RAIKES: So, in effect, the federal government is building this plant? Would that be a fair statement or not? [LB881]

MITCH STUHR: No, that would...no. They are assisting...\$76 million is not what the total plant will cost, obviously. It is a cost-sharing grant there. [LB881 LB946 LB1040]

SENATOR RAIKES: So part of the grant is that your company has to match what... [LB881]

MITCH STUHR: Yes. [LB881 LB946 LB1040]

SENATOR RAIKES: ...match the grant. Tell me, the advantage of cellulose as a base stock for ethanol versus corn is what? [LB881]

MITCH STUHR: Abundance. It's one of the most abundant material. I don't know that I want to speak on that because I don't know that I am truly expert on that... [LB881 LB946 LB1040]

SENATOR RAIKES: Okay. [LB881]

MITCH STUHR: ...but I can definitely give you the answers, I can send you the answers on that. [LB881 LB946 LB1040]

SENATOR RAIKES: Okay. [LB881]

SENATOR JANSSEN: Any other questions? None. Thank you. Next opponent? How many more opponents do we have? Okay. [LB881]

DUANE KRISTENSEN: (Exhibit 23) Good afternoon. I will keep this brief. I'm handing out the written testimony that I have, but I will go ahead and start and just surmise a little bit of what we're doing. My name is Duane Kristensen, D-u-a-n-e, Kristensen is K-r-i-s-t-e-n-s-e-n. I'm here to speak on behalf of Chief Ethanol Fuels, I'm the vice president of operations and general manager of Chief Ethanol, which is a wholly owned subsidiary of Chief Industries out of Grand Island. Just briefly, I want to touch on a couple of points. You guys can read my testimony at your leisure, but a couple of points I want to make is that our plant is the oldest one in the state. We've been around since 1984. We are located in the good Senator Burling's district. We've been operational since 1985. One of the things that I think that needs to be addressed as we look forward and going through some of the ups and downs of the ethanol industry of which we have seen, is that there's been tremendous reinvestment from our standpoint on the plant itself. It originally was built as a 10 million gallon plant; we're presently over six times

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that size and undergoing continued expansions. Over the two decades that we've been around, we continue to be a very viable entity in the Hastings area in Adams County. Of course, we put a lot of our revenues back into the school district coffers, the local state and national tax coffers for all of our revenue that we have had. Over the past number of years, we have been on a very good relationship with the Legislature. There's been some incentives that have happened over the past two decades which has helped us and encouraged us to reinvest the dollars that are in there. Presently we are not getting any of the EPIC Fund money. I think you can follow through on some of the economic incentives and things that we have done from our plant standpoint in my address there, but I do want to just mention that ethanol is traded as a commodity fuel component and by having this excise tax upon it, that it would put us at an economic disadvantage. So that's real briefly what we have in here. So if there's any questions, we'd be glad to help answer them. [LB881 LB946 LB1040]

SENATOR JANSSEN: Good job, Duane. Any questions? Seeing none, thank you. [LB881]

DUANE KRISTENSEN: All right, thank you. [LB881 LB946 LB1040]

JOHN K. HANSEN: Mr. Chairman, members of the committee, for the record my name is John K. Hansen, H-a-n-s-e-n. I am president of the Nebraska Farmers Union and also serve as their lobbyist. We are opposed to these three bills; that, I suspect, is not a surprise to the committee. We have been in the ethanol business and advocacy for a very long time and we have made, we think, some very good investments. And we view this particular approach as undermining a lot of the public investment we have already made and it certainly goes counter to the entire direction of what is going on in Washington these days with the need toward energy independence, renewable energy. I've spent a substantial amount of time this last year in Washington working on the energy bill, also the farm bill and the farm bill provisions relative to cellulosic fuel stocks, sweet sorghum, a lot of those things as well as the renewable section of the farm bill. And so when we move forward as a state it's when we are going the same direction as the feds and we complement those efforts. And so in my view and the view of our organization, this would be one horse going one direction and the other horse kind of going the other. And so we think it is not good policy and we think that the things that will do the most harm will be toward the emerging cellulosic ethanol industry, which we think is the future over the long term when we look at energy efficiency, water use, all of those things. And we also think that an excise tax runs the possibility of adding an additional burden to ethanol producers that would most likely put those kinds of ethanol producers that we would most want to make sure stay in the business long-term. Those farmer-owned players who provide the most economic benefits, who keep most of the profit back in rural communities at an additional disadvantage and we certainly wouldn't want to do anything to help facilitate a shakeout that would cause those folks to leave the state of Nebraska and consolidate more and more ethanol ownership into fewer and

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fewer big hands. And as you look at our ownership structure in our state, I think that we have a very diverse structure. Our only regret is we don't have more farmer-owned ethanol plants than we do. So with that, I would be glad to answer any questions if you have any, if I could. [LB881 LB946 LB1040]

SENATOR JANSSEN: Any questions? Ron. [LB881]

SENATOR RAIKES: John, a quick one. You mentioned cellulose...why is that a better feed stock when you consider how bulky it is to haul and whatever feed by-product there is from it? [LB881]

JOHN K. HANSEN: Well, I think that when you look at the net energy gain, that's going to be the primary issue relative to cellulose. When you look at the total amount of energy expended with corn versus most cellulose, there's just less energy in the development of the cellulosic feed stock and the net energy gained from the ethanol there is even greater than it is with corn. [LB881 LB946 LB1040]

SENATOR RAIKES: But with corn you have feed production; with cellulose it's going to be all fuel production? [LB881]

JOHN K. HANSEN: Most likely, yes. [LB881 LB946 LB1040]

SENATOR RAIKES: Okay. [LB881]

JOHN K. HANSEN: Yet in a lot of cases, that cellulose is...when you look at scrub brush, when you look at a lot of the different kinds of sources of cellulose that are being looked at, you have a real diversity of supply that in a lot of cases wouldn't be utilized otherwise. And in the case of switch grass, for example, as you look at it as a fuel stock, it uses less water than irrigated corn. And so if you come up with a crop that uses less water that is still economically viable, that may be a good fit for southwest Nebraska. [LB881 LB946 LB1040]

SENATOR JANSSEN: Okay. Any other questions? That's it. John, thank you. [LB881]

JOHN K. HANSEN: Thank you, Mr. Chairman and members of the committee. [LB881 LB946 LB1040]

SENATOR JANSSEN: Next opponent? [LB881]

MIKE KINNEY: (Exhibit 24) Mr. Chairman and committee members, my name is Mike Kinney, K-i-n-n-e-y. I will make this very brief so we might be able to get to supper tonight. There's a section in the tax policy reform commission study that was referred to that is the only thing I'd like to point out, that the report last year recommends the

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Legislature periodically monitor any changes in the markets for Nebraska ethanol to ensure that they remain competitive to other ethanol-producing states. Due to the volatility in both the corn and energy markets, increased by supply and weather fluctuations, I believe that the Legislature would have considerable difficulty in assessing the market conditions to adjust this tax. The rest of my testimony I'll hand around to keep my remarks brief. [LB881 LB946 LB1040]

SENATOR JANSSEN: Yep, all right. Okay. Any questions? [LB881]

MIKE KINNEY: Thank you. [LB881 LB946 LB1040]

SENATOR JANSSEN: Thank you for being here. [LB881]

MIKE KINNEY: Yep. [LB881]

SENATOR JANSSEN: Okay. Next? [LB881]

WALTER KITTRELL: Senators, good afternoon. My name is Walter Kittrell, K-i-t-t-r-e-l-l, and I'm employed with Fagen, Inc. We have a branch office in Columbus, Nebraska, have had an office there since 1990. I'm here kind of to give a different perspective. I won't take much of your time. Fagen, Inc. is the primary builder in Nebraska. We build a big majority of the plants throughout the United States. And I guess just a perspective from us is to kind of echo Cliff's remarks and Todd's remarks is that we just don't want to see Nebraska put at a disadvantage. We build plants in other states around the country and at one time with the producer payment that was set up, we had people basically fighting to come to Nebraska and I think that was a good problem to have at the time and I think we credit what you guys and gals have done for the industry. And I just think that we would shoot ourself in the foot or kind of shoot the goose that laid the golden egg if we put ourselves at a disadvantage with imposing the tax. We get to see a lot of states and the incentives that they have and we want to make it competitive. I live in Columbus, Nebraska, been there for 15 years, and as a company we'd like to do more development and build more plants in the state of Nebraska, so. That concludes my statement. [LB881 LB946 LB1040]

SENATOR JANSSEN: Thank you. [LB881]

WALTER KITTRELL: Any questions? [LB881 LB946 LB1040]

SENATOR JANSSEN: Any questions? Don. [LB881]

SENATOR PREISTER: Before you go, I just wanted to check, what percentage of the people that you employ to build the plants are Nebraskans? [LB881]

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WALTER KITTRELL: That pretty much goes plant by plant. When we come into a certain area, as much of the local labor that we can hire we will. It has to be skilled labor, of course, and if we can hire x amount of pipe fitters or welders, then we so do that. So it depends plant by plant. Hopefully that answers your question. [LB881 LB946 LB1040]

SENATOR PREISTER: So there would be a wide variance? You don't take other workers from other parts of Nebraska and bring them in, you'd bring somebody from another state? [LB881]

WALTER KITTRELL: Well, we do quite a bit of transfer labor, reason being is the way we have warranties on these plants. Basically we're responsible for the plants and meeting their startup guarantees, so we'll typically bring in maybe the supervisors, the superintendents, the general foremans and foremans because we want to be responsible, we want to make a good plant, make it start up because we're responsible for that. But in the case that we can hire some of that local labor, enough that we can oversee that and still be responsible, we'll do so. [LB881 LB946 LB1040]

SENATOR PREISTER: Okay. And the prevailing wage for those employees, the welders or the people actually doing the work, is what? [LB881]

WALTER KITTRELL: Probably a labor rate right now would be probably \$24 an hour and probably \$75 to \$80 a day per diem. [LB881 LB946 LB1040]

SENATOR PREISTER: That would be nice for a lot of Nebraskans to get. I would hope that we could employ more Nebraskans. [LB881]

WALTER KITTRELL: Yes, sir. It would be and it has been, it sure has. Actually, that's what brought me up here, is the ethanol industry myself, so. [LB881 LB946 LB1040]

SENATOR PREISTER: Thank you. [LB881]

WALTER KITTRELL: Thank you. [LB881 LB946 LB1040]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. Next proponent? Any more proponents...or opponents, excuse me. (Laughter) Excuse me, opponents. It's getting late, folks. I see Loran get up there, he was kind of hesitant, but. [LB881]

TYDD ROHRBOUGH: Good afternoon, my name is Tydd Rohrbough, I'm the founder and CEO of Cornhusker Energy. As the name states, we're in Lexington, Nebraska. We were a beneficiary of the original tax incentives which did change our mind to go from Iowa to Nebraska. We would oppose all three bills as a economic disadvantage. And I'm not going to testify, I think it's all been said here, but we just wanted to register. If

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anybody has any questions... [LB881 LB946]

SENATOR JANSSEN: Questions? Thank you. Loran. [LB881]

LORAN SCHMIT: (Exhibit 25) Mr. Chairman and members of the committee, my name is Loran Schmit, I'm the registered lobbyist for a number of ethanol companies, producers, and also for the newly created Association of Nebraska Ethanol Producers. Mr. Mesner said that as he listened to people speak, he crossed off portions of his testimony. I, on the other hand, have added comments that I wish to make (laughter) so if you want to send out for lunch, I'll be glad to pay the tab, but anyway, or dinner. I do want to say this at the outset: I have always made it a point to say that the Nebraska Legislature has been good to the ethanol industry. And that doesn't mean that we're going to stop asking, Senator Raikes, but I do want to say that for the record, and, you know, the Nebraska ethanol industry did not invent the incentive system; that was invented with LB775 in 1986, but there were those who maybe they aren't the best original thinkers, but who, like Senator Dierks and others, decided maybe we can jump on the bandwagon. So in 1987, the ethanol industry came along and used some of the ideas of LB775. And I want to give you a little financial report, which you've never received from the beneficiaries of any other incentive program. About \$200 million has been spent thus far by the state of Nebraska to provide incentives to the ethanol industry. Of that amount, approximately \$111 million was from the corn checkoff and the sorghum checkoff. Another \$60 million was General Fund money, direct General Fund appropriation. Another \$5 million came from the Leaking Underground Tank Fund, one of my more infamous bills that I passed and which has now cost us, as Senator Fischer indicated, more than \$150 million as a direct subsidy to the petroleum marketers. Another \$11 million came from the interest on the fund, and then approximately \$1 million was money that came from the off-road highway use fund, which is mostly paid for by today the ethanol industry. But I just want to say, those are the rough numbers; you can get the detailed numbers right down to the dollar. We have never hidden behind anonymity in that regard, we've always acknowledged that we are a subsidized industry and we take pride in thinking that we have made a return to the state of Nebraska. I'm going to testify against all three bills, but I will stick around just in case, you know, I need to go on the record, Senator. I don't want the introducers of that LB946, Senator Burling, and Senator Loudon to feel slighted by my not being available to testify against those bills. But in any case, I will try to reduce my testimony somewhat. It was the original intent of the Nebraska Legislature to replace unleaded gasoline with a 10 percent blend because we knew that the lead would one day be phased out. The oil companies tried to upstage us and developed MTBE, which was a miserable failure and which has now contributed to that cleanup problem we are having with the Leaking Underground Tank funds. At the present time, our insatiable demand for oil has caused that price to peak at more than \$100 a barrel. Because the Middle Eastern oil fields provide fuel to much of the world, we are providing dollars to countries who are trying to destroy us. That alone ought to provide the incentive that we need to become energy

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independent. Although energy from commodity-based ethanol is our first source of alternative energy, other sources may become even more important. During this 2007 legislature, Senator Dierks enacted LB629 to encourage development from wind energy. The Legislature also passed Senator Langemeier's bill, LB343, to encourage development of biodiesel plants. Senator Preister has spent much of his legislative career encouraging development of alternative energy supplies. Most of these programs, if they are to be successful, will involve financial support from the state of Nebraska, perhaps for an extended period of time. The federal mandate that we must produce 21 billion gallons of ethanol from cellulose will require the best efforts of all of us. Nebraska has been a leading state in the development of the commodity-based ethanol. We have already reached levels beyond our expectation. As Todd has explained, in changing those objections, if we were to impose a punitive tax on ethanol, investors or prospective investors in cellulose ethanol might rethink that investment, as would those wind developers who would be, I'm sure, forced to reconsider development considering that after having made that development they might then find themselves subjected to that kind of tax. If we are going to provide a severance tax on ethanol, is it not a reasonable assumption to believe that we ought to provide a severance tax on corn? No one is going to drop over dead, but corn, beef, pork, how about the students who educate in Nebraska and leave? Of my ten children, most of them have left the state. Why? They can get better jobs and enjoy the advantage of living in the sunny South rather than this zero weather here, and I don't blame them. But we have provided a lot of good jobs. I believe Todd touched briefly on the jobs in addition to the jobs at the plant: Attorneys, engineers, accountants, many other people that have earned considerable sources of revenue because of the ethanol industry. I just think that if we were to do what we're talking about here and we were to apply that also to the biodiesel plants and the wind plants, I don't think those plants will come here. I think that the commodity price improvement has impacted not only corn, but wheat and soybeans. Those price increases this year have added more than \$5 billion to the economy. This committee more than any other committee in the Legislature, I think, knows the value of that contribution. So the ethanol industry, by doing what they've done, have also forced the price of their corn from \$2 a bushel to \$4.78 today...In 2006, September 19, the price of corn at billing was \$1.97 a bushel. Today it's \$4.78. Not a modest increase, a substantial increase. I disagree with the assumption by some people that not all corn farmers have benefitted. I think that all of us as corn producers cannot help but acknowledge that the ethanol industry has done that. Sure, there's disparities from community to community, but we've seen a major increase in the price of corn. And so I don't share the concern about the checkoff that some folks do. To summarize my position, I just want to say this: The Nebraska ethanol industry has done much of what we expected of it. Nebraskans, legislators, farmers, businessmen, and the public must determine the course of action we will take, not for next year or the year after, but what we can do over the next 20 or 30 years to make this country energy independent. These are a few of my suggestions. We will need to continue to make corn industry more efficient, and I believe we will. We'll use less water and less BTUs of energy in the

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production of ethanol. We'll separate the oil and the protein early in the process. We will use the protein as a source of human food to relieve suffering and hunger around the world. We will sell that product by the pound instead of by the ton and make ethanol more competitive as an energy source. We will develop energy from cellulose. I don't want to be the person who takes the first air permit request over to NDEQ, my good friend Shelley Kaderly will have a stroke because I think that we start processing cellulose energy, we're going to have a lot of problems there. Maybe more logistical, how do we get the stuff down the road and store it and that sort of thing? But we can do it and we're going to do it. We may gasify it and use it as a source of methane. There are a lot of things that we haven't even considered yet. We're going to develop wind energy assistance that would provide a major supplement to our present energy supply. Biodiesel plants will become a part of our energy supply and are going to be common throughout the United States. I believe that we're going to produce energy, not just from switch grass, I can't see many of us planting our farms to switch grass myself, but there are sources of cellulose today: Our grasses, our garbage, solid waste. I believe that our landfills as we know them today are going to disappear and they're going to become sources of energy. Solar energy will be developed and I think that nuclear power will play a role. There's going to be other sources of energy we haven't even discovered yet that we're going to have as a source of major energy. Based upon the history that I have studied, we have had energy shortages in this world since recorded time, but we've always found a solution. We can, working together, find those solutions in the future and I commend this committee for having been a major contributor to this industry and to the energy problem we have today. I'll be glad to answer any questions, and again I want to thank you for letting me appear today. [LB881]

SENATOR JANSSEN: Any questions? Senator Langemeier. [LB881]

SENATOR LANGEMEIER: Senator Janssen, I don't have any questions, I just want to tell Loran, I said, it's a shame we couldn't coincide this hearing with your annual ethanol meetings here in Lincoln. [LB881]

LORAN SCHMIT: We might want to think about that if... [LB881]

SENATOR LANGEMEIER: And have the fleet here. [LB881]

LORAN SCHMIT: If the Chairman had asked me, we certainly could have arranged that, Senator. We did have pretty good showing, though. [LB881]

SENATOR LANGEMEIER: Thank you. [LB881]

LORAN SCHMIT: We just, if I could make one comment, Senator Preister asked about Nebraska jobs. I know of one union company that right now has more than 60 union employees working on ethanol projects in the state. That's just one with which I'm

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familiar. And those jobs are excellent jobs and I know that one of the managers of the plant that uses union labor said, Loran, I like that kind of help; when they come in and do a job, they walk off the job, I know the job is done right and the plant can operate. So I know that we have improved the labor supply in Nebraska, we have a highly skilled labor supply, and I think we're going to be employed for a long time. But I thought you'd be interested in that, Senator. And thank you for asking the question. Any other questions? [LB881]

SENATOR JANSSEN: I don't see any. Thanks, Loran. [LB881]

LORAN SCHMIT: I can talk a long time yet, Senator. [LB881]

SENATOR JANSSEN: I know you can. (Laughter) [LB881]

LORAN SCHMIT: Thank you very much. [LB881]

SENATOR JANSSEN: You bet. Next opponent? I don't see any. That should...anyone in neutral capacity? Okay. Arnie to close. [LB881]

SENATOR STUTHMAN: Thank you, Senator Janssen and members of the committee. I just want to clear up one of the comments that was made in the testimony that was given. This tax would not replenish the EPIC Fund, which was stated earlier on by one of the testifiers. They said this tax was not needed because there was no need for the funds for the EPIC Fund. I think there's one other thing that I want you to keep in mind whether you move my bill on or not. There's one component of my bill that I think is very important, that it raises revenue for the Department of Roads, also for the counties and for the cities and municipalities for road construction, all three of them. So I think you need to keep that in mind. And I'll answer any questions. Thank you. [LB881]

SENATOR JANSSEN: You're off the hook. Well, okay. That ends the hearing on LB881. Senator Burling to introduce LB946. [LB881]

SENATOR BURLING: Good afternoon, Senator Janssen. [LB946]

SENATOR JANSSEN: Good evening. I mean, oh, good afternoon. [LB946]

SENATOR BURLING: (Laughs) Good evening. Members of the committee, I'm Carroll Burling, that's B-u-r-l-i-n-g. I represent District 33 in the Nebraska Legislature and I'm here this afternoon to introduce LB946 that would impose a tax on ethanol production and provide for its use. Senator Stuthman referred to a remark about the tax going into the EPIC Fund. The person that made that statement, I think, was referring to my bill because that's where I direct the tax to go in my bill, so I think that clears that up. This would put a 2 cents a gallon tax on ethanol production paid for at the point of production

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by the ethanol production plant and as I said, it would go into the EPIC Fund. There are...if you look at the fiscal note that I have received with this bill, there is a possibility that there's not enough money in the EPIC Fund to meet all of the obligations, and this would ensure that. Then, of course, as you know, when the EPIC Fund has completed its tenure, then the balance goes into the Water Resources Cash Fund and this would go there, too. I understand that 95 percent of all the ethanol produced in Nebraska goes out of state, most of which, I've been informed, goes to California. And the thinking on the Tax Policy Reform Commission was that if we could put a tax on that, maybe we could, you know, compare with severance tax we pay on coal or natural gas to other states that we receive energy from, maybe this could work the same. That's why the commission asked the Legislature to look into it. I believe that this is a discussion that needed to be had and I thought that January of 2008 is as good a time as any to have it. I appreciate all the discussion that we've had so far this afternoon on this issue. I don't know if there will be any testifiers follow me or they've all said their piece already, but I want to thank everybody for what they've said because, like I said, I think this is an issue that needed to be discussed and we've done that and we may continue to do it. But it was something that had to start somewhere, and I will be glad to work with the committee on any additional information or questions that you might have as we proceed on with that. I just encourage the committee to give this some serious consideration and I thank you for your time. [LB946]

SENATOR JANSSEN: Any questions? Seeing none. Thank you, Carroll. We take proponents first; anyone in favor of this? Seeing none, any opponents? I think your testimony is all going to be the same, so let's be 'expedious' in that manner. [LB946]

SENATOR LANGEMEIER: We'll carbon copy off the other bill. [LB946]

SENATOR JANSSEN: Carbon copy. [LB946]

STEVE EBKE: (Exhibit 26) Again, Mr. Chairman and members of the committee, my name is Steve Ebke, and it's spelled E-b-k-e, and again I'm representing Nebraska Corn Growers. And in this particular testimony as far as LB946, we won't talk about the things that were talked about with LB881. I do want to point out, though, that the Nebraska Corn Growers have supported the ethanol production incentives as a means to build Nebraska's ethanol industry. This support has involved funding of these incentives with checkoffs on Nebraska corn as well as matching monies from the General Fund, as Mr. Schmit summarized for us. We continue to support checkoffs as they provide a means for our industry to self-finance the creation of new markets and a new demand for corn. Nebraska Corn Producers are committed to share funding responsibility for the current ethanol production incentive program through a checkoff. It may be tempting to think our obligation could be shifted to someone else; however, the fact is that corn would still fund the incentive. As noted earlier in testimony that I had on LB881, ethanol producers are most likely going to reflect the new excise tax and lower bids for corn. An additional

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consequence will be a narrowing of the base for collecting the funds since only the corn purchased by the ethanol producers will be directly affected. As far as the other component, our objection to LB701 and the Water Resources Cash Fund concern the use of a corn checkoff to provide funds for a general state obligation. Nebraska's water issues and obligations affect the entire state and therefore require input and financial commitment on a statewide basis. As previously noted, Nebraska corn checkoffs are self-financed, self-help programs, voluntarily established to create new markets and new demands. Our Nebraska corn checkoffs were never, by either legislative or producer intent, meant to fund general obligations of the state of Nebraska. The provisions of LB946 relating to the funding of the Water Resources Cash Fund do not resolve our concerns. Corn producers will still be providing a substantial portion of the funding, only now through a narrower base. So again, the Nebraska Corn Growers Association would ask that you not advance LB946. Thank you. [LB946]

SENATOR JANSSEN: Thank you, Steve. Any questions? Seeing none, thank you. [LB946]

STEVE EBKE: Thank you. [LB946]

SENATOR JANSSEN: Next opponent? No more opponents, okay, we'll...oh, excuse me. Loran, I'm sorry, I didn't see you getting up. [LB946]

LORAN SCHMIT: That's okay. Senator Janssen, members of the committee, my name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. Just for the record, I want to make clear that the testimony we submitted previously applies also to LB946. Thank you. [LB946]

SENATOR JANSSEN: Thank you, Loran. Any other opponents? Anyone in a neutral capacity? Senator Burling to close. [LB946]

SENATOR BURLING: Thank you, Senator Janssen. And like I said, I thank those that have testified this afternoon on this issue. This whole business of renewable energy is...I believe is in its infancy. It's an important issue to this part of the country and the technology and the research that's going on in this area, it would almost boggle your mind at how the advances have been made and what can be done with certain things. And so that's why I think this discussion was important, because it's a big issue, a lot of changes going on in this area and we need to keep up with that and monitor that. I support what's been done, I supported every tax incentive, tax credit program for ethanol incentive during my whole tenure as a senator. It's been good and I appreciate the people that have come this afternoon to show their support for the ethanol industry and help us with this discussion on this issue. Thank you very much. [LB946]

SENATOR JANSSEN: Thank you, Senator. That ends the hearing on LB946. Senator Loudon is here to open on LB1040. Senator Loudon, welcome to the Revenue

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Committee. [LB1040]

SENATOR LOUDEN: Thank you, Senator Janssen and members of the Revenue Committee. I'm LeRoy Louden, I represent District 49, the last name is spelled L-o-u-d-e-n, and I'm here today to introduce to you LB1040. In...LB1040 would place an excise tax of 1 cent per gallon on ethanol produced in Nebraska and would credit the revenue to the Water Resources Cash Fund. Current statute provides that the fund will receive revenue from an excise tax on corn and grain sorghum starting in 2012 and ending in 2019. This bill eliminates the 2012-2019 period of that tax known as the corn checkoff and replaces it with an excise tax on ethanol that would start and end on the same dates, October 12, 2012, through September 20, 2019. The Water Resources Cash Fund was created last year when the Legislature passed LB701. That legislation is intended to resolve water issues in areas where water is fully and overappropriated. When the Natural Resources Committee was crafting LB701 last year, Governor Heineman suggested that revenue from the corn checkoff be sent to the Water Resources Cash Fund. At the time, the Governor said that he would gladly listen to other ideas if another source of revenue can be found. LB1040 proposes another source of revenue. The Republican River Basin is only one area of the state where water issues will have to be addressed. The Platte River Cooperative Agreement provides for the Platte River Recovery Program. That's the area west of Elm Creek to the Wyoming border was declared overappropriated several years ago. Portions of the Niobrara Basin are fully appropriated. Areas within several NRDs are fully appropriated. It's likely that other areas will be declared fully appropriated eventually. All of the issues associated with full and overappropriation require funding. It costs money to do vegetation control, study the interrelation between ground and surface water, and retire irrigated acres. The Platte River-Republican program alone could cost the state as much as \$150,000 over a period of years. For costs arising from full and overappropriation, I believe that an excise tax on ethanol is more suitable than the corn checkoff. My view is based on two factors: First, ethanol can be made from many different plants. Current research into biomass as an ethanol source makes it fairly clear that many plant materials from switch grass to wood chips will eventually be the basis of ethanol. I've been told that we're about five years out, there's studies working in Golden, Colorado, and various places that there's enough wood chips between the Niobrara River and the Pine Ridge that they could do about 38 million gallon of ethanol a year, just with wood chips. And of course they would use the wood chips to cook the hooch. Second, water is crucial to the industrial production of ethanol. No matter what you make it out of, you got to have water to make the stuff. In a fully appropriated river basin, an ethanol plant's water use would have to be offset by retired irrigated land. Any place you build an ethanol plant, if it's fully appropriated, you're going to have to retire irrigated land some way or another in order to get the water to make an ethanol plant work. If we go out into some of the areas and have to use some other kind of biomass, you're still going to have find the water. For these reasons, I think it makes sense to put an excise tax on ethanol. Also, as I listened on your television set...you folks are all

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stars on television this afternoon...I noticed that a lot of the farm organizations were against using this ethanol excise tax. And what I'm wondering is, I talked to the people from the Corn Board and if you'll notice, the fiscal note with this thing shows that in the year by 2013, I think it is, that they plan on making about 2.5 billion gallons of ethanol a year. And by transferring that from the corn checkoff and by having 2.5 billion gallons of ethanol produced, that's going to be exporting ethanol. Consequently, you'll be changing a tax from a producer tax, which the corn checkoff is now, it's on the producers that produce the corn, you'll be transferring that tax to a consumer tax, which if you're exporting the major portion of that 2.5 billion gallons would be a tax that comes in from out of state or someplace. So I would think that this would probably be a positive note of it. The other thing is, by the year of 2020, you're going to have to find some ways in order to fund water. Now, whether you use ethanol, whether you use general funds, but I said before that Platte River recovery program and then part of that Platte River compact that was made with Colorado and Wyoming on the Platte River to take care of vegetation management, is estimated that over a period of years, about \$150 million that we're looking at, and that was the reason Governor Heineman set up that Water Resources Cash Fund. So somewhere along the line, we're going to have to find ways to fund water and probably your ethanol program is probably as good as any that's come along by now. You've got other compacts, you've got your Blue River Compact that's going to be starting getting in trouble one of these days, you have all of your different river basins. Right now they're talking about the Lower Platte with their sturgeon, whatever those big fish are, and when you start into that, then you're starting to talk about clear up in the Loup Rivers. And so there's a lot of places that you're going to have to have money to offset irrigation or offset part of your recovery for water transfer. With that, I'll be happy to try and answer any questions. [LB1040]

SENATOR DIERKS: Thank you, Senator Louden. Are there questions for Senator Louden? I don't think so. [LB1040]

SENATOR JANSSEN: Thank you, Senator. All right. Okay, any proponents? Opponents? [LB1040]

STEVE EBKE: (Exhibit 27) Again, Mr. Chairman and members of the committee, my name is Steve Ebke, E-b-k-e, and again I'm representing Nebraska Corn Growers. I think the testimony on LB946 covered this area. I do want to thank Senator Louden and his cosponsors for attempting to look for an alternative to the corn checkoff being used to fund the Water Resources Cash Fund. And as I stated previously, we think it's a broader issue and should have a broader base of support than to look at the corn industry as a major contributor to that fund. So that's the end of my testimony and I'd take any questions. [LB1040]

SENATOR JANSSEN: Any questions? Thank you, Steve. [LB1040]

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STEVE EBKE: Thank you. [LB1040]

SENATOR JANSSEN: Next opponent? [LB1040]

CLIFF MESNER: My name is Cliff Mesner, M-e-s-n-e-r, from Central City, Nebraska. I just wanted to speak briefly to the issue of the water use. I think it's been pointed out earlier that ethanol uses less than 1 percent of the water. Irrigation is a big portion of it, 94, 95 percent. If the ethanol plants go away, the irrigation is still going to be there. The ethanol plants along the Platte River now that are starting up, the new startups, are required to offset their water. In Central City, we have done an expansion of that plant and we are required to buy irrigated corn ground and turn it into dry land ground or find some other way to offset our water use. So I think the plants that are in the area are being required to address that issue directly, don't want to have to pay the bill twice, and plants that are located in areas that aren't fully appropriated probably don't want to have to pay our bill. So I suspect the way it's being covered now is a more direct and clean assessment. [LB1040]

SENATOR JANSSEN: Okay. Any questions? Seeing none, thank you, Cliff. Any other opponents? [LB1040]

TYDD ROHRBOUGH: Good evening again. Tydd Rohrbough, Cornhusker Energy. It's T-y-d-d, last name's R-o-h-r-b-o-u-g-h. This bill is particularly concerning to me when I look at the slippery slope we may be looking at when you look at what the message it sends to...not just ethanol manufacturers, but you could start taxing every manufacturer of all other products throughout the state. So as we start looking at, how do we deal with this water, I'd like to address the water as it's pertaining to our plant and what we've done to help this situation. When we started the facility in Lexington, Nebraska, we were very mindful of the COHYST study. We dropped our wells not to the upper aquifer but to the lower aquifer and we discharged back into the Platte River actually increasing the water level in the Platte River, so we have helped mitigate that through the...well, we would consider fiscal responsibility of that. So as we look at, you know, we have looked at this as a comprehensive study and then to get taxed on it on the back end again. The other point I would like to make, it's somewhat of a misconception, I think...you know, ethanol does not use water as far as consume it, it uses as a transport medium within the manufacturing process. So every drop of water that comes in goes back out the other side. Now, there is some cleanup with municipalities or with methanators that is taken to get it back to the same water quality, but we just basically are moving it from one place to the other through the system and use it as a transport medium, so. I think you'll see we have filed a comprehensive study with the NRD of Platte on that so that when you're looking at the use of water for irrigation compared to what the transport medium of ethanol and the consumption or the net consumption, there is no net consumption of water. So as we look at, you know, the long term, we can't actually recycle water more within the plant, it's an economic viability decision plant by plant, so.

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Just a couple of things I wanted to point out for the committee. [LB1040]

SENATOR JANSSEN: Okay. Any questions? Chris. [LB1040]

SENATOR LANGEMEIER: I hate to do this, but I got to ask one question. You talked about taking water out of the ground, you're putting it back in the stream and it's a mode of transportation. Why do you not recycle it 100 percent? [LB1040]

TYDD ROHRBOUGH: Well, originally it was an economic choice for us when we started up. We took it out of the lower aquifer, which is rising out of the Ogallala, and then put it back into the stream. We thought that was a viable, you know, economic pumping cost to put it back into the stream to help keep the stream level up. So that was our original justification of it. We could put an additional wastewater treatment for, you know, several million dollars and recirculate it completely. So, you know, that was an old industry practice. As you go forward, there's new industry practices. I think all the industry here will testify that there is better, more efficient water usage to recycle it within the plant. There's still some that will go out with the feed and other things, so. [LB1040]

SENATOR LANGEMEIER: Thank you. [LB1040]

SENATOR JANSSEN: Any other questions? I see none. Thank you. Any other opponents? [LB1040]

CHARLES WILSON: Good evening again, Senators. Charlie Wilson, W-i-l-s-o-n. And I've already given testimony previously, but I just wanted to make one point clear in the proposing senator's commentary. He made the statement that the corn checkoff tax is a producer tax and that his proposed tax would be a consumer tax, and again without a state consumers being mentioned. And I would make it clear that that would not be the case. The proposed tax under LB1040 would be a production tax, it would be assessed and it would be absorbed solely by the Nebraska ethanol producing plants. It cannot be passed on. I just want to make sure that point is clear and I'd be happy to answer any questions as it relates to that and how the marketplace works. [LB1040]

SENATOR JANSSEN: Questions? Seeing none. Thank you. [LB1040]

CHARLES WILSON: Thank you. [LB1040]

SENATOR JANSSEN: Next opponent? Loran? [LB1040]

LORAN SCHMIT: Chairman Janssen, members of the committee, again my name is Loran Schmit, and I am a registered lobbyist for a number of ethanol companies. I again want to say that I oppose LB1040 for the reason I've given earlier and I want to say that

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there's nothing personal about this, I appreciate the support given to us by the all the members of this committee, Senator Burling, Senator Louden, and Senator Stuthman have all been good supporters of the ethanol industry. I think we've done something here that no one expected could happen when we started down this road. And I agree that the tax revenue issue is a tough one and the Revenue Committee has a tough job. It was my privilege a number of years ago when I was a member of the Legislature to meet several times a year with Omaha businessmen, and we used to talk about issues like revenue. And the one time Mr. Kiewit was there, Peter Kiewit, and he said, Senators, the revenue is always a tough job, but, he said, I hope the day will come when we can devise a system that is consistent so we don't always have to change our policy. He says, in our business we take bids on projects that require several years to complete and if the Legislature changes a tax policy after we bid a job, that changes our whole dynamics. And he said, it makes it very difficult for us to do business in this state. And that's the question we're looking at here today, a change of tax policy where we decide, should we place a tax on a singular product like ethanol to pay for a dedicated expense? I don't want to go into the issue today and try to solve all that problem, but it's one of the things that has to be faced. I respect your job and I appreciate your consideration and thank you for listening to me and I will answer any questions. [LB1040]

SENATOR JANSSEN: It's always a joy to have you with us, Loran. [LB1040]

LORAN SCHMIT: Thank you, Senator. [LB1040]

SENATOR JANSSEN: Thank you. [LB1040]

LORAN SCHMIT: I wish I could say the same. (Laughter) [LB1040]

SENATOR JANSSEN: Anyone else? Anyone in neutral capacity? Senator Louden to close. [LB1040]

SENATOR LOUDEN: Thank you, Senator Janssen and members of the committee, and of course I appreciate your staying late to get all of this taken care of, and I'm sure you've heard testimony all day. But as I've listened to the testimony, I never heard anybody come up with a solution how you is going to handle the water bill in about four or five years from now. Remember, this bill of mine, you're looking four years into the future. Think back four years back where you were on water four years ago and I think one of the gentlemen said that, he mentioned that they had to offset for their wells and he also mentioned that they didn't want to have to pay for that twice because they weren't fully appropriated. Well, I'll bet you a sack of brown cookies that by the year of 2018 or 2019 that there won't be any reaches in Nebraska that aren't fully appropriated. I mean, it's going to happen, so you're going to have to find a way to fund water. If there's other ways, that's fine, but I thought...one thing I would beg to differ, the one

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gentleman said that this would be a tax and they would absorb that tax, and I can't believe that any business that I've ever seen that didn't pass their production cost onto the consumer. I never seen one yet did. Even your trucking firms will put a little deal on there that they put excise tax or delivery tax on their fuel tax, I guess, a surcharge is what they called it for a while. So all costs are always passed on to the consumer, tax or otherwise. So I would just ask that you think about this bill, think about what you're going to do in about five or six years from now for water. Right now, I haven't seen anything else come out there that has any way of funding. So do you plan on funding water with something like this, or do you plan on putting some type of occupation tax on all the irrigated ground in Nebraska, or are you going to put meters on all the wells and put a tax on the water used? Where are you going to start at and what do you want to do that's politically makes you feel better? So, the excise tax right now, it's going to be if...something coming on, it uses water, and it will be probably...corn probably won't be the major producer of ethanol in five to ten years from now. There will probably be other methods to make ethanol because I think it won't be viable to keep...to try to grow corn to do that. So with that, I'll leave this in your hands and I thank you for your attention, and I certainly appreciate if you can put this bill forwards. And knowing Senator Janssen, don't kill it before I get out the door. (Laughter) [LB1040]

SENATOR JANSSEN: I promise. [LB1040]

SENATOR LOUDEN: Thank you. [LB1040]

SENATOR LANGEMEIER: But you might want to run. (Laughter) [LB1040]

SENATOR JANSSEN: Yeah, hurry. (Laughs) [LB1040]

SENATOR LOUDEN: If I hurry, anyway. [LB1040]

SENATOR JANSSEN: All right, that ends the hearing on this particular bill and the hearings for the day. Thank you all for your patience. Thanks, Committee. [LB1040]

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Disposition of Bills:

LB758 - Indefinitely postponed.
LB846 - Advanced to General File, as amended.
LB881 - Indefinitely postponed.
LB946 - Indefinitely postponed.
LB1040 - Indefinitely postponed.

Chairperson

Committee Clerk