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Revenue Committee  
February 07, 2008

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[LB708 LB762 LB1001 LB1010 LB1126 LB1134 LB1137]

The Committee on Revenue met at 1:30 p.m. on Thursday, February 7, 2008, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1001, LB1126, LB1137, LB762, LB708, LB1010, and LB1134. 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. [LB1001]

SENATOR JANSSEN: Good afternoon, ladies and gentlemen. Welcome to the Revenue Committee. For the record, my name is Ray Janssen, chair of the committee, and I'll introduce the committee members. To my far left, is Don Preister from Omaha; and to his right is Carroll Burling; to Carroll's right is Cap Dierks; Chris Langemeier on my right down there; George Kilpatrick, committee counsel; Erma James is the committee clerk; we'll catch the rest of them when...oh, Senator White sitting down there. He's getting ready, he's getting antsy, we've got to get going. I got to go through these things though. Our pages are Sarah and Tim. Turn your cell phones off. Sign-in sheets for the testifiers are on the table by each door and they need to be completed. And if you wish to testify, if you're testifying on more than one bill you need to submit a bill for each, or a form for each bill. Please print and return the form before coming up to, when you come up to testify. When you come up to testify, hand your testifying sheet to Erma down on the right side of the desk here. And there are clipboards in the back by each door, if you do not wish to testify but just want to indicate your support or opposition to that particular bill, and it will be included on the official record. We'll follow the agenda as posted on the door. Introducers or representatives will present the bill followed by the proponents, then the opponents, then the neutral. Only the introducer will have the opportunity to close if he wishes to or she wishes to. As you begin your testimony, state your name and spell it for the record. If you have handouts, make sure you bring ten copies for the committee and the staff. If you have only an original, we'll be glad to make copies for you. With that, we will begin today's hearings with LB1001. Senator White. [LB1001]

SENATOR WHITE: I'm Thomas White, T-h-o-m-a-s W-h-i-t-e, I'm the Senator representing District 8 in Omaha, Nebraska. Thank you, Senator Janssen, members of the committee, for allowing me to introduce this and also for the courtesy to allow me to jump the line. I very much appreciate it. This bill is a bill that we are introducing to discuss a problem that is becoming increasingly widespread across the state, not just in the cities, and that is elderly people and people of low income unable to pay heating bills. This problem is particularly difficult because as heating costs rise, the people that live at or below 150 percent of the poverty level tend to live in homes that are very badly insulated. They have older equipment like furnaces, they have bad windows. So as heating prices go up, they're hit harder than people of...comparably than of people of higher income who have, generally speaking, better housing. This bill has a fiscal note

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that is an eye-popper and I wanted to explain. There was a miscommunication on that. The language apparently in the bill I failed to make it as clear as we intended. The bill would have provided and provides, we hope, that if for example an energy provider, in this case Omaha Public Power District in my case, they would get 20 percent of what they would otherwise remit in sales taxes that they pay. Not that it paid that they collect but that they pay on goods and services they purchase. In Omaha Public Power District, I believe, folks who know more will follow me, but I believe, as the largest energy provider in the state, they pay approximately \$1.6 million total a year. So they would take 20 percent of that. The state would give that back to them, it would go into a trust fund, they would take and match that. So in their case, if, let's say, for ease of math, it was \$1.5 million, the state would give them \$300,000 back. They would take \$300,000, they would put it in a trust fund that they would administer. They would then go and do energy audit studies for people who are at or below 150 percent of the poverty level, which in my district in Omaha, is very often elderly people on Social Security are really going to be the major recipients of this. They then would be able to use that money to put in insulation, weather stripping, new windows, if necessary, or take other steps to decrease the impact of higher energy costs on them. Now the fiscal note shows a fiscal note of over \$15 million. That clearly cannot be possible for what we have and intended. So to make clear, we will have an amendment to make sure that it is a credit only on the amounts that the energy provider pays. One of the major issues for older people particularly faced with this, is not only lack of money but the inability or the lack of confidence to negotiate with contractors. In my district we frequently see older people, again Social Security people, getting ripped off by different kinds of housing contractors and many of the older citizens just really won't deal with contractors at all for fear they will lose their house, get liens put on their homes. So this again would reach out to a, hopefully, a very vulnerable population that's being squeezed very hard. There will be secondary savings. I think the folks that sit behind me can tell you we are seeing anything from fires to illness caused by folks that just can't afford to keep their homes warm enough and hopefully this is a step towards intervening in that. Thank you for your courtesy. I will be available for questions after they testify should they be helpful to the committee. [LB1001]

SENATOR JANSSEN: Any questions? Just one, Tom, a little clarification here. So actually what you're doing is taking 20 percent of the sales tax, OPPDs sales tax that they collect, return, and then that's returned to the OPPD and then they to use that money to weatherize homes, more or less. That's kind of it in a nutshell. [LB1001]

SENATOR WHITE: Yes and they will do studies and it's not what they collect because if we looked up what they collect on all the services they sell, Senator, then we're talking a huge number. [LB1001]

SENATOR JANSSEN: It's only on the... [LB1001]

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SENATOR WHITE: It's what they pay when they buy, for example, if they buy wire and they buy wire or they buy office supplies. [LB1001]

SENATOR JANSSEN: Okay. All right. [LB1001]

SENATOR WHITE: So it really would be a credit on what they pay, a much smaller amount and that's why the number, the fiscal note is out of line. They pay, we believe, a total last year of around \$1.6 million and they're the biggest energy provider in the state so in their case, it would be slightly over \$300,000, you know, that would come back to them and go into this fund. [LB1001]

SENATOR JANSSEN: Okay. Gottcha. Okay. [LB1001]

SENATOR WHITE: Thank you. [LB1001]

SENATOR JANSSEN: We'll take proponents first. [LB1001]

TOM RICHARDS: (Exhibits 1 and 2) I have some testimony for the page. Chairman Janssen, members of the Revenue Committee, my name is Tom Richards. I'm the manager of governmental and community affairs for the Omaha Public Power District. I'm here on behalf of OPPD and the Nebraska Power Association in support of this bill. First of all, we want to thank Senator White for introducing the bill. I'm going to walk through a brief testimony. I'm going to walk through the sales tax scenarios that you, that Senator White opened. There's a couple of clarifications I need to make but I'm going to walk you through my testimony and then walk you through any questions that you might have. LB1001 creates the Low Income Home Energy Conservation Act. Energy efficiency is quickly becoming a cornerstone of OPPD's sustainable and renewable energy response to environmental concerns. The greenest kilowatt of energy is the kilowatt that is never used. There has been much discussion on building renewable energy projects but very little discussion on how to use energy more effectively. This bill addresses a population segment that are high energy users but lack the resources to implement conservation measures. This bill does a number of things to assist low income homeowners in making their homes more energy efficient. It allows public power districts and other governmental entities to receive incentives from the state of Nebraska of 20 percent of the entities prior year's sales tax and use payments. In OPPD's case, that incentive would be \$1.6 million. We pay about \$8 million a year just in sales tax that we pay as an organization and the fear that Senator White had, the \$1.6 million is correct but that's the amount that we would receive as a benefit to go out with the incentive program. In OPPD's case, that would be approximately \$1.6 million credit from the state. The applying entity would be responsible to match any incentives from the state with a one-to-one dollar match. In other words, if the state provides \$1.6 million incentives, the entity would be responsible to match that with a like amount. So if the state comes up for \$1.6 million, OPPD would match the \$1.6 million and that would

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go out for the use of the grants. These grants are for low income homeowners. The threshold is set at 150 percent of the federal poverty level. This level would provide grants to a wage earner of somewhere around \$36,000 per year. The bill allows the entity to contract with other agencies to establish the applicants meet, that they meet the income guidelines that we've set up and established in the bill. The bill provides definitions of what energy efficient materials can be used. Any improvements done by the grant recipients must be verified and that the work has been completed to our satisfaction. And it establishes that the entity must provide an annual report to the Department of Revenue on the number of grants provided. Lastly, it authorizes the Department of Revenue to establish rules and regulations on the administration of this program. I have prepared an amendment that clarifies a couple of items in the bill and I will hit the highlights of that amendment. And what I would do, is I would kind of hit what those highlights of the amendment are, and then I'm going to pass it out to you. Basically, it does three things. It clarifies that one word were using the word energy "conservation." Kind of the more and more the vogue word, the vogue word on this issue is energy "efficiency" so basically strikes all the words saving "conservation" and says "efficiency." It also, it says right now, the bill says that it is 20 percent. What this amendment would do would say that it is up to 20 percent so it could be something short of 20 percent and wouldn't have to be 20 percent every time that somebody applied for the grants to do it. And the last thing it does, is it clarifies that we're talking about the sales tax that we pay as an entity and not the sales tax that we collect and remit to the Department of Revenue on behalf of our customers. OPPD, for instance, in 2006 collected or paid \$8 million in sales taxes in organization. Things that we buy. Cars, trucks, wire, construction materials, all of those types of things. We collect probably close to \$30 million on peoples electric bills, so right now people have overinterpreted the breadth of what the bill is trying to do. We're going to make sure that people understand it's limited down to just what we pay as an organization. We're also amenable to the idea that if it's based on all sales tax, that if there's another formula to achieve getting the \$1.5 million, however we do that, we're open to that idea. I've had some conversations with the legal counsel about that possibility. However it's structured, would work for us. It's a question of a one for one grant between the state of Nebraska and the public power entities to provide these low income energy assistance grants. Anyway, I have the amendment. It's what I think that it does and I would try to answer any questions that you might have. [LB1001]

SENATOR JANSSEN: Ron. [LB1001]

SENATOR RAIKES: Yeah, Tom, the first question. For this sort of a program, why would sales tax on materials you buy be the logical source of funds? [LB1001]

TOM RICHARDS: I think in the original thinking the thought was that we did not want to tap into the dollars that we're paying, that we're collecting from our customers. Either way would work but our thought was that we would take the first shot at it on dollars that

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we pay as an entity. There is no particular priority to how you could get there. It was just...that was our shot at how we would do it. [LB1001]

SENATOR RAIKES: You have some utilities for example that will ask for a donation from rate payers to add to whatever they pay as a regular bill. I don't know whether this might be a source for... [LB1001]

TOM RICHARDS: That's a little different. What that's doing, that's called an energy assistance program and there are people in the audience right now who administer those programs and that's actually to help people pay their energy bills. These are people that at the end of the month do not have enough money to pay their electric bill or their gas bill, and that checkoff that you're talking about is a way that people collect donations to help them meet their monthly bills. This is a conservation going into low income housing, putting insulation in, caulking windows, doing doors, windows, so that energy isn't used. [LB1001]

SENATOR RAIKES: I understand. So let's just say I'm a homeowner that would qualify for this sort of a program. What you have in mind, the state would come up with money, you would match it. [LB1001]

TOM RICHARDS: Correct. [LB1001]

SENATOR RAIKES: Then, I, as the homeowner would, I guess, gain a couple of things. You would negotiate with the contractor for me. [LB1001]

TOM RICHARDS: Correct. [LB1001]

SENATOR RAIKES: You'd figure out what needs to be done, you would negotiate with the contractor and then you would pay for the work, right? [LB1001]

TOM RICHARDS: That's correct. [LB1001]

SENATOR RAIKES: So and as a result I would say, my utility bill might go from fifty bucks a month to thirty bucks or whatever it would happen to be. [LB1001]

TOM RICHARDS: Possibly. [LB1001]

SENATOR RAIKES: So as a homeowner, I'm getting your services, I'm getting the construction work done on a home that I own and I'm getting a reduction in my bill. Would it be fair to ask me to contribute some of that? I mean I'm gaining quite a bit there. [LB1001]

TOM RICHARDS: It's possible that asking somebody to contribute to that is the right

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thing to do but the population segment, I think, that we're targeting, are people that have trouble making their monthly payments on all the other items that they're trying to get through in the course of a month. There is a segment where that idea might work and perhaps it might work with this segment but these are people where energy conservation steps are probably the last things on their mind as far as doing improvements to their home. [LB1001]

SENATOR RAIKES: Although I assume that most of these people are, you know, with great stress, I certainly can imagine are paying the bills now. [LB1001]

TOM RICHARDS: That's correct. [LB1001]

SENATOR JANSSEN: So they would be paying less, there would be some extra money left. And wouldn't it be true that if you got some input from these people that you could do this on a broader scale? You could... [LB1001]

TOM RICHARDS: Could. Yes. [LB1001]

SENATOR RAIKES: Okay. Thank you. [LB1001]

TOM RICHARDS: I don't disagree. One of the other reasons why we want to control the work that's being done is because with this population segment, we've had situations where faulty wiring, faulty work has been done, they've been charged hundreds of dollars and they have gotten absolutely no benefit out of it. And in fact, some cases they've turned into dangerous situations where people are taking advantage of this population segment. And I'm going to be followed by Marc Nichols, who is doing our energy efficiency and conservation and he can give you a little better economic perspective on why we're involved. I'm trying to just kind of work through the nuts and bolts of how, at least currently how the bill is drafted. [LB1001]

SENATOR JANSSEN: Tom, then you would have the right to select the contractor to come in and do that to your specification and if they weren't done right, then you would handle that. [LB1001]

TOM RICHARDS: That's correct. We do some of the things right now with lots of different programs in the district and the best example are heat pumps. When we put heat pumps in, we have our guys go out and inspect to make sure that they're the right units, that they're installed properly, the same kind of principle as what we would do with the energy efficiency that these people would get what it is that is being promised in their home to conserve energy. [LB1001]

SENATOR JANSSEN: Okay. Any other questions. I don't see any. Thank you. [LB1001]

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TOM RICHARDS: I appreciate the opportunity. Thanks. [LB1001]

SENATOR JANSSEN: Any other proponents? [LB1001]

TOM RICHARDS: I'm going to give these amendments to the clerk, or to the page. [LB1001]

MARC NICHOLS: Senator Janssen, members of the Revenue Committee, my name is Marc Nichols, M-a-r-c N-i-c-h-o-l-s. I'm the division manager of Sustainable Energy and Environmental Stewardship for the Omaha Public Power District and I'm here to speak in favor of this proposed bill. I also want to thank Senator White for introducing this bill for OPPD. We think it's an important bill that will help not only our constituents but all the rate payers and customers across the state of Nebraska. In July of 2007 OPPD formed a new division charged with addressing sustainable generating resources, encouraging energy efficiency, and demonstrating environmental stewardship in OPPD's business practices. Energy efficiency as being one of the three areas of emphasis has the potential of providing the cheapest and quickest means to effectively reduce our energy consumption. Success in this area will mean the deferral of new base load generation. What that really means is, is that if we are able to successfully defer energy, the cost of deferring a kilowatt is substantially cheaper than the cost of having to produce a new one. On average it costs about a \$1 or \$1.25 to help save a kilowatt as opposed to about \$2 to produce a new one. That gap of almost a dollar is beneficial not only to the recipients of this proposed granting process but to all the customers that purchase energy in the state of Nebraska. There's a potential of reducing the amount of energy we consume today by as much as 20 to 40 percent in both our residential and our commercial sectors. Customers can, would apply, if they apply sound energy efficiency practices and systems to their daily use of energy can achieve these kinds of savings. The residential portion of our customer base represents approximately a third of the overall energy usage and almost half of the demand on our generating assets. So it's a very large segment of the population that contributes to the amount of energy that utilities and the state of Nebraska have to produce. We believe helping low income homeowners will increase the energy efficiency of their homes as this legislation would do, may produce some of the most significant savings. Helping low income homeowners make their homes more energy efficient not only helps reduce energy consumption, it may also help those individuals free up some income for other necessities of life. This bill will allow utilities to leverage their dollars with the state's sales tax dollars to make a measurable impact in improving energy efficiency and also perhaps, in the quality of life for a significant number of people. Are there are any questions? [LB1001]

SENATOR JANSSEN: Any questions? Chris. [LB1001]

SENATOR LANGEMEIER: Thank you for your testimony. Thank you, Chairman

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Janssen. Can you tell me, and I should probably ask this one step back but of your power generated, how much of that are you using or how much you buying off the grid in addition to what you're generating as a system? [LB1001]

MARC NICHOLS: And I always hate to answer a question with depends. It depends on the time of year and you know what's happening but you know, today probably we have more capacity today than we would need. I mean, I would guess that we're probably two-thirds of the capacity we have as being used today and that we're probably selling about the other one-third to other utilities off the grid, so to speak. In the summertime, it's just the opposite that we're pushing our limits in the summertime and part of the reason we're trying to save energy is, is that if we can truly do this, which I fully believe we can, not only through this process but many processes of saving energy, we can literally defer the next generation asset that we have to build. In our case, just for our utility alone, if we can defer a new generating plant one year, we can save between \$40 million and \$50 million by deferring that plant just one year. And so this has a real potential of being able to help our customers in terms of the affordability of electrical energy in the state of Nebraska. [LB1001]

SENATOR LANGEMEIER: With that...thank you for answering, you did a great job and I guess, with that said, that deferring that \$40 million for one year, wouldn't it be good sound public policy as OPPD to be doing this anyway? If you're saving \$40 million? [LB1001]

MARC NICHOLS: And that's exactly why they formed this organization that we're doing and part of what we're trying to do, Senator, is of that \$40 million, let's say that's the number, we're going to use a portion of that \$40 million, that's that dollar I was talking about to save energy, to save energy so that the \$2 we don't have to spend so the customer gets that dollar gap in there. And so, yes, it is good public policy for us to it. What this bill allows us to do is to leverage that dollar that we're going to spend anyway and to be able to reach even more homes and more customers than we could by just leveraging the dollars that we're using now and that we're going to be able to save. [LB1001]

SENATOR LANGEMEIER: Thank you. [LB1001]

MARC NICHOLS: Sure. [LB1001]

SENATOR JANSSEN: Carroll. [LB1001]

SENATOR BURLING: Thank you for coming in and helping us to understand this. The eligible entity is the provider of power, of energy, and you're going to match 1.6? [LB1001]

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MARC NICHOLS: The way the bill is structured is that the utilities have the option of matching up to 20 percent. So utility A may say, okay, we only want to take 10 percent. And so they would take 10 percent and then they would match 10 percent. Utility B may say, okay, we want the full 20 percent, then they would have to match. So whatever they take from the grant pool has to be matched by the utility the same amount. So if they take out \$1 million, then they've got to match it with \$1 million or whatever the math might be. [LB1001]

SENATOR BURLING: And they get that money from the rate payers? [LB1001]

MARC NICHOLS: Absolutely. [LB1001]

SENATOR BURLING: And all of the customers, including those who will be recipients of this benefit, will pay a higher rate, a little higher rate to come up with the money that you need to match? [LB1001]

MARC NICHOLS: Yeah, what we're doing is we're spending that \$1 instead of spending the \$2 and so what we're trying to do is, to try to keep the pressure down on our rates, we want energy to be affordable in this part of this state or all over the state and so that we can still have good economic development. And so the trick is, is that we know we're going to have to spend some money to encourage people to do energy efficient things. And if we spend that wisely and are able to leverage it with resources like this bill would provide, then instead of the rates going up 10 percent, maybe we can hold it down to only 5 percent, so in the long haul the consumer actually winds up saving. If we don't do that, then we'll continue to do business the way we have for the last 100 years, which was okay in the old world, and we'll just continue to build generation but our rates would go the full 10 percent then instead of the 5 percent or whatever the math might be. So that's what our efforts are, trying to keep pressure down on those rates, as well as continue to make sure the lights are on in our business every day. [LB1001]

SENATOR BURLING: Thanks. [LB1001]

MARC NICHOLS: Yes, sir. [LB1001]

SENATOR JANSSEN: Senator Preister. [LB1001]

SENATOR PREISTER: Thank you, Senator Janssen. Mr. Nichols I appreciate your being here. OPPD has created a whole new department that now you're in charge of, is that correct? [LB1001]

MARC NICHOLS: Yes, sir. [LB1001]

SENATOR PREISTER: Would you tell us what the name of that is and briefly what that

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is intended to accomplish? [LB1001]

MARC NICHOLS: Sure, sure. It's a very long name and I apologize for that but it sends the right message, I think. It's called Sustainable Energy and Environmental Stewardship and there's three major pieces of it. The first piece of it is to be able to properly integrate renewable resources into our generation mix and renewable resources can go for anything from wind energy to solar energy to biomass to whatever it might be. We think there's a real opportunity for us to be able to do that. Wind energy particularly in the state of Nebraska. Nebraska is number six in terms of amount of wind available to produce energy. The second piece of it is the energy efficiency piece and that's what I've been talking about today. That energy efficiency piece, I truly believe that we can save somewhere between 20 and 40 percent of the amount of energy that we have to produce to meet load today that we can use to meet new load in the future instead of building new generation. And then the last piece of it, the environmental stewardship piece of it, is to look at our entire business cycle and how do we buy materials, what kind of materials do we have, how do we recycle, make sure that buildings that we build or facilities that we build are energy efficient that can be good examples for our customers and truly we've always been good stewards in the environment. We just think we can be a lot better so that's kind of the essence of what the new effort is for OPPD. [LB1001]

SENATOR PREISTER: Good. I appreciate the department, I appreciate you overseeing what happens there and I think this component of it is very important because you're looking at the type of generation. You're looking at renewable generation, which I think everywhere we need to look at in the world, but then you're looking at not having to invest in that generation as soon, whether it's renewable or any other type, by being more efficient. And as Mr. Richards said, the greenest kilowatt is the one we don't have to generate at all which I've been saying for years. So I particularly appreciate that. You're talking about businesses doing this, you're talking about OPPD doing it internally itself but this bill specifically deals with low income folks who have very little, if any, discretionary money. It's very difficult for them to come up with money to sometimes pay the bills let alone to look at making their homes more efficient. If they even have the mindset, with all the other things they have to contend with, to be able to think about doing it. So this provides a mechanism that would allow a segment of the population to make a contribution to the things that your whole department is attempting to do. Is that an accurate assessment? [LB1001]

MARC NICHOLS: That would be correct, Senator, yes sir. [LB1001]

SENATOR PREISTER: Okay. Thank you. [LB1001]

MARC NICHOLS: Yes, sir. [LB1001]

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SENATOR JANSSEN: Any other questions? Chris. [LB1001]

SENATOR LANGEMEIER: One follow up question. [LB1001]

MARC NICHOLS: Sure. [LB1001]

SENATOR LANGEMEIER: And I like this idea, don't get me wrong. I just like to ask questions, I guess. But, uh... [LB1001]

MARC NICHOLS: That's why we're here, sir. [LB1001]

SENATOR LANGEMEIER: If this bill doesn't go through, are you planning to use your dollar and do this anyway? [LB1001]

MARC NICHOLS: I mean the answer is, we're going to use that dollar to put into place as many energy efficiency programs for our entire customer base that we can. The challenge is, is that we only have a dollar and when you segment that out and start spreading it...in our case we have 300 and some odd thousand customers, we can't do it as fast as we would be able to if we have some additional resources. And this provides some additional resources for a segment of the population that frankly probably won't do it without some help. And we can help and we have been helping but it would be great if we could accelerate that because I believe that that's a segment that probably we can get some of the biggest gains. We're going to go after the biggest bang for our bucks, so to speak, and that, that particular stock of homes, we believe, is probably pretty energy inefficient and they can contribute to the savings of kilowatts probably more substantially than some other segments of the residential population. [LB1001]

SENATOR LANGEMEIER: Thank you. [LB1001]

MARC NICHOLS: Yes, sir. [LB1001]

SENATOR JANSSEN: Senator Cornett. [LB1001]

SENATOR CORNETT: You are talking about 20 percent of the amount that you actually pay, correct? [LB1001]

MARC NICHOLS: That would be correct, Senator. [LB1001]

SENATOR CORNETT: How much is that approximately? [LB1001]

MARC NICHOLS: We pay, I mean, last year... [LB1001]

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SENATOR CORNETT: Approximately, it changes, right. [LB1001]

MARC NICHOLS: ...I think we paid about \$8 million dollars or something so 20 percent would be about \$1.6 million so if we leveraged the entire 20 percent... [LB1001]

SENATOR CORNETT: And that was my next question, are you planning on leveraging the entire amount? [LB1001]

MARC NICHOLS: That would be my desire. The only question I have is, it's going to take a while to ramp this up and so, how fast that we can get the infrastructure in place to start delivering it. But ultimately, yes, that would be our desire. [LB1001]

SENATOR CORNETT: So you're looking at about \$3.5 million if you contribute the full amount. [LB1001]

MARC NICHOLS: Correct. [LB1001]

SENATOR CORNETT: And how many houses, what's the average cost per house to do this? [LB1001]

MARC NICHOLS: You know, Senator, I don't know that and I'll be glad to get that for you because it really, it totally depends on what we do in each home. [LB1001]

SENATOR CORNETT: Depends on the house, right. But I figure if you average, get an average because some houses are going to be more, some houses are going to be less. [LB1001]

MARC NICHOLS: Right. [LB1001]

SENATOR CORNETT: I'm just trying to figure out how many houses we're talking about. [LB1001]

MARC NICHOLS: I can tell you on a statewide basis, there's something, oh, well over 100,000 houses that would qualify as low income and my guess, this is a guess, so is that a good portion of those are probably in our territory because we have the largest urban population... [LB1001]

SENATOR CORNETT: Concentration, yeah. [LB1001]

MARC NICHOLS: ...and so, I think a good portion of those but there are also a number of rural communities that would certainly qualify but just because of the numbers, Omaha is 600,000 people, and I think we'd probably have the majority of that. [LB1001]

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SENATOR CORNETT: Thank you. [LB1001]

MARC NICHOLS: Yes, maam. [LB1001]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. [LB1001]

MARC NICHOLS: Thank you very much, Senators. [LB1001]

SENATOR JANSSEN: Next proponent. [LB1001]

KEN WINSTON: (Exhibit 3) Good afternoon, Chairman Janssen and members of the Revenue Committee. My name is Ken Winston, W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in support of LB1001. I want to start off by applauding Senator White and OPPD for their efforts in this regard. We've been supporting energy efficiency measures for a number of years and it's great to see the fact that OPPD has taken on this issue and the fact that the Nebraska Power Association is supporting it. I think that's an excellent step and it's a very important step in terms of Nebraska's energy future. I just wanted to talk a little bit about the, about energy issues. First of all, energy efficiency is generally acknowledged to provide the greatest potential for reduction in fossil fuel use and all of its impacts including greenhouse gas emissions and other pollutant emissions and water use. Approximately 40 percent of our energy use is related to buildings and I don't have a breakdown as to how much of that's related to residential buildings but it's a fairly substantial amount. And then I note, as is often stated, the cheapest and most environmentally friendly kilowatt is the one that is not generated, which has been said three times today already. So I guess I'm on the mark with that. Then I want to talk a little bit about the economic and social benefits of LB1001. And I'm not pointing fingers at OPPD or NPPD or any of the power generating people but energy costs are rising and not particularly the electric costs. I think actually the electric costs have held steady more than other energy costs have but they're bound to rise because of the fact the fossil fuel costs are rising and fossil fuel costs have risen dramatically in the last year. I mean, you just think about what it was like to pull up to the gas pump in the year 2000 versus today, and that's, it's very clear that a lot of costs have risen. And that often has had a great impact on low income people and as has been previously indicated, many low income people live in older homes, some of which are poorly insulated, have poor windows, doors that leak air and their heating systems are often outmoded and inefficient. Now a complete retrofit of a building like this can often result in more than 50 percent savings in energy costs. Just changing the lighting in a building can often change, can reduce, often reduce the cost by 10 percent. So and as has previously been indicated, it's often important...the people, who this bill would benefit, can't afford to do this on their own. They're not going to do it on their own. They don't have the discretionary income to go out and spend thousands of dollars on new insulation, new windows, new boiler or heat pump. The money isn't there. They're busy trying to figure out where to spend the

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money, the money is going from paycheck to paycheck. Some of these folks are trying to figure out in a time of high energy cost, they're trying to figure out how to make the house payment as well. So what benefits can this provide? Well, imagine if somebody's living in a house where they're paying \$200 a month in heating costs and of course, some people aren't on budget plans and sometimes in the wintertime they're heating costs soar. But if you could reduce their energy cost by 50 percent, that would put another \$1200 in their pockets over the course of the year, and that would be money that would be spent, and I know that lots of economists have been talking about how to stimulate the economy and lots of politicians have been talking about that. Well, it's well documented that low income people don't save money. They turn around and spend it. This money would go back into the economy. It would be spent on things like food, clothing, medicine, and making the mortgage payment. In addition to benefiting the individual family, the local economy would benefit because the money would be spent in the economy as opposed to being sent out of the economy. One of the problems with a lot of energy costs is the fact that we don't produce a lot of our...the inputs that create our energy mostly are out of state or out of the country. I read an estimate yesterday, that \$5.4 billion was spent on energy in the state of Nebraska last year. Then I want to comment on the fiscal note and I don't want to pick a fight with the fiscal office because I know there's good folks there, but so I'm not going to argue with their numbers necessarily but they're saying \$15 million a year. Well, that would assume that all of the utilities were going to do it and I don't think we know whether all of the utilities are going to set up a program like this, so I believe that that estimate is high. Because it requires them to set up a program and provide matching funds, or at least that's the way I read the bill and I don't know that all the utilities intend to do that. I would certainly hope that they would but I don't know that that's going to happen. However, if the state makes a contribution, say of \$5 million by way of revenue that's foregone, and the utilities match it, then there would be \$10 million that would be spent. And this money would be spent in the community as has been previously indicated. The spending would have an economic multiplier effect by, in the form of purchases, and by providing jobs for contractors. Combined with increased spending by low income families who benefit from more efficient homes, we submit that the long-term fiscal impact to the state from this program would be positive rather than negative. To summarize, LB1001 provides benefits to low income families, to the economy and the environment by increasing energy efficiency. We would encourage you to advance LB1001. And I wanted to make one more comment, next Tuesday there's an event at the Lied Center. It's part of the E. N. Thompson lecture series. There's an expert in energy efficiency who is going to come and talk. His name is Amory Lovins and he's going to come to the Lied Center and he's the world's, probably preeminent, expert on energy efficiency. I would strongly encourage you to attend that event. You have to get tickets to go. I actually have a few extra tickets. It's free so it's not anything of financial benefit to anyone but as I understand it, it's sold out so there are a few tickets left. And I would strongly encourage anyone interested in this issue to attend this event because he is an expert in this area and he talks about some fantastic savings that can be achieved through energy

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efficiency. I'd be glad to answer questions, if I can. [LB1001]

SENATOR JANSSEN: Any questions of Ken? Don't see any, Ken. Thank you for being here today. [LB1001]

KEN WINSTON: Thank you. [LB1001]

SENATOR JANSSEN: Next proponent. [LB1001]

JILL BECKER: Good afternoon, Chairman Janssen and members of the Revenue Committee. My name is Jill Becker, B-e-c-k-e-r. I'm appearing today on behalf of Aquila Networks, speaking in general support of LB1001. I'm here today to talk about two general concepts contained in the bill that Aquila supports. Energy assistance programs for low income individuals and energy efficiency. Aquila employees care about their customers and their communities that they serve. Unfortunately, some of our customers and our neighbors are struggling to pay their utility bills. Aquila participates in several ways in assisting these individuals in need. Through its Aquila Cares energy assistance program administered by the Salvation Army, our company helps Nebraskans who are disabled, elderly or disadvantaged, and need assistance with their energy bills or related expenses. Aquila matches dollar for dollar contributions by customers, employees and vendors. This is a program similar to what Senator Raikes was asking about. Since 2001, Aquila has provided over one-half million dollars to help Nebraska families needing energy assistance. This program helps some customers but there are not enough funds to help all of those in need. In addition, many of these same customers could reduce their energy bills by relatively easy conservation measures but simply lack the financial ability to afford the materials or the knowledge to select the measure with the most benefit. Last Friday, Aquila employees participated, along with many other utilities, in the first annual Heartland Walk for Warmth to raise funds and awareness for energy assistance programs. Net proceeds from this walk will go to the American Red Cross and the Salvation Army for their energy assistance programs. Aquila's weatherization team is a customer outreach program designed to weatherize homes at no cost to the homeowner of those less able to weatherize their homes due to either health or financial reasons or for all other customers to raise awareness that people do have control over their energy bills and that they can reduce their home energy usage and cost. Aquila was also one of the entities that was instrumental in creating an organization devoted to improving energy efficiency throughout the state. Nebraska Energy Assistance Network, NEAN, participated in more than 70 energy efficiency educational forums in 2006 and distributed over 800 energy efficiency kits. This year they're working with the Head Start program to educate this audience on additional measures for better use of energy. Aquila has also lobbied our federal delegation for increased funding for the LIHEAP program. The LIHEAP program assists individuals with disabilities, seniors and low income households with income under 150 percent of the federal poverty level. According to an organization affiliated with LIHEAP,

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74 percent of the households served have incomes below \$15,000. Ultimately, Aquila is supportive of all measures that would assist those unable to afford their energy costs. We believe that energy assistance measures are a vital component to providing service for our customers. As the bill is written, the providers of natural gas service are not included as eligible entities in the proposed legislation. And we recognize that there are distinctions between the eligible entities listed in the bill, which are publicly owned companies and investor owned utilities. If the committee would like to include investor owned natural gas providers, we would be happy to work with Senator White and the members of the committee staff in achieving those results. Thank you for the opportunity to testify today and I'd be happy to answer any questions that you may have. [LB1001]

SENATOR JANSSEN: Any questions? Seeing none, thank you. [LB1001]

JILL BECKER: Thank you. [LB1001]

SENATOR JANSSEN: Any other proponents? [LB1001]

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'm president of Nebraska Farmers Union and I also serve as their lobbyist. I think just about everything that needs to be said on this bill has been said, and we agree with just pretty much all of it, and would underline just a couple things. And one is that, there is a tremendous need for this kind of program in rural areas. We work with the farm crisis hotline. We help provide a wide range of different services to low income rural residents as well. And if this program were available in rural Nebraska it would...and offered to rural citizens, it would help a lot of folks who are really living in old rundown farm houses and houses in small towns who really do need some help, and really don't have the money to make capital improvements for these kinds of things. So we, at the risk of tanking Senator White's bill, strongly support it. (Laughter) [LB1001]

SENATOR JANSSEN: Any questions? Chris. [LB1001]

SENATOR LANGEMEIER: John, thank you. I talked to the group ahead of time. We talked a little bit about the poverty level and at \$36,000 at 150 tenths of poverty level, in rural Nebraska, how do we decide what houses to do, what not to do? I mean, Schuyler, Nebraska, where I'm from, if you took \$36,000 as income that 99 percent, including my household, we'd all qualify. How do you start weeding through that in...it may be different in Omaha, but in rural Nebraska, how do you start weeding through the apps? [LB1001]

JOHN K. HANSEN: Well, I think that's an interesting question. It is, and how do you differentiate between urban and rural poverty and both perceptually and practically both.

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But we certainly, we have need. And, you know, some of the lowest income counties in America in past years, we've unfortunately had a couple of those counties in Nebraska and they were rural counties. So I don't know whether you rank them based on first come first served or need or you just, you know, take the folks who are the lowest. I've done some door to door work in some small towns and some of those houses it was really hard to determine whether or not human beings lived in those houses they were so run down when you went on those porches. [LB1001]

SENATOR LANGEMEIER: I've had to appraise them. I can relate. [LB1001]

JOHN K. HANSEN: Well it's a, it's...and if you just drive by and look at them, they kind of look okay except when you get up on the porch and you look inside and you go, my, my, my, this house hasn't had any money put into it for a very long time. [LB1001]

SENATOR LANGEMEIER: Thank you. [LB1001]

SENATOR JANSSEN: When you hit that first board that comes up, slaps you in the face, that gets your attention doesn't it? (Laughter) [LB1001]

JOHN K. HANSEN: The unfixed hole in the porch platform is always a dead give away. [LB1001]

SENATOR JANSSEN: Any other questions? Don't see any. Thanks, John. [LB1001]

JOHN K. HANSEN: Thank you. []

SENATOR JANSSEN: Any other proponents? Any opponents? Anyone in a neutral? Okay. Tom. [LB1001]

SENATOR WHITE: Thank you, Mr. Janssen. I have a number of just real quick points to make. These are excellent questions and I'd like to respond to a couple of them. First of all, Senator Langemeier, why not OPPD doing it alone? Studies of the housing in the state show the oldest housing isn't in Omaha and it's not in Lincoln. Areas that have had that growth tend to have newer homes. The worst need, in fact, is in the rural areas and the small towns where the housing stock is older because they haven't had the growth. A furnace, for example, that is 25 years old, yeah, a new one can be as much as 80 percent, 80 percent more efficient than a 25-year-old furnace. So if you have a housing stock that's over 25 years old, their furnaces are necessarily older. Hundred and fifty percent of poverty is an excellent question. What I would say first of all is, whatever we do we should allow the people administer it to select on greatest need first. Hundred and fifty percent of poverty was selected because who we want to hit are poor people who own homes. If you get much below 150 percent of poverty, you're starting to get into a different strata. These are folks that largely rent homes, you know, or apartments.

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They can't own them but we could be very flexible on poverty just to get that strata. With regard to Senator Raikes's point on, that they should contribute something. I agree with you and one of the ideas we can work with and we want to start a dialog, is a concept of recapture. For example, if you have a person who meets the guidelines, bill averages \$100 a month, we invest money in weatherproofing, all those kind of things, bill drops to \$60 a month. Figured in constant dollars we could, example, they could pay \$80 per month for a fixed period of time to repay part of it back into the fund. The savings could literally justify. One of the horrible problems with being poor, and it's documented in a lot of studies is, they don't have the money to save money. For example, you'll find poor people who will buy one can of pop instead of a six-pack. It makes no sense because they're paying 25 percent more perhaps but they don't have the money for a six-pack, so they buy one can of pop. This is to get them past that kind of a hump on an essential for life, which is energy cost. Were we to recapture? Absolutely, good idea. We can work there and that way we are helping them. Another thing is, I want to apologize about the misunderstanding again on the numbers. We talked outside. We were in shock by the fiscal note and we just miscommunicated on the amount. But what I am assured of by OPPD now is, that they represent about one-third of the total energy market in the state for electricity. They would reap, if they fully implemented this 20 percent, \$1.6 million. If it was 100 percent implemented as drafted right now across the state, it would be \$4.8 million if all else being equal based on market share. Certainly, we would be more than willing to work on any percentage or numbers. One of the things I'd like to point out is, when OPPD offers to match for 20 percent, that's not the real value. They'll manage it. We're not going to have overhead costs. The 20 percent the state will put in will go into the home. OPPD will manage it. They'll put the people on the ground. They understand who has the...they understand the energy cost. They have the analyst right there. They have the infrared photographs to show whose leaking heat. They know the people who have had trouble with the bills. They're right there and that same would be true for each local energy supplier. Those management costs can be hugely expensive in this kind of situation. Furthermore, OPPD, through their Heat Pump Program and other programs, already has existing ties to contractors and they have assured me, they will look at things like bundling contracting so you're not buying one little house at a time. You're going to get maybe 50 homes to do the weather stripping and so you can get economies of scale which cost money to manage but they will do it. They also will look into things like buying caulk and supplying them to Habitat for Humanity crews so rather than build a whole new home, if you gave people cases of caulk, sent them out, you can actually have a huge impact for very little money. But again, it's knowing where to go, management and having people in place. They will do that. Finally, I guess, I would say to you, the difference between energy assistance and what this is, is the difference between a band-aid and a serious effort at a cure. Energy assistance gets somebody through the month. This helps them get in a situation where they can afford their bills going forward. I really appreciate the courtesy of the committee. Any questions, I would try to answer. [LB1001]

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SENATOR JANSSEN: Ron. [LB1001]

SENATOR RAIKES: A quick one, Tom. A renter... [LB1001]

SENATOR WHITE: Right. Here we have a situation. You know, I would tell you, if we had a renter and they are in a situation where they're paying for the heat as opposed to the landlord, were making an improvement to the landlord. I would say I would make that property eligible but only if it was on a recapture basis where the landlord then allowed the payment to come back to repay the fund. Again, it's to my point of view, I'm an elemental person in the end and it's about keeping people, who are struggling, warm and there are secondary benefits folks. In my district all the time I have people getting sick, not taking medication, for example, because they can't afford their heating bills so they don't take their hypertension medicine. They get sick, we end up taking care of them. These are the kinds of things that if we address them here, Senator Burling, it's a...my mom used to say, a stitch in time saves nine and that would be the point. We would try not only by preventing future kilowatts but by preventing older people from leaving their homes, getting ill, becoming dislocated or dispossessed. [LB1001]

SENATOR RAIKES: Thank you. [LB1001]

SENATOR JANSSEN: I believe that's is, thank you, Tom. [LB1001]

SENATOR WHITE: Thank you. [LB1126]

SENATOR JANSSEN: LB1126 [LB1126]

SENATOR WHITE: Yes, and thank you, Senator. [LB1126]

SENATOR JANSSEN: Here to open on LB1126. Senator White. [LB1126]

SENATOR WHITE: Thank you, Senator. This is a bill that was brought to me as a result of concerns by the Omaha, well the state bar association and the concerns are as follows. Even though we have as a state, exempted legal services from sales tax, several law firms found themselves being audited and the position was taken that depositions, which I assume everybody knows what a deposition is. That is a sworn statement where an attorney asks questions, responses and questions are written down by a court reporter and then it's typed up in the form of a transcript and provided to you, are now being considered as buying those or copies of those are being considered as subject to sales tax. Also the possibility of medical records that an attorney if, for example, you're in a car accident and I call your doctor, under certain circumstances, particularly if they're provided to a third party, a medical supply house or somebody and I buy copies, that sales tax should be collected on those. First of all, we have a major policy issue as to whether or not we exempted them. Certainly, the industry thought we

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did. I know of no one, who is a lawyer, who has ever charged anyone sales tax on either depositions or medical records. Certainly, we pass the cost on and that's all we are. The biggest concern that has potential for being a real problem is that the Department of Revenue has instituted audits. They have sought, and I guess at times, obtained the permission to go through law firms books to look at their billing statements. I will tell you as an attorney, that I think that is a very serious issue for the client and for the attorney that...if any, that allowed that. I can tell you, if I am given your attorney's billing records, I will know more about you and your legal problems than you can possibly imagine just by the billing records. What depositions, who they're buying them from, why they're buying them, time they spent on them, what their analyzing, reveals a lot of information that we've generally protected vigorously from any kind of governmental inspection. I am very grateful to Mr. Ewald. He and his people have been incredibly cooperative. We're working towards a solution on this. I hope to have a solution on it but this bill is put forward at this time to make it clear that depositions and medical records are exempt from sales tax and therefore, no one can come in, inspect an attorneys records. And for an attorney, the frightening thing about this is, they're not after the attorney. We're not responsible. They want to go through our records to catch our clients and that has been something that we have not permitted in this country to my knowledge ever, have we allowed government to inspect attorneys records in order to, without cause, to go after individual clients. So potentially, it's very troubling. I think we're going to, hopefully, we can work this out and that it will go away but we need this bill at this time in case we cannot. [LB1126]

SENATOR JANSSEN: Questions? Ron. [LB1126]

SENATOR RAIKES: Very quickly, on the point of auditing. If they audited your income tax records, they might find out some things about your clients. [LB1126]

SENATOR WHITE: No, they wouldn't know a thing. They would not. [LB1126]

SENATOR RAIKES: It's only sales tax audits that could reveal anything? [LB1126]

SENATOR WHITE: No, it's when they go through my books and records and my time sheets to see specific documents of what I've billed my client. The IRS would never...I mean, they'd have a pitch fight, Senator, before they could ever see my billing records with specifics of time spent. I'd certainly give them what my client paid me, a check, here's the income I got. Here's what I paid, no problem. But any kind of breakdown in detail, for example, if you hired me as part of your business and you wanted me to go get copies of a deposition of a case in which IBP was being sued for underpaying or a scale that was too light, and you wanted me to go through that and start looking at that, I now know the government now has a record that tells me you're concerned about whether you were underpaid or not. And that's an innocuous situation but there are others that are not. I can assure you, the bar association and the courts will take this

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really gravely because it's literally been our position that I'm supposed to, absent a court order, go to jail without revealing anything like that, unless the court tells me to, in any communication from you at all. And if I'm sending you a bill telling you what I'm doing, why I'm doing it, you know, which is a description, you've I'm sure gotten legal bills and what I did, that is highly privileged. Even the fact that you hire me, is generally privileged. [LB1126]

SENATOR RAIKES: Okay. Thanks. [LB1126]

SENATOR JANSSEN: Any other questions? Thank you, Tom. [LB1126]

SENATOR WHITE: Thank you. [LB1126]

SENATOR JANSSEN: Take proponents please. [LB1126]

BILL MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of both the Nebraska State Bar Association and the Nebraska Court Reporters Association in support of LB1126. We do thank Senator White for bringing this bill and we do thank Commissioner Ewald and Deputy Commissioner Cathy Lang who have been very helpful in working with us on this issue. As Senator White told you, this issue came to light following an audit by the department of a law firm in Omaha. Two issues were raised. Number one, the sales tax paid or not paid on medical records, and the second issue, sales tax paid or not paid on copies of depositions. Now I've spoken with Senator White, we've spoken with the department. We think that the medical records issue can be addressed in rule and regulation so that if a patient obtains a copy of his or her medical records from a provider, from a hospital or a physician, their hospital or their physician, that would not be subject to sales tax because that physician would be providing them professional services. If the health care facility might outsource that to a company that does nothing more than copy medical records and give them to people, there would not be that professional medical care involved, and that transaction would be subject to sales tax. I don't believe that we need legislation on that issue so what I intend to talk about today is the deposition question. This issue came to light in this audit when the department looked at its current rules and regulations and determined that a copy of a deposition purchased by a lawyer or a party, was subject to sales tax because it was a copy. Currently the rules says that blueprints, abstracts, law briefs, or other similar documents furnished in connection with personal services in a professional capacity are not taxable when furnished as part of the rendition of personal services. So again, if an architect gives his or her client blueprints, that's not subject to sales tax because that's part of the professional services. If an abstracting company or a title company gives an abstract as part of their professional services, that would not be taxed. We believed that law briefs or similar documents would cover court reporter documents. The problem is this. When I take a deposition and say, Senator White is on the other side, one of us will schedule the

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deposition. We do that by calling the court reporter saying we want to take a deposition at Senator White's office at 10:00 next Tuesday. Senator White and I will show up, sometimes with our client, sometimes not. The court reporter will show up. Senator White, attorney White, will ask questions of the witness, I will ask questions of the witness. At the end of the deposition, since as I recall, I called the reporter, Senator White would generally say, send me a copy of the deposition. I will get a copy because I called the reporter and I'm paying the court reporter fee. Senator White who didn't call the reporter and didn't pay, will have to say to the reporter, send me a copy of the deposition. He'll get one. The court reporter will bill him. It is that transaction, the one between Senator White ordering the copy and the reporter, that the department maintains is subject to a sales tax because that's a copy of a deposition and the department believes that I hired the reporter, so the reporter and I have a professional relationship, not Senator White and the reporter. Now, you're going to hear in a minute, from a court reporter. I don't think that's the accurate description of the relationship between the lawyers and the reporter. Yes, I called the reporter because somebody has to call the reporter. It wouldn't make sense for both of us to. That reporter doesn't work for me at the deposition. That reporter is a neutral, third party. That reporter's job is to put down on paper every word said in that deposition. If the reporter doesn't do that, our legal system collapses. If the reporter starts deciding what they're going to report or not report. So I believe that that reporter is working both for Senator White and for me, that there is this professional relationship and what they are providing me when they give me the deposition is part of that professional service that they're providing. I understand the department's position. We would like to pass a bill that would clarify that when the reporter provides that copy as part of their professional duties, that would not be subject to sales tax. Court reporters are not like Kinko's. You don't go to a court reporter or call a reporter to get a copy of a deposition like you would go to Kinko's to get a copy of a deposition. I think I'll stop there. I'd be happy to answer...oh, let me say two more things. Court reporters have never had sales tax certificates. They don't...they've never had a certificate. They've never imposed sales tax. They believed and lawyers have believed that their services were tax exempt...well, they weren't tax exempt. They were not subject to the imposition of a sales tax and they've never charged for these sales taxes and the problem now is, since they don't have certificates I think the department if they wanted to, and I'm not saying the department will do this, we really hope they won't, they could go back five years and look at every one of these copies sold and impose a sales tax at that point. I'd be happy to answer any questions you may have and Brenda Fauber is going to follow me. She's a court reporter. She's actually brought a deposition with her. You can look at it. One other aspect of this, we've talked a lot about depositions and again, depositions happen outside the courtroom, they happen in advance of a trial. That's a way that the parties conduct discovery. We all find out what a witness is going to say through discovery. This issue may apply in court to where I want to appeal from a case for a client. My obtaining the bill of exceptions, and by the way, that's one of the words in the bill, that's just a verbatim account of what happened in court. That's the bill of exceptions. I think that could be subject to sales tax so this is

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broader than just depositions. Senator Janssen, you look puzzled, I must have confused you. (Laughter) [LB1126]

SENATOR JANSSEN: Well, how can you collect sales tax if you don't have a sales tax number? [LB1126]

BILL MUELLER: Well, that's the problem. I mean if...I think that the department would say, that now court reporters are going to have to get sales tax certificates and therefore... [LB1126]

SENATOR JANSSEN: How long have we had sales tax in this state? [LB1126]

BILL MUELLER: 1967. [LB1126]

SENATOR JANSSEN: And now it surfaces? Or have you been fighting this for quite some time. [LB1126]

BILL MUELLER: No, the first I learned of this, and I know this well, was the afternoon of the eighth day of bill introduction because I then raced up to bill drafting and said, I need a bill that exempts depositions and medical records from sales tax so I'm not aware that this has been raised prior to the last ten days. [LB1126]

SENATOR JANSSEN: Okay. I bet there's someone in the room that can explain that to me though. Abbie. [LB1126]

SENATOR CORNETT: I was just...you probably don't know the answer... [LB1126]

BILL MUELLER: Probably not. [LB1126]

SENATOR CORNETT: ...but we have a bill coming up later in the hearing that Chris has introduced in regards to game birds because the Legislature didn't hear a bill last year, the Department of Revenue took that as we didn't want to do it. Was this a fallout of something else or... [LB1126]

BILL MUELLER: No, no, no, not to my knowledge, no. [LB1126]

SENATOR CORNETT: It just...all of a sudden they went digging and found something new that they might be able to use. [LB1126]

BILL MUELLER: I was...I'd never heard of a law firm being audited by the Revenue Department until I heard about this particular situation in Omaha. I don't know that never...,knock on wood, I've never had my firm audited.(Laughter) [LB1126]

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SENATOR JANSSEN: Not that they shouldn't be some times but...(Laughter) [LB1126]

BILL MUELLER: Yes. [LB1126]

SENATOR CORNETT: Did something prompt that audit? [LB1126]

BILL MUELLER: Again the department's here... [LB1126]

SENATOR CORNETT: Okay. Fair enough. I'm sorry I (inaudible) [LB1126]

BILL MUELLER: ...and I don't know that they can talk about a particular audit. I think it must have been a routine sales and use tax audit. Now I was not aware that, I mean... [LB1126]

SENATOR CORNETT: What do we do in this state that an attorney would have a sales tax audit for? [LB1126]

BILL MUELLER: Well, you would as the consumer, and I'm looking at Mr. Kilpatrick, I may not be using the right words. When I buy photocopy, well, when I buy any supplies in my office, I pay sales tax. When I buy computer equipment, I pay sales tax on it. If I order it on line and I don't pay sales tax, I should be paying and I do pay, use tax. I'm guessing that, and again this is pure speculation, I'm guessing that is what the audit of the law firm was about. And in the course of that, an auditor raised this issue. [LB1126]

SENATOR CORNETT: But there's nothing currently in our law that allows to tax law firms for services, correct? [LB1126]

BILL MUELLER: That is correct. That is correct. And whenever you've looked at taxing services, one of the services... [LB1126]

SENATOR CORNETT: We've said no. [LB1126]

BILL MUELLER: ...sought to be included was court reporting services and the Legislature's never done that. I think because of that, we assumed that what a court reporter did was not subject to sales tax. [LB1126]

SENATOR JANSSEN: Ron. [LB1126]

SENATOR RAIKES: But if you and Tom jointly hire the reporter, then there is an issue, is that correct? [LB1126]

BILL MUELLER: Well, I would maintain that, that Tom and I do jointly hire the reporter although one of us makes the call and the person who makes that call gets the bill for

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the deposition and that includes a copy but, I mean, you're right. You and I talked about this, this morning. The court reporter could say since Mr. Mueller called me and scheduled the deposition, I'm going to charge him, and really his client, for everything and I will just give Mr. White a copy. The problem there being, my client would have to pay for all the deposition whereas now, Senator White's client is going to pay for his copy, my client's going to pay for mine. You know, we could make this a lot more confusing, because at the end of a lawsuit, if we settle it, we generally provide for who is going to pay the costs and part of the costs are deposition costs. [LB1126]

SENATOR RAIKES: But my point is, if you both, if you jointly hire the reporter, then the reporter services are a part of the provision of professional services which are not taxable. [LB1126]

BILL MUELLER: Yes, yes. Correct. [LB1126]

SENATOR RAIKES: So that would seem to me to be an easy change in the way you do business which really wouldn't be a change, which wouldn't require a change in statute. [LB1126]

BILL MUELLER: And then the question is, I guess, how do Mr. White and I jointly hire the reporter? Because, in my deal we're talking... [LB1126]

SENATOR RAIKES: Two lawyers can't figure that out? (Laughter) [LB1126]

BILL MUELLER: Well, believe me, we would come...but I mean, practically I call Brenda Fauber and say, would you take a deposition next week. I mean that's, we don't have a contract, we don't have an agreement. [LB1126]

SENATOR RAIKES: Well, whoever shows up at the deposition is receiving services from the court reporter, part of which are a copy of the proceedings. [LB1126]

BILL MUELLER: I believe so, yes, yes. I don't think they should be taxable. I'm telling you what position the department's taking. [LB1126]

SENATOR RAIKES: Well, my point is, it seems to me you could just simply change your, the description of the way you do business and you don't need to nitpick the statute to exclude this specific thing but maybe I'm wrong. [LB1126]

SENATOR JANSSEN: Abbie. [LB1126]

SENATOR CORNETT: Isn't it true to say that it would be difficult to work out who would, for splitting a bill, because a lot of depositions are hostile in nature and that I might receive a subpoena for a deposition. I don't want to be there. I don't want to pay for it,

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that you are forcing me to go there and it would be difficult to find a way to agree for both parties to pay for that? [LB1126]

BILL MUELLER: That could be an issue. That could be an issue. [LB1126]

SENATOR CORNETT: It's a big...because some of us have had subpoenas that we didn't want to go to for court or for whatever reason, and if you, I mean if you're being forced to do something, I don't see that you should have to pay for it. [LB1126]

SENATOR JANSSEN: By the way, you're going to have to pay for the deposition. [LB1126]

SENATOR CORNETT: Yes. [LB1126]

SENATOR JANSSEN: Yeah. For the sales tax. Chris. [LB1126]

SENATOR LANGEMEIER: Thank you. I guess that was kind of what my question was, kind of, and I'm going to make up numbers here. But if you called the reporter and she comes and she sends you a bill for a hundred bucks and your copy, what's the copy that Senator White would get, what's his bill going to be? Is it going to be \$25 or is it going to be \$100? [LB1126]

BILL MUELLER: It's generally a page rate. [LB1126]

SENATOR LANGEMEIER: That's what I wanted to know right there. Thank you. [LB1126]

BILL MUELLER: Yes. [LB1126]

SENATOR JANSSEN: Any other questions? Thanks, Bill. [LB1126]

BILL MUELLER: Thank you very much. [LB1126]

SENATOR JANSSEN: Next proponent. [LB1126]

BRENDA L. FAUBER: (Exhibit 4) Good afternoon. My name is Brenda Fauber, F-a-u-b-e-r. I am a court reporter in the state of Nebraska. I have worked as a state official court reporter for ten years, a freelance court reporter for six years and I have been working in the Federal Court system in Omaha for the last twelve and a half years approximately. I am here on behalf of the Nebraska Court Reporters Association to ask for your support on this particular bill that Senator White has introduced to exempt the transcripts from the court reporters from sales tax imposition. What I have provided to you is a transcript, hopefully not real exciting reading to you, but actually it's one of the

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shortest ones that I could find that I thought perhaps I could give to you to as an example. And first of all, I need to make sure that you do understand, there are two different types of court reporters working in the state of Nebraska. You have official court reporters and you have freelance court reporters. Official court reporters are employed by the court system. They are either working in the state courts or working in the federal courts. Currently in Nebraska, we have 67 state official court reporters. We have four official court reporters working in the Federal Court system in Nebraska. The other type of court reporter is the freelance court reporter. These individuals are independent contractors. They are privately employed, whether one person out of their home or whether they work at a court reporting firm. They are independent contractors. They will do court reporting services for instance, for an attorney that wants to take a deposition which is, as Mr. Mueller said, testimony taken under oath prior to trial so that the attorneys find out what the witness is going to say. They may also, for instance, report a city council meeting where perhaps one particular person wants a verbatim record made of what's said on a specific issue. They are often hired by state agencies for administrative type hearings. So there are a variety of individuals that would hire court reporters but it's basically anyone that needs the verbatim record on a certified basis that is reduced into a transcript. That tangible document that you see in your hand right now. If you work as an official court reporter, you are earning a salary, as a state employee or as a federal employee. However, you are required to have two jobs because you are supplying the reporting work in the courtroom but you're required to put together the transcript if either side appeals. If we don't have transcripts of court reporters exempted from sales tax, I would be required to impose a sales tax and pass it on to the attorney who would pass it on to the parties on any of the appeal transcripts that I am currently doing. I have no control over, you know, what, how many transcripts I get. It's strictly who's going to appeal. And you have...unlike in a court reporter's or the deposition situation, that you were talking about earlier, where you may be able to quote share the responsibility of getting the court reporter, one party wins in the lawsuit, one party loses. The party that loses is the party that appeals. The transcript for the appeal purposes is produced on behalf of the appealing party. That is set by statute. It's set by Supreme Court rule. In the federal system it is set by statute. The court reporter is required to produce a transcript of the portions of that case described by the attorney that they want on appeal and you charge per page to the side that is actually ordering the transcript. The other side is capable of purchasing a copy for their use and their cost is less. I have no option with respect to how much I'm going to charge either side and no, I cannot split it down the middle because by working in Federal Court, people in Washington are telling me what I will charge per page for my appeal transcripts whether it's the original or it's the copy that the other side is actually ordering. For the freelancers, they are working on behalf of typically one side and I understand the discussion with respect to perhaps we could both hire the court reporter. Part of the reason that that is a problem is by virtue of the fact that one side is going to take the deposition and it's not typically considered that Mr. White took the deposition or Mr. Mueller, it's the plaintiff or it's the defendant and it's that party that takes the deposition.

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The attorney for that party arranges for the court reporter but as I walk into a court hearing or I walk into a deposition setting, I am not, in my eyes, employed by anyone in there. I am providing a service that these attorneys are going to need in the representation of their clients and that is not something that I am allowed to have a favoritism, perhaps. We actually have a National Court Reporters Association. We have a professional code of ethics that we abide by, and that states that we are required to be a neutral, impartial party in that courtroom or in that deposition suite. And we are not to engage as the court reporter if we are employed by one side or the other or related to one side or the other. There are probably about, I would venture a guess to say, 30 to 40 freelancers in Omaha, 20 to 30 in Lincoln, and maybe 10 to 20 that live outside of those two cities. That's all we're talking about here as far as trying to get this tax from. You look like you would like to ask me a question, go ahead. [LB1126]

SENATOR JANSSEN: Yeah. [LB1126]

BRENDA L. FAUBER: Okay. [LB1126]

SENATOR JANSSEN: So you're selling your service? [LB1126]

BRENDA L. FAUBER: I am. [LB1126]

SENATOR JANSSEN: You're not selling this. [LB1126]

BRENDA L. FAUBER: I am not. [LB1126]

SENATOR JANSSEN: But you're selling your service. [LB1126]

BRENDA L. FAUBER: I am selling my service. And I will tell you, I do not have a tax certificate. I never dreamt that I should be collecting a sales tax for the service that I provide whether to the court system or to the attorneys that I have worked for doing depositions. I don't know of any state that believes that the court reporter's transcript is a product and is a taxable product. And I don't believe that it is something that ever crossed my mind. I have always felt that I was an impartial individual whether in a deposition setting or in a court setting. [LB1126]

SENATOR JANSSEN: Then who pays for this? [LB1126]

BRENDA L. FAUBER: That is actually a copy of an appeal transcript from a court hearing. One side appealed. They paid for the original. The other side paid for their copy so that they could represent their client at the appellant... [LB1126]

SENATOR JANSSEN: They paid for the hard copy. [LB1126]

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BRENDA L. FAUBER: Yes, yes. And it is...the actual transcript has been set as...the payment methodology has been set by statute long, many, many years ago that they believed how we should set this payment for the court reporter transcript and they said, well, let's do it per page. And so the Supreme Court said, or in my case, the judicial conference in Washington said, this is what you will charge per page. If it's an original over on this side and this is what you'll charge per page, if it's a copy on this side. So that is not a methodology that some court reporters actually thought up. It is something that we...that has been established in history that we've just been following what the actual state has been suggesting. Yes, sir. [LB1126]

SENATOR JANSSEN: Ron, you've got a question. [LB1126]

SENATOR RAIKES: So all of your revenue is on a per page basis? [LB1126]

BRENDA L. FAUBER: It is, because... [LB1126]

SENATOR RAIKES: You don't get paid anything per hour, it's all per page. [LB1126]

BRENDA L. FAUBER: I am an official court reporter and so I do not get paid anything per hour. I only get paid per page because they told me that's all I can charge them for. Freelance, and let me go further, freelance court reporters that are taking depositions may be charging an hourly fee for their appearance in addition to the transcript. I don't know and what anybody charges out there in the freelance world, is basically not discussed with me and I don't know what their charges are. But it...I will tell you, that it is the norm that court reporters charge for their transcripts based on a per page basis. [LB1126]

SENATOR RAIKES: So if you had a sales tax certificate, you could charge sales tax on a per page basis? [LB1126]

BRENDA L. FAUBER: I could if I was required to, yes. [LB1126]

SENATOR RAIKES: Okay. Thank you. [LB1126]

SENATOR JANSSEN: Any other questions? I don't see any, thank you... [LB1126]

BRENDA L. FAUBER: Great. [LB1126]

SENATOR JANSSEN: ...for your help. Any other proponents? Mr. Lindsay. John. [LB1126]

JOHN LINDSAY: Senator Janssen, members of the committee. My name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska

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Association of Trial Attorneys. On the eighth day of bill introduction this year, I got a call from one of our members who is at the firm that Mr. Mueller made reference to, to first hear about this issue as well. He is a member of...this particular lawyer is a member of our association but most of the firm is not. As I talked to him about it, he described the issue and in true lobbyist fashion I said, you need to talk to the bar association lobbyist and make it his issue so that's why I'm testifying third instead of first. We do have, seriously, we do have the same...some of the things that Mr. Mueller talked about, the same issues but our people, our members, are trial bar, but actually both defense and plaintiff side trial bar so we deal with depositions on a daily basis. It's what we do and when Mr. Mueller and Miss Fauber testified, they talked about how the court reporter is not really hired by one side or the other because that court reporter doesn't work for either plaintiff or defendant. That court reporter works for kind of a justice system because if it is...if I hire...usually when you're going to hire somebody, you're going to hire the person whose best for you but in a court reporter situation, it's all going to be the same. It's going to be...they're going to take down what they hear that witness saying and what they hear that attorney asking and it's not going to vary from court reporter to court reporter because it's going to be a verbatim transcript. So when you talk...when Mr. Mueller talks about arranging a court reporter, that's what you're doing or calling a court reporter. You're not going to, go interview to see which one is going to give you the best deal or the best maybe slant things your way, because it ain't going to happen. They work for this, not really for, maybe the state or the county court or anything like that, although some do as Miss Fauber suggested, they work for the justice system and it's important that that happen so that all can have faith in that justice system. So given that, you look at what we're buying and even though I may, I may in litigation with Senator White ask him to arrange the court reporter, what's going on at that deposition is every bit as important to me on the other side as it would be to Senator White representing his side. So and then you look at it from another position, as who's going to benefit from that service. I'm going to get a copy, Senator White's going to have a copy of the transcript and if we get to trial, if we need to use that transcript or that transcript at trial to maybe impeach a witness or however it needs to be used, we're going to do it in exactly the same way. The difference is, we're not going to know whose going to use it until after the deposition is done to see what the witness had to say. And Senator White may have scheduled somebody because he thought, this is going to be a great witness for me. Now you find out, now when they got into the deposition you find out, no, it's not the case. And I wouldn't want to be that witness but with Senator White having that transcript. (Laughter) But the...when you talk about it, it truly is a service that both sides are purchasing and if you, looking at how that copy, if you will, that I get from the other side, I'm getting it for the exact same purpose. I'm going to use it the exact same way. I'm...it truly comes down to which side is actually going to make that call. Senator Raikes, you asked about, can't one, can't the two lawyers jointly order the service or jointly arrange for the court reporter. Sometimes it's not quite that easy. I haven't actually practiced law in the ordinary sense in a dozen years or so but in my time handling some difficult divorce cases, for example, especially if child custody is

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involved, you may have a dispute about whether there ought to be a deposition taken in the first place. That somebody may want to take a whole series of depositions, that one side thinks this is ludicrous. They don't need to be taken and so getting somebody to say, yeah, I'm going to jointly buy that service that is absolutely irrelevant and unneeded service, getting them to agree to arrange that may not always be easy to accomplish. Or if somebody's bringing an action against you and is just seeking to drive up your costs, what better way than to have you sharing the cost of every deposition that you line up just for that purpose or somebody lines up against you, I should say, just for that purpose. The issue of depositions, I think, it's a unique situation where you have oftentimes private sector individuals who are doing a service but it's just a very critical function done for our court system. On the medical records side, when this came up, I asked some of our members to tell us are you paying sales tax on medical records in depositions. They all said, never paid sales tax on a deposition. They said on medical records, it tends to be in some of the larger providers of medical records. For example, a hospital that might use a service to maintain and copy and distribute medical record requests, that our people have been, our lawyers have been paying sales tax on those types of records. Maybe if they're coming from a smaller office that they have not paid sales tax on those. But I would concur with Mr. Mueller's position that I think the significant part of this is the depositions because they are a, they're just a unique animal. With that I'd be happy to try to answer any questions. [LB1126]

SENATOR JANSSEN: Any questions? Ron. [LB1126]

SENATOR RAIKES: So you pay \$1.75 a page. Why couldn't you pay \$1.75 a page plus sales tax? [LB1126]

JOHN LINDSAY: Oh, you could if you were going to...certainly it's up to this body's discretion to impose a sales tax on court reporting services because that's in effect what you're doing. But that has not been done by this body. It has chosen not to do that in the past that came up. I think they were specifically included in one of Senator Brashear's proposals and it was determined by the body not to continue along that path. [LB1126]

SENATOR RAIKES: Okay. [LB1126]

SENATOR JANSSEN: Abbie. [LB1126]

SENATOR CORNETT: I was going to say, isn't another factor of what's so troubling about this bill is the five-year look back on the people that thought that they were exempt and have not paid taxes on this? [LB1126]

JOHN LINDSAY: Oh, absolutely and that's, in talking... [LB1126]

SENATOR CORNETT: Isn't that one of the major concerns? [LB1126]

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JOHN LINDSAY: Absolutely. And that is, from the attorney that I spoke with, it was the fact that as Senator Janssen mentioned, that we've had sales tax for 67 years but apparently these were exempt for the first 40. The issue is, really is, that look back that kind of coming in afterwards to say you should have been collecting tax when nobody dreamed that, that this service in effect is, was subject to the tax. [LB1126]

SENATOR JANSSEN: Seeing no more questions, thank you. [LB1126]

JOHN LINDSAY: Thank you. [LB1126]

SENATOR JANSSEN: Good to have you here, John. Any other proponents? Seeing none. Any opponents? Anyone in neural capacity? Neutral? [LB1126]

DOUG EWALD: (Exhibit 5) Chairman Janssen, members of the Revenue Committee, I'm Doug Ewald, E-w-a-l-d. I'm the tax commissioner. I'm here today with respect to being neutral on LB1126 and hope that we can maybe have a dialogue here and understand exactly what's going on today and a little bit of the history. LB1126 does two things. It appears, it creates two exemptions for sales tax. One is for depositions, bills of exceptions, and transcripts prepared by court reporters. And the second exemption is for copies of medical records. A little bit of the history. Since 1975 the Department of Revenue has had a regulation and I think Bill Mueller spoke on this and he was, quoted this word for word about what's taxable and what's not taxable with respect to copies. As he said, if we hire a law firm to do something on your behalf or someone, a court reporter, and as part of that process you get a copy, you hire him, that's a service, the copy is incidental, that is not taxable. However, if you are the other party and you are billed for that copy, under this regulation, that copy would be deemed as taxable because you're paying for the copy. Now whether or not that's a true intent of what's going on here, there's, I...there may be a way or two around that here. But talking about our audit practices at the Department of Revenue. A concern was raised with this bill as the availability of the client or patients records during the audit by the Department of Revenue. First of all, I want to stress that all information provided during an audit is confidential. Safeguards are employed by the department to ensure the confidentiality of all information for all taxpayers, not only those in the legal and medical, of those of legal and medical practitioners. We did perform a couple audits of law firms. We went in there to audit withholding tax and as part of the withholding, we started to look at a few other things and we see, in this particular case, this law firm did a lot of insurance work. So they paid for copies of medical records and a firm, a medical copying firm, provided those copies. So we found that we assessed, not sales tax but the use tax, the medical...the company that made the copies should have billed sales tax to the law firm. They did not. Therefore, the firm that the ultimate consumer is, they owe the use tax on that particular component. So that is what we assessed use tax on, would have been the copies provided to the law firm as part of that requesting that copy in that particular

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situation. In no case would the department ask to see personal client or patient information files. There's specific HIPA rules. In fact, I've talked to some of our auditors. If somebody gives us something like that, we'll request that they white out the patient information. We have no desire to see that. We have not, in addition we have not issued subpoenas during an audit to either the medical or legal practices firms and we would not issue one for confidential patient or client records. At the end of the day here, LB1126, if we look at the court reporter and what they do, I think that if we can...we heard that no one has a sales tax permit today and I will validate that. There are none. We went and looked in our business master file. There were none of them licensed for sales tax collection today. That is correct. So really what we're talking about here is, maybe if I would, kind of isolate that particular issue over to one side here, we're not collecting anything, they're not collecting and remitting and maybe we can take care of an exemption here, and honestly, the bulk of the fiscal note on this bill is related to the companies that do provide medical record copies. That's their sole function. They make copies and provide them anyway. So that's the bulk of the cost of the fiscal note in this particular situation. So I guess I would offer it up and open it up for discussion but Bill Mueller had a good suggestion earlier, is that maybe we can take LB1126, get it wrapped around the court reporter issue, let the Department of Revenue issue some regulations with respect to copies and what happens with respect to the medical services issue, what's being done there today, what really is taxable. If I as a patient want to get a copy of a medical record, I don't think we should charge tax on that. That shouldn't be, that's not the intent of that, getting a copy of my particular record. But if we have companies out there that, that's the service they provide, that particular service or that copy in that particular situation should be taxable. With that, I'll open that up for some dialogue here. [LB1126]

SENATOR JANSSEN: Any questions? Oh, Abbie, go ahead. [LB1126]

SENATOR CORNETT: How did we go from all the years of not taxing them, and I'm assuming these were not the only, the only law firms that were ever audited, to all of a sudden deciding this was something we should be taxing? Is it just a change in the administration and a change in the people reading it and the interpretation of it or what brought this about all of a sudden? [LB1126]

DOUG EWALD: That's a good question, Senator. I believe that these audits took place before I was in this position. They were, the two law firms that we did audit, they were purely random. They came up looking at...like I said, well, how did they get audited, their services they provide are not taxable. Well, there's some use tax, there's some sales tax on office supplies, something like that. I can't speak to how they were selected other than I can say it was random. [LB1126]

SENATOR CORNETT: But my point is, these are not the only two law firms that have ever been audited, correct? [LB1126]

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DOUG EWALD: I don't know the answer to that. I would guess not. [LB1126]

SENATOR CORNETT: And I'm assuming that no one else prior to these two firms has looked at it and said, oh, we should be taxing the court reporters because the issue hasn't come up for it. What brought the issue of the court reporters up under these two audits that has not been an issue before? [LB1126]

DOUG EWALD: I don't know that any...I guess, I can't point to what specifically brought up the court reporter issue other... [LB1126]

SENATOR CORNETT: Was there an individual auditor looking at the report and saying, oh, I think that, we're looking at it and saying, I think we should interpret the law this way? [LB1126]

DOUG EWALD: You know somebody probably...I, without knowing what the auditor specifically did, they probably looked at this and said, oh, say, since 1975, we've had this regulation on copies and if the copy you get is in part of the service or what you require in the deposition, hey, that's okay, but they're also billing for the second party to get a copy. What are they paying? They're paying for the copy. Is that reasonable underneath the revenue ruling that's been out there since 1975? [LB1126]

SENATOR CORNETT: I was just going to say since 1975 nobody looked at that and the practice in...the law firm's have not changed that I know of in that time period. [LB1126]

DOUG EWALD: Yes, I... [LB1126]

SENATOR CORNETT: And then all of a sudden, hello, we're in 2007 and we're going to say, oh, we should be taxing this? [LB1126]

DOUG EWALD: That's, I mean that's...I can't speak to what the past audit practices were, what they looked for in that particular situation. [LB1126]

SENATOR CORNETT: Okay. Thank you. [LB1126]

SENATOR JANSSEN: Ron. [LB1126]

SENATOR RAIKES: So, your suggestion was that we should continue to or sales tax should be imposed on copies provided by firms that in a commercial basis provide copies, either medical records or, I guess, legal records, if that in fact that happens. Did you say that we need this bill then or they can handle by regulation or what? [LB1126]

DOUG EWALD: I guess, I think that we could handle the medical record side and those

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firms that hold themselves out to make copies, the Kinko's of the world like that, we could handle that through regulation but I guess I'd like to see LB1126 clarify with what, with respect to what we're doing for court reporters or if that's the intent here. [LB1126]

SENATOR RAIKES: Okay. Thank you. [LB1126]

SENATOR JANSSEN: All right now, I have this, say it's a medical record or a copy of this, and I take that to the copy shop, does the copy shop, do they on anything I bring in there whether it's a copy of my birth certificate or whatever it might be, will they charge me sales tax on that? [LB1126]

DOUG EWALD: They should, yes. [LB1126]

SENATOR JANSSEN: Okay. All right. [LB1126]

DOUG EWALD: Now, I don't know if, as part of this process, if somebody calls to a court reporter and says, okay, as part of this service now instead of one, I want you to provide me two copies instead of the one. I mean, I don't necessarily want to promote them changing their business practice but is there a way for them to say, I want you to do this deposition and as part of your costs I want you to provide me two copies instead of one so. [LB1126]

SENATOR JANSSEN: Okay. Any other questions? I don't see any. Thank you, Doug. [LB1126]

DOUG EWALD: Okay. Thank you. [LB1126]

SENATOR JANSSEN: Anyone else neutral? I don't see any. Okay, Tom. Senator White to close. [LB1126]

SENATOR WHITE: Thank you, Senator Janssen. Let me maybe do something that will help. I think the auditor was channelling the spirit of Senator Raikes when he decided after 40 years that this was taxable. (Laughter) The other thing, I guess, Senator, to tell you is there's another way to look at it. That paper in front of you is worthless. The value in that is the thinking and the questions of the lawyers and the answers. [LB1126]

SENATOR RAIKES: You mean this one? (Laughter) [LB1126]

SENATOR WHITE: Not that one. Touche, Senator Raikes, I have to say. No, the deposition. I mean, it has no value, the paper. All it is, is a recollection of a professional service. The attorney's service is recorded. Their questions, their thinking. The other sides questions, their thinking. That then becomes a basis for further legal services. I mean, in some levels, I would tell you the court reporter really is just reflecting a service

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that is exempt and the transcript itself is that service. And we have always exempted that. It is unusual that after 45 years there's suddenly an interpretation that would change a practice that's been accepted like this and I thank the committee. [LB1126]

SENATOR JANSSEN: Okay. Any other questions for Tom? Seeing none. Tom, thank you. That ends the hearing on LB1126. Senator Preister. [LB1126]

SENATOR PREISTER: (Exhibits 6 and 7) Thank you, Chairman Janssen and members of the Revenue Committee. My name is Don, D-o-n, Preister, P-r-e-i-s-t-e-r. I'm here as the primary introducer of LB1137. It's a cleanup bill to last year's legislation to grant a sales tax exemption to community based energy development or C-BED on materials used to construct, repair, replace or manufacture a device such as a wind turbine. Throughout the interim, my office and others have worked extensively with the Department of Revenue as they drafted their ruling to implement this legislation. I passed out a copy of the pages did, thank you, of the department's C-BED ruling which was just issued last month. During this process of working with the Department of Revenue, and I would commend them because they were exceptionally easy to work with, very cooperative, and gave us all the information in the time that was necessary to work collaboratively to come to this point. So I thank them and all of the staff involved. We wanted to be sure that there was clarification in order to assure that the exemption is applied as we had originally intended it last year when we passed the legislation. In order for all C-BED statutes to be consistent, these clarifying provisions are inserted in the tax statutes and the C-BED statutes located in chapter 70. LB1137 clarifies the following issues. One, project ownership provisions. Two, payments to qualified owners. Three, what constitutes payments to local community. Four, notification requirements if ownership of C-BED project changes so the project is no longer eligible to receive tax exemption. Five, inserts an annual date each utility must provide information about the previous year's activities related to C-BED projects. Six, clarifies that C-BED project developer are required to provide an opportunity to become a qualified owner to each property owner on whose land a turbine is located. Seven, it clarifies and details the Department of Revenue's authority regarding oversight of the C-BED project and recovery and payment of exempted sales tax. LB629 which established C-BED was passed last session on a 49-0 vote. The C-BED model contained in LB629 and the sales tax exemption granted under LB367 were promoted and adopted based on three important policies. The C-BED model creates significant rural economic development. Two, the C-BED model is consistent with and maintains Nebraska's commitment to our public power structure. And three, the C-BED model assures competitive electric rates for Nebraska rate payers. You may hear arguments today from individuals who want to amend this bill by changing the amount of the power purchase agreement payments made to local qualified owners from gross to net amounts. However, this change actually results in a completely different model and negates all of the policy benefits of the C-BED model which we passed. I'm passing out an amendment, you should have that already, which makes a few more clarifying changes to the bill. It inserts real

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property in the list of community benefits. Two, it clarifies that a C-BED project developer must extend an opportunity to become a qualified owner to a landowner on whose property a turbine will be located. This change is necessary because the offer must be made prior to the construction of the project, and three, it clarifies that if a C-BED project is sold to the electric utility prior to the end of the power purchase agreement, it does not disqualify the project for purposes of receiving the sales tax exemption. John Hansen, who has worked extensively with the C-BED model, will follow me and can respond to any questions you may have regarding the technical changes to the current C-BED statutes. I would mention also the fiscal note. The fiscal note has a minor technical flaw as Senator White's bill did earlier. The fiscal note states 52 million. The decimal point was slightly off. It's actually 52,000 so that, I think if you wanted to clarify that, I got that from the PRO office just before noon today. But I think the correction there will be made and perhaps Mr. Ewald...I don't know if he's going to testify. He could certainly answer any questions. Much of the language in this is from the Department of Revenue so the clarification in going back and forth, it is somewhat technical but the concept is to bring in line what we did last year. Part of the problem, as you'll recall is, this bill was advanced from this committee, the Revenue Committee advanced the incentive portion, but the portion that actually dealt with the creation of the C-BED was still in negotiation in the Natural Resources Committee. So it was amended and went back and forth and was advanced late in the session. We're harmonizing what we did with what ended up being done in C-BED. So we're combining things that we wouldn't have known or been able to do when this was advanced from the committee. So it's that kind of cleanup that this is attempting to do. We're not broadening, we're not trying to do anything new. This is simple clarification that's not so simple. [LB1137]

SENATOR JANSSEN: Any questions? Ron. [LB1137]

SENATOR RAIKES: Don, I know very little about this issue as you will soon find out but I did have a call from someone who raised the issue that you mentioned earlier about the 33 percent going to a qualified owner. And the point of this individual, as I remember was, this was going to or could potentially greatly restrict the application or the...yeah, the application of this concept and the scale. That if you got, I think as he told me, okay, qualified owners if they happen to be local, people in the local community and you're talking about a \$100 million project potentially, that would require \$33 million somehow or another to...capital raised for them to become a part of the project, which is unlikely. I mean, do I have this anywhere near right or can you straighten me out on that? [LB1137]

SENATOR PREISTER: I think John Hansen can give you a clearer answer on that. [LB1137]

SENATOR RAIKES: Okay. [LB1137]

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SENATOR PREISTER: But if there is an intent to change what we did, I think that needs to be brought forward in a separate bill and have a concept presented that would address the other component of it. What we were trying to do in C-BED is to make sure that we were providing some incentive to the producer or developer, the C-BED person, rural economic development. That's more the model and to change that concept in this bill, I don't think would be appropriate but to more directly answer your question, I think John can probably tell you, because he has worked in the rural areas with the model and with how that structure works directly. [LB1137]

SENATOR RAIKES: Okay. Thank you. [LB1137]

SENATOR PREISTER: You're welcome. [LB1137]

SENATOR JANSSEN: Senator Langemeier. [LB1137]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. Thank you, Don, for bringing this. With your amendment, which allows the sale of the C-BEDs, I mean the fundamental purpose behind the C-BED was for local ownership, community ownership. Why would we want to aid in the credits going on if they sell it to Nebraska Public Power? Wouldn't that defeat the whole purpose of the C-BED model? [LB1137]

SENATOR PREISTER: It would seem to on the surface but we're trying to allow for some flexibility and at some point, maybe that's a good option if they both agree to do that. You're right. We're trying to incent this model and trying to make that incentive go to the property developers, the cooperative in effect. But there are options and opportunities that we may not be foreseeing. This, I think, is to clarify just to make sure that it is clear in statute that it's a possibility. [LB1137]

SENATOR LANGEMEIER: But wouldn't this aid in myself being one to develop and getting a group together, let's say, hey, let's build this thing and then we're going to sell it to Nebraska Public Power. We're going to get some benefits and then we don't have to do it anymore. It's gone. They'll have to run it. I won't have to run it. But I'll get the credits. And we have an individual out there doing that already. [LB1137]

SENATOR PREISTER: Well, I don't know that we have an individual doing that already but... [LB1137]

SENATOR LANGEMEIER: I'm just, I'm curious. [LB1137]

SENATOR PREISTER: Sure. [LB1137]

SENATOR LANGEMEIER: Okay. Thank you. [LB1137]

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SENATOR PREISTER: You're welcome. [LB1137]

SENATOR JANSSEN: Any other questions? Don't see any. Thank you, Don. [LB1137]

SENATOR PREISTER: Thank you. [LB1137]

SENATOR JANSSEN: Do we have proponents? [LB1137]

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 president of Nebraska Farmers Union and appear before you today as my organization's president and lobbyist. The summary that Senator Preister just presented was a very good one. It was, this bill is the efforts on the part of Senator Dierks office and Senator Preister and my organization, some others and the Revenue Department to work together to make the necessary cleanup really technical changes in order to make sure that the sales tax exemption for C-BED was done as it was intended and so we've strayed out of policy. We have just stuck to making technical changes and we did work with the Nebraska Department of Revenue as they went through the process very recently in developing their revenue ruling for C-BEDs, and we thank the department. They have been really good to work with and so all of these changes that we see are needed and appropriate and we believe that they are in order and so we support them. And there have been some questions raised, and I think the better use of my time, Mr. Chairman, would be to try to answer any questions if the committee has any about any of these issues. [LB1137]

SENATOR JANSSEN: Any questions? Ron. [LB1137]

SENATOR RAIKES: Well, I'll bring the one to you that was brought to me, John, and I understand you're saying this is not intended to be substantive, this is technical and maybe what I'm raising is a substantive issue but what about that argument that by requiring 33 percent of the revenue stream to qualified owners, you're either limiting the scale of the projects or you're maybe limiting the chance that they'll happen at all. [LB1137]

JOHN K. HANSEN: Well, I would say that based on what I know, and the position that I am in, relative to C-BED projects and their development, that we are familiar with how the financing structure works and where, how the pro forma is put together and where the money goes and all of those things and 33 percent gross to qualified owners is doable, it works. It is consistent with how 200 and some megawatts of wind in Minnesota have been successfully developed and used. And I would say that there is a general lack of understanding on the part of some folks about how that particular development model in the financing structure that goes with it works, and so we continually try to help and educate folks about how that works. But we also have in some cases, folks who really want to take other than a bona fide C-BED development

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model and slightly modify it so it's not quite a C-BED model but just enough that it would get a 5 percent sales tax relief and the opportunity for eminent domain relief. And so, part of what the Revenue Department has wanted to do is to make sure that those folks who qualify for these two significant advantages are, in fact, bona fide and use this development structure. Does this development structure works. Yes, sir, it does.  
[LB1137]

SENATOR JANSSEN: Any other questions? Don. [LB1137]

SENATOR PREISTER: John, Senator Langemeier had asked a question and maybe you could address better than I did and that was, why the provision that would allow the early sale? [LB1137]

JOHN K. HANSEN: The Nebraska Public Power District put out a request for proposals last May, shortly after LB629 was passed by the Legislature for 100 megawatts of wind energy projects. That was expanded to 150 megawatts. They have announced that there are three projects that have been chosen and they are in process at this point in time with representatives of those projects on power purchase agreements which should be done before very long. I think they're fairly far along in that process. But one of the criteria in the request for proposals, was the option for a public power to have the opportunity to buy a C-BED project out before the completed contract, power purchase agreement contract period which is typically 20 years. So if that happened, and as I read this amendment, there's a question that runs through my mind in that, I think that the intent as discussions have gone on between the various entities on this issue who are private and governmental entities that have been impacted, was that at the point at which a sale would happen, if in fact public power would utilize their option to do that, is that the C-BED project itself and its authority by virtue of the contract structure would be terminated. And that the second part of that is that the sales tax abatement would...the terms of the sales tax abatement had been fulfilled and that there would not be a need to repay it along with the penalties as a part of the early termination if it was bought by a Nebraska utility. And the economic answer to Senator Langemeier's question is that the IRS Safe Harbor Rules would indicate that if public, a public power entity were to buy a C-BED project before the end of the contract period, it would be, have to be after the equity flip had taken place and would have to be likely in that 11 or 12 year out of the 20 year contract period and would have to be a fair market value arms-length transaction which would then mean that the owners of the C-BED project would have necessarily had to be adequately compensated for the potential earnings that they were likely to get in the out years of the C-BED contract because that would be a part of the fair market value of the project. So instead of waiting, operating the project and receiving the margin over the remaining, say eight years of the project, they would have to be compensated for that lost net revenue and from a C-BED project, the last ten years of the project from the qualified owners perspective is by far the period of time when the qualified owners receive the most value in the income and the profit. I don't know if you

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understood that or are able to follow that or if I did an adequate job of explaining it but I thought I understood it when I explained it but if you don't (laughter) I'd be glad to take another run at it. [LB1137]

SENATOR PREISTER: You might want to meet with Senator Langemeier and answer it directly to him since unfortunately he wasn't able to be here. Thank you [LB1137]

JOHN K. HANSEN: Well, thank you, Senator Preister. [LB1137]

SENATOR JANSSEN: Any other questions? I don't see any, thanks, John. [LB1137]

JOHN K. HANSEN: Thank you Mr. Chairman and members of the committee and would encourage your favorable consideration. [LB1137]

SENATOR JANSSEN: Proponents? [LB1137]

KEN WINSTON : Good afternoon, Senator Janssen, members of the Revenue Committee. My name is Ken Winston, W-i-n-s-t-o-n, appearing on behalf of the Nebraska Chapter of the Sierra Club in support of LB1137. Sierra Club was one of the organizations that supported the creation of C-BED in LB629 last year and LB1137 appears intended to clarify issues related to the sales tax exemptions for purchases by C-BED entities and therefore we support it as supporting the development of C-BED. Be glad to answer questions if I can but I don't know much about this, not like John Hansen, so. [LB1137]

SENATOR JANSSEN: Any questions? Okay. Thank you. [LB1137]

KEN WINSTON: Thank you. [LB1137]

SENATOR JANSSEN: Any other proponents? [LB1137]

STEVE EVEANS: (Exhibits 8 and 9) Good afternoon, Senators, Senator Janssen. I'm going to try to read this letter into... [LB1137]

SENATOR JANSSEN: Will you state your name? [LB1137]

STEVE EVEANS: My name is Steve Eveans, E-v-e-a-n-s. I'm president of SEArch, Inc., selective energy alternatives out of Omaha, Nebraska. We're a Nebraska rural community based energy economic developer. We have two C-BED projects under way. One in Blaine and Brown Counties and one in Cass County, Nebraska. I would like to read this letter. It's a compilation of discourse amongst our members, our C-BED members, the development group and team. Questions that have been brought up by the previous proponents. Again we are proponents of this legislation. I'll begin by

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reading the letter from our group here. We have one specific and what we consider very important area of we would like the committee, Senator Preister, Senator Dierks, and cosponsor Senator Pankonin to evaluate and adjust. Please consider putting in the place of page two, line 11, 12, language that would be supportive of all forms of finance available to C-BED projects, and that's all forms of finance available to C-BED projects. If the word gross has to be used, please consider assigning the term gross a definition that would take this into account. Our financial advisors would like to be given the opportunity to review with the committee how not allowing gross proceeds to be identified as over the life of the project, impacts a project financing structure that takes out the costs of debt service, maintenance and overhead, like five of the seven financing structure diagrams attached that are used in wind projects of all types across the country. And that's the attachment that came from...please consider this information provided by Windustry's Kit of Tools for the development of small wind, community based wind, and utility sized developments, which includes the same tools for all of these projects. We believe C-BED should be able to utilize power purchase agreement payments to pay operating costs at the project level and to pay principal and interest payments on the project level debt. Project level debt benefits all owners, including qualified owners, and principal pay down at the project level builds up equity in the project which benefits all owners in proportion to their ownership interest. It is not clear that the requirement that 33 percent of the gross power purchase agreement payments flow to the qualified owners would adequately allow for the above. It is fully our intention to return to the community and our qualified investors, the economic benefits of the power purchase agreement payments over the life of the project, and it has been and is still our goal to see as much as can be returned to C-BED participants which includes all of our Nebraska based businesses and investors. Any questions? [LB1137]

SENATOR JANSSEN: Questions? Ron. [LB1137]

SENATOR RAIKES: So, what...I gather, maybe incorrectly, from what you're saying is that if you require the gross, of 33 percent of the gross to C-BED investors, then the C-BED investors outside, outside of assets in the project, have to do whatever debt financing they can. What you're suggesting is, you ought to be able to be allowed to do debt financing within the project so that you would have a, you wouldn't mind as I understand it, to have a 33 percent return to qualified investors if it's after debt service. [LB1137]

STEVE EVEANS: That's correct. [LB1137]

SENATOR RAIKES: Okay. [LB1137]

SENATOR JANSSEN: Cap, did you have a question? [LB1137]

SENATOR DIERKS: Steve, I'm not sure that I caught all of that but I think that you're

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trying to, am I right, you're trying to change the definition of a qualified owner? [LB1137]

STEVE EVEANS: No, we're just trying to define the definition of gross. I mean, if it's for the full project term in essence but also that it also include the debt financing structure as being a netted out item. [LB1137]

SENATOR DIERKS: How would that differ from the qualified owners procedure today the way he becomes...the bill is, as we took care of it last year, provided that a qualified owner had to be a Nebraska resident. [LB1137]

STEVE EVEANS: Right. [LB1137]

SENATOR DIERKS: And that his financial partner would be equity partner, could be anybody that had the investment to do it. The percentage of investment, I'm not sure that I even know what that is but the payout came at the end of 10 years as far as when... [LB1137]

STEVE EVEANS: Right. [LB1137]

SENATOR DIERKS: ...the equity investor was, had utilized all his tax credits. [LB1137]

STEVE EVEANS: That's correct. [LB1137]

SENATOR DIERKS: Do you want to change that? [LB1137]

STEVE EVEANS: No, we just want to define that if we we're to use gross, we need a definition that it is over the project term, you know, the 20 years. And it does encourage the, basically project level debt benefits that we're talking about. That's what the banks are, they need to see to finance the projects and if we can't show that, then they basically can't loan the money on a project level. We can't obtain that level of funding for these projects. [LB1137]

SENATOR DIERKS: Okay. [LB1137]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Steve, for being here today. Are there anymore proponents? Any opponents? Anyone neutral? Senator Preister to close. Senator Preister waives closing. That ends the hearing on LB1137. Senator Avery has arrived to tell us about the holiday season. [LB1137]

SENATOR AVERY: Good afternoon committee and greetings to you, Mr. Chair. My name for the record is Bill Avery, A-v-e-r-y. I represent District 28 here in Lincoln. I am back again with the same idea that I brought to you last year. You didn't like it then, maybe you'll like it better this time. (Laughter) LB762 would establish a sales tax holiday

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for back-to-school shopping. It would occur the first Friday, Saturday and Sunday in August just before school commences. It would include such items as clothing for children and school kids, well, any...the items that would qualify would be clothing items, back-to-school items like backpacks, notebooks, things of that sort. And also, it would include computers up to \$1,500 or less per item. A number of items would be excluded, things that do not have a direct application to school such as sportswear or sports protective equipment, computer supplies, game, computer games for example would not qualify. The idea of a sales tax holiday for back-to-school shopping began in 1997 in New York. Since then it's spread to more than 12 other states plus the District of Columbia. It is very popular wherever it's been enacted. It's front page news in North Carolina, Missouri and other states. I happened to be in North Carolina this year during their weekend of back-to-school shopping, a tax holiday. And I brought some advertisements because they were just everywhere and the interesting thing about this is, it's not just a matter of the 6 or 7 percent reduction in the exempted items in sales tax, but typically what these retailers do is they couple the sales tax holiday with additional sales. Here is an advertisement from Staples, tax free days, in big letters. And then here on certain items, save an additional 40 percent, save an additional 20 percent. Here is an advertisement from Circuit City advertising computers with deep discounts in addition to the sales tax rebate or sales tax holiday. An interesting thing too, I observed, that will address Senator Pahls's idea. He'll be up next, I think. And that is for those industries, those retailers that did not qualify because, for the sales tax holiday, because they don't sell items that are back-to-school merchandise, such as furniture, they would advertise back-to-school weekend sale, 10 to 40 percent off, and then they would say, we will pay the tax. Now currently, I think, our law does not allow that but I think what Senator Pahls is proposing would do so. It might be, you could combine the two because what I can see happening is a tremendous stimulus for the economy when you have a back-to-school sales tax weekend like I'm proposing that would also allow certain companies that merchandise, or that sell items that wouldn't qualify, at least they could say, we'll pay the sales tax for you. That might be an additional way to get more business. The only evidence we have of the impact of such a holiday, in addition to the anecdotal evidence, was a comprehensive empirical study in Missouri and the conclusion that the Missouri Chamber of Commerce came to in their study, is that the holiday did not harm tax revenue. I know there is concern in this committee about the fiscal impact and I applaud you for being tight with our dollars and not being so quick to shrink the tax base but what they found in Missouri is because of the increased retail activity, people getting into the stores in order to buy the tax exempt items, they would see other things that were on sale and they would often buy those and have to pay the income tax, or the sales tax on those. And what would happen is that the increased retail activity would actually lead to a net gain in sales tax receipt. The study done in Missouri found that the taxable, the sales of taxable items increased enough to eliminate losses in tax revenue. Would that happen in Nebraska? I can't, I can't say for sure. I don't know. But I think that there is a chance it might. This is an idea that has caught on in other states. It seems to be working. It provides much needed tax

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relief for working families, many of whom are struggling to get by. Iowa has had such a holiday for some time and I just got ahold of some information the other day that during their first year of their sales tax holiday, Iowa stores reported sales increases of 20 percent. In fact, employees at Target stores in Omaha were sent across the Missouri River to help in Council Bluffs in stores that were so crowded with so much business that they couldn't handle it all without getting some employees on loan from Target stores in Omaha. The business was booming so much. In Nebraska, on the other hand, stores...the same weekend now, stores in Nebraska in the Omaha area were experiencing double digit losses in such things as children's apparel. And you go to the parking lots of the stores in Council Bluffs on their holiday weekend and you see Nebraska license plates all over the place. We need to stop the annual flood of Nebraska dollars across the Iowa border during the first weekend in August. In Florida their holiday was so successful, they decided to expand the period to cover two weekends, nine days. In Pennsylvania and South Carolina the sales tax items are frequently sold out and retailers can't get enough new stock quick enough to meet the demand. Finally, we're headed into an economic downturn that is by almost all estimates and most of the economic indicators suggest that we will experience a downturn. Passing this bill could provide an important economic stimulus, so I would ask you to give serious consideration to advancing this to General File. Thank you. [LB762]

SENATOR DIERKS: Thanks, Senator Avery. Are there questions? Questions, anybody? Thank you so much, Bill. [LB762]

SENATOR AVERY: I'll hang around. My other committee's finished. [LB762]

SENATOR DIERKS: Okay, yeah. Are there proponents for LB762? Hi, Jim, whenever you're ready. [LB762]

JIM OTTO: Senator Dierks, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation. I'm here on behalf of the Nebraska Retail Federation in support of LB762. Senator Avery did a very good job of summarizing the bill. I would just...it truly is a sales tax holiday. There's going to be another bill that's called sales tax holiday. We don't personally, we don't feel that that is a sales tax holiday, the other bill. As you go through Senator Avery's bill it's very well written. It states exactly which items would be exempt from sales tax and all businesses would do it exactly the same way, because all businesses that sell those items would have those items exempt from sales tax. It also outlines which items are not exempt and answers all kinds of questions on how you would handle returns and whether or not there would be sales tax on returns, etcetera. And so we believe it's a very well written bill. We believe that, I guess we would encourage you take, as Senator Avery said in the fiscal note, sales tax holidays do generate more sales for items that are still taxable and I doubt that that's something that gets considered in the fiscal note. How many

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other taxes you would generate as a result of the sales tax holiday. The other thing is as Senator Avery said, 7 percent savings in Lincoln and Omaha and couple that with other sales, that is truly what happens. If a retailer were to have a 7 percent sale, they would pretty much get laughed at. I mean a 7 percent sale is nothing in the retail world. So in other words, that way the person would save the tax so that wouldn't really get anybody out and the other thing is, the real incentive is not saving the 7 percent. I believe the incentive is that this is the chance for the little or maybe not the real important or influential person to kind of get their niche out of the government and it's kind of a...we like to take advantage of the government. This is the chance we have not to pay that tax and I think that is an emotional issue that is much greater than the actual 7 percent. That if I can answer any questions, I'd be glad to. [LB762]

SENATOR DIERKS: Thanks, Jim. Questions for Mr. Otto? Think not. Thank you so much. More testimony in support? Testimony in support of LB762? Is there opposition? Opposition testimony for LB762? Neutral on LB762? [LB762]

JEREMY P. MURPHY: (Exhibit 10) Good afternoon, Senator Dierks and members of the committee. My name is Jeremy Murphy, M-u-r-p-h-y. I serve as associate director of the, for education issues for Nebraska Catholic Conference and we're testifying in a neutral capacity on this bill although neither the Nebraska Catholic Conference nor its affiliate, the Nebraska Federation of Catholic School Parents have taken positions on this specific legislative proposal, we do wish to affirm our longstanding support for the concept of tax relief for families who incur costs related to the education of their children at elementary and secondary levels. Historically we have supported and continue to support tax relief in the form of income tax credits for educational costs and expenses. The one constant that affects the concept of tax relief is the rapidly escalating cost of educating children. Parents of children enrolled in Catholic and other nongovernmental schools are bearing the double burden of paying taxes to support public education and also paying tuition and fees for the education they determine is best suited for their children and they're complying with the state's compulsory education law. By educating a substantial number of students, these non tax supported schools relieve the public schools of a great burden to the benefit of all taxpayers. In Nebraska this amounts to hundreds of millions of taxpayer dollars saved. One final positive benefit of this bill is its application to computers and computer technology which are very important tools in education. With the ever increasing use of computers in the learning process, it is essential that children have the best educational resources possible to further their education. Thank you for your consideration of these comments. Are there any questions? [LB762]

SENATOR DIERKS: Okay. Thank you, Jeremy. Questions for Mr. Murphy? I guess not. Thank you very much. [LB762]

JEREMY P. MURPHY: Thank you. [LB762]

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SENATOR DIERKS: Is there further neutral testimony on LB762? Would you like to close on LB762, Senator Avery? [LB762]

SENATOR AVERY: I noticed that Senator Raikes fled as soon as I started my comments so I'll just give my testimony again. (Laughter) No, I waive. [LB762]

SENATOR RAIKES: It still won't do any good. (Laughter) [LB762]

SENATOR DIERKS: Thank you. That closes the hearing on LB762. [LB708]

SENATOR JANSSEN: Okay. Senator Pahls here? Yeah, there he is. Okay. Tell us about LB708. [LB708]

SENATOR PAHLS: Will do. [LB708]

SENATOR JANSSEN: Welcome Senator Pahls to the Revenue Committee. [LB708]

SENATOR PAHLS: (Exhibits 11 and 12) Good afternoon, my name is Rich Pahls. I represent the Millard Omaha District, District 31. Thank you for this long day, I know. Let me begin. Last year when I came before this committee with a sales tax holiday, I was met with some opposition because of fear of loss of revenue. I do not believe the state or local sales tax receipts will ever suffer a net loss under a sales tax holiday but apparently there is a fear that is real to others. And last year when I looked at this issue, talking to the people from Missouri and from Iowa, they saw this as bringing more people in and I think, Senator Avery, alluded to that factor so I won't pursue that information any more. This year I'm offering an alternative that guarantees no loss in state or local revenue. In fact, the increased business that our retailers will enjoy under this bill will result in increased state and local revenue. When the sales tax was first adopted in 1967 the Legislature included three provisions that are here today. Number one. The sales tax shall be collected by the retailer from the consumer, and number two, it is unlawful for the retailers to advertise that the tax will be assumed or absorbed by the retailer. Number three. The sales tax shall be displayed separately from the price of the article. LB708 makes an exception to all those three requirements, the exception is as follows, on the first Friday, Saturday and Sunday in August. Under this bill retailers may decline to collect taxes, advertise that sales are tax free and that the retailer will absorb the sales tax. And they would also, number three, combine the tax and the price. The retailer is still required to submit the tax that would otherwise be due to the state. LB708 puts the retailer in control of the holiday. The bill is optional. Retailers decide whether to participate and the retailers decide which product will be eligible. Every other state with sales tax holiday has one or both of the following features. They have a dollar cap on the value or volume of the products that qualify or they have a specific list of items that qualify. Most states place both limits on their sales tax holiday sales including

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Iowa and Missouri, which are our neighbors, of course. With this bill, Nebraska would have the broadest sales tax holiday. No dollar limit on the value or the volume of the product and no specific limit of terms that qualify. My bill more than evens the playing field with Iowa and Missouri and places us at even a bigger advantage with Kansas, Colorado, Wyoming, and South Dakota. The biggest feature of this bill is that it will allow Nebraska retailers to more fairly compete with retailers in Iowa and Missouri, our neighbors who already have a sales tax holiday. This would be on the same weekend as they have on, on the weekends dealing with school supplies. And I want to just tell you how some of the information, because I think some of you may have received a letter from the city of Omaha saying they didn't like this because they thought this would reduce revenue. Tells me they didn't read the bill because they would not lose anything. And so I think sometimes people are reading. We called some of the biggest retailers in the city of Omaha. They liked the concept but again they didn't really understand that this bill was there and you'd say, well, gee, they should. And I'm talking about the biggest retailers and they thought this was a good idea. They didn't commit that they would do it or not, but also we talked to Target. And if you see in some of the newspapers that I passed around, the Target person told us compared to the Target, and this was in the Omaha area, the Target stores in the Omaha area as compared to the Target stores in the Council Bluffs area was night and day. There's so much...they had lost so much traffic in Omaha on those days because they went over to Iowa. There's several other stores who are also saying it and I think if you'd read...and I'm just going to read a couple of the information that I did give to you. Tax free weekend is the second biggest sales tax holiday sales day at Mall of the Bluffs next to the day after Thanksgiving. So the first day of sales in the Mall of the Bluffs was after Thanksgiving. The second was the weekend of when they have their sales tax holiday. So that tells you that there's something happening there. It says the crowds of shoppers typically included many Nebraskans. This is coming...I'm quoting from the paper. People have come here from as far away as Grand Island, Kansas and South Dakota. And they said in addition to just buying the products, the school products, they're buying other things. So we're actually losing it and I'm saying is, actual words from the Target store in Omaha compared there, I mean that's, I mean that's just fresh information. Now on one of these I'd just like to...couple of other comments. If the parking lot outside of Dillard's department store was any indication, business was good Saturday for the annual sales tax holiday. One person said, there's nowhere to park in her store's lot in the Mall of Bluffs. In fact, she said, the store was doing about 30 percent more business than last year. And now I'm going to read one from J. C. Penney's at the Mall of the Bluffs. The store had lines at cash registers until 7:00 p.m. Bloomingdale said the back-to-school tax holidays are the store's biggest days of the year. Sales were up from last year she said. Back to school is a huge success. So if that's a huge success, think what would happen if we'd have a holiday where any item that a retailer would want to pay the sales tax on, that would be a motivation, could be a jump start and I know at times the retailers...I know there will probably be some discussion of not supporting this but I don't say that's all of them, because some of the ones I talked to, they did not have enough

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information. Thank you. [LB708]

SENATOR JANSSEN: Any questions? Ron. [LB708]

SENATOR RAIKES: Couldn't you do that now? [LB708]

SENATOR PAHLS: No, by law you cannot do that and I found out that...thank you, for that question. I found out this summer when I was over at the Revenue Department going through some of their...they had a day that we was supposed to learn some of the stuff that goes on over there and that was brought up. (Laughter) Well, you were telling me this stuff, no, no, I'm just giving...yes, but anyway, one of the comments that they made is that there had been retailers who had wanted to do this but they could not do it because it was breaking the law. [LB708]

SENATOR JANSSEN: Okay. Any other questions? [LB708]

SENATOR RAIKES: I would just say, I've been a little dubious of the idea of a sales tax holiday but I really like your funding mechanism here a lot better. (Laughter) [LB708]

SENATOR PAHLS: I figured that would at least have you thinking. (Laughter) [LB708]

SENATOR JANSSEN: Other questions? Thank you. [LB708]

SENATOR PAHLS: Yeah, thank you. [LB708]

SENATOR JANSSEN: Proponents please. Those in favor of this idea, don't all get up at once. Oh, seeing none, are there any opponents? Here comes one. [LB708]

JIM OTTO: Senator Janssen, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation and I'm here to testify in opposition to LB708. First of all, I want to say that Senator Pahls's heart is in the right place. He...and we appreciate his efforts. We just don't think it would accomplish what he wants to accomplish. Senator Pahls is exactly correct when he was talking about all of those cars that are in the Council Bluffs parking lots on the sales tax holiday weekend. The concern that we have is that, first of all, it really isn't a sales tax holiday because you still are collecting the sales tax. The difference is the retailer pays it and once again, Senator Pahls is correct. Presently a retailer cannot advertise that they are paying the tax but in order to accomplish what we have happening in Iowa, we need to have something similar happening in Nebraska that would be competitive with that. When we...in Senator Avery's bill, it outlines specifically which things would be tax, not taxable. Our concern is that one, first of all, we don't think many retailers would take advantage of it. Some would but not very many and secondly, one retailer would have computers on sale, another retailer would have bicycles on, with that they're going to pay the sales tax.

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There would be no consistency as to which items were tax exempt, or the retailers paying the sales tax on because it's completely up to each individual retailer which items they choose to say they're going to pay the sales tax on. So the customer would be confused because they're thinking I can get computers everywhere, at least in Iowa, or whatever their law is, maybe computers are exempt those two days. In Nebraska, at one store, computers might be exempt. At another store maybe computers aren't exempt, and maybe clothing is exempt or all kinds of different things. So we don't think it would be consistent and because of that, it wouldn't accomplish what we really want to accomplish and what we want to accomplish is more people shopping in Nebraska and more revenue for Nebraska. One of the real concerns we have is...the real thing is, if you do change it, we would think that we would have to advertise the retailer pays the tax because that truly is what is happening. Senator Pahls in line, or paragraph 3 on page 3 of his bill it says, any retailer who makes an election under this section may advertise, state, declare or hold out that such sales are tax free sales. That simply is not a true statement. They are not tax free sales because the tax is being paid. So we don't see how you could advertise them as being tax free sales when they truly aren't tax free sales. We do see how you could advertise them if the law were changed that the retailer is paying the tax. We don't feel that accomplishes, in the eyes and the mind of the buyer, the shopper, what gets sales tax holidays to work and that is, they're putting it to the government. The tax is still being paid. We don't think that it will accomplish what Senator Pahls wants to accomplish and it is with that, I'll answer any questions if I can. [LB708]

SENATOR JANSSEN: Jim, what if we would put Senator Avery's list in this bill? [LB708]

JIM OTTO: If...I know I heard Senator Avery suggest that and I don't know if you put Senator Avery's list in this bill or if you put something into Senator Avery's bill but maybe the two together would make sense. But I'm still a little concerned that I'm not sure you can...well, then any retailer could choose to do whatever they want above and beyond the items that were actually not taxable items, that might make sense. [LB708]

SENATOR JANSSEN: Abbie. [LB708]

SENATOR CORNETT: Isn't this just really, I mean couldn't this be accomplished just by advertising exactly like you advertise a sale? We have computers on sale this weekend. Computers don't go to Best Buy when Nebraska Furniture Mart has an ad for a sale. [LB708]

JIM OTTO: Well, I think you'll, and I wish I could, could... [LB708]

SENATOR CORNETT: I mean it's in there that you have to advertise. Okay. Maybe the wordings not right on the way that they have to advertise it but basically, it's no different than a sale. [LB708]

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JIM OTTO: I agree. It shouldn't be any difference than a sale but in the mind of the consumer, I don't...it's phenomenal to me how successful these are. I don't quite get it and I think there's something about the tax not being paid. [LB708]

SENATOR CORNETT: I think in the mind of the consumer if you pay the tax it's just as good as if the government collects it. [LB708]

JIM OTTO: I would have to... [LB708]

SENATOR CORNETT: We're getting it for free. I mean... [LB708]

JIM OTTO: Maybe, we could try it but I don't think so. I think that there's the, this is my chance to get to the government. I'm going out there and I'm going to get these things and I'm not going to pay any sales tax and nobody is and as long as that tax is being paid, I don't think you accomplish that. [LB708]

SENATOR JANSSEN: Chris. [LB708]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. On that philosophy there that they're sticking it to the government. [LB708]

JIM OTTO: I didn't say it that way, did I? I didn't say stick. I didn't say stick. (Laughter) [LB708]

SENATOR LANGEMEIER: I'm pretty sure you did. (Laughter) I think we can go back to the transcript but I think I accurately quoted that. Why then, across this state, is cities want to implement city sales taxes. They pass with, I can't think of any that haven't passed. People vote them in unanimously but yet on one day they would like to stick it to the government as you said. That's two different philosophies that can't go together, I guess. [LB708]

JIM OTTO: I think most people think sales tax is a fair tax and is a fair way to tax people but it's also a tax that's paid by everyone and it's the chance for just the regular consumer to avoid tax that day. So I don't know, it's just the... [LB708]

SENATOR LANGEMEIER: I'm curious. I'm just, your thoughts. [LB708]

JIM OTTO: I'm curious too. When you look at the success of sales tax holidays it really doesn't make any logical sense if you're just talking about 7 percent off so it...because a 7 percent sale would be nothing as I said before. But somehow they are extremely successful and it must be that emotional factor. I don't know. Maybe I'm wrong, but... [LB708]

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SENATOR LANGEMEIER: Okay. Thanks. [LB708]

SENATOR JANSSEN: Any other questions? Don't see any. [LB708]

JIM OTTO: Thanks. [LB708]

SENATOR JANSSEN: Any other opponents? Okay. Any neutral? [LB708]

JACK CHELOHA: Good afternoon, Chairman Janssen, members of the Revenue Committee. My name is Jack Cheloha, C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I wanted to testify in a neutral capacity on LB708. We did send around a letter earlier today to all of the members of the committee and then respectively to Senator Avery and Senator Pahls regarding the sales tax holidays. I have to apologize on behalf of my city finance department because they group these bills together, didn't quite catch that LB708 would require the retailer to submit the sales tax, and for that reason we've moved from an opposition to neutral on LB708, and so I wanted to apologize to Senator Pahls on behalf of the city of Omaha for that and I'll try to answer any questions. [LB708]

SENATOR JANSSEN: Any questions? You're off the hook. [LB708]

JACK CHELOHA: Thank you. [LB708]

SENATOR JANSSEN: Anyone else neutral? Senator Pahls. [LB708]

SENATOR PAHLS: Just a couple of things as I think you probably know where we...what our thinking is and I want to say, God forbid we'd have free enterprise. This store does this thing and this store does this thing. I mean I just can't believe in the United States that that would be bad. And I also think I...Senator Avery showed me some of the marketing that some of these stores are doing and that's what part of this is, is to help with the stores. It is optional but they do not have to do it. It's simply what I have to say. Thank you. [LB708]

SENATOR JANSSEN: Questions, oh, okay [LB708]

SENATOR LANGEMEIER: If we can't master free marketing would you accept the list out of Avery's? (Laughter) [LB708]

SENATOR PAHLS: Well, then we'd have to do some changes within... [LB708]

SENATOR LANGEMEIER: Well, we're good at that. All right. Thanks. [LB708]

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SENATOR PAHLS: Thank you. I appreciate it. [LB708]

SENATOR JANSSEN: That ends the hearing on LB708. Senator Hudkins is here to introduce LB1010, change the sales tax, use collection fees. [LB708]

SENATOR HUDKINS: Good afternoon, Senator Janssen and members of the committee. I am Senator Carol Hudkins. I represent, that's H-u-d-k-i-n-s, and I represent Legislative District 21 and I'm here today to offer for your consideration LB1010. This is a simple bill. And I know you've heard that many times but this one really is, and it's a fair bill. In 2002 businesses were asked to give up some of their fees to help the state balance our budget. They are asked to collect the state sales tax and then remit it to the Department of Revenue and in a time of economic downturn, they were asked to give up part of their fees. And what we want to do with this bill is put them back to where they were prior to the budget crisis of 2002. On...say on items that individuals and businesses sell, the businesses receive two and a half percent of the amount of everything under \$3,000, and then at that time they were asked to give up everything over \$3,000. What we're asking is to give them back that one-half percent of items over \$3,000. The bill doesn't raise taxes but it does recognize that businesses incur costs to collect and remit the taxes to the state on behalf of the state and they shouldn't have to make the decision whether to eat those costs or pass them on to their customers. And you know, of course, what they're going to do. So we're just asking to put things back like they were prior to 2002. Now I know that the fiscal note is not good but in times of crisis we ask the businesses to give this up, and they're saying, hey, it costs us money to collect this and so we're asking that you give it back to them on items over \$3,000. [LB1010]

SENATOR JANSSEN: Ron. [LB1010]

SENATOR RAIKES: Senator Hudkins. I've got a couple of sales tax certificates and, okay, I collect sales tax for the months ending January and I hang on to the sales tax and I finally owe it the 25th, I believe, it is of February so I get the use of the money for, well, at least on the average at least a month, a little over a month and I do get something for it so it's not like it's a total loss to me. The other thing is, I also withhold income tax from employees. Should I get paid for withholding and submitting state withholding? [LB1010]

SENATOR HUDKINS: That's not part of this bill. [LB1010]

SENATOR RAIKES: Okay. So you're rejecting that amendment? I appreciate that, but... (Laughter) [LB1010]

SENATOR HUDKINS: Well, and as far as their being able to hold that money, prior to 2002, they were able to do that and then we took that away from them. So we're just

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saying, let's put it back like it was. You know, we're a little more flush with money now. Let's give the businesses what it costs them to actually collect these sales taxes. [LB1010]

SENATOR RAIKES: Okay. Thank you. [LB1010]

SENATOR JANSSEN: Any other questions? I don't see any Carol. [LB1010]

SENATOR HUDKINS: Okay. And I waive closing. Thank you. [LB1010]

SENATOR JANSSEN: Okay. Thank you. Any proponents? Jim. [LB1010]

JIM OTTO: Senator Janssen, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation. Also a registered lobbyist for the Nebraska Restaurant Association and I appear here today on behalf of both in favor of LB1010. And we are very appreciative and want to thank Senator Hudkins for introducing this. It's a...we really do appreciate it and also appreciate Senator Burling introducing a very similar bill last year which got indefinitely postponed, I think, before I got out of the room. I thought maybe you could try to delay that a little longer this year, Senator Janssen, but anyway... [LB1010]

SENATOR RAIKES: Walk more quickly. (Laughter) [LB1010]

JIM OTTO: One of the reasons to introduce this and I recognize the challenge of the fiscal note but we being the retail industry in Nebraska is a significant industry. The retailers and the restaurants do collect a significant portion of the sales tax and one of the reasons to keep introducing it, even if I'm not successful in getting you to advance it to the floor, although I am optimistic, is that especially now during term limits no one, it's easy for people to forget that it used to be this way. It used to be that retailers got one-half of 1 percent of all the sales tax collected. Presently they are limited to \$75 a month or \$900 a year, it doesn't matter how many millions of dollars of tax they collect. So that is the maximum that a retailer can get is \$900 a year under the present law. And the other thing that I have to use this platform to explain, is that retailers do in fact remit more tax than they collect. And that is because of the charge on credit card sales. On a \$100 sale in Lincoln or Omaha there would be a \$7 tax. That \$7 in tax is, at least probably on somewhere close to 60 percent of the sales, is on a credit card. That retailer pays somewhere between one and a half and two percent of that \$7 in a credit card processing fee. So in the case of the \$7 tax, the retailer probably collects somewhere around \$6.88 but still remits \$7. So that's one of the things that kind of sticks in the craw of retailers is they actually remit more set tax than they collect. Now last year when I brought that suggestion up, Senator Raikes also brought up the cost or the time value of money, which is a valid concern but in today's interest rates, \$7 per month might get you another couple cents so still, you still don't get up to the, I don't

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know, if we get 6 percent that means one-half of 1 percent. If there's a 6 percent return, which is high on money and savings or whatever, and this is for one month of the twelve months then that would one-half of 1 percent a month on the \$7 which is maybe three and a half cents, is that right. So my point is, that even if you take the time value of money into the equation, retailers still do, especially on the credit card sale, remit more tax than they collect. And that's one of the reasons that we continue to ask for you to reconsider this. The other thing to...and the real value of advancing it to the floor to us, we wouldn't be...is that we could help educate all the members of the floor that it used to be, of the body that it used to be this way. That retailers do a significant service and restaurants do a significant service in employment and business for the state, always considered secondary employers, not primary employers so never qualify for LB775 or any of those things. There was just another bill introduced this year to get retailers to collect advanced recovery fee on electronic recycling, and the retailer was not going to be reimbursed in any significant way for recovery, redoing that. So I'm just using this opportunity to tell you all the things that retailers and restaurants do for the state and they really don't get reimbursed for it. With that, I'll try to walk fast. (Laughter) [LB1010]

SENATOR JANSSEN: One thing about the credit card, Jim, they don't bounce. [LB1010]

JIM OTTO: That's true. [LB1010]

SENATOR JANSSEN: You pay, sure you pay. There is a fee but you end up with thousand dollars worth of bad checks at the end of the month, you don't see that happen near as much, being a retailer myself, as we used to, because of the card. [LB1010]

JIM OTTO: Yeah, it's true. That's one of the reasons... Thank you. [LB1010]

SENATOR JANSSEN: Any other proponents? Any opponents? [LB1010]

GARY KRUMLAND: Senator Janssen, members of the committee, my name is Gary Krumland, K-r-u-m-l-a-n-d, representing the League of Nebraska League of Municipalities. I just wanted to appear basically to put something on the record. If you look at the fiscal note, it says the impact of LB1010 on political subdivisions is simply, counties will get a collection fee and, as this committee knows, this bill will have an impact on the local option city sales tax in that the Department of Revenue charges a proportional part of the fees that retailers collect to the local option sales tax too. So it would result in a loss of the sales tax to the cities in addition to the state. Since the fiscal note didn't mention that, I just wanted to make that part of the record. [LB1010]

SENATOR JANSSEN: Okay. Any other questions? All right. Seeing no questions, thank you, Gary. [LB1010]

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GARY KRUMLAND: Okay. [LB1010]

SENATOR JANSSEN: Any other opponents? Neutral? Seeing none, Senator Hudkins waived closing and that ends the hearing on LB1010. Senator Langemeier. [LB1134]

SENATOR LANGEMEIER: Good afternoon, Chairman Janssen and members of the committee. LB1134 would update the definition of food for human consumption to include the species of game birds subject to permit regulated by Game and Parks Commission. Last session we heard a bill introduced by a colleague or colleagues, Senator Stuthman, dealing with the current sales tax exemptions. We have in place for ag commodities, seed chemical, animal life, which ordinarily consists of food in human consumption. The Senator was seeking clarification and an update as currently there is in existence, a great deal of confusion among game bird and hunting businesses as to what is taxable. There's also a need for clarification for the Department of Revenue as well. We heard several bills during the sales tax exemption that day, and I think we killed them all in one felled swoop. Since that time I've had the opportunity to sit down with the game bird hunting association folks and I have a better understanding of why it is important to update the definition and clarify it for all involved. The bill derives, from last year, in that it uses the definition already that exists in statutes and that is, species of game birds subject to permit and regulation by the Game and Parks Commission. This includes pheasants, quails, turkeys, partridge, etcetera. The Department of Revenue in negotiation in audits have come back on the game bird associations, the game bird suppliers, that had not been paying any tax. And through diligent work in their office, I say they're overachievers lately, they had the opportunity to audit these and go back, and go back and audit, and found some clarification in their language that said, these entities should be taxed. Through some negotiations with them prior to that bill coming before this committee last year, we all seemed to come to an understanding that these animals were truly for food consumption and they shouldn't be taxed. However, as this committee killed that bill last year, that sent a signal to the agency that maybe they hadn't interpreted it quite right. And so, at that point they thought, well, since we killed that bill, they should be taxed. And I think the discussion amongst the committee members at the time was, is we didn't think it needed to be taxed so we didn't need any further legislation, it should be nontaxable, and so the legislation was not pertinent at that time. But however, due to that reaction, here we are today to get it clarified. And so with that, there's more testimony behind me of exactly how this works in the industry, and if there's any questions, I'm more than happy to answer them. [LB1134]

SENATOR JANSSEN: Any questions of Senator Langemeier? Seeing none, thanks Chris. We'll take proponents. Those in favor of the legislation. [LB1134]

KIM SNOW: (Exhibit 13, 14, and 15) Mr. Chairman, members of the Revenue Committee, my name is Kim Snow, S-n-o-w. I'm here today representing the Nebraska

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Gamebird and Hunting Association. Knowing you've had a long day and in the interest of time, I'm also representing the following groups in support of LB1134, the Nebraska Outfitters and Guides Association, the North American Gamebird Association, Cabela's, Incorporated, Werner Enterprises, Incorporated, and the Nebraska Travel Association, and Nebraska Hotel and Motel Association. I do have copies of my testimony here and some copies of these letters that... [LB1134]

SENATOR JANSSEN: The pages will get them. [LB1134]

KIM SNOW: Thank you. This issue is important to the 225 hunting preserves and over 300 game bird producers all across Nebraska. These individuals primarily represent farmers and ranchers who have diversified their operations to seek alternative ways to keep the family on the farm. This industry in Nebraska is only 20 years old and has rapidly grown in the last 10 years. We simply all work together to provide quality corporate and private hunting opportunities for people of our country and also from many other countries. Our industry is environmentally friendly. We put vast amounts of acres into wildlife habitat which nearly eliminates the use of herbicides, pesticides, and fertilizers, which improves the quality of our air, ground, and water. We do these practices at our own expense and we are not government funded or subsidized. According to a 2006 national survey of the fishing, hunting and wildlife association, the small game hunting industry is a \$2.4 billion industry nationwide and a large portion of this supports our local hotels, restaurants, and rural businesses. Although we did not bring the legislation before you last year, this clarification is critical to the future of our industry. It is a very competitive environment. This clarification greatly impacts our ability to be successful and compete. As Senator Langemeier shared in his opening, the game bird industry seeks clarification and asks that you update the current definition that exists. The question that has been asked and needs clarification is this? Do game birds meet the current definition of animal life, which ordinarily constitutes food for human consumption? If so, the sale of, and the inputs to game bird producers are both exempt from Nebraska sales tax. The game bird raising industry has always assumed that game birds are animal life which ordinarily constitute food for human consumption, therefore, are exempt from sales tax. Game bird raising has also been considered an agriculturally based enterprise which would fall into the same category as poultry. I also have a list of restaurants, internet sites, and stores, that's this book here, where one can purchase game birds. Today game birds are widely available and sought after by consumers. Declaring game birds taxable creates a financial burden on the industry which allows game birds to be taxed too many times, often twice, in the same day. Declaring game birds taxable also puts a great economic disadvantages with our neighboring states which have already addressed this issue, and declared game birds to be exempt. Please keep in mind that we are not seeking an exemption on taxes paid on the hunts themselves. The Nebraska game bird and hunting industry has had a strong momentum going for 20 years and we ask that you support LB1134, and please help us keep our rural economy growing. I greatly appreciate your time today and

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Senator Langemeier, thank you for bringing this bill back. I thank each of you for your willingness to listen and to serve our state. I ask for your support and be happy to answer any questions you may have. [LB1134]

SENATOR JANSSEN: Any questions? Abbie. [LB1134]

SENATOR CORNETT: Just one. I'm assuming that other wild game is exempt. Like if you...maybe Chris could answer this or I don't know. [LB1134]

KIM SNOW: Well, I think I can. Just wild game that is hunted in Nebraska? [LB1134]

SENATOR CORNETT: For sale, like the venison for sale in grocery stores which you can buy at some of the specialty stores and hare, rabbits...I would assume so. [LB1134]

KIM SNOW: Yes, I assume they are exempt also. [LB1134]

SENATOR CORNETT: So we're only taxing game birds then? [LB1134]

KIM SNOW: Yes, I believe so. [LB1134]

SENATOR JANSSEN: Okay. Ron. [LB1134]

SENATOR RAIKES: How does \$5 corn affect your industry? [LB1134]

KIM SNOW: To feed \$5 corn and \$10 beans has greatly affected the input cost of the game bird industry lately but... [LB1134]

SENATOR RAIKES: I would assume it would also impact the land set aside for habitat. [LB1134]

KIM SNOW: Yeah, but the one thing about the, like the feed and stuff it's up but it's also up nationwide which puts us at a competitive, equally playing field with the rest of our states. That's just part of life, I guess, when input costs go up. The problem with the sales tax issue is, all of our surrounding states have already declared these tax exempt which puts us in a disadvantage because we've got, now the out-of-state birds are being purchased and coming into our state because they're tax free. And also our hunting prices and everything have to go up and that really puts us at a disadvantage with South Dakota and the states that are getting our hunting business now because our prices have to go up to cover these kind of prices. [LB1134]

SENATOR RAIKES: Okay. Thank you. [LB1134]

KIM SNOW: Thank you. [LB1134]

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SENATOR JANSSEN: Other questions? Senator Preister. [LB1134]

SENATOR PREISTER: Who comes to you, I mean, who are your customers? [LB1134]

KIM SNOW: To buy game birds? [LB1134]

SENATOR PREISTER: You're not just selling the game birds are you? [LB1134]

KIM SNOW: Personally myself now we are, yes. We hunted until a year ago. We've been in a hunting business for up close to 20 years so I'm real familiar with the hunting business but personally my operation just sells game birds now and produces. [LB1134]

SENATOR PREISTER: So you're just selling them to the other places that would have the hunt experience. [LB1134]

KIM SNOW: Yes, to the other operations, yes. [LB1134]

SENATOR PREISTER: Okay. I guess I was wondering about who we're competing with and how we're competing when you mentioned South Dakota and Iowa. I was wondering about if those folks are coming from a distance that they would go to any one of the states but how competitive the business was coming into Nebraska versus going anywhere else. [LB1134]

KIM SNOW: Well, the aspect of purchasing game birds would be, you know, we're five and a half percent higher on game birds due to the sales tax than even our neighbors that who need game birds can call Kansas and get, you know, get game birds tax free which is a game bird side. The hunting side is, I guess, just the increased price in our hunts that, that we've been competing with South Dakota and neighboring states for the hunting business for about 20 years which is the time frame with this industry has really grown in Nebraska. And that is, we are doing a very effective job of that. We, you know, we've have really grown in our quality of our operations in Nebraska and have a foot in the door on getting a lot of business and keeping the momentum going. This just sets us back. We have, you know, our industry out there right now is somewhat running under the radar since this is a new thing where these birds might be taxed, they're all fearing that they're the next one to get audited and set back with three years of owed taxes and penalties and there's been a few audits that have really put fear into our industry now so they're out there kind of running under the radar hoping they're not next because it's a fine big enough to where it's really damaging part of the businesses. So that's basically why were not, we don't feel we're asking for a new exemption. We're just clarifying the wording that feel we've always been exempt and the Revenue Service just has interpreted the wording to where they're starting to audit and saying, we're going to tax these birds. You know, we see all of the southern states drive through Nebraska and on

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to the Dakotas still. They're driving right through our states and we're offering the quality that the Dakotas are in hunting and saying, a lot better we feel, and we just need all the help we can get to stop them all in this state instead of keep going through, and I think we're doing a very effective job so far. We just need this competitive, not a competitive edge but this would just keep us on an even playing field with our neighboring states. [LB1134]

SENATOR PREISTER: Thank you. [LB1134]

KIM SNOW: Thank you. [LB1134]

SENATOR JANSSEN: Now, do you, you raise the pheasants or quail or whatever you do. [LB1134]

KIM SNOW: Yes. [LB1134]

SENATOR JANSSEN: And then do you resell them to a hunting areas or do you have hunting on your property also? [LB1134]

KIM SNOW: We just quit hunting last year at our, on our property. Now personally we just sell to the operations that do the hunting. [LB1134]

SENATOR JANSSEN: Okay. And you have, they have to pay the tax on that then? [LB1134]

KIM SNOW: Yes. See, we, you know, the way they interpret it now, I have to pay sales tax on all the inputs to the game bird and which is all the feed, bedding, fencing, mainly everything that goes into the game birds, and then when I sell them to a preserve they have to pay sales tax on the bird at that time and oftentimes the same day or day later, they have to collect sales tax on that pheasant or game bird again, and so what our position... [LB1134]

SENATOR JANSSEN: If they're in Nebraska. [LB1134]

KIM SNOW: Yes, yes, which most of them are. So our position is where, you know, we have basically a \$10 pheasant that ends up creating about \$3.50 in sales tax and we want a simple end user sales tax like a wholesale retail situation should be is what we feel we should have, and that's the hunter being the end user in collecting the sales tax at that time on the hunt which a pheasant will generate about \$40, \$50 a piece on the hunts and we're not opposed to that at all. [LB1134]

SENATOR JANSSEN: Okay. Thank you. Any other questions? Seeing none, thank you. [LB1134]

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KIM SNOW: Thank you. [LB1134]

SENATOR JANSSEN: Are there any other proponents? Opponents? Neutral? Senator Langemeier. [LB1134]

SENATOR LANGEMEIER: We tried to consolidate everybody and as he read off that whole list of people that wanted to come and testify to save some time. The crucial component is here is, we have these hunting preserves here in Nebraska. They're looking at our Nebraska suppliers of birds and saying, oh, we've got to pay sales tax from you, I don't think so. We're calling Kansas and those suppliers are bringing these birds up and then dumping them for us to hunt here, and then the people are paying high dollars to hunt these and then they're paying sales tax on that which I think is very appropriate. We talked a little bit about who does this. Most of these, I think, are corporate sponsored type perk kind of a deals. Corporations will bring in clients and come out to hunt so I think that's kind of the main thing. What's nice about bringing them to Nebraska is they're all, got to have motel rooms, they've got to rent rental cars, they got to get there, and they got to go out to eat and then they can take their bird home with them and eat it but while they're here, they have to buy everything and that's, those are good people to have to come to your state that don't have a home to go back to right away and lose the revenue there. [LB1134]

SENATOR JANSSEN: Any questions? Abbie. [LB1134]

SENATOR CORNETT: Chris, I don't know, do we have hunting preserves for deer and other game in the state? [LB1134]

SENATOR LANGEMEIER: Yes. [LB1134]

SENATOR CORNETT: I thought we did and is that, are they taxed or do we just single out game birds here? [LB1134]

SENATOR LANGEMEIER: They fall into the old definition. We're putting game birds in that definition with this to... [LB1134]

SENATOR CORNETT: And the game birds were out of that before? [LB1134]

SENATOR LANGEMEIER: Right. [LB1134]

SENATOR CORNETT: Okay. [LB1134]

SENATOR LANGEMEIER: They were exclusively in it so we're adding them to, you know, there's an elk countdown... [LB1134]

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SENATOR CORNETT: Right. [LB1134]

SENATOR LANGEMEIER: ...in southwest Nebraska and some deer hunting and yeah, we have those kind of facilities out for big game. [LB1134]

SENATOR JANSSEN: Cap. [LB1134]

SENATOR DIERKS: Chris, we don't tax anything in the food chain do we anymore of... [LB1134]

SENATOR LANGEMEIER: I didn't hear that. [LB1134]

SENATOR DIERKS: We don't tax anything in the food chain. [LB1134]

SENATOR LANGEMEIER: Right. That's why we're, we wanted to define this and we use this definition that we cleared it with the Department of Revenue to make sure that this wording would do it and they've approved it, and I asked if they were going to testify neutral and they said, we don't think you need it. You're good to go with that so, if you choose to do this, I guess. [LB1134]

SENATOR DIERKS: Thank you. [LB1134]

SENATOR JANSSEN: Any other questions? Don. [LB1134]

SENATOR PREISTER: Senator Langemeier, I'm glad you clarified in your opening that because this committee killed the bill last year, that that was not a signal that we thought it was an inappropriate bill necessarily and that our signal, at least from my perspective, was not that at all so that would be a misinterpretation of what that vote was. I'm glad you mentioned that in your opening. [LB1134]

SENATOR LANGEMEIER: (Exhibit 16) You bet. So that's why I think it's important to hand that out. I am going to give out one more piece of paper to prolong this a little bit. There's a nice article in the Omaha World-Herald talking about rural tourism and how these kind of hunts have become a great economic tool across the state. People are really taking on to it. I don't hunt, so it's unique. Any other questions? [LB1134]

SENATOR JANSSEN: Any...thank you, Chris. [LB1134]

SENATOR LANGEMEIER: Thank you. Have a great weekend. [LB1134]

SENATOR JANSSEN: Okay. Do you want to do a little Exec? []

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Disposition of Bills:

LB708 - Advanced to General File, as amended.  
LB762 - Indefinitely postponed.  
LB1001 - Advanced to General File, as amended.  
LB1010 - Indefinitely postponed.  
LB1126 - Held in committee.  
LB1134 - Held in committee.  
LB1137 - Held in committee.

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Chairperson

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Committee Clerk