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Revenue Committee
February 24, 2010

[LB954 LB967 LB981 LB1053]

The Committee on Revenue met at 1:30 p.m. on Wednesday, February 24, 2010, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB967, LB954, LB981, and LB1053. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Galen Hadley; LeRoy Loudon; Pete Pirsch; and Dennis Utter. Senators absent: Tom White.

SENATOR CORNETT: Good afternoon and welcome to the Revenue Committee. I am Senator Abbie Cornett from Bellevue. To my left is Vice Chair, Senator "Cap" Dierks from Ewing; Senator Greg Adams from York will be joining us. To my far left is Senator Hadley from Kearney; on my far right, Senator Pete Pirsch from Omaha will be joining us; Senator Dennis Utter from Hastings; Senator LeRoy Loudon from Ellsworth; Senator Tom White from Omaha will not be here today. The research analysts are Steve Moore to my right and Bill Lock to my left. Committee clerk is Erma James and pages today are Abbie Greene and Ryan Langle. Before we begin the hearings today, I'd please ask everyone to turn their cell phones to either off or vibrate. Sign-in sheets for testifiers are on the tables by both doors and need to be completed by everyone wishing to testify. If you are testifying on more than one bill, you need to submit a form for each bill. Please print and complete the form prior to coming up to testify. When you come up to testify, please hand your completed forms to the committee clerk. There are clipboards by the back of the room to sign in if you do not wish to testify but wish to indicate either your support or opposition to a bill. The sheets will be included in the official record. We will follow the agenda posted on the door. The introducer or representative will present the bill, followed by proponents, opponents, and neutral testimony. Only the introducer of a bill will be allowed closing remarks. As you begin your testimony, please state and spell your name for the record. If you have handouts, please bring ten copies for committee and staff. If you only have the original, we will make copies. When you come up, please hand those copies or handouts to the pages. With that, we will begin the hearing. Senator Schilz, you are recognized to open on LB967.

SENATOR SCHILZ: (Exhibit 1) Thank you, Senator Cornett and members of the Revenue Committee. I'm here before you today to introduce LB967. LB967 creates...oh, I'm sorry. I'm Ken Schilz. I represent the 47th District, that's K-e-n S-c-h-i-l-z. [LB967]

SENATOR CORNETT: I think we can figure out how to spell yours. (Laugh) [LB967]

SENATOR SCHILZ: That's okay. I just wanted to make sure I get it on the record. Okay. LB967 creates a rural safety net for municipalities of the first class, second class, and villages experiencing high levels of loss of local sales tax revenues due to state incentive programs such as the Employment Investment Growth Act and Nebraska Advantage. The safety net is provided through the establishment of a refund fund to be used administratively by the Tax Commissioner when a municipality experiences local

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sales tax losses exceeding 10 percent in a given budget year based on the average annual sales tax revenue generated by the local community in the three previous fiscal years. The loss of greater than 10 percent of the local sales tax revenue has created severe budgetary challenges for local municipalities because of unanticipated losses. Current state policies to grant a municipality only 30 days notice on the loss of local sales tax revenues on existing contracts through employment investment growth. Identification process will grow to one year when the Nebraska Advantage is fully implemented and contracts allowing for refunds are exercised. But there is no provision currently for extending notification on other existing contracts. Municipalities plan for their budget years which run from October 1 through September 30 each year, weeks in advance before their budgets take effect. Even using historic data on the loss of local sales tax revenues does not provide the municipalities any exact amount of information on what can be expected on future losses of local sales tax revenues over the 12 months of its fiscal year. Once local budgets are set, revenue anticipation cannot be changed and when the losses substantially go over historic levels, the municipality is left in a very challenging situation that could create the loss of local services and employees needed and expected by local citizens to provide those services or in making payments on the debt service or bonds dependent upon the local sales tax revenue for payments as originally decided by a local vote of the citizens. The refund fund will help spread out any such impact in resolving the excessive highs or lows experienced by the respective municipality when trying to anticipate its local sales tax loss to state incentive programs each year. Each municipality could then plan on a worst-case scenario of how much loss they might experience up to a 10 percent level. The refund fund is used only to borrow against during those times when the excessive loss occurs and paid back to the fund by the municipality during years it does not exceed the 10 percent loss, with this being administered by the Tax Commissioner. Incentive programs were adopted by the state without local consent on the possible loss of local sales tax revenue. LB967 would give the state the opportunity to be proactive on the issue and provide a mechanism to prevent fiscal harm to the local municipalities due to the excessive and unanticipated loss of revenue as a result of state policy. The one seed fund option getting the most support seems to be the one-time, one-month, 1 percent fee from all sales tax revenues generated in one specific month throughout Nebraska. This would seed the refund fund and provide ample funding to do so for the foreseeable future based on what the losses experienced to date have been. I have some folks here that will be here to testify that know this issue inside and out. I would say that I handed out a letter from the city of Bridgeport. (Exhibit 2) I received that two days ago, and this is the first time that I know of that Bridgeport has had this problem as well. And I think what...I'm afraid that what we're seeing is we're starting to see more and more of this happening throughout the state and it's becoming concerning to me. This is now the second city in my district that's having this issue and I think that we need to move forward and find a solution to this. So with that, I would answer any questions, but as I've said, there's other folks here that will like to testify and they have much more experience with this than I. [LB967]

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SENATOR CORNETT: Questions from the committee? Senator Utter. [LB967]

SENATOR UTTER: Thank you, Senator Cornett. Senator Schilz, can you just briefly tell me how you arrived at the 10 percent figure instead of 5 or 15 or 20? How did the 10 percent come about? [LB967]

SENATOR SCHILZ: Well, we had to start somewhere and so that 10 percent figure was what the communities that we were discussing it with thought would be a good place to start. I'm not sure if that's the proper place to be. I think that...and one of the considerations that I'm seeing now is that we need to be careful that as more and more communities may fall into this situation, that we make sure that companies aren't just always taking out but have a level where we can put back in. So truthfully...and Gary Person is here from Sidney and he...you know, that 10 percent was from work that we had done with him. And so, but I don't think that's a magic number in any way. I'm not sure that there was any analysis done to bring that out, but Gary would have...might have a better answer on that than I. [LB967]

SENATOR UTTER: Do you know what kind of shortfalls the cities in your district that are experiencing these problems have had? What has been the shortfall in tax receipts? [LB967]

SENATOR SCHILZ: Sure. Well, I can tell you and Gary can correct me if I'm wrong when he comes up, but Sidney is looking at having about a million dollars less than they expected this year. [LB967]

SENATOR UTTER: And what percentage would that be? [LB967]

SENATOR SCHILZ: I would ask you to ask Gary that. He knows those numbers. I just know the amount and I think that's correct, so you can sure ask him. [LB967]

SENATOR UTTER: Thank you. [LB967]

SENATOR DIERKS: Other questions? Senator Louden. [LB967]

SENATOR LOUDEN: Yes, thank you, Senator Dierks. Well, as I look at this bill, Senator Schilz, is there anything in there that stops anybody from raiding that fund, like the raids that went on last November? [LB967]

SENATOR SCHILZ: You mean as in the check-off fund and things like that? [LB967]

SENATOR LOUDEN: Yeah, is there anything in the bill? [LB967]

SENATOR SCHILZ: You know... [LB967]

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SENATOR LOUDEN: I haven't looked the bill over close enough. [LB967]

SENATOR SCHILZ: I'm guessing that right now there is not anything in that bill to do that. So I would say no at this time. And we do have...and I'm not sure if the committee has got it, but we do have the amendment that sets up how the funding is and I'll make sure that we get that so that you guys all have that. [LB967]

SENATOR LOUDEN: Yeah. Well, I said after going through that baptism by fire last fall with some of our check-off funds, I'm always quite dubious about setting up funds because that doesn't necessarily mean that that money will always be there for what we intended it to be there, and that's...I was wondering if there was any way that that can be, I guess what would you say, put a guard on it. [LB967]

SENATOR SCHILZ: Sure. [LB967]

SENATOR LOUDEN: Put a big dog on the front porch. [LB967]

SENATOR SCHILZ: I would definitely be open to that. That would be something that I would be happy if the committee would come up with that. And I would say that, you know, on all this stuff, it truly is...this bill is truly a work in progress. We've been trying now...this is the second year that we have been attempting to alleviate these situations and problems out there. And so although we believe we are making progress, we are not opposed to looking into other avenues that will fix the problem. And so in that respect, we would all be open to solutions if there are any out there, whether it's this or something else. [LB967]

SENATOR LOUDEN: Yeah. And I read your letter from Bridgeport, but Alliance, oh, several years ago was going through the same deal, and when I notice that they can't find who was supposed to get the money, I have a problem with that also but I don't know if it needs to be that confidential if it's costing them money. Well, thank you for your testimony. [LB967]

SENATOR SCHILZ: Thank you. [LB967]

SENATOR DIERKS: Any other questions for Senator Schilz? Guess not. Thanks, Ken. [LB967]

SENATOR SCHILZ: Okay. Thank you, and I've got a wind hearing over there, so I will...I may be back to close but I'm going to leave for now. Melissa will be here, so if I'm not here at the end, then I'll waive close. [LB967]

SENATOR DIERKS: Okay. [LB967]

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SENATOR SCHILZ: Thank you. [LB967]

SENATOR DIERKS: Thank you. Proponents. Is there someone in support of LB967? Go right ahead. [LB967]

GARY PERSON: (Exhibit 3) Senator Dierks, my name is Gary Person, spelled like person, G-a-r-y P-e-r-s-o-n. I'm the city manager and development director for the city of Sidney and the Sidney/Cheyenne County Economic Development Partnership. Distinguished Revenue Committee members, thank you for the opportunity to address a very pressing, growing concern to municipalities across Nebraska on the loss of local sales tax revenue to state and city programs. Some of us, obviously, far worse than others. I also thank Senator Schilz and Senator Giese for their concern, support in helping our voice to be heard. Your communities that have been the most aggressive at helping sell Nebraska and encouraging new investments and job creation in our state are now experiencing an unreasonable and painful amount of local sales tax loss. I'll skip over part of my written testimony because Senator Schilz already kind of outlined it. But we plead with you to act now, not later. For too many years already we have heard the battle cry, well, you're going to have to wait until next year, but next year never seems to arrive. In our situation in Sidney, this issue has gone beyond the critical stage for action. If you take a community like Sidney, for example, most of our development projects are city driven because the tools and the infrastructures needed to do development is dependant upon municipal participation and funding commitments. I applaud the state of Nebraska's intent to help build Nebraska's business and industry base the past two decades, but there has been what I believe to be some unintended consequences for local communities. My points are simple. Local voters authorized use of local sales tax for specific local purposes, and the state is currently diverting those funds away from its intended uses without any local consent. These programs were supposed to be state incentive programs. We already do our part with funding local economic development incentive programs through programs such as LB840. I'm providing you a chart in regards to Sidney's situation, which will illustrate to you the severity of the situation in our local municipality. I've been asked the question: Well, aren't you benefitting from your additional valuation? Yes, but in turn, we have lost almost all of our municipal state aid because we were further penalized for growing Nebraska's economy which gives us a double whammy of lost revenue. Several years ago we were getting \$500,000 a year in municipal state aid for our city. Today, we're only getting \$50,000. I can't believe the state incentive programs intended to make local communities the victims of their own economic development success and Nebraska's subsequent success as a result of our local efforts. In one recent 12-month calendar period of time, our community lost \$1 million of local sales tax revenue to the state incentive programs. I know some members of this committee are former mayors of your community, and I ask you: What would you have done as a mayor and had that kind of an unintended consequence happen to your local budgets? It leaves you in the middle

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of budget years with consequences that are never going to be very popular in your community. What the state chooses to do with your state revenue is your business. Local revenues generated and decided upon by local elected officials of the electorate at large should be our local business. To head off a pending collision over this issue, we ask for the Revenue Committee to be proactive and provide the safety net through this legislation. The local sales tax loss has grown by 1,250 percent in Sidney just since the year 2000 and continues to skyrocket beyond that. Sidney's current budget year losses in just five months of our fiscal year will already set a new loss record and it will complicate it further by a down economy and the loss of our municipal state aid. How can anyone expect us to survive the next six months? It's impossible to budget for its impact and causes community leadership and citizens to see only the negative aspect of economic development. We've worked too hard to let that effort disintegrate. I also argue that with community growth comes growing demands for community infrastructure and services. How are we going to provide that to our local citizens when the state takes away our revenue? We all preach that the only way real property tax relief in Nebraska is going to occur is to grow your local valuations, yet the state penalizes for doing so and making it impossible to show property tax reduction, and instead we are left with substantial property tax increases. We provide the jobs for 20 smaller communities surrounding Sidney and we're the only reason they remain viable communities with a future, and other trade center communities can tell a similar story. We're possibly the only community west of Kearney that even is showing population growth. We need you, the Revenue Committee, to demonstrate good faith and the leadership necessary towards good community partners in the state of Nebraska, those communities that help create those additional state sales, state income, state lodging, and state fuel taxes for your state revenue streams. Please, we ask you to give us the mechanism to help us better prepare to serve our respective communities. The amendment that Senator Schilz has introduced came about as trying to find some type of a compromise solution to where everybody would share just a little bit of the pain for a one-time only seed fund to allow us to borrow against in times that we exceed that 10 percent and to pay it back in years that we fall below that 10 percent standard. As a result of that compromise amendment, we have two state organizations that often see...don't see eye to eye but also have different ideas on the state incentive program. The Nebraska Economic Developers Association legislative committee and its board of directors, along with the League of Municipalities legislative committee, made up of large and small communities from all sectors of the state of Nebraska, have all voted to support this particular amendment and funding mechanism on the one-time, one-only situation. Be happy to answer any questions. The charts that I provided show you, you know, the enormity of the severity that we are facing, and yet on the state aid chart shows that as we've grown our valuation, how we're penalized as well and losing all of our state aid. And it really has created a fiscal crisis for us and we've doubled our property tax rate just trying to, each year, compensate for those additional losses, and it's to the point that the public says, no more, the city council says, no more. And we just...you know, we feel like someone who has done the work that we have done in

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being a good partner ought to have some reward in the end other than being penalized for being a good partner. [LB967]

SENATOR DIERKS: Thank you, Gary. Senator Hadley. [LB967]

SENATOR HADLEY: Senator Dierks. Mr. Person, I guess I just need it kind of explained to me because if I take the sales tax, for example, I thought the Advantage Acts and such as that, the advantage of them is that they bring expenditures to your city that wouldn't have been made otherwise. So the sales tax is being spent and so you're getting it, right, and then the revenue kept by the Nebraska Department of Revenue. My question is, has your total sales tax that you've collected increased each year? [LB967]

GARY PERSON: The biggest problem is you never know where it comes from. You know, as we've grown our industrial base in our community, obviously we've grown our retail base. We've developed our interstate. You have...we went from 220 motel rooms to 600 motel rooms. We now probably have 20 retail businesses. Out on our interstate, we have a new super center Walmart. We have Cabela's retail store. So you logically think some of that sales tax additional revenue is coming from your efforts as a community to bring and recruit those types of businesses to your community. It's not all being generated by your growth and your industrial base. So, you know, our revenues did see a steady increase but we had no knowledge. That's part of the fallacy of this whole thing is none of the information is shared with us, it's all proprietary in nature. And then when you get a down economy or, for instance, in our case Cabela's retail store at one time was the only retail store that they had in their entire company. Today, they have 30. Obviously, it was a huge attraction at one time and it starts to decline and obviously their sales start to decline. So, you know, a lot of our revenue has stayed pretty steady and, in fact, has fallen the last couple of years, so it was impossible to see those spikes. We did see one year where we had a substantial spike and we tried to be smart about it. That money that was over and above what we had budgeted for we put into our own safety net to have when this day of reckoning, we assumed, was coming, but now it's totally depleted. It's gone. And, in fact, we're living on borrowed time now. And the problem is a local community is left without any knowledge of what happens. We get a 30-day notice. And of the nine projects in Sidney that have qualified for LB775, none of this is even Nebraska Advantage yet which has lowered the thresholds even more. So the impact for a lot more communities are coming soon, but those...I just want to make one quick point. I'm sorry, Senator, I didn't mean to interrupt you. When those local businesses say they decide to expand and grow, they had an existing operation that paid into your local sales tax just through the normal day-to-day business actions. They go build a new facility. All of that facility that is new where all those jobs moved to, all of that qualifies for the incentives. What used to exist in your economy with what they supported in their local sales tax purchases is now gone. It comes back on the backside and it can for up to seven years forward and backward that it's impossible to gauge or impossible to know. All we can do is go by the historic aspect of what we've

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lost in the past and we've always tried to budget for the loss being the average over the last three years or the average of the...or what had just occurred in the last fiscal year. And then when it grows by another \$250,000, \$300,000, where is it going to come from in the middle of a budget year? [LB967]

SENATOR HADLEY: I guess...just one quick follow-up question, and I used your example of the person having the store and wanting to move to the newer store (inaudible), if we didn't have this, they may not have done it. [LB967]

GARY PERSON: Very true and applaud you for doing it. [LB967]

SENATOR HADLEY: Yeah, and the second thing is, if I take your number, \$551,201.01, if I think in the way economic incentives are supposed to work, then Sidney would have somehow gotten \$551,201.01 more than they would have gotten if we hadn't had the incentives, but you're saying that that isn't the way it works? [LB967]

GARY PERSON: Well, obviously they paid it at some point in the deal. Our problem is we didn't know where it was coming from and it certainly didn't increase \$551,000 in a year. We had little bumps at the same time, but when you're adding a lot to your retail base as well, logic tells you that that's a result of you growing your retail community. [LB967]

SENATOR HADLEY: One last question and maybe we'll get this later. But would it be better if somehow the Department of Revenue just held this funding from you and basically said this is through some, you know, company that's involved with the advantage or LB840 or LB870 and just held it so you'd never see it, so you don't get any false pretenses? [LB967]

GARY PERSON: Anything is better than what we have right now. The problem is with incentive legislation is that companies have to meet those thresholds, and so they might have applied but they haven't created the jobs, they haven't put the investment totally into it to get up to the threshold of qualification. So how is the Department of Revenue to know when they're actually going to qualify just because they've made an application? [LB967]

SENATOR DIERKS: Senator Adams. [LB967]

SENATOR ADAMS: Gary, I think the first time I heard about this was at a league conference, and based on these numbers, it must have been about 2004 and '05 because I heard one of your city council members saying, we took a \$300,000 hit and didn't even know it was coming. When is the information reported to you from the Department of Revenue? [LB967]

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GARY PERSON: Thirty days in advance. [LB967]

SENATOR ADAMS: But you don't know what month you're going to get? I mean, it's not January every year or... [LB967]

GARY PERSON: No, it's all 12 months. I could show you the monthly reports, I have them with me. For instance, in the month of December, we had generated enough local sales tax we should have received a check for \$220,000. Instead, we get a note from the Department of Revenue said you had \$270,000 of incentive refunds, so you're not only, we're going to take all of your sales tax revenue, we're going to take another \$50,000 from next month also, plus that month you're going to see some more refunds. And so it's a wild guessing game. Last month for the first time this fiscal year, we really didn't get hammered. We lost I think it was \$55, but the previous month was \$200,000. I mean, it just creates...and then when you depend on sales tax for your cash flow in running a city, where are you going to borrow it from internally? [LB967]

SENATOR ADAMS: So therein lies part of the problem for all communities because you're relying on the sales tax for cash flow, which is understandable, that's why you've got it versus a TIF project where you know you're giving up growth in valuation for a gain down the road. So the upside to you here, you have a community with five new projects, presumably, or however many that you have. [LB967]

GARY PERSON: Um-hum. [LB967]

SENATOR ADAMS: Now, about the bill itself. The cities that would kick into this fund,... [LB967]

GARY PERSON: Right. [LB967]

SENATOR ADAMS: ...is it all that have local option sales tax or only those that have a LB775 obligation? [LB967]

GARY PERSON: No community ever knows when they're going to face this situation. [LB967]

SENATOR ADAMS: No, but what I'm talking about... [LB967]

GARY PERSON: Yes, it's all. [LB967]

SENATOR ADAMS: All right. Go ahead. Go ahead. [LB967]

GARY PERSON: Everybody is, well...and a lot of those communities that are on the municipal legislative committee, they come from all size communities all across the

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state. They all understand that it's like buying an insurance policy. For one month only, they're willing to give up 1 percent just to have this seed fund insurance policy in case they face that day like Sidney or South Sioux City or Tecumseh or Bridgeport is facing. [LB967]

SENATOR ADAMS: So hypothetically, what would happen if I'm...it doesn't matter what size, but let's say that I'm a second class city, village, and we've just managed to get a local option sales tax passed. [LB967]

GARY PERSON: Right. [LB967]

SENATOR ADAMS: And we did so by earmarking it... [LB967]

GARY PERSON: Um-hum. [LB967]

SENATOR ADAMS: ...and committing it to a project and we're in this project and maybe we've got funds to finance or whatever,... [LB967]

GARY PERSON: Right. [LB967]

SENATOR ADAMS: ...and now you're going to ask me to give some of that up. Does that jeopardize that revenue stream? See what I'm getting at? [LB967]

GARY PERSON: It's 1 percent, one time only, one month only is all that they're giving up to buy a little bit of peace of mind so they have some sanity when they do their budget. [LB967]

SENATOR ADAMS: One percent of their collection, their annual collection? [LB967]

GARY PERSON: Just one month collection. [LB967]

SENATOR ADAMS: Oh, one month's collection. [LB967]

GARY PERSON: Just one month's collection, and you make a very good point. Those local people voted on that for a specific local purpose, we did too. [LB967]

SENATOR ADAMS: Um-hum. [LB967]

GARY PERSON: And now we got to explain to the people there's no money there for what you intended it to be used for. I mean, and we had no say-so in it. And it's hard to explain to the common citizen. [LB967]

SENATOR ADAMS: And I see what you're saying. It's like an insurance because the

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reality is, some of the small villages probably never will have a LB775. [LB967]

GARY PERSON: No, but they'll have a Nebraska Advantage because the threshold is two jobs... [LB967]

SENATOR ADAMS: Right. [LB967]

GARY PERSON: ...and a \$125,000 investment. Those communities that never thought they'd ever, ever, ever see this happen will now see it happen or they may have a railroad going through their town, and Burlington Northern or Union Pacific files a statewide application, they did a little rail refurbishing in that community and it was delivered on site. That's where the sales tax was generated. You know, the community may not have even noticed it was coming in, but then when they get on the backside of it, it's gone. [LB967]

SENATOR ADAMS: Okay. Thank you. [LB967]

GARY PERSON: Um-hum. [LB967]

SENATOR CORNETT: Senator Pirsch. [LB967]

SENATOR PIRSCH: Just a few questions. So these each individual township (inaudible) regardless, they've all had votes, local votes (inaudible). Do you see any constitutional problems then that would emerge with respect to what the deal was for the voters and now if it is used in this new purpose? How would you address that? [LB967]

GARY PERSON: I believe you've hit the nail on the head, and there's a lot of other people that believe that too. I think any of us don't want to see some type of class-action lawsuit happen to take away something from Nebraska that's been very effective in helping grow our economy, and what we're trying to do is head that off. We're trying to just find a little bit of sanity when we go to do our local budgeting so we know worst-case scenario. Like in Sidney's case, we'll always plan to lose 10 percent of our previous three-years revenue. Now, if you did one of those projects that generated a lot more sales tax, your threshold just rose considerably. So then your...you know, your 10 percent factor is going to be far greater in the future. And all this does is when you have that year up here, then you...the Department of Revenue will take, when you reach that threshold will be able to continue paying those companies for their incentives that qualified for that contract. In years where you may tailor off, you went three or four years, you didn't do a project in your community, and then your sales tax loss drops to like 5 percent, you'd pay back up to that 10 percent threshold every year that you fell below it until you paid yourself, your loan back off. [LB967]

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SENATOR PIRSCH: That's how the bill would work, but you don't see that there's any constitutional problem with the measures that were put before the voters in these various localities then? You don't see any problems with this being used or them arguing, certain individuals arguing that this is used in an unintended purpose that was not approved by those folks? [LB967]

GARY PERSON: Isn't that already what's occurring? It's a very good point, but isn't that what's occurring? Hasn't Sidney just lost \$4 million in what its local citizens had promised for local projects and it was taken away from them? Isn't that the same constitutional argument? [LB967]

SENATOR PIRSCH: Very good. I have just a question with respect to...so it's a genius, kind of pooling, as you say, kind of an insurance type of philosophy that underlies this. Was this borrowed from a different jurisdiction where this is in place with the incentives or is this a homegrown kind of conceived idea? [LB967]

GARY PERSON: Well, it was a few of us brainstorming when Senator Schilz introduced the bill and I think Senator Heidemann helped him come up with the refund fund concept. It was originally going to be out of municipal state aid. Obviously, that concerned a lot of municipalities who have continued to see that erode away over time. Sidney's case, we really don't care what it comes from. We just wanted to try to find some solution out there, some compromise to where we'd have the slightest bit of chance that this might happen that you would move this on out of committee. We could have some really good debate on it because our situation is so desperate we have nowhere else to turn. We can only turn to the folks that have the solution. If you have a better solution, we're all for it. But we just have to have something that doesn't cause us to absolutely implode as a community. I mean, it is so...the atmosphere is so ugly right now in what we're going to do. Are we going to close our swimming pool? Our library? Our golf course? We going to eliminate our parks? What are we going to do? We got to lay off half of our police force. There's nowhere else to go. We trimmed our budget down to the bare bones when we set it this year, absolute to the bare bones to try to prepare for this. And we had 100-and-some people show up mad because our only other option was to raise property taxes even more; we'd already doubled them. You know, and it's just that people have had enough and they're not seeing the benefits of their hard work and their trust in government that economic development was supposed to be good for them. [LB967]

SENATOR PIRSCH: Thank you. [LB967]

SENATOR CORNETT: Senator Utter. [LB967]

SENATOR UTTER: Thank you, Senator Cornett, Mr. Person. Senator Schilz, of course, identified you as the expert, so here I come with my questions. [LB967]

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GARY PERSON: That's only because I'm 350 miles away. [LB967]

SENATOR UTTER: I guess that's right. The 10 percent figure,... [LB967]

GARY PERSON: Um-hum. [LB967]

SENATOR UTTER: ...tell me how you arrived at that,... [LB967]

GARY PERSON: Well, I looked at... [LB967]

SENATOR UTTER: ...why that's a good figure or why 20 percent wouldn't be better or 5 percent? [LB967]

GARY PERSON: Yeah, because 20 percent is absolutely devastating to a community. Ten percent, I looked at Sidney's situation, you know, 10 percent in our case is somewhere between \$250,000, \$300,000. We can sustain that, we can live with it. When it gets above that, it just absolutely is crippling to us because that was supposed to go towards projects that local people wanted to see funded. And when it gets too high a percentage, it just absolutely fiscally caves you in. [LB967]

SENATOR UTTER: The theory of economic development would lead us to believe that one of these days when the incentives have been exhausted, the rewards come. [LB967]

GARY PERSON: I agree with you. [LB967]

SENATOR UTTER: Okay. So in the event that the 1 percent doesn't prove to be adequate, if we have the growth that you're talking about statewide and the people, the different sizes of municipalities... [LB967]

GARY PERSON: Right. [LB967]

SENATOR UTTER: ...sharing in that, is the 1 percent going to be adequate? [LB967]

GARY PERSON: That's a question I cannot answer. I think based... [LB967]

SENATOR UTTER: And if it isn't, should there be some type of a sliding scale, for example, installed in this so that you...when the 1 percent runs out and you weren't there in time, that your month hit poorly, that you come back and we have to move that base for that insurance fund to 2 percent or 5 percent? [LB967]

GARY PERSON: Well, it's a one-month, one time only, and that may very well happen,

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Senator. I mean, you may have to a couple of years from now, say we have to take one more month, one time only situation. [LB967]

SENATOR UTTER: Given Sidney's experience... [LB967]

GARY PERSON: Yeah. [LB967]

SENATOR UTTER: ...if you folks had to put 1 percent in, one time only, that wouldn't have been a drop in the bucket to the losses that you've experienced, to the shortfalls that you've experienced, but that one day you will get back. [LB967]

GARY PERSON: City councils change, staff changes. I mean, you know, everybody is always concerned about today and we try to do that. We try to save for the rainy-day fund to make that happen. We try to be smart about it. And, you know, part of our problem is we're a victim of our own success. We work very hard at it. We've tried to grow the economy. We try to be the shining star of western Nebraska in what we do but, you know, it's worked, but on the other end, on the down side of it is, we're getting hammered or penalized for being that good partner. It's like having a private company and you take your best salesman and you just cut his salary in half and you gave it to everybody else that's not working as hard. How long do you think that's going to...he's going to stay with your company and he's going to keep doing your sales for you? It's not going to happen. And that's almost how we feel, you know, that we've been this great partner. And the state is a wonderful...DED is just a tremendous partner in working with us on our projects and we bring them good projects and we want to keep doing that. But, man, I mean, politically I'm telling you, this is a tough sellout. [LB967]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB967]

GARY PERSON: Thank you very much, Senator. [LB967]

SENATOR CORNETT: Next proponent. [LB967]

DOUG GORACKE: (Exhibit 4) Thank you, senators, for this opportunity. My name is Doug Goracke, D-o-u-g G-o-r-a-c-k-e. I'm the director of economic development for the city of Tecumseh. As you might or might not know, Tecumseh is a small, rural town of about 1,700 people, struggling as many others to meet the needs of our residents. Last April, we were presented with a notice from the Department of Revenue that stated we were to begin paying back \$51,000 of sales tax, and we were absolutely given no explanation. After numerous phone calls, the Department of Revenue gave us the reason. It was a program commonly known as LB775. It's an incentive program created and implemented by the Department of Economic Development. My response to this was, well, we didn't sign up for it so where is it coming from? My answer came, it is a

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program that you are not notified about when applied for but it is your obligation to track and know what your obligation might be. After the loss of two substantial contributors to the sales tax stream, that task was impossible to achieve for us. So in order to repay this money, the Department of Revenue withheld all of our May receipts and most of the June receipts of that year. Breaking that down to show the magnitude, the state collected \$53,836.14 in city sales tax, and the city only actually received \$3,804.02 as a result. You can only imagine our disbelief when we fully realized the impact this was going to have on us. Thanks to the efforts of Senator Heidemann in June of 2009, we were able to meet with the president of the company that had applied for this incentive. Our objective was to try and understand why this was our liability and how much more we could expect. Basically, we were informed that this is the way the program is funded, and wherever the headquarters of the business is...was located would be an avenue for recapturing the incentive. And so it continued on. The following month, the Department of Revenue withheld over \$11,000, 58 percent of our take for that month. In January, \$7,000. Another \$7,000 the following month is looming over the horizon and, most likely, that is not the end as far as we understand. As you know, small communities have few, if any, options when it comes to generating revenue, and the idea of absorbing these kinds of liabilities without consequences is naive at best. When we are in a time where people are trying to keep their jobs, we are forced to eliminate or reduce our work force through early retirement, reduction, or whatever avenues we see fit. The steps we have taken are slowly going to help, but the impact is now. Reducing spending, compensating overtime, reduction in force, they're all the quickest solutions that we could come up with, yet the struggle continues. I can't help but wonder if I had several programs established for incentives for several new businesses, that we might be fortunate enough to attract with our LB840 program, where would the city be today? Would the Department of Revenue or the state give me a break for this short time to live up to my commitments? I think we know what that answer is. The original intention of LB775 was to help the larger communities with business retention and expansion, but I believe Tecumseh so far...and this is wrong, this statement is wrong now because I didn't know that Bridgeport was involved in this, was the smallest community. Time will only tell if the suffering is worth it. With these programs...when these programs affect our youth programs, I begin to get very frustrated. Yes, these are some of the services we have to look to cut. The youth didn't ask for this and neither did we. So we ask you to consider all ramifications LB775 has had on Tecumseh when you debate LB967 and LB954. Thank you. [LB967 LB954]

SENATOR CORNETT: Questions from the committee? Senator Utter. [LB967]

SENATOR UTTER: Thank you, Senator Cornett. Doug, you obviously must have had a couple of businesses, then, expand in Tecumseh, is that correct? [LB967]

DOUG GORACKE: We've had one. [LB967]

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SENATOR UTTER: One expand? [LB967]

DOUG GORACKE: Um-hum. [LB967]

SENATOR UTTER: And so did you know at the outset that they were going to apply for the LB775 funds? [LB967]

DOUG GORACKE: No, no. They actually expanded in another town. [LB967]

SENATOR UTTER: Oh, they didn't expand in Tecumseh? [LB967]

DOUG GORACKE: No. [LB967]

SENATOR UTTER: Thank you. [LB967]

DOUG GORACKE: Thank you. [LB967]

SENATOR CORNETT: Senator Pirsch. [LB967]

SENATOR PIRSCH: So it's just that the corporate headquarters was located in Tecumseh, is that right? [LB967]

DOUG GORACKE: Um-hum, um-hum. [LB967]

SENATOR PIRSCH: So the actual benefit didn't accrue to your town is what you're saying? [LB967]

DOUG GORACKE: That's correct. We actually...after they qualified, we actually lost jobs, 230-some jobs went to the other town. [LB967]

SENATOR UTTER: The same business? [LB967]

DOUG GORACKE: Um-hum. [LB967]

SENATOR PIRSCH: Thank you for clarifying that. [LB967]

SENATOR CORNETT: Senator Hadley, then Senator Adams. [LB967]

SENATOR HADLEY: Thank you, Senator. Doug, I guess I'm trying to get my hands around it. It almost seems patently unfair that the sales tax is taken from your Tecumseh when the sales tax generation...there was no sales tax generation then, is that correct? [LB967]

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DOUG GORACKE: That's my understanding. [LB967]

SENATOR HADLEY: That would certainly be interesting to find out how that occurred because I..you know, I'm trying to get my hands around it and I understand a city that if there had been an expansion in Tecumseh and... [LB967]

DOUG GORACKE: Um-hum. [LB967]

SENATOR HADLEY: ...somebody had built a new building and spent \$50,000 on local sales tax... [LB967]

DOUG GORACKE: Um-hum. [LB967]

SENATOR HADLEY: ...you know, you can say, okay, you had a spike... [LB967]

DOUG GORACKE: Yeah, I... [LB967]

SENATOR HADLEY: ...of 50 and somehow you got, you know, you got to pay that back. [LB967]

DOUG GORACKE: Um-hum. I certainly agree. We've asked that question several times and if I understand the explanation correctly, it really does not matter that much where that money was spent necessarily, where the investment was at, this is the headquarters. If the other town...and I think this is correct, if the other town that the expansion took place in does not have local option, it comes back to you to recoup or recapture through your local option. I think I understand that correctly. [LB967]

SENATOR HADLEY: Okay, okay. I just...thank you, Senator Cornett. [LB967]

SENATOR CORNETT: Senator Adams. [LB967]

SENATOR ADAMS: Doug, yeah, this is kind of alarming, I think, but I have a less important question. [LB967]

DOUG GORACKE: Um-hum. [LB967]

SENATOR ADAMS: It may seem unimportant but I think to most citizens it isn't. In the initial introduction, you said you called the Department of Revenue numerous times before you got the response at LB775. I have no reason to doubt you, but numerous times? All they would have to say the first time is, this is LB775. [LB967]

DOUG GORACKE: I believe at the time they were unsure of what it was and they had to do some investigating. [LB967]

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SENATOR ADAMS: That I understand. [LB967]

DOUG GORACKE: And then we followed up. [LB967]

SENATOR ADAMS: All right. Fair enough. Thank you. [LB967]

SENATOR CORNETT: Further questions from the committee? I just want to clarify. [LB967]

DOUG GORACKE: Um-hum. [LB967]

SENATOR CORNETT: The business that you're talking about has the headquarters in your city? [LB967]

DOUG GORACKE: Um-hum. [LB967]

SENATOR CORNETT: The area that they expanded when they were included under LB775 benefits is in another community? [LB967]

DOUG GORACKE: That is correct. [LB967]

SENATOR CORNETT: The headquarters is paying sales tax though? I mean, you're...they're generating tax also, not just the other community? [LB967]

DOUG GORACKE: I can't answer that. I don't know for sure. I don't know what they generate in that other community. I have no way of knowing. [LB967]

SENATOR CORNETT: So you're saying that where the tax was, the other community where they had qualified for the LB775 benefits, the burden is being placed on you in Tecumseh? [LB967]

DOUG GORACKE: Um-hum. I think...and I'm very new at this so you kind of have to bear with me. I think what has happened is, is it gets pooled together essentially. It's a company is a company is a company. [LB967]

SENATOR CORNETT: That I understand and that's similar to where I was headed because Cabela's has its headquarters in one place but has outlets in another, and the place where the headquarters is isn't bearing the full burden for Cabela's. [LB967]

DOUG GORACKE: I would assume that if...take Sidney's circumstances, if they weren't able to recapture all of their... [LB967]

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SENATOR CORNETT: Those businesses are in Sidney though. [LB967]

DOUG GORACKE: Um-hum, but if they weren't able to recapture that, they could go to the next town and the next town and the next town, I believe. [LB967]

SENATOR CORNETT: I don't think that's correct, but we'll figure that out off mike. [LB967]

DOUG GORACKE: You could be very well right. [LB967]

SENATOR CORNETT: Okay. [LB967]

DOUG GORACKE: I was only...I mean, we're only concerned about Tecumseh at this point for us and that is the way that it was kind of explained to us... [LB967]

SENATOR CORNETT: Okay. That's fine and we'll... [LB967]

DOUG GORACKE: ...that they were coming back to Tecumseh for it because it was not able to be recaptured in the other place. [LB967]

SENATOR CORNETT: Okay. Further questions from the committee? Seeing none, thank you. [LB967]

DOUG GORACKE: Thank you. [LB967]

SENATOR CORNETT: Next proponent. Are there any further proponents? [LB967]

SENATOR UTTER: Senator Cornett, I realize this is a little unusual, but before we move on to the opponents, I would like to ask Mr. Person another question as a proponent. [LB967]

SENATOR CORNETT: Mr. Person, come on back up. Restate your name for the record, please. [LB967]

GARY PERSON: Gary Person, P-e-r-s-o-n. [LB967]

SENATOR UTTER: Gary, just referring to Mr. Goracke's testimony, is that same thing happening in Cabela's when Cabela's has stores in Kearney and in Omaha, and are you telling us that Sidney is bearing the brunt of... [LB967]

GARY PERSON: No. [LB967]

SENATOR UTTER: Okay. [LB967]

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GARY PERSON: I'm not saying that at all. [LB967]

SENATOR UTTER: Do you know? In fact... [LB967]

GARY PERSON: Yes, I have had that conversation with Doug Ewald several times and he assures me that all of those receipts originally came from the city jurisdiction, so. [LB967]

SENATOR CORNETT: As long as you're... [LB967]

GARY PERSON: ...because I had that question as well. Is that what is happening to...I have to take his word for it and I, you know... [LB967]

SENATOR CORNETT: Senator Adams. [LB967]

SENATOR ADAMS: But if hypothetically, let's say you got corporate headquarters in Town A... [LB967]

GARY PERSON: Um-hum. [LB967]

SENATOR ADAMS: ...and it's purely an office operation and you've got the actual... [LB967]

GARY PERSON: Manufacturing, yeah. [LB967]

SENATOR ADAMS: ...plant or whatever in a different town, raw material inputs that are delivered there, are taxable there, not back at corporate headquarters but yet corporate headquarters gets the benefit of LB775. [LB967]

GARY PERSON: True, and they may have not have qualified had they not...say they had been spending that money in that local jurisdiction... [LB967]

SENATOR ADAMS: Right. [LB967]

GARY PERSON: And the local communities have been enjoying the revenue stream from that. So when they expand over here and create those jobs, that community is also, you know, subject to the sales tax. But this which used to be exempt or are going to the local revenue stream is now also exempt from it. So they're getting the revenue back that they used to be able to contribute to the local revenue. [LB967]

SENATOR ADAMS: But conceivably the office location may not be directly as a business generating any sales tax for that community. [LB967]

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GARY PERSON: I think they do because everything you purchase in your operation. [LB967]

SENATOR ADAMS: Right, but if it was purchased in the town down the road? [LB967]

GARY PERSON: Then their receipt would show that's where it came from. [LB967]

SENATOR ADAMS: Okay. Thank you. [LB967]

SENATOR CORNETT: That brings me to what I was trying to figure out a moment ago. The situation in Tecumseh, how did that...how do you see that that exists that those sales tax receipts weren't generated in Tecumseh? I don't see how that works. [LB967]

GARY PERSON: You know, I don't think legally it can. [LB967]

SENATOR CORNETT: Okay. That was my point. Not knowing the statutes on this, I didn't... [LB967]

GARY PERSON: Yeah, I don't want to, you know, argue the Tecumseh point of view. I mean, they have their conversations with the Department of Revenue. I only know what I've been told. [LB967]

SENATOR CORNETT: Okay. Thank you very much. Further questions? Seeing none, next proponent. May I see a show of hands for the number of proponents left on this bill? [LB967]

LANCE HEDQUIST: My name is Lance, L-a-n-c-e, Hedquist, H-e-d-q-u-i-s-t. I'm the city administrator of the city of South Sioux City. I do want to, on behalf of the city of South Sioux City, extend our support for this bill, but in lieu of going through my comments now since they really are basically the same with Senator Giese's bill, I'd just like to go on record as saying that we support this bill. [LB967]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB967]

LANCE HEDQUIST: All right. [LB967]

SENATOR CORNETT: Next proponent. [LB967]

ROBERTA PINKERTON: (Exhibit 5) Thank you. My name is Roberta, spelled R-o-b-e-r-t-a, Pinkerton, P-i-n-k-e-r-t-o-n. I'm testifying today on behalf of NEDA, the Nebraska Economic Developers Association. Gary alluded to the fact that we support

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this bill earlier in his comments. NEDA is a membership organization of over 300 members statewide involved in economic development. We do support LB967 with the proposed amendment that Senator Schilz introduced and referred to today to seed the refund fund. We want to thank you for the Nebraska Advantage Act and LB775 and your work in enacting those. They are an excellent tool for attraction of business and encouraging our existing employers to expand their operations in Nebraska. Successful economic development projects do enhance the local economies in which they reside, but the process by which the companies are receiving the incentive is flawed and, as you've heard today, it has created quite a hardship for some of our local municipalities. We feel that establishing this fund to assist the municipalities when the local tax revenues exceed 10 percent is a viable alternative for alleviating this problem. We support the concept as it provides relief to our communities without diminishing the value of the Nebraska Advantage incentive. NEDA opposes any changes that reduce the value of the incentive program and hinder our competitiveness in Nebraska. But we do support LB967 with the proposed amendment and we encourage you to consider that as well. Thank you. [LB967]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. Next proponent. Are there any further proponents? We'll move to opposition testimony. [LB967]

RON SEDLACEK: Senator Cornett and members of the Revenue Committee, for the record, my name is Ron Sedlacek, it's R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce. We, at the state chamber, had reviewed the legislation and we re-reviewed and re-reviewed the amendments. But we still have a position of opposition not in the sense that we have a lot of heartburn over this particular issue, but we do not believe this is necessarily the appropriate policy that we would advise the Legislature to pursue or, if doing so, without really good study as to whether or not this is a...will raise the potential for further problems down the road. I know Senator Utter talked about what percentage. I think that needs to be studied. But also it becomes a question as to whether or not this itself may subject the programs to a particular challenge, that it may be subject to potential litigation, and then we'd like to have that explored as well as whether or not this one time only seed money--which could end up being two times or three times, we don't know--would in a sense represent a loss of faith to the voters, particularly those local communities. So we would like to have that explored. This has been an issue that we've been aware of probably since either the late eighties or early nineties, so it's not new; it's over 20 years old, I would believe at this point. The issue that we have tried to tackle on a number of occasions, we've made some adjustments, it just...they don't seem to work. Many years ago our suggestion was--and this was prior to the enactment of Nebraska Advantage when there was legislation in regard to the LB775, the Employment and Investment Act--if there would be a way in which the sales tax would not be collected in the first place and, therefore, not budgeted or planned for. We laid those options out and perhaps hindsight

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is 20/20, but we wish that that policy had been pursued and that this bleeding that's being talked about would not continue. And we understand and sympathize with the city administrator, the very cities that have come forward here today. Two options that I would lay out and that we would support: One option would be very similar to what I would call the sales tax exemption certificate but it would be an application, an applicant certificate, that would be issued by the Department of Revenue when you have signed an application. That's one option in which that would be presented, sales tax would not be collected. The reporting of the sales would be made and there would be a log of where those sales are made and the amount and what is attributed to that sale so it's not collected in the first place, it's not planned for. If the investment and employment or whatever combination, that threshold is reached, fine. The incentive is there. The plus is the city can...there's nothing that would affect the city in that regard. Secondly, the money is not collected and could be used for further investment or further employment expansion by the applicant. The downside, if there's a failure on the part of the company, then it needs to be clawed back. But we have that situation already with the income tax. That's a credit, but that credit can be clawed back if you do not attain. So if that isn't a compelling reason why not to do it...to take up that option, the second option may be this: Again, you would have essentially an applicant certificate. The sales tax that would normally be paid would be paid into essentially a trust fund held by the state. That fund, whether it's raided or not, would still be a liability that if there was no attainment, and then that money would be paid back to the local municipality. And if the attainment is there, then the company would be able to draw from that trust fund. Again, the downside on the part of the applicant company is status quo, in a sense, it's that the money is taken out of the economy for the time being but there is predictability on the part, again, of the local government. And I lay out these two options. These have been discussed within the state chamber and we've talked about option one before. I don't believe many members of this committee may recall that option at that time since the turnover, but we still believe that there's some viable alternatives here in which a system can be constructed that would be based on some solid policy. And with that, I'll close and ask if there's any questions. [LB967]

SENATOR CORNETT: Questions from the committee? Senator Louden. [LB967]

SENATOR LOUDEN: Yes. Ron, considering, as I mentioned before, the raids we went through, do you see this as a problem rising if there was one getting \$20 million in a fund there, what would happen to that \$20 million in a shortfall year like we had last November? [LB967]

RON SEDLACEK: Well, definitely, Senator, it could be raided. I suppose you could put up as many protections as you can, but one Legislature doesn't necessarily bind the other and so you'd have that potential, but the liability still would be there. So if there was a...and in the same way, I guess you could say if you did have a trust fund, so to speak, and it remained intact, at least there would be interest generated from that fund

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that could go into the General Fund so you could make a little bit of money off of it in the time being. But also knowing full well there could be a liability if that were raided upon...you know, that the state would still owe and that would be a mechanism by which... [LB967]

SENATOR LOUDEN: Well, it wouldn't be the state that would owe, because it's somebody else's money just like all these checkoffs. [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR LOUDEN: It was somebody else's money they were taking. [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR LOUDEN: I mean, what they...would the state chamber, what would be their position if the state just wasn't allowed to give back that city sales tax portion? [LB967]

RON SEDLACEK: I think that the state chamber's position would be that really diminishes the impact of the incentive programs. I don't know if that would also might not have another economic effect in regard to the attractiveness of the programs, where to locate, but it may. It could have an impact on cities that do have or do not have local option taxes or whether the location is within city limits or not and to get into some of those issues. [LB967]

SENATOR LOUDEN: How come some of this gets to be such a huge fund that they give back when the city didn't probably take that much money in but as I think Mr. Person's testimony, they gave out, what, \$200,000 or something like that or they were billed that and had to pay? How come that's got to be such a big number? [LB967]

RON SEDLACEK: Well, because those are the investments made and the amount of revenue that was collected based upon those investments in a cumulative nature. [LB967]

SENATOR CORNETT: I know there's other questions from the committee but I just want a clarification on a point. The companies that are eligible for these benefits can utilize that credit at their discretion to a certain extent, am I correct? [LB967]

RON SEDLACEK: That's correct. Um-hum. [LB967]

SENATOR CORNETT: And that's where they may have earned the credit in a different time period than when the state refunds them that credit, am I correct? [LB967]

RON SEDLACEK: Possibly. There's a...yeah. [LB967]

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SENATOR CORNETT: What I'm saying is they're holding some of these credits and as they're having trouble possibly businesswise, they're cashing in some of those credits. [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR CORNETT: So the sales tax receipts for the municipality are not matching up with the credit, ergo you have a deficit credit, am I correct? [LB967]

RON SEDLACEK: That can be and it can also be the nature of the business. It may be such that its sales...I mean, the credit can only be applied to sales because there are other credits or there are other issues involved... [LB967]

SENATOR CORNETT: Um-hum. [LB967]

RON SEDLACEK: ...in regard to, you know, a payment perhaps not of income tax but of a franchise tax or premium tax that's credited against corporate tax, and so the only outlet is the sales tax credit. [LB967]

SENATOR CORNETT: Is the sales tax. [LB967]

RON SEDLACEK: That's right. [LB967]

SENATOR CORNETT: And that's what I was trying to get at... [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR CORNETT: ...when you see owing more money back than you actually took in in a month in sales tax. It's not from necessarily that month we're talking about, correct? [LB967]

RON SEDLACEK: That's correct. That's correct. [LB967]

SENATOR CORNETT: Or period, not month would be a better way to put it. [LB967]

RON SEDLACEK: Um-hum, um-hum. [LB967]

SENATOR CORNETT: I believe Senator Hadley, then Senator Utter, and then Senator Adams. [LB967]

RON SEDLACEK: Um-hum. [LB967]

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SENATOR HADLEY: Senator Cornett. Ron, eventually is this a zero-sum game so we're more concerned about timing because it seems to me that if we're talking about sales tax that theoretically if it's an economic development, the cities are getting...at some time or another they're going to get more sales tax because there was this economic development project or such as that, and then we'd take it away from them, and those can be kind of not related timewise. Is that correct that the company may have spent, you know, or paid the sales tax this month, and five months down the line we take it away from the city? Does that make sense, that? [LB967]

RON SEDLACEK: Well, remember you have to attain. You have the applicant agreement and you can't...and that's the flaw in regard to collecting in the first place is because that's a guessing game. Are you going...it's a risk if they attain or not. If the company attains, then the credit...you know, as they attain the level, they are allowed then to draw upon those credits. If they do not, then they're supposed to be clawed back in that regard. So it is a matter of...there is a matter of timing element that you speak of there, but it seems that, again, that argues for some sort of policy by which the cities can be held harmless, so to speak, in regard to not collecting in the first place. Allow the activity to occur, but certainly with the capability for the state to enforce the law in regard to if you do not attain, then that money that would normally be collected and the purchases were made would go back to the city. [LB967]

SENATOR HADLEY: I guess that would be my next point... [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR HADLEY: ...that maybe we do need something so that the cities aren't sitting there and suddenly getting a bill that they had no idea that maybe, you know, six or eight months ago you had a little bit of windfall and... [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR HADLEY: ...you know, maybe you should have saved that... [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR HADLEY: ...but who knows, so. [LB967]

RON SEDLACEK: And certainly you don't want to bet that and hope that attainment isn't made. [LB967]

SENATOR HADLEY: No. [LB967]

RON SEDLACEK: Because it's going to be paid back, and by the same token if it is

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made, then all of a sudden there's this issue and it arises over time. And it needs to be...you know, eventually this needs to be addressed and nipped in the bud because if these continue to...if there is continued expansion, which thankfully we have. We have more applicants. That's wonderful news but until we get a system in which it's predictable for the very people that were here as proponents of the legislation. Again, I caution the committee in regard to the proposal, and as I say, as compared to the other bill, you know, it's not...it's something that, you know, we certainly want to work with the committee on, but I don't believe this is the right policy at this point. [LB967]

SENATOR HADLEY: Just one final quick question and I probably...to quote Senator Adams, I'm probably way off base and don't understand what I'm asking, but in some ways this is a little bit like our fiscal notes on an economic incentive proposal at the state level because we don't know whether that's really going to happen or not. You know, that if we have a wind project and they say there might be three of them and it's going to cost the state \$2 million in lost sales tax revenue, we have to take that into account, but it may or may not happen but it has to be in our planning process. So it's...in some ways it's a little bit like this. But if it happens, you got...the money comes, has to be taken back, so. [LB967]

RON SEDLACEK: Well, that's right and if there's no program and no, essentially, incentive to have a wind project... [LB967]

SENATOR HADLEY: Yep. [LB967]

RON SEDLACEK: ...you're probably not going to have wind projects. And the reason why you're looking at legislation is in order to encourage those projects which, if they occur, should generate more (inaudible). It's the old chicken-and-egg argument, the but-for argument, I guess you could say, but for the incentives, would this have happened? [LB967]

SENATOR HADLEY: Thank you, Ron. [LB967]

RON SEDLACEK: You try to encourage and make policy so that it does. [LB967]

SENATOR UTTER: Thank you, Senator Cornett. Ron, I would assume that cities that are receiving the additional sales tax are probably expending part of that money for infrastructure projects to provide services to that business that's located in their city that is qualified for LB775 funds. But I think you present an interesting concept in that maybe you don't withhold 100 percent of it but maybe the state needs to put in trust for those cities a portion of that, maybe half of it, for example. As those additional sales tax revenues are generated, the state only paid half of them back to the...the additional sales tax back to the cities and kept half in a trust fund to allow for the time when the refunds have to happen, then it doesn't seem to me to be quite as severe a blow

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financially. [LB967]

RON SEDLACEK: If you don't collect in the first place or you collect and place in a fund, the question becomes, you know, what kind of integrity is there to that fund or to the program, and with the ability to recover should attainment not be made? That's the main issue. [LB967]

SENATOR UTTER: There has to be absolute integrity as I see it. [LB967]

RON SEDLACEK: Right, right. [LB967]

SENATOR UTTER: There has to be the faith in the government of the state of Nebraska. When you really earn those funds, they're paid to you. [LB967]

RON SEDLACEK: Right. And so I would encourage looking at either to go down...to take a look at the policy and decide, you know, is there a level? Should it be all, you know, 100 percent or should it be less and what would be the advantage of less. I'm not sure but that would be another time and that would be certainly something to take a look at. And, again, we want to be helpful. We would be happy to participate. [LB967]

SENATOR UTTER: And we're happy that the cities participate in this program, and if it's causing heartburn, severe heartburn as some have testified, why, that there's some way or another that this could be made more palatable and easier on them, why, we need to take a look at it for sure. [LB967]

RON SEDLACEK: Absolutely. [LB967]

SENATOR UTTER: I'm a little bit...and I don't know what your reaction is, but I'm a little bit concerned about the withholding of 1 percent from every city in the state of Nebraska's local option sales tax to create this fund. I can see some pushback there, particularly if a city doesn't have any LB775 funds in the...at risk, in jeopardy... [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR UTTER: ..for payback. Some of them cities are going to say, why me? They will say that until such time as they get one of those projects as Mr. Person had mentioned, but maybe it needs to be in terms of a saleable product needs to be designed in such a way that the minute that potential LB775 refund thing hits, that then you could become a participant in some kind of a self-help program. [LB967]

RON SEDLACEK: Right, and that's why we came up here essentially in a position of opposition, and that is when we go down this road and we start saying, okay, the Legislature by policy which they can do. But when we say, we're going to take the local

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option tax, we're going to require you to use that local option for this purpose, that sets a precedent that it can be used then some other day for another purpose and another purpose, and then they begin...there's a loss of control in that regard potentially. [LB967]

SENATOR CORNETT: Senator Louden and Senator Pirsch. [LB967]

SENATOR LOUDEN: Thank you, Senator Cornett. With the conversation you had with Senator Cornett here, you mentioned that, you know, some of that refund money came from a different period of time than what when the sales were made or something like that. Well, can you tell me how long do these businesses have to apply for that refund and get it? I mean, are we talking about a year or two later or six months? [LB967]

RON SEDLACEK: We can talk about...I'll stand corrected here for a moment, but I believe you have...you know, we have a program, it can be seven years or greater. And then you also have a 7-year...you know, 14-year exposure essentially, if I recall correctly. I'm seeing some nodding in affirmation. [LB967]

SENATOR LOUDEN: You're telling me that some of these refunds could have been on sales 7 years ago or something like that, 14 years ago, something like that? [LB967]

RON SEDLACEK: Well, yes. Um-hum, um-hum. Um-hum, um-hum. If you have not attained, you know, again, those sales taxes are being collected and there has not been an attainment. The levels of investment or employment or whatever the particular program is has not been reached, so you're talking about over time, over years perhaps and then bang and then it hits. And that's the issue. [LB967]

SENATOR CORNETT: Ron, once attainment has been reached, is the company required at that time to turn in for their reimbursement or can they hold onto that? And are they using this as a cash flow, a means of managing their cash flow? [LB967]

RON SEDLACEK: I can't answer the latter. [LB967]

SENATOR CORNETT: Do you see what I'm saying? [LB967]

RON SEDLACEK: I don't think it would be the means...I don't believe it would be a means of managing cash flow necessarily because there's flow out... [LB967]

SENATOR CORNETT: Well, if these credits could have been attained... [LB967]

RON SEDLACEK: ...and now you're talking about one time, but... [LB967]

SENATOR CORNETT: Well, the point I'm getting at is if these credits could have been... [LB967]

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RON SEDLACEK: Um-hum. [LB967]

SENATOR CORNETT: ...attained... [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR CORNETT: ...or gotten years before, okay? [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR CORNETT: All of a sudden the communities are getting hit with these huge sales tax turnbacks to the state. Are the companies that are receiving this benefit turning in their paperwork that they've reached attainment now because maybe their sales are down and now they are asking for money back from the state, which they're entitled to, but they've held off using for a rainy-day fund? [LB967]

RON SEDLACEK: It seems that... [LB967]

SENATOR CORNETT: I mean, that just makes it very difficult for a municipality to budget. [LB967]

RON SEDLACEK: I don't want to mislead the committee because I have more of a speculative answer, so I would rather find the answer for sure. But if I...my gut feeling is that once attainment is made, that you make that report. You would ask for those funds. [LB967]

SENATOR CORNETT: Then...okay, never mind. We'll talk about...we'll work on this issue. [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR CORNETT: I think Senator Pirsch, then Senator Louden. [LB967]

SENATOR LOUDEN: What I wanted to follow up on yours...is that money a taxable income for them when they get it from...? [LB967]

SENATOR CORNETT: No. No. [LB967]

RON SEDLACEK: No. No, it's the tax paid. [LB967]

SENATOR PIRSCH: You would use the words legal challenges is one of the reasons why you are concerned about going forward with it right away, with the committee

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passing the bill on, and I'm just trying to clarify when you...and you talked about by allowing...you know, obviously these local option sales tax that are measures that went before local voters and have been approved and you're saying to the extent that they're now being used for...in ways that were not known by the voters in approving it that there would...it could lead to a slippery slope, additional uses, that kind of thing. But that aside, the precedence argument, just addressing the legality of it, do you see...are there concerns on that front that you hold or not? [LB967]

RON SEDLACEK: The question is when the sales taxes originally authorizes for local purposes and now we're changing this to another fund, I just was...it was a speculation. [LB967]

SENATOR PIRSCH: So, I mean, that is one of the concerns. [LB967]

RON SEDLACEK: Then I suggested the committee explore that before proceeding on the policy to make sure that is not, is that an issue or is it not? And that was all in the context that in these...you know, in making this policy, not only in the percentages and whether this works, this quote, unquote, insurance program works, that's fine to explore but, you know, also let's explore the legal implications before moving forward too hastily. [LB967]

SENATOR CORNETT: Senator Louden. [LB967]

SENATOR LOUDEN: Yes, I still want to ask that question over again. [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR LOUDEN: You're telling me that when these corporations get that refund that they applied for and they get it back, they don't have to enter that as a taxable income? [LB967]

RON SEDLACEK: Well, you see that's...no, that's a tax, that's a tax due. It's not income. They paid that. They paid the taxes over time. [LB967]

SENATOR LOUDEN: Well, I know, but... [LB967]

RON SEDLACEK: Um-hum. Now, accounting wise I'm not going to get into the intricacies, but my assumption is that you pay a tax in one year and...and so I have to kind of think this through, but you pay the sales tax and it's a business expense and that's deducted at that year. And then the year that you get the refund, then there has to be an adjustment made. Okay. [LB967]

SENATOR LOUDEN: As an income. [LB967]

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RON SEDLACEK: Yeah, yeah. In that regard, that may be. [LB967]

SENATOR LOUDEN: Okay, because what I was going to say, when I get a refund back from the state... [LB967]

RON SEDLACEK: That may be. [LB967]

SENATOR LOUDEN: ...from the state of Nebraska, I got to enter it as a taxable income. [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR LOUDEN: And I'm wondering if some of these corporations would actually be delaying that if it looks like they're going to pay a large amount of taxes for something, they can actually delay that two years when they won't be paying as much taxes. And Senator Cornett was... [LB967]

RON SEDLACEK: That's where a tax accountant would be better testifying than myself at this point. [LB967]

SENATOR LOUDEN: Okay. Thank you. [LB967]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you, Mr. Sedlacek. [LB967]

RON SEDLACEK: Um-hum. [LB967]

SENATOR CORNETT: Next opponent. May I see a show of hands for the number of opponents? Neutral testimony? [LB967]

LYNN REX: Senator Cornett, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. I would like to say that the League of Nebraska Municipalities executive board supported the original concept that was brought forward back in the fall of 2009, recognizing that just the critical mass that we're at right now with cities experiencing these sorts of issues. And I guess instead of saying that it creates heartburn, Senator, I would say it creates heart attacks. Heartburn doesn't cover it. We are going to have city after city after city experiencing exactly what South Sioux City and Sidney, Nebraska, Tecumseh, and others are experiencing. And it's just taking a period of years for this to kind of come to pass, but it is critically important. So the board supported the initial concept which was in, fact, that the money to create this refund fund would come from the state's General Fund. And Senator Schilz felt, I think, that basically that probably would not be a likely bill to pass, so

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instead he tried to come up with some other innovative proposals and this was one of them. The amendment, as Gary Person correctly stated, we had a conference call on February 3, 2010, of representatives of the League larger and smaller cities legislative committee, and all representatives of the first-class cities, Lincoln and Omaha on our larger cities legislative committee, as well as 40 representatives of our smaller cities legislative committee. And they voted overwhelmingly to support the concept of taking 1 percent, one time only of their monthly sales tax revenue for this refund fund. They also voted that they would not support it if it was for five months. They had a separate vote on, well, what if it's not just a one time only thing, and they wouldn't support that. But for a one time only thing, they felt that it was important, and also for the state of Nebraska to put money in as this amendment provides. The League executive board subsequent to that had a discussion and raised a number of issues, and based on some of their concerns, not out of the fact that there is not a recognition of this serious problem, but for several other reasons chose to say we're going to oppose this concept, certainly at this time, not of the refund fund because they believe, I think, it should come out of the state's General Fund. And with that, what I would like to suggest is a couple of things. You talk about the legal issues, Senator Pirsch, relative to this. I think there are serious issues that cities for the first time are really discussing and discussing with some level of commitment, and that is the fact that there is an issue of trust. You go to the local vote to get voter approval for certain programs, whether it be an LB840 program or another type of program, to say this is what we're going to do or even just a local option sales tax vote because after passage of LB890 several years ago, you can put on the ballot how you're going to use those local sales tax dollars. So you go to a local vote of the people to say we're going to use it, let's say, to build a civic center or we're going to use it because we're in Scottsbluff's case, to help build and renovate a zoo, plus then we're going to use it for property tax relief. And the voters say, yes, and in those cases they did. And we have over 160 cities of the 530 that have a local option sales tax. Voters in those communities went to the polls based on what that...how that local government was going to use those sales tax dollars. And then they find out it's not going to be used for that. It's not being used for basically that at all because we've having city after city facing this. And one of the concerns that has been brought forward to us is literally the constitutionality of a LB775 type concept at all. Cities understand and want to do what they can to enhance their communities, they want to do that. We are in a position that is really one that I didn't think we would be in because when...I think other than Bill Lock, we're the only ones that were around when LB775...maybe you, Senator Dierks, when LB775 first passed. But when Vard Johnson was Chair of this committee, I can remember...and you can go back through the legislative testimony as well as the transcripts to find out that this is really one of those that falls under the category of a huge unintended consequence. And, in fact, even the amount of revenue that would be ever accessed by companies or the number of companies doing it far surpassed whatever the projections were at that time. Sort of underscoring what you raised this morning, Senator Hadley, on a totally different bill that what someone may project is going to happen may not even be in the ballpark of what's going to happen. So this is a

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serious issue and we're now looking at a situation where we have cities that have issued bonds for projects, how do you pay off those bonds? I think Sidney right now is the city that is most seriously impacted, the others it's just a matter of time because as he noted to you, under the Nebraska Advantage Act, the thresholds are far lower. And so even our smallest of cities are going to be feeling that. That being said, LB775, the Nebraska Advantage Act, the Superadvantage Act, those are great incentive programs. They've done great things across the state, but let me just suggest to you that it's now to the point the municipalities that are a very important part of the economic engine in this state. It's not only the university is an economic engine, municipalities are an economic engine. That's where a lot of the job creation, job retention happens because that's where the people are. But at the end of the day, if cities can't operate and you end up in situations repeatedly like is happening now in Sidney where you're ending up with property tax increases, where folks say, wait a minute, we went to the polls to vote to basically in almost every case to lower property taxes and for a specific project. Now that's not happening. We're being told we have to increase property taxes because of LB775 refunds, because of this, that, whatever, dealing with these issues and to the point that we did some polling recently, and I'll just tell you for those that may run for another office, don't use the words economic development. It has a very sour taste in the mouths of a lot of citizens and especially those cities that are facing these kinds of issues. People understand job creation, job retention. But now economic development is being tied in to some concepts where they understand that what they thought they voted for is not what they were getting and they are not happy about it. And, of course, the local folks...we even had folks where there have been comments about recalling local elected officials because they're not following through on the local vote. Well, the local vote occurred, they are bound by that, but if they never get the sales tax dollars because of these refunds, they are in a quandary and those especially that relied on it for bonded indebtedness and payoff. With that I'd be happy to respond to any questions you might have. [LB967]

SENATOR CORNETT: Lynn, what became apparent over the course of the last couple of years in working with Mr. Person is it's a multifaceted problem. It's not just that they are getting hit with this huge tax or sales tax. It's that they aren't able to budget for it because they don't know what's coming. And I lived through some of the debate and discussion in regards to privacy under LB775. Could this issue be handled by looking at how those credits are utilized and maybe working on so they can't turn in more than a certain number of credits in a time period or is there a way to manage when they reach attainment and when they apply for these... [LB967]

LYNN REX: Well, I certainly hope so. [LB967]

SENATOR CORNETT: ...that could help the...yes. [LB967]

LYNN REX: Prospectively, I think the concern is...and others behind me may be able to

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better respond to this, but the concern would be once they've signed the contract, I don't know that you can do anything retroactively for those folks that have already signed the contract. I think that's a done deal. And Ron Sedlacek is nodding yes. But in terms of any future company in signing up for the Nebraska Advantage Act or any of these programs, I think that if you pass legislation so that we can do something on this, I think that could be done. I think it has to be done, Senator. Something has to be done. This is a crisis. [LB967]

SENATOR CORNETT: What did you think of Mr. Sedlacek's idea of like a trust, setting this money aside until those credits are attained or part of it? [LB967]

LYNN REX: I think that is something certainly worthy of consideration. I think Senator Giese's bill following this one is also certainly worthy of consideration. I think there needs to be a group of folks that are involved in this. And, of course, we were not involved on the front end on LB775. We weren't included in those discussions because our answer would have been no. And I also think in answer to your question about whether or not local funds should be used as part of a state incentive program, I will also tell you we would vote no. [LB967]

SENATOR CORNETT: No. [LB967]

LYNN REX: ...that that ought to be...because local governments can provide those incentives as they see fit. For example, your bill that you had in for the United Cities of Sarpy County, Senator Coash's priority bill, that's one way the local government will be...they get to decide that, they live with the consequences, but it's their local money, they're making the decision, they control it. [LB967]

SENATOR CORNETT: Now, fairly though, most of the communities, including Sidney jumped in with both feet. [LB967]

LYNN REX: No question. [LB967]

SENATOR CORNETT: ...not understanding necessarily what the future repercussions were of this but they were equal partners in this to begin with. [LB967]

LYNN REX: No question. [LB967]

SENATOR CORNETT: Okay. I just wanted to clarify that. [LB967]

LYNN REX: And no question that LB775 and the Nebraska Advantage Act and Superadvantage Act have...create jobs all across the state. They've done great things. [LB967]

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SENATOR CORNETT: We're not talking about the income tax or the income tax that has been received from the jobs or the property tax. We're just talking about how this sales tax is being handled. Correct? [LB967]

LYNN REX: Right, but I think, too, that...I think that it was sold and also I would submit and I can't talk for Gary Person, but I would submit to you that most city officials...and we have several former city officials as mayors sitting on this committee, that the whole concept was that you...the whole concept is you broaden your base by broadening your tax base, certainly property tax base, everybody pays less. But there's a real advantage to that. Well, then flip that around and now say, okay, now we have this program but if you're in Sidney, Nebraska, you get to pay more property taxes now. And I'm just saying, Senator, it is very confusing. But no question about it, I think Gary Person put it correctly, Sidney is the victim of its success. But I don't think anybody thought that the price of basically promoting this and creating these incentives was that cities would be so financially strapped they can't even move one step forward. [LB967]

SENATOR CORNETT: Senator Hadley. [LB967]

SENATOR HADLEY: Thank you. Lynn, I guess I'm concerned about the ticking time bomb that we can look to the future to try and change it, but if we have these contracts that are sitting there that we've made with businesses out of these communities, we could have significant dollars that the communities could be on the hook for. Is that... [LB967]

LYNN REX: Oh, they are, they are. I don't think there's any question about that. And I will also tell you in answering Senator Cornett's question earlier, inasmuch as I think that the ideas brought to you by the state chamber are absolutely worthy of consideration, certainly for future contracts, something to look at, I also don't want to underscore the fact that there does need to be a refund fund. Our board is not opposed to the concept of a refund fund. That's not why they opposed the notion of having cities contribute to that. The issue was that there was...the concern that our board had was basically if you have other cities that didn't, quote, benefit from that company coming to that community, should they, quote, help that effort? But having a refund fund, I think, is a very important concept, notwithstanding the other things that the chamber brought forward. I think those are legitimate. [LB967]

SENATOR HADLEY: Well, I guess I... [LB967]

LYNN REX: But prospectively, Senator Hadley, I think you're looking at a light at the end of the tunnel and it's a train coming. [LB967]

SENATOR HADLEY: Okay. Well, I guess I still go back...I truly believe this is a little bit of a timing issue and we just found out it could be a 14-year timing issue which is a

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horribly long timing issue to do, but eventually, hopefully, the city of Sidney over 14 years or whatever it is, they will get extra revenues from these companies that come in and they will pay some of them back. But I do understand that we have to do something so that they didn't get the sales tax revenue three years ago and suddenly the bill comes through next month. And I think that's something...and that's where I think we need to work out some kind of system so it does help them with their budgeting and how they're going to do that type of... [LB967]

LYNN REX: Yeah, and this committee was very...and the Legislature itself, very helpful in passing legislation a couple of years ago to at least prospectively, although this is not going to help Sidney at all, but prospectively say that you're going to have more notice so at least you have at least one budget cycle to try to pay for it because prior to passage of that bill, you basically had 30 days notice and it was out of your budget, so. But clearly cities have partnered, cities wanted to...I mean, we were...you know, basically cities thought LB775 was just the greatest thing to hit the bricks, no question about it. So we are part of the problem and we need to have partners now. We wanted to partner on the front end, but now we need a partner to help us with a solution and the unintended consequences on the back end. [LB967]

SENATOR CORNETT: Senator Pirsch and Senator Utter. [LB967]

SENATOR PIRSCH: Yeah, I understand Mr. Ewald is going to testify, the Tax Commissioner, for this (inaudible)... [LB967]

LYNN REX: I'm sorry, I can't hear you. [LB967]

SENATOR PIRSCH: I'm sorry. I heard that Mr. Ewald is going to testify here... [LB967]

LYNN REX: Oh. [LB967]

SENATOR PIRSCH: ...so I think I'm going to hold my questions. [LB967]

LYNN REX: Okay. [LB967]

SENATOR PIRSCH: They're probably more properly put to him, so thank you. [LB967]

SENATOR CORNETT: Senator Utter. [LB967]

SENATOR UTTER: I just want to understand your testimony in opposition, Lynn. You're not now taking...the League is not now taking the position that this is a bad deal. The thing that you're opposing today is the fact that the 1 percent proposal is going to affect some cities that, number one, have promised their local option sales tax for other uses, not for this fund, and questioning. That's your opposition from that standpoint? [LB967]

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LYNN REX: That's correct. However... [LB967]

SENATOR UTTER: The source of the funding then. [LB967]

LYNN REX: Yes, that's correct because we'd strongly support it if it would come out of the state's General Fund. We understand you've got financial issues, but at the end of the day... [LB967]

SENATOR UTTER: What is that? We don't have one of those anymore. [LB967]

LYNN REX: I understand, but at the end of the day it was not because of the fund itself. But if you can imagine folks that were concerned about having 1 percent of their local option sales tax taken for one month and, of course, overwhelmingly our folks said, yes, they would support that, they were concerned on the legislative committees. But in addition to that, imagine then if you're now a voter and it's not 1 percent of one month's takings of sales tax; it is basically you're not getting the sales tax. That's the Sidney scenario. And as Senator Cornett properly pointed out, this is a multifaceted issue with multifaceted complicated issues involved in and out of this. But we do think it's important to do something and do something to help these cities that are facing this right now because obviously, we don't want cities...we've actually had some discussion by some of our members about whether or not they should even submit and try to go after some of the companies. They're concerned about when it might happen to them because the problem is, you don't know when it's going to happen to you. It could be York. It could be Kearney. And their problem could happen within the next six months. They just don't know. [LB967]

SENATOR CORNETT: Further questions? Seeing none. [LB967]

LYNN REX: Thank you for your time. [LB967]

SENATOR CORNETT: Are there any further opponents? We'll move to neutral testimony. [LB967]

DOUG EWALD: Chairwoman Cornett, members of the Revenue Committee, my name is Doug Ewald. I'm the Tax Commissioner for the Nebraska Department of Revenue. I had not planned to testify on this bill. I was sitting in my office, heard some of the dialogue going back and forth and thought it might be of value to provide you with some technical clarification with respect to the number of things that we heard here. So I will maybe make a few statements and then open it...I mean, obviously will line up for questioning. With respect to refunds that go to local jurisdictions, we do not refund money. The tax has to have been paid. An example earlier of Tecumseh. Tecumseh received that sales tax sometime prior to the state sending them a letter that you're not

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getting X amount of dollars this month. So we do the audits on that and in order for us to withhold from a local, the tax would have had to have been paid to them at some point in time. I heard questions about contracts. These are legally binding contracts with the state with respect to the tax incentive program. Let's talk a little bit about the length of how the...how long these things might spread over. LB775, for example, you file an application. You have the next six years to attain the minimum thresholds, so you basically have seven years. Say you attain that minimum in your seven. You now have seven more years to...of entitlement. Once you reach the end of your entitlement, you now have eight more years to utilize those credits. So you're talking about a 22-year window in all in potential for one particular project, the life of that particular project. And Senator Louden had a very good question about refunds. And from a financial reporting standpoint as a taxpayer, all of us here are cash basis. The businesses are accrual basis, so in the year in which you spend that sales tax dollar, you're going to have to accrue a corresponding tax benefit, so a contract expense, an income item, for example. But you could also have a situation where a dollar spent in year 1 depending on when a company files their refunds, could be years 8, 9, 10, 11, somewhere down the road from that standpoint. So with that, I would be more than happy to answer any questions you have. [LB967]

SENATOR CORNETT: Go ahead, Senator. [LB967]

SENATOR UTTER: Thank you, Senator Cornett. Doug, you have listened to the testimony today and obviously you are aware of the problem now. I'm sure all these folks have probably discussed this problem with you. Do you have any recommendations for the committee? How...what's your...after you've heard this testimony, where do we go from here in your opinion? [LB967]

DOUG EWALD: You know, I haven't studied a lot of the detail of the bill honestly. I don't have any recommendations on what you do. I mean, obviously, we have a legally binding contract that's in place and that policy has been set by prior Revenue Committee and Legislatures. I don't really have a suggestion for you with respect to what you do or don't do. [LB967]

SENATOR UTTER: Well, that's probably smart but it's pretty coldhearted. (Laughter) [LB967]

DOUG EWALD: Fair enough. [LB967]

SENATOR CORNETT: Senator Utter, that is the "Tax Man" there. What do you expect? (Laughter) Mr. Ewald, I know that you have been in contact with the municipalities that are facing this and Tecumseh being the latest one that I have heard from. They're saying that they didn't even know that this had occurred, but people could have applied for this LB775 benefit a decade or more ago, correct? [LB967]

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DOUG EWALD: Correct. [LB967]

SENATOR CORNETT: They reached attainment sometime in that first seven years. Then they can hold that...do they...I know they file a certificate that they've reached attainment, but then is that...do they then ask for the sales tax return at that point or can they ask for it any time in the next, what did you say, 20 years... [LB967]

DOUG EWALD: Yeah, well... [LB967]

SENATOR CORNETT: ...which would be 10 years? [LB967]

DOUG EWALD: Good question. When they...what businesses do once they feel they've met those minimum thresholds, they will call us or send us a letter to the Department of Revenue and say, okay, we believe we're there as of the end of this year. We'd like you to schedule an audit to come in and audit our records and validate that we've met those minimums. Now, once we go in and validate that, it's up to the company to determine when they're going to expend those internal resources to put those refund claims together and actually file them with the state. So we don't have a lot of control over that. It's a little interesting. In downtimes, we usually get a wave of them because people want cash from that standpoint, you know. They'll put extra resources towards monetizing those credits and those refunds, but we really don't have any control over when they file those. [LB967]

SENATOR CORNETT: Which was my question earlier. With the downturn in the economy, these companies are using these credits as a cash flow management tool. But at the same time the economy is down for them, it's also down for the municipalities and they've seen a decline in their sales tax receipts, so the municipalities are getting a double whammy of a tax credit that may have been...occurred multiple years previously that they did not know was coming and not in the same time period that...they're having to pay it out in a different time period than they're in and their time period that they're in, they're down on their sales tax. I guess my question kind of comes back to what Senator Utter asked, and I know it's not really your position as a tax administrator, but we are looking for a way to not back out of any of these contracts and not hamper economic development because all of these programs have been tremendously successful. But it brings the question, how do we limit the impact, the negative impact, on the cities during an economic downturn when these credits are being utilized? [LB967]

DOUG EWALD: What you said there is right on and that the municipalities are real laggard in this. And then when you get hit in an economic downturn, it can be a double whammy for them. What we do at the Department of Revenue, and I know the Department of Economic Development does as well, is we put out an annual report to

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the Legislature and it's on our Web site of all the companies that have filed, and it states their name and it states the local jurisdictions. Whenever we get a chance, we encourage companies...we encourage cities to look at that report to find out who may have filed an incentive application in their local jurisdiction and we encourage them to reach out to those businesses and start a dialogue. And by that, what I mean is...I'll give you a great example here. When I was at Union Pacific, we knew we had significant refunds associated with the new headquarters project. And what we did is we would call the city of Omaha and say: Okay, by the way, we are going to file a large refund claim; this is your share of it. We're filing it now so you can expect this to hit you locally within six to nine months or sometime six months to a year, something along those lines, depending on when the state worked through it. So we encouraged that dialogue between the local chambers of commerce and their businesses, form that bond so you form that dialogue that hopefully you get that information of when they're filing refund claims. Now, I know that doesn't answer your question (laugh) about what can be done. You know, we're receptive to working with the committee to explore a number of different alternatives with respect to that. But, like I said, it's a policy decision that there's a number of things that can probably be done that we could administer internally. [LB967]

SENATOR CORNETT: Senator Hadley, just one second. The problem that I see particularly right now in this economic situation, and you better than anyone else is quite familiar with how far we are down in sales tax receipts. Well, that is reflective of each community being down in sales tax receipts. So our municipalities who have these companies are really...companies who have reached attainment are really in a bad way, particularly until the economy turns around because I have a gut feeling that more and more of these credits are going to be utilized over the next couple of years. [LB967]

DOUG EWALD: I would tend to think that companies are looking very hard right now at how they monetize those credits, how they turn them into cash. [LB967]

SENATOR CORNETT: Okay. Thank you very much, Mr. Ewald. Thank you for coming over to answer our questions. Senator Hadley and then Senator Pirsch. [LB967]

SENATOR HADLEY: Senator Cornett. Mr. Ewald, maybe you can't answer this. What do you think we have as a contingent liability right now sitting on the books for cities out there? Any estimate or is there any way to find out? [LB967]

DOUG EWALD: You know, I wouldn't even venture to guess because it's going to be a moving target when companies file their tax returns and those type of things, what refunds are in queue, you know, whether or not they are going to...you know, we have...we've seen the last few years, we see a number of credits expiring that businesses have earned because they don't have the income to offset them and they've exhausted their sales tax liability. That's something that's been fairly relevant the last

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couple of years here. So I couldn't really venture to guess how big that is. Sorry.
[LB967]

SENATOR HADLEY: Okay. Okay. Thank you, Mr. Ewald. [LB967]

DOUG EWALD: Yeah. [LB967]

SENATOR CORNETT: Senator Pirsch. [LB967]

SENATOR PIRSCH: Actually, Senator Hadley had a brilliant, insightful question which was my own, so thank you very much. (Laughter) [LB967]

SENATOR CORNETT: Senator Louden. [LB967]

SENATOR LOUDEN: Yes, thank you, Senator Cornett. Well, Doug, thanks for coming over because I'm sure you can clarify some stuff. Is there any way in your regulations that you can perhaps tell these cities some of the businesses that you say have expended their resources or whatever to get these refunds so that they would know what to expect? I mean, every town knows who their best customer was. [LB967]

DOUG EWALD: Right. [LB967]

SENATOR LOUDEN: And is there any way that through your regulations without interfering in this confidentiality that they could be notified? You know, saying, well, these, these, and these are not...will not be sending you any notices of refunds anymore or something like that so they'd have...at least they would know where the horizon was maybe. [LB967]

DOUG EWALD: Right. Well, I think the way our statutes are construed right now, we couldn't issue a regulation that expands that confidentiality on out to a higher level to help the locals with respect to that. There are certain things, obviously, LB312 adds for a little bit more than LB775 does. But they can look and see what...like I said, they can look on our Web site and find out what...if there's a statewide project, is it...what's local. You know, it's worthy of their perusal to try to identify those businesses and start that dialogue and say, you know...and most businesses say, hey, we want to be a good, corporate citizen here and let's start the dialogue and let you know when we're going to file a refund and that type of stuff. But I don't see it... [LB967]

SENATOR LOUDEN: Then the only way they'd have of finding out is find out what towns or what businesses are still out there and then contact the businesses themselves and... [LB967]

DOUG EWALD: Correct. [LB967]

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SENATOR LOUDEN: ...hope they would get some answers. [LB967]

DOUG EWALD: Right. And our Web site says Business, A, B, C in whatever Nebraska city, has filed an application. And then, okay, then you start to dialogue with that company to hopefully allow you to maybe budget a little bit better down the road. [LB967]

SENATOR LOUDEN: On your Web site, do you have anything in there that Businesses C, D, and F are eligible to file or something like that? [LB967]

DOUG EWALD: No, we don't. I mean, that's an individual business decision on whether or not they want to file an application, so we don't have anything like that. [LB967]

SENATOR LOUDEN: But, well, somebody must know who is the one that's...which businesses are...have the ability or have the credits that can be filed, wouldn't you? Could that be put out? [LB967]

DOUG EWALD: I guess I envisioned your question a little bit different, Senator, and that was, who's a potential candidate out there to file for an application. I think you're saying, who's a potential candidate out there to file a refund. And it would just be based on, you know, the information that's out there on our Web site as well as in the local communities having those chamber of commerce discussions and dialogue. [LB967]

SENATOR LOUDEN: Is that available? [LB967]

DOUG EWALD: Yes. [LB967]

SENATOR LOUDEN: Okay. They could come from that angle then perhaps? [LB967]

DOUG EWALD: Um-hum. [LB967]

SENATOR LOUDEN: One other last question, is there anything in there that without, I guess, jeopardizing the contract that there could be a certain limit on how much they could get refunds in a year? You know, they could still get their refunds, but they couldn't get it in one particular year. They'd have to carry it over to next year or something like that. [LB967]

DOUG EWALD: You know, I don't...that's a tough one. There's nothing, obviously, in statute today to say...and here's the problem, say, okay, if you say we're going to pay out \$100 million a year in a particular year, so how do we administer that on a first-in, first-out basis of who files their refunds or...you know, and if you didn't...if you don't make it, are you first in queue the next year? It creates a few hurdles to overcome in

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that situation. I mean, that would obviously accelerate some refunds by certain companies, but I don't know how you administer if you had a pool of \$100 million, for example, how you were going to decide or if you were going to prorate that, who was going to get what dollars? [LB967]

SENATOR LOUDEN: Okay. Thank you. [LB967]

DOUG EWALD: Um-hum. [LB967]

SENATOR CORNETT: Senator Utter, did you have a question? [LB967]

SENATOR UTTER: Doug, when you get an application for a refund of those taxes, how long between the application time and the actual payment time? [LB967]

DOUG EWALD: By statute, we have 180 days. So we have six months to act on that application. Now, we may approve it in its entirety. We may approve it partially. One thing that the Legislature changed a year or so ago was allowed us to enter into an extension agreement with the company. Say we get into something and they haven't provided us all the support for that. In the past, we would just have to flat deny it. So we said, okay, the Legislature now has let us extend that six-month period for whatever they need to gather the appropriate documentation so that we're just not slamming the door in their face from that standpoint. [LB967]

SENATOR UTTER: So they apply for the refund. You go audit them to determine... [LB967]

DOUG EWALD: We audit the refund claim, yes. [LB967]

SENATOR UTTER: ...to determine whether the claim is valid or not. [LB967]

DOUG EWALD: Correct. [LB967]

SENATOR UTTER: If you determine the claim valid, then how long before you send the money? [LB967]

DOUG EWALD: Well, we will probably...well, it would be within that month. [LB967]

SENATOR UTTER: Within that month? [LB967]

DOUG EWALD: Within that month, yes. [LB967]

SENATOR UTTER: So is there privacy restrictions with you just notifying the municipalities involved that Joe Blow in Tecumseh or wherever has filed a claim so that

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they're on notice at that stage of the game and know that it probably could be a 180 days before they...before the payment is actually made? [LB967]

DOUG EWALD: Yes. There are confidentiality restrictions with respect to... [LB967]

SENATOR UTTER: Whose restrictions are those? [LB967]

DOUG EWALD: Those are the Department of Revenue restrictions with respect to confidentiality and what we can disclose to the municipalities and really to anyone on the outside. [LB967]

SENATOR UTTER: That were established by the Legislature? [LB967]

DOUG EWALD: Correct. [LB967]

SENATOR UTTER: So it's your position, then, that you can't give the cities any advance notice that something is in the works? [LB967]

DOUG EWALD: That would be correct and it's probably more so for the locals where you have three or four taxpayers as opposed to the larger cities. You could probably do something for Omaha and Lincoln because there are many companies and you wouldn't be breaching anyone's confidentiality in that situation. But we don't do it for anyone today. [LB967]

SENATOR UTTER: But they're kind of your partner, right? [LB967]

DOUG EWALD: Sure. [LB967]

SENATOR UTTER: Thank you. [LB967]

SENATOR CORNETT: Further questions from the committee? Mr. Ewald, since we are dealing with another bill similar to this in nature, would you mind remaining in the hearing room in case of further questions? [LB967]

DOUG EWALD: Actually, I am late for another meeting right now that I need to run to that's probably going to occupy me for the rest of the afternoon, so. [LB967]

SENATOR CORNETT: Okay. Thank you very much for your time here today. [LB967]

DOUG EWALD: All right. Very good. Thank you. [LB967]

SENATOR CORNETT: Next testifier in a neutral capacity. [LB967]

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DACIA KRUSE: Good afternoon, Chairman Cornett and members of the Revenue Committee. My name is Dacia Kruse, spelled D-a-c-i-a K-r-u-s-e, and I'm testifying in the neutral capacity on behalf of the Greater Omaha Chamber. I'm going to bring up an issue that's already been brought up and so I will be brief. Our understanding is that the intent of this bill is that it apply to first and second class cities and villages, and we want to make sure moving forward that Omaha does not have to pay sales tax dollars into a fund that it is not eligible to receive money from. I have expressed this concern to Senator Schilz. If the cities who do contribute money to this fund and those who are eligible to receive money from the fund are limited to first and second class cities and villages, then we would have no opinion on the bill, we'd be neutral on the bill. And with that, I'd be happy to answer any questions. [LB967]

SENATOR CORNETT: Seeing none, thank you. Is there anyone else in a neutral capacity? Senator Schilz waived closing. Then that closes the hearing on LB967. Senator Giese, you're recognized to open on LB954. [LB967]

SENATOR GIESE: Thank you, Senator Cornett and members of the committee. My name is Robert Giese, G-i-e-s-e, and I represent the 17th Legislative District which includes Dakota, Dixon, and Wayne Counties in northeast Nebraska. I was writing down some comments to earlier testimony. Senator Utter mentioned the word "heartburn" and also Senator Hadley mentioned "timing" as one of the words, and then, lastly, "where do we go from here." And I think that LB954 may be a possible part of that solution. The Nebraska Advantage Act by all accounts has been a successful program in the state of Nebraska and for the communities that have benefited from the new businesses that the Nebraska Advantage has brought to our state. LB954, along with Senator Schilz's LB967, is designed to address the issue of local option sales taxes under Nebraska Advantage, a topic the committee is far too familiar with. Last session, Senator Schilz introduced LB640 which would have allowed communities to opt out of the local sales tax refund under the Nebraska Advantage Act. The bill was indefinitely postponed by the committee due to fiscal and other concerns. LB954 is designed to be a revenue-neutral solution to this growing problem. Under Nebraska Advantage, businesses are given tax credits which can be applied to a number of different tax liabilities, including state income taxes, state sales taxes, and local option sales taxes. Under LB954, refunds of local option sales taxes for projects that expand an existing business would be limited to the amount by which the sales and use taxes paid during the calendar year exceeds the amount of sales and use taxes paid by the business in the calendar year prior to the year of application. Thus, if a business had been paying \$50,000 in local sales taxes before applying for Nebraska Advantage and paid \$75,000 in local sales taxes after entering into an agreement with the state, they could only apply Nebraska Advantage credits to \$25,000 of the local sales tax liability. Because these tax credits can be applied to other tax liabilities and can be carried over for up to ten years or more, businesses should not see a change in the dollar amount of credits, merely a change in the time line or application of those credits. The reason for the distinction

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between existing businesses and new businesses is twofold. First, in some cases, existing businesses which receive credits under Nebraska Advantage have used those credits to erode their existing sales tax bases in their local communities. Second and most importantly, any local sales taxes...any local sales tax revenue received by a municipality as a result of a new business is revenue that the community would not have received but for the existence of the Nebraska Advantage incentives. By limiting the use of credits for preexisting businesses but not new businesses, LB954 seeks to hold communities harmless, ensuring that communities will not see a revenue loss as a result of local businesses choosing to expand. Opponents of both LB954 and LB967 will claim that the bills are a setback to the Nebraska Advantage, and that passage of either bill would pit Nebraska's communities against the state's business incentive programs. I would submit to the committee that communities which have already been burned by significant loss of local sales taxes are at the point where if the Legislature fails to address this issue, they will have no choice but to actively oppose further applications for Nebraska Advantage and other business incentives. I would urge the committee to seriously work towards a solution for this problem and ensure Nebraska communities continue to benefit from Nebraska Advantage. I would thank you for your time and would be happy to take any questions. Lance Hedquist, the city administrator of South Sioux City, will testify behind me and can hopefully answer any technical questions about the bill now that we lost Doug Ewald, too, but. Thank you. [LB954]

SENATOR CORNETT: Senator Hadley. [LB954]

SENATOR HADLEY: Senator Cornett. Senator Giese, you mention that I used the word "timing." You and a number of people that have testified have talked about a loss. There may be a loss in a given year, but over the life of the economic development project it should be revenue neutral, shouldn't it, because the company spends the sales tax dollars? And the theory behind economic development is that they wouldn't have spent them if we hadn't have given them that incentive. Then we take it back so it's a zero-sum gain. The company spent \$100 on local sales tax five years ago, city got it, spent it; five years later, we take it away. So I see it more not...it's a loss in the year that it was taken away, but it was a gain in the year you got it because if you didn't have LB775, theoretically, that company wouldn't have expanded, may not have come to Kearney or something like that. So, again, I'm back to the...trying to figure a solution to the problem from a timing standpoint that the city doesn't have the windfall one time and when the new administrator, new mayor has to pay the piper. [LB954]

SENATOR GIESE: I agree, Senator Hadley. But I will just offer you this scenario that everyone...our city administrators that are out there, some are not as astute as yourself and are in a position to have to obligate themselves for different things to maintain and new ideas, and so get themselves in a situation where they're obligated at one end and then here comes this. And, yes, in time they'd have to pay the piper, but I will just... [LB954]

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SENATOR HADLEY: Senator Giese, I would agree entirely that I think in our lives we have...sometimes we take actions and we get windfalls and... [LB954]

SENATOR GIESE: And we hope for the best. [LB954]

SENATOR HADLEY: Yeah, and we don't think that the other shoe is going to drop sometime down the line. [LB954]

SENATOR GIESE: And maybe that's not...I mean, we don't just...I know city administrators or...we just don't hope for the best. We plan and have a plan to do that, but. [LB954]

SENATOR HADLEY: Well, Senator Giese, what you don't...the city administrator doesn't know is how much of it came from that project. You don't...you know, did we just have an upturn in the economy that gave us, you know, little uptick or was it because Cabela's spent...bought all their brand new office furniture for their new building? You just don't know. So I just hope that...the last thing I want to do is to come up with some kind of proposal that stifles economic development because I think we have to try and grow our way out of these economic times that we're in. So I want to be absolutely fair to the cities because we want them as our partners. [LB954]

SENATOR GIESE: Well, I would just...one other comment, Senator Hadley, is that, you know, I've touted Nebraska Advantage and LB775 for years and I think these are just some of the issues that are...they don't affect everybody, but we are hearing some...a little bit of pushback on that and that's why we're here, to address those issues and try to figure out what we can do as we move forward. [LB954]

SENATOR HADLEY: Thank you, Senator Cornett. [LB954]

SENATOR CORNETT: Further questions? Seeing none, thank you. Before I open up the testimony to proponents, may I see a show of hands for proponents of this bill? All right. If you've already spoken on the previous bill, please only give us new testimony. We understand the situation that your communities are in. Tell us what you're looking at specifically with this bill. [LB954]

LANCE HEDQUIST: (Exhibit 6) Thank you, Senator Cornett, members of the Revenue Committee. My name is Lance, L-a-n-c-e, Hedquist, H-e-d-q-u-i-s-t. I am the city administrator of the city of South Sioux City. First of all, I'd like to commend this Legislature and previous Legislatures for passing the Nebraska Advantage laws and LB775 because they have done a great deal in terms of getting new industries to our area. It's particularly important to us because we're in a tristate area where they can choose Iowa or South Dakota or Nebraska. In fact, Mayor Giese or Senator Giese when

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he was mayor, I'd say he would be the first billion-dollar-mayor in the city of South Sioux City and we're coming fairly close to that taking place with all the expansion that we have with Beef Products, Incorporated, Dakota Cold Storage, Sioux City Foundry, Omega Industries, Badger Corporation, all those companies are continuing to grow in our area, in a large part due to great work of the Nebraska Advantage laws. As we speak today, we have about \$400 million worth of private-sector construction taking place within our community. We've had three one-half cent sales taxes approved within our city. One half of that one-half cent sales tax was approved for property tax relief within our community. We have...a half cent was approved for improving the streets within our community. And then the city of South Sioux City and Dakota County were the first to approve a half cent for a jail project in our community where we floated bonds, \$7.025 million worth of bonds for paying off the building of a jail within our particular area. And if Senator Pirsch was here, I would just mention that that's one of the areas that does concern us in terms of us being able to complete the liability the public incurred if we do not have adequate revenues to pay off the bonds for the jail tax facility. That does raise concerns for us. I think it's also important to note the difference between LB775. We have a long period of time to get those credits as well as people come in and amend their applications. So it's not only the first-time application, but you can actually submit amendments under LB775 itself. Also note in terms of...and I think the Department of Revenue has been extremely good and easy to work with and always been responsive to questions we've had, but in terms of the amount of sales taxes paid to a community, part of that can be estimated. It's not where you have sales tax receipts. They'll take a rule of thumb in terms of some of the construction costs and say we'll allocate X percent for that particular facility to take place within your particular community. If you'd note on the handouts...is it okay if I stand, Senator Cornett? I think that might be easier for me to explain a couple of these things with you. And you do have copies of these figures and what I've handed out, but what I want to show in the black line is the amount of revenue that the city of South Sioux City and the citizens of South Sioux City voted for in three separate elections for our community for specific projects that I mentioned earlier. The red lines show those time frames where people have come back and asked for refunds. We don't know who they are, who asked for those. We didn't sign a contract with those, but obviously, those are refunds that are being asked for from our citizens of our community. In fact, if you look at the biggest dip there where we actually went in the red, we received zero money for the state...from the state for three months in a row. That raised a question by the county, citizens in the county saying, the city, you haven't paid us for three months for what the voters approved for, for a sales tax to pay off the bonds on the jail. Our response is we can't pay you if we don't get a check. There is no money that we can pay. So that's created a little bit of tension with the county, some citizens of the county saying: Where did it go? How come we don't have it, etcetera? They said, well, who got the refund? We said, we don't know. It's just a lot of uncertainties that exist within this area. But you'll see that we have continuous requests for refunds within our community. As mentioned earlier, that will increase with the new Nebraska Advantage law because in our case it's up

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\$250,000 a year you can start asking for Nebraska Advantage refunds. Then if you look at the second sheet over there, if you look at the refunds by year within our community and you see that in each year we've had various amounts of money that we have paid back for those business expansions. Business expansions that we wanted in our community, we supported in the community, and were benefited under the LB775 and Nebraska Advantage Act. If you'll note in the dark, the amounts of money that was refunded during that period of time, it amounted to \$1,845,000 that was refunded to companies that made credit requests from our community. The senator's bill does something different. The problem is the same as was mentioned in the previous bill, but the results are significantly different in terms of how this bill is implemented. Senator Hadley made a comment that I thought was very good in terms of saying, well, the city got a windfall over this period of time because the company came in and spent those additional sales taxes. That is true that the city did get that windfall during that period of time because the company did grow and did pay sales tax. What this does, however, is saying for an existing company, not a new company since they didn't pay any funds, but for an existing company, they only get credit for the increased amount of sales that they have within the community. So if they bought 100 rolls of paper towels for their existing business, and they paid the sales tax of those 100 paper towels, and they expanded and they used 150 paper towels, they would get credit under the Giese bill of only the 50, only the additional 50 that they applied for, not the existing 100, not the existing 100 that was used for existing services, what the public voted for, and what the public wanted these funds to go for. So you don't reduce that base. Your whole basic community can change a little bit if somebody comes in or out or something changes, but it does take the windfall and separates that and has the community look at that in a different fashion so that it doesn't take away from those existing public voter bond issues. It only applies to the expansion. And that's the way this differs is that if you're an expanding firm, I think you'll note in the previous testimony, a lot of the expansions in cities and other places are existing firms. Clearly, that's true within our particular area, those existing firms, but they would only get credit for the new development they have and the new sales taxes and the existing base sales tax would continue to be paid. Much of this...you talk about TIF where a TIF...the base valuation stays the same, it doesn't change during the life of the TIF. This would be the same kind of a concept to take place. So when we enter...when there's contracts that are entered between the state and the businesses, you know, we're not part of that agreement. We don't sign the agreement. We don't know how much the agreement is for. And so we never know exactly when that's going to take place. So the \$1.8 million, our proposal is not to get back \$1.8 million in this process, only reduce that amount by whatever the new was versus what the existing was, so you couldn't double dip, if you will, and go back into the existing base within the community. So the idea, I think, is pretty straightforward and I think it makes sense and I think it's revenue neutral from the state of Nebraska's standpoint. [LB954]

SENATOR CORNETT: Questions from the committee? Senator Pirsch and Senator

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Utter. [LB954]

SENATOR PIRSCH: Go ahead, Senator, (inaudible). [LB954]

SENATOR UTTER: Lance, you're suggesting this is a prospective-type bill. [LB954]

LANCE HEDQUIST: That's correct. [LB954]

SENATOR UTTER: You're not suggesting that we can go back and alter contracts with the existing companies that have gotten LB775... [LB954]

LANCE HEDQUIST: That's absolutely true. [LB954]

SENATOR CORNETT: Senator Pirsch. [LB954]

SENATOR PIRSCH: Are you familiar with how other states approach the concept of...? Has this model been used in any other state? (Inaudible)...same concept that's imbued in TIF where you start with the baseline that always stays the same or was this, again, something that you conceived the concept (inaudible). [LB954]

LANCE HEDQUIST: We conceived of the concept. I'm very familiar with what some other states have in terms of incentives. The Nebraska Advantage is unique among those other communities. And so the solution or the issue here, I think, has to be tailored to what Nebraska has. [LB954]

SENATOR PIRSCH: In other states, though, is it pretty common, then, to use the base as opposed to...you're suggesting that might be one shortfall to Nebraska Advantage is that you don't use the base. [LB954]

LANCE HEDQUIST: That's correct. In other places, they'll count the expansion of what the company does versus taking the existing operation of the company and including that in terms of the incentive. [LB954]

SENATOR PIRSCH: Does that have a meaningful, then, effect on the bottom line then of the payouts, so to speak? [LB954]

LANCE HEDQUIST: Well, what it would do is delay the payouts and in some cases if they can't use all their credits, it would actually reduce the credits a company gets if they can't use them all. But remember, they have a period of time to get those, and so they still can collect that same credit amount, it's just going to take them a little longer to get it. [LB954]

SENATOR PIRSCH: Would it...I mean, you said...I mean, it's pretty simple, few words

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involved in this amendment. It says, "For a project that expands an existing business." And using that terminology, "expands," is that precise enough? Is that clear enough to avoid, I guess, possible disputes about what that means? I mean, this is a pretty comprehensive bill used in many situations or do you foresee that that would be adequate enough to address all those situations? [LB954]

LANCE HEDQUIST: I'm a city administrator, not a lawyer, but from my particular standpoint the answer is yes because a company has to apply for the new funds and apply for the expansion, and in that process, they're setting the dates and time frames for them to achieve those goals, so I believe that that does answer that question affirmatively. [LB954]

SENATOR PIRSCH: Thank you. [LB954]

SENATOR CORNETT: Senator Adams. [LB954]

SENATOR ADAMS: Thank you. Lance, would you explain for me again, I'm maybe reading too much into this, how the base is established? [LB954]

LANCE HEDQUIST: The base is... [LB954]

SENATOR ADAMS: I mean, you used the TIF analogy and that makes sense to me. All right. So you're saying we're willing to accept the amount that's been grown. We understand that part. So how do you determine the basis? [LB954]

LANCE HEDQUIST: When a company makes an application under this proposal, you take the previous year's sales tax that was paid by the company on their audit or their tax statement that they make, so every company knows what they've paid in so it's nothing new. [LB954]

SENATOR ADAMS: All right. So let's say it's a million dollars. [LB954]

LANCE HEDQUIST: Right. [LB954]

SENATOR ADAMS: Okay. Go from there. [LB954]

LANCE HEDQUIST: And they paid a million dollars in sales taxes the year before and they expand and they go to \$1.2 million. They would get credit for everything over the million, so they'd get credit on the \$200,000 not the \$1.2 million that they currently get. [LB954]

SENATOR ADAMS: I see. [LB954]

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LANCE HEDQUIST: I think there's a real misnomer here and this is really a fundamental issue is that most people think that the credits they're getting is on their expansion. That's not true for existing companies. Existing companies get credits on their expansion and their existing operation. And what this does is say that... [LB954]

SENATOR ADAMS: Cut the existing operation out of it. [LB954]

LANCE HEDQUIST: Cut the existing out because, again, it goes back to the...what the public voted for, what the public expected, what bonds are sold for, property tax relief, streets, whatever the town went into. I think that would help them and help alleviate some of the heartburn on future projects. It's not retroactive. In addition, I think the other question that lays out there, I think the League made some comments about that. I think there is a real concern in terms of concerns about expending fund monies on bonds, etcetera, when the cities don't have a role in that. I think that's a real potential constitutional question, at least from an administrator's standpoint. Again, I'm not an attorney, so. [LB954]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB954]

LANCE HEDQUIST: Thank you very much, Senator. [LB954]

SENATOR CORNETT: Next proponent. May I see a show of hands of opponents? [LB954]

GARY PERSON: Gary Person, city manager of Sidney, Nebraska, G-a-r-y P-e-r-s-o-n. I'll just be very brief. I just...we'd probably be a good example of Senator Giese's bill. Had it been in place, we wouldn't be in the situation we are. Seven of the nine qualifying projects that we're affected by were, already had existing operations in Sidney before they filed. And I just also wanted to address an issue that Doug Ewald brought up in the communication that he encourages, you know, with the companies that may file for refunds. In our case, only one of those companies is locally owned and operated. I believe four or five of them have been sold since the time that they had applied. You begin working with the relationship and trying to develop a trust factor and having them, even though they don't legally have to, to communicate back to you what might happen, what might occur. One company, in fact, has sold four times and one time it was to a German company. And it's...you know, I wouldn't know the first place where to start to try to communicate. I just want to give you one quick example with Walmart. We were working with them on just a simple street project, and over the course of the year being a large corporation like they are, I dealt with 30 different officials with Walmart trying to get simple answers. And by the time I get one person educated, somebody else has been assigned the responsibility or somebody else had taken their job and they got reassigned somewhere else. So it's a real challenge to have that communication when it's not mandated by law. [LB954]

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SENATOR CORNETT: Senator Hadley. [LB954]

SENATOR HADLEY: Senator Cornett. Mr. Person, just so I understand this completely, right now, we're not...an existing company, we're not just talking about sales tax on the expansion items, you can use some of the base from this company. Is that a correct statement? [LB954]

GARY PERSON: That's our belief. Since we're not privy to all the information, we believe that that is the case, yes. [LB954]

SENATOR HADLEY: Okay, because I'm always under the assumption that it's the...from an economic development, it's the additional that you wouldn't have gotten if they hadn't have done it versus giving away...because I...you know, as a former mayor, I was involved with a half cent sales tax increase in Kearney and we did commit that we would use it for certain very specific projects. [LB954]

GARY PERSON: We all did, every one of us did, and now we feel like we're going back on our word. And a lot of these times these companies when they do expand, they'll move completely out of their existing operation into a new facility, so it has the appearance that it's all new. [LB954]

SENATOR HADLEY: Okay. Thank you. [LB954]

SENATOR CORNETT: Seeing no further questions, next proponent. [LB954]

LYNN REX: Senator Cornett, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. I would like my testimony from the prior bill to apply to what I'm saying in this hearing as well. We do strongly support this measure, and I would hope that based on the fact that it was our understanding, too, Senator Hadley, that these credits were supposed to be on the new and expanded business. So that being said, there really shouldn't be any opposition to this by definition. Be happy to respond to any questions. [LB954]

SENATOR CORNETT: Seeing none, thank you. [LB954]

LYNN REX: Thank you. [LB954]

SENATOR CORNETT: Next proponent. Are there any further proponents? We'll move to opposition testimony. May I see a show of hands for neutral? [LB954]

ROBERTA PINKERTON: (Exhibit 7) Thank you, Senator Cornett. Again, my name is Roberta Pinkerton, R-o-b-e-r-t-a, Pinkerton, P-i-n-k-e-r-t-o-n, and I'm testifying on behalf

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of NEDA, the Nebraska Economic Developers Association. We are opposed to LB954. While we have acknowledged in the previous hearing that the local sales tax refunds can and have created a hardship for some communities, we don't feel that this is the best solution. By establishing limits on the refunds that are being provided to our businesses that are expanding, we're diminishing the value of the incentive program that we currently have, and we're reducing Nebraska's ability to compete with other states for these projects and expansions. And as I stated previously, NEDA opposes any changes that reduce the value of the incentive as the businesses look at the bottom line when they're making those comparisons state by state. We oppose any changes that reduce that value and, therefore, hinder the competitiveness that we have with other states. Thank you. [LB954]

SENATOR CORNETT: Questions from the committee? Senator Adams. [LB954]

SENATOR ADAMS: Thank you, Roberta. Obviously, you've been here all afternoon and you've heard these cities come up and testify, and I have to think that despite your opposition you have to be at least empathetic to their financial issues. So in light of that, I'm going to hope that when I ask the question you at least say, yeah, maybe. So what do we do? We can't just drop these people off the edge of the map. [LB954]

ROBERTA PINKERTON: Absolutely. Our membership is very concerned about this. Gary and Lance are both members of NEDA. We have members who are city administrators and serve in an economic development function. And we certainly understand the issue. We know it's a problem. We know there needs to be discussion. We've been part of the discussion to try to come up with the solution. It's not an easy solution, as we've talked about earlier today. We feel like the previous bill is a better solution than this is. This bill... [LB954]

SENATOR ADAMS: Why is that, may I ask? [LB954]

ROBERTA PINKERTON: The previous solution did not diminish the value of the incentive. This bill reduces the amount of the incentive that a business is getting. So as they're looking at comparing the expansion opportunity in Nebraska to Iowa and South Dakota and they're listing all the incentives that they're receiving, they're looking at the bottom line, who's giving us the best opportunity. This is reducing the amount of the incentive that we're providing to that business, so it's, therefore, making us less competitive with Iowa or South Dakota or whatever other states they might be looking at. So we're not supportive of anything that's reducing the value of the Nebraska Advantage incentive. [LB954]

SENATOR CORNETT: Further questions? Seeing none, thank you. Next opponent. [LB954]

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RON SEDLACEK: Senator Cornett, members of the Revenue Committee, for the record, my name is Ron Sedlacek, it's spelled S-e-d-l-a-c-e-k. In order to not be repetitive and also knowing full well the committee has a number of other bills to hear today, I've been authorized to testify on behalf of Nebraska Chamber of Commerce, and then also the Greater Omaha Chamber of Commerce, and the Lincoln Chamber of Commerce, to speak in regard to the policy of the state chamber. In looking at the bills before us today in regard to the subject matter, as I mentioned before in testimony on the previous bill, we have a little bit less heartburn in regard to that approach as opposed to LB954. And the representative from NEDA pretty much explained that rationale. We have offered, also, alternatives that I won't repeat today that we feel would be something for the committee to look forward to, particularly in the future. We have concerns about this particular bill that have not been mentioned in regard to the...an ambiguity as to the application and the timing as to current and/or future contracts that have been entered into. We believe this may be rife with issues in regard to some creative corporate organization as far as the bill is currently drafted because it speaks only to existing and...in regard to that as to whether or not there may be a way in which to interpret the formation of new corporations and merging of assets over to other...to the new corporation in order to avoid the existing requirement. That's something that, you know, you might want to take a look at. And when you start formulating policy of this type and not encourage necessarily that activity, and then also the question becomes a matter of, at least in the bill in its drafted form which we have reviewed as to the classification, questions as to existing businesses versus new businesses and that could be, in other words, the possibility of rewarding out of state with additional incentives as opposed to those who are currently in state. [LB954]

SENATOR CORNETT: Questions from...Senator Adams. [LB954]

SENATOR ADAMS: Mine is a timing question also. And if you don't have an answer I understand completely. But the timing I'm thinking about is not when they get information, but at the time that LB775 was implemented, I wonder how many communities in Nebraska had local option sales tax as compared to today. And what I'm wondering and I don't know the answer to, but let's say there were Omaha and Lincoln, I don't know, at the time of its enactment, then does the fact that as more cities come on line with local option sales tax become something of an unanticipated windfall for the Advantage Act? [LB954]

RON SEDLACEK: Well, and that's an interesting observation because as just a few years past the unintended consequences that were mentioned before by the proponents and whether or not...I'm not going to judge whether they were unintended or not. I seem to recall that there was some issue in regard to the local option and the Legislature had considered that, but my timing as far as when that was raised may have been at the time or some years later. But nonetheless, as you mentioned, this problem was known and other communities then did adopt local option, so their eyes were opened. It should

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not have been unintended for those who had fair warning in that regard. Now, I'm not saying that that makes the issue go away. Certainly it doesn't and we're sensitive to that issue, no question about it. [LB954]

SENATOR ADAMS: On the ballot, then, the cities that put it on should have said, well, we're asking for a penny and this much of it is going to go to street development, this much to fire, and this much for potential LB775 refunds. [LB954]

RON SEDLACEK: Not really. I think that it would go for street and fire but, again, reiterate these options. If it was not collected or if it was collected and reserved, then the money that is being collected from all sources but for the economic development activities which hopefully...and promised additional economic activity for that locality and additional property tax base and employment and on and on, that should provide more levels of predictability. We would maintain that if there is not an attainment, it can be recovered. If there is attainment, the activity...the agreement has been met. [LB954]

SENATOR CORNETT: Ron, I see a problem here, just an underlying problem, not something we can't resolve. But you have companies or corporations that use accrual base accounting. Municipalities use cash base, correct, generally? [LB954]

RON SEDLACEK: Um-hum. [LB954]

SENATOR CORNETT: Municipalities are going to have a hard time selling it to their taxpayers, having a huge cash reserve. I mean, I saw this last year in the Legislature. Everybody wanted to spend that cash reserve, and we're only looking two years down the road and we could see... [LB954]

RON SEDLACEK: Um-hum. [LB954]

SENATOR CORNETT: ...that we had a problem coming up. How is a municipality supposed to go, okay, we have a LB775 company come into our city. We know that they're accruing these credits. How are they supposed to budget for that? How are they supposed to sell it to their voters that they have this big pool of money sitting there that they're not using and they're trying to float a bond issue for a police station, and the taxpayers are going, we'll use that money there? So if they use that money, then when those credits come due, they can't pay the credits. [LB954]

RON SEDLACEK: Um-hum. [LB954]

SENATOR CORNETT: I mean, it's a fundamental problem between having a public entity... [LB954]

RON SEDLACEK: Um-hum. [LB954]

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SENATOR CORNETT: ...and a private sector company. [LB954]

RON SEDLACEK: Um-hum. [LB954]

SENATOR CORNETT: I mean, do you see what I'm saying here? [LB954]

RON SEDLACEK: Sure. I understand and that's why the suggestion was setting up, if you set up that fund, that trust fund, that would be with the state. [LB954]

SENATOR CORNETT: That would be with the state? [LB954]

RON SEDLACEK: With the state. [LB954]

SENATOR CORNETT: So those taxpayers in that municipality can't go, why are you increasing our taxes for this police station when you have a pool of money sitting there? Is that what you're saying? [LB954]

RON SEDLACEK: Well, they're not necessarily having a pool of money sitting there. Those are taxes, local option taxes, that are being paid into a fund that may... [LB954]

SENATOR CORNETT: No, I'm not talking about what you're talking about. I'm talking about the way it is now. [LB954]

RON SEDLACEK: Okay. The way it is now. Okay. [LB954]

SENATOR CORNETT: I mean, you...right now, they'd have to go back to their taxpayers and try and explain, well, we have to save this money because somewhere in the next 20 years they may want it. [LB954]

RON SEDLACEK: Um-hum. I understand the political problem there. [LB954]

SENATOR CORNETT: Yeah. [LB954]

RON SEDLACEK: Absolutely. Um-hum. [LB954]

SENATOR CORNETT: Thank you. Further questions? Seeing none. [LB954]

RON SEDLACEK: Um-hum. [LB954]

SENATOR CORNETT: Any other opponents? Anyone in a neutral capacity? That closes...oh, I'm sorry, Senator Giese. That closes the hearing on LB954. [LB954]

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SENATOR DIERKS: So we open on LB981 by Senator Cornett. [LB954]

SENATOR CORNETT: Good afternoon, Vice Chair Dierks and members of the Revenue Committee. I'm Abbie Cornett, C-o-r-n-e-t-t, and I represent the 45th Legislative District. LB981 would require the Department of Revenue's biannual tax expenditure report and all tax expenditures to be reviewed before publication of the report by a panel appointed by the Executive Board of the Legislative Council of the Nebraska Legislature. The panel would be required to make recommendations regarding tax exemptions and tax expenditures, and those recommendations must be published as part of the Department of Revenue's tax expenditure report. The panel would consist of two members of the Legislature and one member of the public. Members of the panel would serve a two-year term except that term of a member of the Legislature would expire when his or her term of office of the Legislature expires before the end of the two-year appointment. Members of the panel would be reimbursed for the actual and necessary expenses similar to how we are reimbursed now for mileage if we come down during off session. This bill came about because of the discussions over the last two or three years regarding all of the exemptions and what we're actually paying out, and is what we're doing the right thing? This would be a panel that reviews the Department of Revenue's annual tax expenditure report, and then would look into the exemptions and review them before that report is made, and then could make recommendations to the Legislature. With that, I'd be happy to answer any questions for the committee. [LB981]

SENATOR DIERKS: Questions? Senator Utter, please. [LB981]

SENATOR UTTER: Define tax expenditures for me, will you, Senator Cornett? [LB981]

SENATOR CORNETT: It would be like your sales tax exemptions or... [LB981]

SENATOR UTTER: No. The expenditures. I understand receipts. I'm not...I'm concerned about what you're talking about when you're... [LB981]

SENATOR CORNETT: I think it's the same thing or what we're talking about would be what we are not collecting in regards to taxes. So we're not collecting certain sales tax, and we're not collecting certain things. You know, like you see the fiscal note. It shows that we lose that money. That's an expenditure. So this is stuff we're not collecting. [LB981]

SENATOR UTTER: I guess I'm...I'm...what is this committee going to accomplish? [LB981]

SENATOR CORNETT: Well, we have had a number of bills, and we've had with interim studies on the different bills in regards to sales tax exemptions. And it wouldn't just be

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for sales tax exemptions. It would be all types of taxes. They would review the report from the Tax Commissioner, and then review like the sunsets, on the Advantage, Superadvantage, determine if they are viable working, and if they are, you know, if they're any benefit to the state, and then make recommendations to the Legislature in that regard. Similar to the sales tax committee that we established a couple of years ago that Senator Pahls was on. And this was something that Senator Pahls and I had talked about. [LB981]

SENATOR UTTER: Thank you. [LB981]

SENATOR DIERKS: Other questions? I see there's no fiscal note. [LB981]

SENATOR CORNETT: No. It would be...the only expenditure would be mileage and they're talking about meeting, you know, once or twice a year to review the report, maybe two or three times during the session...or summer. [LB981]

SENATOR DIERKS: And two members of the Legislature and one member from the public-at-large. [LB981]

SENATOR CORNETT: That is appointed with no salary, simply mileage. [LB981]

SENATOR DIERKS: Thank you. Other questions? I think that does it, Abbie. Proponents? Anyone in support of LB981? In support of LB981? Anyone in opposition to LB981? Is anyone neutral on LB981? Would Abbie like to close? (laughter) That closes the hearing on LB981. [LB981]

SENATOR CORNETT: We will open the hearing on LB1053. [LB981]

SENATOR HADLEY: Chairman Cornett, members of the committee, my name is Galen Hadley, G-a-l-e-n H-a-d-l-e-y, representing the 37th district, and I'm sitting in for Senator Rich Pahls. This is his bill, LB1053, and basically, I was asked to present the bill which I am happy to do. It doesn't come as any shock to you that Senator Pahls still has some concerns about our sales tax, the way we do things in the state of Nebraska, and I think that this is another way that he's asking us to look at it. And in the past, you know that we have heard bills from Senator Pahls where he has gone to the idea of taxing basically everything to try to get what he considers a level playing field. And there is some precedent because if you look at the spectrum, you can go from New Hampshire that has basically, I believe, zero sales tax, to South Dakota that taxes everything including rodeo clown fees. So you can...there's someplace in the middle that we should be. Well, I believe that Senator Pahls...the purpose of this bill, and I hate to speak for him, but I got a hunch it wasn't to advance it to the floor or anything else, but it's just to enter it in the record that he has a concern. So he asked...he went the other way to show what would happen if we "gave somebody what he feels the exemptions that

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we've given to business and industry if we gave that to the local taxpayer." So LB1053 enacts a sales tax exemption on retail sales of prepared food, furniture or appliances for household, business, or other purposes, computer software or hardware, NPE-G1's, NP3 or global positioning peripheral devices or equipment, and clothing. Basically, it is to give the consumers of the state of Nebraska their fair share of sales tax exemptions. LB1053 grants four new sales tax exemptions which I just went over--prepared food and meals, furniture and appliances, computer software, hardware equipment and devices, and clothing. Sales tax was enacted in 1967. The initial sales tax law included exemptions for certain interests. The bulk of the revenue burden fell on consumers, and I would be reticent not to say that that will probably go on because there's a tax on the end consumption, end use of products, so that's the consumers, basically the end user. Since 1967, the Legislature has routinely updated, broadened, or granted sales tax exemptions for a variety of exempted interests, industries, and products. Since 1967, consumers have been granted only one major sales tax exemption, unprepared food exempted in 1983. The fiscal impact of LB1053 demonstrates the level of funding provided by consumers on behalf of the state's sales tax revenue picture. We did get a fairly reasonable fiscal note. Senator Utter told me he thought it was fairly reasonable. He had expected a little higher. Basically, \$129 million in the next fiscal year and \$198 million in the fiscal year after that, so it is a significant fiscal note. But I really think Senator Pahls's concern was to show what he felt was the consumer paying their fair share--more than what he felt was their fair share of sales tax. And I think...well, I'll just leave it at that because I don't want to speak for Senator Pahls. I wish he was here being able to speak for himself, but I would say that I happened to see on the Sioux Falls newspaper the other day that the state of South Dakota is actually looking at, and voted out of one of their house committees that they would...looking at exempting food. Right now they sales tax food in South Dakota, and it was voted out of one of their committees nine to six to eliminate the sales tax exemption on food. So with that, I would be happy to answer any questions. [LB1053]

SENATOR CORNETT: To eliminate the sales tax exemption or to exempt food?
[LB1053]

SENATOR HADLEY: Oh, to exempt food...to exempt food. [LB1053]

SENATOR CORNETT: Okay. Thank you. I was going to say because they... [LB1053]

SENATOR HADLEY: Right now they tax it, and the arguments in the article were similar to our reason for exempting food. [LB1053]

SENATOR CORNETT: I think Senator Dierks and then Senator Utter. [LB1053]

SENATOR DIERKS: I just have to ask you a question, Senator Hadley, and I think that if you were in your chair, you'd have probably asked it first. What are we going to use to

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make up the \$200 million we're going to lose here? [LB1053]

SENATOR HADLEY: I would say that I would ask for...answer for Senator Dierks that I would say that he would then turn around and expand the sales tax on many of the other items that we exempt right now. [LB1053]

SENATOR DIERKS: Like maybe the one we're going to hear tomorrow that I'm going to have. [LB1053]

SENATOR HADLEY: That's right, Senator Dierks. I think there's an...an interesting bill that we'll hear tomorrow that will probably take care of that, finding that revenue. [LB1053]

SENATOR DIERKS: Thank you. [LB1053]

SENATOR CORNETT: Senator Utter. [LB1053]

SENATOR UTTER: Senator Dierks, I kind of resent you asking that question. That's my question (laughter). [LB1053]

SENATOR DIERKS: Oh, is that right? [LB1053]

SENATOR UTTER: Yeah (laugh). [LB1053]

SENATOR DIERKS: I'm sorry about that. [LB1053]

SENATOR UTTER: Well, Senator Hadley, isn't South Dakota having some fiscal heartburn right now? [LB1053]

SENATOR HADLEY: Absolutely, very... [LB1053]

SENATOR UTTER: So how do they solve that heartburn by now turning tail on the food thing? [LB1053]

SENATOR HADLEY: That's an interesting question. Actually, Senator Utter, from what I remember from the article, it would be to increase the general sales tax that the state charges by like three-quarters of a percent, and if they increased the three-quarters of a percent on everything, it would take over for food. [LB1053]

SENATOR UTTER: Not necessarily abandoning the concept that they've had, but (inaudible)... [LB1053]

SENATOR HADLEY: That's right. It would...yeah, it would...you exempt food and you

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raise the rate because the revenue is the given that they have to have. [LB1053]

SENATOR CORNETT: I was going to say, their policy in the past, though, has been to tax everything and have a lower rate, but they are taking a philosophical step away from taxing food. [LB1053]

SENATOR HADLEY: And, of course, they do not have an income tax, so this is... [LB1053]

SENATOR CORNETT: I only have one comment. I would have loved to have seen you guys's faces when Senator...when one of its former senators used to drop trillion dollar notes in here, it was (laughter). [LB1053]

SENATOR DIERKS: I've got another question. [LB1053]

SENATOR CORNETT: Go right ahead. [LB1053]

SENATOR DIERKS: I wonder if Senator Hadley, being a former resident of South Dakota, would a dollar a pheasant tax take care of the difference here? [LB1053]

SENATOR HADLEY: Well, it could...probably could go a little bit of a ways to do that. South Dakota has a unique taxing structure, and what they're doing is that...and I don't mean to speak for South Dakota, but they're basically running out of things...they can't expand the base anymore for taxing, and now they're having to look at rate increases... [LB1053]

SENATOR CORNETT: It's because everyone isn't spending as much money on sales tax, so they're falling short on the projections. [LB1053]

SENATOR DIERKS: But the other thing is that their needs are not going down. [LB1053]

SENATOR HADLEY: That's right. Their needs are not going down, and it's a...well, I will...I have about a 45-minute closing, but I will waive the closing. [LB1053]

SENATOR CORNETT: We do appreciate that. Proponents? Opponents? [LB1053]

LYNN REX: Senator Cornett, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We respectfully oppose the bill. We're concerned about how the replacement dollars and where they come from and also how that would interface with just the lid laws and levy laws that are in place in municipalities across the state. I'd be happy to respond to any questions you might have. [LB1053]

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SENATOR CORNETT: Next... [LB1053]

SENATOR UTTER: Plus that creates more heartburn, doesn't it? [LB1053]

LYNN REX: Yes, sir. [LB1053]

SENATOR CORNETT: Next opponent? Are there any further opponents? Anyone in a neutral capacity? Go ahead. [LB1053]

JACK CHELOHA: Good afternoon, Senator Cornett, members of the Revenue Committee. My name is Jack Cheloha. The last name is spelled C-h-e-l-o-h-a. I'm the lobbyist for the city of Omaha. I want to testify in opposition to LB1053. Just to be consistent with the positions we've taken earlier on other bills granting new exemptions this session, and this would have an impact on local option sales tax, and it would create heartburn, as you said, Senator Utter, for the city of Omaha. For those reasons, I oppose. Thank you. No questions? [LB1053]

SENATOR CORNETT: No questions? Closing is waived. I move we move into executive session. [LB1053]