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Revenue Committee
February 03, 2011

[LB361 LB384 LB389 LB672]

The Committee on Revenue met at 1:30 p.m. on Thursday, February 3, 2011, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB672, LB389, LB361, and LB384. Senators present: Abbie Cornett, Chairperson; Dennis Utter, Vice Chairperson; Greg Adams; Deb Fischer; Galen Hadley; LeRoy Loudon; Dave Pankonin; and Pete Pirsch. Senators absent: None.

SENATOR CORNETT: (Recorder malfunction)...Senator Greg Adams from York will be joining us. On my far right is Senator Dave Pankonin from Louisville; Senator Pete Pirsch from Omaha. Senator LeRoy Loudon will be joining us, as will Senator Galen Hadley from Kearney. My research analysts are Stephen Moore, to my right, and Bill Lock is excused today. Committee clerk is Matt Rathje, and the pages are Marilyn Buresh and Amara Meyer. Before we begin the hearings, I'd please request everyone turn your cell phones to either the off or vibrate. The sign-in sheets for testifiers are on the table by both back 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 the sheet to the committee clerk. There are also clipboards located by the back doors to sign in if you do not wish to testify but would like to indicate either your support or opposition to a bill. These sheets will be included in the official record. We will follow the agenda posted on the door. The introducer or representative will be presenting the bill, followed by proponents, opponents, and neutral. Only the introducer will have an opportunity for 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 the committee and staff. If you only have the original, we will make copies for you. Give those copies to the page to circulate to the committee. With that, we will open the Revenue Committee hearing. Speaker Flood, it's a pleasure to have you in the committee.

SENATOR FLOOD: Thank you. [LB672]

SENATOR CORNETT: You are recognized to open LB672. [LB672]

SENATOR FLOOD: Thank you very much. Good afternoon, Chairperson Cornett and members of the Revenue Committee. My name is Mike Flood, F-I-o-o-d. I represent Madison County, including the city of Norfolk. LB672 is identical to another bill I introduced last year in this committee. It would add two kinds of deeds, (1) deeds between siblings for no consideration, and deeds between nonprofit organizations for no consideration, to the list of deeds in Section 76-902, which are exempt from the documentary stamp tax. The doc stamp tax is imposed by Section 76-901 on the grantor who executes a deed transferring his or her interests in real estate. The rate of tax is \$2.25 for each \$1,000 of value of the real estate, and the tax is collected by the

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local register of deeds offices when a deed is presented for recording. For each \$2.25 of tax collected, the register of deeds retains 50 cents to be placed in the county general fund. The remaining balance is remitted to the State Treasurer, who credits \$1.20 of such amount to the Affordable Housing Trust Fund, 25 cents to the Homeless Shelter Assistance Trust Fund, and 30 cents to the Behavioral Health Services Fund. There are 22 types of deeds that are exempt from the doc stamp tax and these deeds are listed in Section 76-902. Some of these existing exemptions include deeds between husband and wife and parent and child for no consideration, and deeds between a subsidiary corporation and its parent corporation. I introduced this bill again this year because of a couple of situations that still suggest the need for these two additional exemptions. In one, two siblings own real estate...real property as joint tenants. They wished to sever the joint tenancy, and did so by recording a deed that conveyed the property to each other as tenants in common without the payment of any consideration. In another situation, a local church wished to convey certain real estate to a nonprofit charity it also operates. I believe in these two situations, deeds between siblings and deeds between nonprofits for no consideration, it doesn't make sense to impose the doc stamp tax. In fact, I imagine that when the exemptions were created by the Legislature, these types of transactions were intended to be included as exempt transactions. I also realize that no matter how consistent these proposed exemptions are with current exceptions, any kind of fiscal note is a tremendous hurdle this session, and rightfully so. While the bill does not impact the state's General Fund, it will have some fiscal impact on Nebraska counties; as well, on the Affordable Housing, Homeless Shelter, and Behavioral Health funds. As the fiscal note explains, though, the Department of Revenue assumed that the two proposed exemptions in LB672 would have the same impact as the average impact of the 22 current exemptions. I would make one quick observation and that is it would seem that using an average could yield a number that is much higher than the actual fiscal impact. In short, while I disagree with the number in the fiscal note, I understand that you have to take that into consideration and can understand how you may treat this bill. I do intend to work over the summer, if this committee sees fit not to forward this bill, to see that the fiscal note is fully examined. I realize that we don't keep records on what comes in under every exemption, but a church that gives its real property, its real estate to a church-owned foundation, is the same as a corporation putting it in the name of a subsidiary. I don't think it's that common, but churches shouldn't have to pay that. Two siblings that do some estate planning, no different than Mom and Dad deciding how to treat son and daughter in their estate planning as they decide how to transfer real estate. So I understand what your role is and how you have to look at this bill, but I do intend to continue to work on this as long as I'm a member of this Legislature. Thank you. [LB672]

SENATOR CORNETT: Thank you, Speaker Flood. Questions from the committee? Seeing none...oh, I'm sorry. Senator Louden. [LB672]

SENATOR LOUDEN: Thank you, Senator Cornett. Well, Speaker Flood, most of this tax

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goes into some of this affordable housing and homeless shelter assistance. That's what most of this tax money goes for. [LB672]

SENATOR FLOOD: Um-hum. [LB672]

SENATOR LOUDEN: I think, like, Senator Redfield or somebody here a few years ago, raised that from, what, \$1.75 to \$2.25, or something? [LB672]

SENATOR FLOOD: Yeah. [LB672]

SENATOR LOUDEN: Now is there a surplus of money in that fund? Do you know how that fund is situated nowadays? [LB672]

SENATOR FLOOD: I believe there is an outstanding, significantly large cash balance in the fund. I think the folks from the Affordable Housing Trust Fund would say a lot of it's obligated. But there's always money coming in as real estate transactions take place. I do look very favorably on any proposal that wants to use some of that money for site development in communities--which is a different issue. I'm very supportive of that. [LB672]

SENATOR LOUDEN: Um-hum. Well, I'm wondering, when they show such a...you know, what the loss would be by implementing your bill, I can't believe that there's that many transactions going on that would make that significant of a number. But, anybody give you any reason for that high a number? [LB672]

SENATOR FLOOD: Well, what...right now, there are 22 exemptions I believe. And so what they did is they took the total amount of all of the exemptions and they divided it by 22, and they said: that's what we think one exemption costs. And I think the fiscal note on it does acknowledge that they aren't really sure, because we don't make people on a real estate transfer statement identify the specific exemption. Now in my law practice, since I've encountered this issue, I always list the statute and the sub exemption on my real estate transfer statement. But I'm a small fish in a big ocean. [LB672]

SENATOR LOUDEN: And how many of these type of transactions, that you're asking to exempt, have you had in your law practice? [LB672]

SENATOR FLOOD: Oh, you know, what really got my attention was when a church tried to put the real estate in the church foundation's...when the church had to...one tried to put in its foundation, under its nonprofit charitable arm, I thought: that shouldn't be subject to doc stamp tax. You know, it's no different than a corporation and a subsidiary; and even more, it's nonprofit. And the Department of Revenue looked at it and I think accurately said there's no specific exemption for it. And I just thought in those types of situations there should be an exemption. If we're going to do it for corporations, we

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should do it for churches. [LB672]

SENATOR LOUDEN: Okay. Thank you. [LB672]

SENATOR CORNETT: Further questions? Seeing none. [LB672]

SENATOR FLOOD: Thank you, and I'll waive closing. [LB672]

SENATOR CORNETT: Thank you, Speaker Flood. [LB672]

SENATOR FLOOD: Okay. Thank you. And I have another bill, so may I be excused? [LB672]

SENATOR CORNETT: You may be excused, sir. Proponents? Opponents? [LB672]

JON EDWARDS: Good afternoon, Senator Cornett and members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I'm here representing the Nebraska Association of County Officials in opposition to LB672. As you'll see in your materials, there is a fiscal note attached to this bill. Regardless of what that amount is and how you average it or how you come to that number, it will ultimately result in a loss in some sort of revenue at the county level, based on that--based on that as being a part of the reason we oppose this particular piece of legislation. There's also some concern that's been brought to our attention by some of our membership regarding the language that I believe the language is "deeds between nonprofit organizations." It seems like the nonprofit organization language is fairly broad, can obviously include a lot of different transactions, a lot of different pieces of property. You could be talking about significant pieces of property, what those transactions might look like, different things like that. So there was just some concern about what all those different transactions could look like. And also, you know, there's also an argument about to make siblings exempt in a situation involving transfer between siblings, you know. And I think that I would argue that in those situations certainly you have a legal obligation that comes up between a husband and a wife; you have a legal obligation that comes up between a parent and a child, but I see no obligation, typically speaking, between siblings. And so in that sense I think that when you talk about previous Legislatures probably meant to include this, they just simply overlooked it--I'm not so certain that that's exactly probably the case. I would think probably they did look at this issue and decided not to exempt those. So with that, we stand in opposition to this bill, and I'll conclude my testimony. Thanks. [LB672]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. Are there any further opponents? Anyone in a neutral capacity? Speaker Flood. [LB672]

SENATOR FLOOD: I would like to close. [LB672]

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SENATOR CORNETT: I gathered that. (Laughter) [LB672]

SENATOR FLOOD: That was exceedingly misleading testimony to suggest that this bill exempts all nonprofit transactions. If you carefully look at the green copy, on page 5, lines 1 and 2: "Deeds between nonprofit organizations without actual consideration therefor." To suggest that this is going to be used by Avera Hospital when it buys Faith Regional Hospital in Norfolk and that no documentary stamp tax would be paid, potentially, under the prior witness's testimony, is blatantly false. Because Avera is going to pay fair market value in all likelihood for the real estate it buys from Faith Regional, if that were ever to happen. I use that as an example. I think if we're going to make comments in front of this committee, they should be accurate. And my bill took into consideration trying to very narrowly craft that. Thank you. [LB672]

SENATOR CORNETT: Thank you. Senator Fischer. [LB672]

SENATOR FISCHER: Thank you, Senator Cornett. Speaker Flood, tell me what lines 1 and 2 mean, in English, on page 5. [LB672]

SENATOR FLOOD: It means two...deeds between two nonprofit organizations, which is what the prior individual testified about, and then the words "without actual consideration." Consideration is the price that you pay. So if I...without actual consideration would be me giving you my house for free. That would be a transaction without consideration. Or me giving my children my house for free; I just give it to them as part of my estate planning. Or one of my radio stations. I have two radio stations, two different companies; one is a subsidiary to the other. I give the ground that the transmitter is on, and I put all the transmitters in a separate LLC for liability purposes. That would be without actual consideration. [LB672]

SENATOR FISCHER: So even though a gift is made--basically it's a gift but you wouldn't call it a gift--a transaction is made between either two individuals or entities or whatever, without any monetary consideration, you still would pay the doc stamp. Correct? [LB672]

SENATOR FLOOD: Right. [LB672]

SENATOR FISCHER: And the "therefor" would cover that. Correct? [LB672]

SENATOR FLOOD: Right. And if somebody tries to...say, you pay a million dollars for somebody's business and they agree to give you the land for free, well, that's a fraudulent transaction and it shouldn't be covered by this. [LB672]

SENATOR CORNETT: Further questions? Seeing none. [LB672]

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SENATOR FLOOD: Thank you. [LB672]

SENATOR CORNETT: Thank you. With that, we will close the hearing on that bill. Senator Utter. [LB672]

SENATOR UTTER: Senator Cornett, you're free to open on LB389. [LB389]

SENATOR CORNETT: Thank you, Senator Utter and members of the Revenue Committee. My name is Abbie Cornett, C-o-r-n-e-t-t, and I represent the 45th Legislative District. I introduce LB389 at the request of the Governor. The bill would adopt the Angel Investment Tax Credit Act to spur new private investment in a wide variety of high-technology fields of endeavor, including aerospace, renewable energy, nanotechnology, medical device products, and material science technology, by providing a refundable income tax credit to qualified investors, and qualified funds to make qualified investments in high-technology small businesses. A qualified investor and a qualified fund is eligible for a refundable tax credit equal to 40 percent of its investment in a qualified small business. The tax credits cannot exceed \$5 million in a calendar year for all qualified investors and qualified funds. And there are rules governing recapture of tax credits. A person must make a qualified investment of at least \$25,000 to be a qualified investor. To be a qualified fund, the minimum investment is \$50,000 and the fund must have at least three investors. A qualified investment is a cash investment in exchange for an ownership interest in a small business. A qualified small business is a Nebraska-based business with more than 51 percent of its employees in Nebraska, more than 51 percent of its payroll in Nebraska, and 25 or fewer employees at the time of investment. The act has application processes and procedures for certification as a qualified investor, qualified fund, and qualified small business. It requires them to submit an annual report by July 1 each year. Confidentiality protections are in this bill also. The Angel Investment Tax Credit Act is operative for all taxable years beginning on or after January 1, 2011. Funding for the tax credit program would come from transfers of all unallocated tax credits for the calendar year 2011 from the Nebraska Advantage Rural Development Act and by making changes to the Nebraska Advantage Microenterprise Tax Credit Act. Representatives of the Department of Economic Development and the Department of Revenue are here today to testify and answer any technical questions you may have. Thank you for your time and attention to this bill. [LB389]

SENATOR UTTER: Thank you, Senator Cornett. Any questions? I guess they're going to save the questions for the testifiers to follow. Dr. Baier, welcome. [LB389]

RICHARD BAIER: (Exhibit 1) Thank you, Senator. Good afternoon, members of the committee. For the record, my name is Richard Baier; the last name is spelled B-a-i-e-r. I'm the director for the Nebraska Department of Economic Development and I'm here today testifying in support of LB389. And I want to share some background with you

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about why this is a component of the Governor's proposed Talent and Innovation Initiative. In December 2009, the Governor gave DED approval to conduct a new strategic plan study in cooperation with the Battelle Technology Partnership out of Ohio. Battelle came back with recommendations on a variety of things, including target industry development, population and work force, a review of DED programs, and an innovation road map, which is what brings us here today to discuss LB389, the proposed Angel Investment Tax Credit. Year after year, Nebraska ranks very poorly as a state in seed funding for small, start-up businesses. The 2010 State Technology and Science Index, which was just released a few weeks ago, ranked Nebraska forty-fourth in "Risk Capital and Entrepreneurial Infrastructure," a spot identical to our 2008 ranking. The Battelle report also acknowledged the perennial challenges that Nebraska faces in seed and venture funding for the small start-up businesses. The report states, and I quote, "...entrepreneurs and early-stage companies interviewed indicated that it is very difficult to access early-stage capital in Nebraska." End quote. In this innovation age where entrepreneurial culture is so important for not only Nebraska's economy but also for our work force and youth retention and attraction, this is not how Nebraska wants to be known around the country. We are looking to address this highly significant critical capital shortage with the proposals in LB389. As of 2010, 20-plus states offer some form of angel investment tax credit. These credits range from 10 percent in New Jersey to 100 percent in Hawaii. LB389 proposes a 40 percent refundable tax credit, as noted by Senator Cornett. In our research, we found Maryland to be the only other state in which the angel tax credit is treated as a refundable credit. I would note that Maryland restricts their angel tax credit simply to biotechnology companies, which is a flagship of Maryland's economy. Nebraska's economy is more diverse and the industries targeted within LB389 reflect our commitment to the many industry clusters that are poised for growth in the coming years. A list of those companies is attached at the end of my testimony. For clarification, angel investors are defined as those high net worth individuals that invest personally, or as part of a group, in early stage companies, usually focused around innovation and technology. Most new entrepreneurial businesses follow a funding cycle that has four distinct funding phases. And if you follow those entrepreneurs, many of them start with what we call the three F's, which is family, friends, and fools, and goes through the process of venture funding on the other end. If you take a look, I have included a copy of that process in terms of the continuum as well. You will see on that graphic that it highlights Nebraska's real funding gap is in that \$100,000 to \$1 million range in terms of funding. This represents the sweet spot for angel investment. Currently, there is only one formal angel group based in Nebraska, the Nebraska Angels based here in Lincoln. There are also a few community-investment clubs scattered across the state, but with no real angel structure. Other states, like Wisconsin, Minnesota, and Wyoming have structured networks of angel groups that cover their entire state. I will skip some of the detail, as Senator Cornett covered much of that. But this bill is being funded in part by existing program resources as both the Governor and DED are committed to the best long-term return on our taxpayer dollars. Unused credits from both the Nebraska Rural Advantage and the

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Microenterprise Tax Credit program will be used to fund LB389 in the first year, and the caps will be lowered into the future to reflect the capacity of these projects in Nebraska and shift resources towards this new program. To summarize, this small business assistance bill can provide Nebraska entrepreneurial businesses with a new important source of capital when the need for small business capital is the greatest. It also addresses a key area of weakness in our business development program here in Nebraska in an area where we consistently rank low, and it gives us the opportunity both in urban and rural environments to ensure that if someone has the will, the work ethic, and the next big business idea, that they can realize that dream in Nebraska through Nebraska investment. With that, I would be happy to take specific questions that you might have. [LB389]

SENATOR UTTER: Senator Fischer. [LB389]

SENATOR FISCHER: Thank you, Senator Utter. Thank you, Mr. Baier, for being here today. As you know, I served on the Innovation and Entrepreneurship Task Force. I'm sorry Senator Hadley is introducing a bill, because he also served on that task force. As members of the task force, we received this handout from James Linder, M.D., on behalf of the Nebraska Angels Incorporated. In that handout, there's a page, we see "Play at your Own Risk." [LB389]

RICHARD BAIER: Okay. [LB389]

SENATOR FISCHER: "Angel investing equals high risk investing. Ten percent of investments will succeed and yield a return." Ten percent. "Twenty percent of investments will survive but not provide liquidity. Seventy percent of businesses will fail." Do you...all right, this isn't a fair question to you but I'll ask it anyway. [LB389]

RICHARD BAIER: That's all right. You can ask it anyway. [LB389]

SENATOR FISCHER: Do you believe the state of Nebraska should be in the business of high-risk investment with taxpayer money? [LB389]

RICHARD BAIER: Senator, what I do think--and I'll clarify a couple of things. If you look at the small business statistics as a whole, 50 percent of all new small businesses fail within the first three years. So that 70 percent number, while I don't know where he got that at, I wouldn't be surprised at that number. I do believe this is a way for not just taking investments in the business, but it is supporting a culture of capitalistic investment in those new young start-ups. What would have happened had Google not had that investor? They wouldn't exist today probably. We've got a lot of those examples around the country, and that we're missing those opportunities in Nebraska right now. [LB389]

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SENATOR FISCHER: And I'm sure you can name other companies besides Google. [LB389]

RICHARD BAIER: Sure. [LB389]

SENATOR FISCHER: But back to my question. I think we're a state that doesn't like gambling, and I think when you're looking at a return rate of 10 percent to provide tax credits for a small number of individuals, is that a wise use of taxpayer money? Can you sit there and say, yes, it is? [LB389]

RICHARD BAIER: I believe at this point we would benefit significantly in Nebraska while making that investment. Yes. [LB389]

SENATOR FISCHER: What type of returns do you think we're going to see? As a state, what are we going to see? [LB389]

RICHARD BAIER: Having not done this in Nebraska, it's purely guess at this point. But what I can tell you--and some of my following testifiers will share similar numbers with you, Senator--in places like Wisconsin that have been doing this since 2003-2004, they've seen substantial new numbers of projects coming into their state, mostly tied, in their case, to technology and software, especially as it relates to the University of Wisconsin. I'm not sure the failure rate on those. I can ask that question and be happy to provide you with a response. But the states that have done it have had pretty resounding success in terms of increase in lending to small business. [LB389]

SENATOR FISCHER: How are those states measuring those successes and how do you plan to measure them here in Nebraska? [LB389]

RICHARD BAIER: We would measure them on a variety of things. And we benchmark internally about 37 or 40 factors a year, and that includes things like patents per 1,000 people, new business start-ups. We measure business closings or failures as well. Those are the kinds of things that we would be looking at. We would also measure a variety of other research and development-type functions, like small business innovation research grants. You know, Nebraska historically has been up a little bit higher the last few years, but historically has been forty-eighth, forty-ninth, in terms of using and leveraging federal research dollars. Those are the kinds of measurements that we would be looking at as part of this program. [LB389]

SENATOR FISCHER: And how many jobs do you anticipate this will create? [LB389]

RICHARD BAIER: I don't know that I have a number for you, Senator. I mean that would be such a guess at this point to know what kinds of companies we might see. It's going to be a lot less than what you would see with Nebraska Advantage, because you're

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really talking about companies with 25 or less employees, you know. So you might be talking several thousand as opposed to 20,000 kind of a number. [LB389]

SENATOR FISCHER: What do you have for benchmarks that you're trying to meet then in this program that we're putting \$5 million in? [LB389]

RICHARD BAIER: In terms of jobs? [LB389]

SENATOR FISCHER: How many jobs you're going to see, what kind of investments. [LB389]

RICHARD BAIER: We would also measure to get new business start-ups, investment levels. Um-hum. [LB389]

SENATOR FISCHER: Do you have those benchmarks? I mean how many jobs do you plan to seed? Do you have benchmarks for them? [LB389]

RICHARD BAIER: I don't at this point, Senator, that I'm really comfortable saying, yeah, this is number we're going to get to. [LB389]

SENATOR FISCHER: Okay. On page 4 of the bill, I think you have there that only 51 percent of the company's employees need to be employed in Nebraska. [LB389]

RICHARD BAIER: Right. [LB389]

SENATOR FISCHER: That seems a low number. Why only 51 percent of the employees employed in the state, if we're giving tax credits? [LB389]

RICHARD BAIER: Part of the reasoning for that, Senator, is because especially in software companies, which would be a target for this activity, a lot of these software companies use people that work from home as part of their structure. So you might see a percentage of that work force split. We also would see border towns where we may have a project in South Sioux City that would have an opportunity and they may get part of their workers from Sioux City from the Iowa or South Dakota side as well. And that work from home will be a big component in the IT sector. [LB389]

SENATOR FISCHER: If I could ask just another question, Senator Utter? I won't go through all of them. Also on page 4, you have the company needs to be either "engaged in, or committed to engage in, innovation in Nebraska." How do you define committed? [LB389]

RICHARD BAIER: That is a little bit of a vague word, Senator, in terms of showing...they would do that through a business plan process that showed that they're going to utilize

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new technology or come up with a new proprietary product as part of this business venture. I mean with that they can't be engaged in it if they have a...if it's a new creation or a new start-up. I mean they have to say, here's our intention. That's the reason we used that word "committed," to say, yes, we're starting a new company and, yes, we're committed to doing this; it doesn't mean we've done it yet. They may be a one-person shop that's starting a new company. [LB389]

SENATOR FISCHER: How do you plan to follow through on that commitment then? [LB389]

RICHARD BAIER: There are a variety of factors in the bill that look at was the investment made. We're going to go in and verify employees every year, are they still in Nebraska, those kinds of things, and look at the kinds of activities that they're doing and also if their in business in three years would be another requirement and a measurement for us. [LB389]

SENATOR FISCHER: Okay. Oh, thank you. I'll pause for now. [LB389]

RICHARD BAIER: Yeah, I would...Senator, most of those companies, if they are going to fail, they're going to fail in the first couple years, so that's really a big benchmark and time frame for us that we would measure. [LB389]

SENATOR FISCHER: If I could just follow up, since Mr. Baier just... [LB389]

SENATOR UTTER: Yes. [LB389]

RICHARD BAIER: Um-hum, sure. I opened the door. Come on. (Laugh) [LB389]

SENATOR FISCHER: Since you just keep talking. [LB389]

RICHARD BAIER: No, that's fine. [LB389]

SENATOR FISCHER: If they fail within a year or two, do the investors still get that tax credit or... [LB389]

RICHARD BAIER: There would be a recapture...there's a recapture provision in the bill as it's proposed now. [LB389]

SENATOR FISCHER: And what is that recapture provision? [LB389]

RICHARD BAIER: You would go out and try to recapture what's available. Now if the company is defunct, that's a part of the challenge. That is correct, Senator. [LB389]

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SENATOR FISCHER: That would be a big challenge if the company is defunct. [LB389]

RICHARD BAIER: Yes. [LB389]

SENATOR FISCHER: Thank you. [LB389]

SENATOR UTTER: Are you sure? [LB389]

SENATOR FISCHER: For now. [LB389]

SENATOR UTTER: Senator Adams. [LB389]

SENATOR ADAMS: Thank you, Senator Utter. Richard, the...we kind of had this discussion in the Rotunda the other day. So here we are, considering developing a program to give away, for lack of a better term right now, state dollars to high-risk investment. And those numbers that Senator Fischer points out are...I had not heard those numbers before. That set me back a bit. And I guess what I'm saying to myself, and now I'm asking you, what do we...why don't we have, without the state's intervention, why don't we have investment in new start-ups and entrepreneurial efforts, risk capital? I mean we...this country is founded on that kind of thing. And here we are now, at this point in time, the state getting in and having to incent it. So where's it gone? [LB389]

RICHARD BAIER: Senator, I think there's a couple of things. And I would call it, and not an expense, but an encouragement of investment for the future of our kids, because we do want to create opportunities that they'll want to come and stay for. And so I think that's part of that. I do think we as a state, and Senator Fischer mentioned already, we're a fairly conservative state that doesn't like to take risk. And what we've lost over the history of our state, and especially in the last 10 or 20 years, personal belief--and this is Richard's position--is that a lot of our risk takers have left Nebraska. We had a generation of them died, the people like Dean Sack in York, who passed away, who aren't here making those investments any more. And we had a large volume of those young people who were risk takers that didn't find the support and the ecosystem that they were looking for in Nebraska, and they've left the state and they've taken their money elsewhere. And you're going to hear that from a couple of the testifiers in just a minute. You're going to hear one of them tell you that people are investing in other parts of the country because there's a better opportunity or that the risk is too significant in Nebraska and those kinds of factors. And so not only do we have if you start to pool all those things together and it's really put a damper on our...in our investment community. [LB389]

SENATOR ADAMS: May I ask one more question, at least? [LB389]

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SENATOR UTTER: Yes, sir. [LB389]

SENATOR ADAMS: The dollars for this, the fiscal note shows \$2 million. I could use that for schools. (Laughter) That was not fair. It's just been one of those days. Let me ask you: The Nebraska Advantage Rural Development Act and the Microenterprise Act were...the plan is to move tax credits from there, \$3 million, to this. Tell me what brought you to doing that. Are those underused? Or are we just pulling the plug, to some degree, out of those programs? [LB389]

RICHARD BAIER: Yeah. Well, let me give you a feel for right now the program as it exists, and I know Commissioner Ewald is going to touch base on this. But the Rural Advantage program, for example, has an appropriation of \$4 million a year. This past year we were--I'm going to look over my shoulder--\$600,000, \$700,000, \$800,000 that we utilized. So there's \$3.2 million that went underutilized. The other thing that happened when we created the Rural Advantage, we also created Nebraska Advantage, and we put tier 1, which was a million dollars and ten new jobs. Many of those projects that would have gravitated to the Rural Advantage program in the past, are saying: I'm going over here; the benefit is on this side of the ledger. So I'm going to the big Nebraska bill; I'm not going to pursue the usage of the Rural Advantage program as much as we have seen in the past. [LB389]

SENATOR ADAMS: Okay. Thank you. [LB389]

RICHARD BAIER: So we're not pulling the plug. [LB389]

SENATOR ADAMS: Thank you. [LB389]

SENATOR UTTER: Senator Pirsch. [LB389]

SENATOR PIRSCH: Thank you. And I apologize. I know that some have had an education, a little bit, as to the contents of the piece, so I'm coming in a little cold on that respect, but. So I'll try to be quick with these questions. [LB389]

RICHARD BAIER: That's fine. [LB389]

SENATOR PIRSCH: But with respect to the categories that you identify: aerospace, agricultural processing, on page 2 of the green copy, I take it are those the industries that were identified by Battelle in the study as being those that should be employed in a bill like this? [LB389]

RICHARD BAIER: Yeah. They were identified by Battelle. They were also, for example, like aerospace is tied to the University of Nebraska at Omaha's space program that they have down there. So there's kind of a mix of those. But those are primarily Battelle

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recommendations. We threw in a couple, like cellulosic ethanol, things that we're seeing in the industry where we're seeing technology added that weren't necessarily specifically addressed by Battelle. [LB389]

SENATOR PIRSCH: And the criteria in which you look at an added and didn't add one of these categories to, is that based on not necessarily...I mean I take it are these categories where we...I mean what was the criteria...where there would be extremely high job growth or that the jobs that would be created would be high paying jobs, or what was your criteria? [LB389]

RICHARD BAIER: It's a mix of all the above. We looked where there was employment growth. We looked where there was investment growth. And we also looked where maybe Nebraska has a natural advantage. Things like, you see biosolutions in there. Well, that's one of the Battelle recommendations, but that's really about taking all natural ag products and figuring out how to produce plastic or cleaners out of a corn stover, as an example. Those are the kinds of things that we looked at in measuring those industry sectors. [LB389]

SENATOR PIRSCH: Thank you. It's billed as Angel Investment Act and it says defined as high net worth individuals in your script. Is there anything about any requirement in...I mean the idea is you want somebody who has the capacity to continue investment over the passage of time, I suppose, right? Which is why...is there anything within the green copy that sets forward the qualifying criteria for high net worth? I know I think it was somewhere. At the beginning it says qualified investor...this is on page 3, "...means an individual, trust, or pass-through entity which has been certified by the director under section 5 of this act." So with respect to Section 5, which starts on page 6, is there any criteria that, in terms of defining what high net worth individual would be? [LB389]

RICHARD BAIER: There are some significant tax law provisions related to potential investors. Right now, an angel investor is invested by...as defined by the SEC is someone that has individual earnings of more than \$200,000 a year or a net worth or a joint net worth of more than \$1 million. There's also some opportunities for banks and insurance companies, investment companies, or charitable organizations that have assets exceeding \$5 million. [LB389]

SENATOR PIRSCH: Okay. With respect to...there's certain...because funds are going to be allocated to these in the manner set forward in the bill, to a company that is engaged in and, as another senator had questioned, committed to. What would be the oversight or audit capacity? Would it be the Department of Economic Development that would go out and kick the tires, so to speak, on occasion, or? [LB389]

RICHARD BAIER: We would...we've been looking at programs around the country and how they manage that. And the certification for the investors or the investment funds

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has to deal a lot with SEC and tax law. The certification of the business is much more flexible and would fall to DED to do that. We would have a list of probably...I don't know what, I don't know if it's 15 or 30 check items that we would go through to verify where the business is at, where it's located, employment, the things required by statute. But then we'd also look at the kinds of technology that they're using, what their business plan looks like, all of those kinds of activities, and certifying those companies. [LB389]

SENATOR PIRSCH: Well, I appreciate you bringing the bill concept forward because I think it is something we need to take a look...a really hard look at in this state in terms of being competitive. That's all the questions. [LB389]

SENATOR UTTER: Other questions? Richard, I have two or three questions if I may. Number one, will you just define, for the record, refundable tax credit, so that we have that in the record. [LB389]

RICHARD BAIER: Good question, Senator. Thank you. A refundable tax credit is let's assume that you are an investor and you have no tax liability but you do have this credit. You file your (inaudible) return. You have no liability. We would still reimburse you that 40 percent. That makes it refundable. [LB389]

SENATOR UTTER: The next question that would follow that then is, how did we arrive at the 40 percent figure? And I think I saw here somewhere that there's only one other state that has such a high...has a credit as high as a 40 percent or above? Is that right or...? [LB389]

RICHARD BAIER: Senator, they range in--I don't see my sheet sitting here with me--they range from a 10 percent low to a 100 percent high around the country. Many of them are in that 25-50 percent range. In talking with Battelle and some other folks, we were sort of in a balancing act between being too low to make a difference and being too high to really not accomplish what we needed to do and balance--Senator Fischer's question--of making sure that we balance our dollars correctly. And so we picked a 40 percent number. Is there magic to that? No. It was really just based on what we did in terms of research and what we think might work in Nebraska. [LB389]

SENATOR UTTER: In addition then, an angel investor that gets this tax credit for investing in a qualified business, that business fails; he still gets the tax credit. If that business fails, what is the...what are the federal tax ramifications for that angel investor? [LB389]

RICHARD BAIER: You know, Senator, that's not one I'm exactly sure on the federal side. I'm hoping John Miles is coming up after me with Cline Williams. He can talk about that on the federal side. [LB389]

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SENATOR UTTER: I'll save that question for him. One final question: Did you consider at all a sunset on this, a time that this thing automatically is going to sunset to give the Legislature an opportunity to evaluate what has been accomplished and what the success has been? [LB389]

RICHARD BAIER: It was not part of our discussion, Senator. There are really two reasons for that. One of them is every time we put a sunset in here, it creates uncertainty in the investment community. Or you're either going to get a run at the end of a year or people are going to say, oh, Nebraska is not committed; I'm not going to set up that fund. It sort of creates that sense of lack of security and predictability. The second piece of this is because it's going to run through the budget in terms of the credits, we really felt like the Legislature was going to get a chance to look at it every two years as part of our budgeting process. [LB389]

SENATOR UTTER: And I think there's an awful lot of state agencies that operate on that basis and state programs that operate on that basis. But in terms of a true evaluation, it just seems to me like we don't get a real evaluation unless when the bill is going to sunset and then we finally, at that point in time, get a real report on how successful that program has been or how successful it has not been. So the question would be, is that it seems to me like if you put into the bill a five- or a six-year period of time or some period of time that is into the future, that that isn't going to...I don't think that projects the image that you suggested that it projects. [LB389]

RICHARD BAIER: Right. Yeah, I didn't think...I thought you were thinking about two or three years, not six years. [LB389]

SENATOR UTTER: Any other questions? Senator Louden. [LB389]

SENATOR LOUDEN: Thank you, Senator Utter. Well, thank you, Richard, for being here on this. I guess I need, after listening to the discussion around here, I think I need to have some clarification. This is set up so that someone with a boatload of money can go ahead and invest part of that to help someone that's trying to start a business up. Is that right? They're putting up some cash; the other person is putting up some smaller amount or whatever? [LB389]

RICHARD BAIER: It would allow Nebraska qualified investors to invest in our early stage companies in the state. [LB389]

SENATOR LOUDEN: Now this investor with the money, what he gets out of that is he gets to deduct that amount of money from his income tax when he pays income taxes? Or did I understand you to say that if that business folds, he can get a rebate back from the state for it? [LB389]

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RICHARD BAIER: He's still going to qualify for the tax credit, and we would have a process in place to go try and bring the money back in. But it is going to be a challenge if, obviously, the business folds. [LB389]

SENATOR LOUDEN: Now would the state pay him back that tax credit or would he carry that forward for a few years until he found someplace else to use it? [LB389]

RICHARD BAIER: Because it's a refundable credit, he would be paid the following year as part of their tax statement. [LB389]

SENATOR LOUDEN: We pay it? In other words, if I wanted to go in and find somebody that wanted to start a business and I wanted to invest some money, I could have him do that, and I really wouldn't care whether he survived or not because I could get my money back from the state the next year or so? [LB389]

RICHARD BAIER: Well, you could get 40 percent of your investment back through the tax credit. [LB389]

SENATOR LOUDEN: Okay. You get 40 percent of it back. How come you get any of it back? If we're going to give a tax credit, what I thought we usually did with tax credit, if they made money you got to take it off of your income tax. If they didn't make money, why, you...that was it. [LB389]

RICHARD BAIER: Right. Again, this is set up as a refundable tax credit, so depending...the person may or may not have liability, but either way they will qualify for that corresponding 40 percent investment related to the Angel Tax Credit program. [LB389]

SENATOR LOUDEN: But in order to make this bill work, does it have to be a refundable tax credit? [LB389]

RICHARD BAIER: We believe that it would put Nebraska at an advantage because there's only one other state in the country that does treat it as a refundable tax credit. [LB389]

SENATOR LOUDEN: That does or does not? [LB389]

RICHARD BAIER: Maryland is the only state that does. [LB389]

SENATOR LOUDEN: That's does? [LB389]

RICHARD BAIER: That's correct. [LB389]

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SENATOR LOUDEN: Is it refundable? [LB389]

RICHARD BAIER: Um-hum. [LB389]

SENATOR LOUDEN: And the rest of them... [LB389]

RICHARD BAIER: Treat it as a normal tax credit as you're suggesting. [LB389]

SENATOR LOUDEN: Okay. And what does Maryland know that the rest of them don't know? [LB389]

RICHARD BAIER: If you look at what's going on in the science and industry base in terms of bioscience and biomedical, Maryland really is a leader in the country and that's really where they're focusing their efforts. [LB389]

SENATOR LOUDEN: Okay. And these other states haven't been acquiring those businesses? [LB389]

RICHARD BAIER: Many of these programs are relatively new. The businesses are going...I mean you're seeing bioscience and biomedical across the country, but you're seeing a super huge growth in that Baltimore, Maryland corridor. [LB389]

SENATOR LOUDEN: Okay. Thank you. [LB389]

RICHARD BAIER: Um-hum. [LB389]

SENATOR UTTER: Senator Fischer. [LB389]

SENATOR FISCHER: Thank you, Senator Utter. Just a couple quick questions here, Richard. Can you tell me how many businesses applied for the Nebraska Advantage Rural Development Act last year? [LB389]

RICHARD BAIER: Senator, if you don't mind, I'll have Doug present that information. He brought it with him and a chart. [LB389]

SENATOR FISCHER: Okay. And same with the Microenterprise Tax Credit? [LB389]

RICHARD BAIER: Yes. He's got a history of those in his comments. [LB389]

SENATOR FISCHER: Okay. Since we're...the reason I asked you that, since under the fiscal note we're lowering the cap to those two programs in order to fund this new program, but yet you are estimating you are going to have to add a staff person. And you're estimating a cost of \$83,500 from General Funds for that? [LB389]

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RICHARD BAIER: Not coming from General Funds. It's coming out of this pool of dollars, so. [LB389]

SENATOR FISCHER: Well, this says that DED estimates the annual cost to carry out the program would total \$83,500 General Funds. [LB389]

RICHARD BAIER: Okay. I'll double-check that and make sure that we've got our wording correct. [LB389]

SENATOR FISCHER: Okay. But even though you're capping two programs, which I would assume then would lower how many businesses could apply there, in order to get this new program up and running we're going to have to add somebody. Is that correct? [LB389]

RICHARD BAIER: Well, I don't administer the Rural Advantage or the Microenterprise program, and the Tax Commissioner does that through the Department of Revenue. [LB389]

SENATOR FISCHER: Okay. So then why are you adding one staff person? [LB389]

RICHARD BAIER: We would be running this program as opposed to the Rural Advantage program. We don't have a great deal of... [LB389]

SENATOR FISCHER: You guys just can't switch? [LB389]

RICHARD BAIER: We'll have to arm wrestle when we're done, Senator. [LB389]

SENATOR FISCHER: Okay. Sounds good. Thank you. [LB389]

SENATOR UTTER: Other questions for Richard? I guess that takes care of it. [LB389]

RICHARD BAIER: All right. [LB389]

SENATOR UTTER: Thank you very much for your testimony. Next proponent. Welcome to Revenue again. [LB389]

DOUG EWALD: (Exhibits 2 and 3) Thank you, Vice Chair Utter. Members of the Revenue Committee, my name is Doug Ewald, E-w-a-l-d. I'm the Tax Commissioner of the Nebraska Department of Revenue. I appear before you today as an proponent of LB389, the Angel Investment Tax Credit Act, and I also will give to you a brief overview of how the tax credit will be administered by the Department of Revenue. As Director Baier mentioned, the Angel Investment Tax Credit encourages new investment in high

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tech and other Nebraska start-up enterprises by providing a refundable income tax credit to qualified investors equal to 40 percent of a qualified investment in a qualified business. A certified estate, trust, or resident individual is eligible for the tax credit. While the Department of Economic Development will certify which investors are eligible for the credit, the Department of Revenue will be responsible for issuing the income tax refund based upon information provided by both the Department of Economic Development and the taxpayer. For example, an investor and the related investment will be authorized by DED through an established application process. Once the investor makes the investment, the investor will notify DED that an investment has been made and DED will issue a tax credit certificate to the qualified investor. DED will also notify the Department of Revenue that the tax credit certificate has been issued, along with the amount of the tax credit, and other information the Department of Revenue may need to process the income tax refund. The investor will attach the tax certificate to their individual income tax return to claim their credit. Procedures will be in place to accommodate electronic filing for this as well. As the fiscal note reflects, the Department of Revenue will incur one-time costs for a system update associated with the Angel Investment Tax Credit. Specifically, the department must add a line to the individual income tax return and the fiduciary income tax return to allow eligible investors to claim the income tax credit as authorized by the certificates issued by DED. This one-time cost is estimated to be \$62,000. This concludes my testimony. I'd be happy to answer any questions you may have. And I've also passed out an exhibit that kind of gives the history of Rural Advantage and Microenterprise. [LB389]

SENATOR UTTER: Questions for Director Ewald? Go ahead, Senator Pirsch. [LB389]

SENATOR PIRSCH: Thanks for your testimony here today. Just a few questions. With respect to the testimony that's been put forward earlier about a requirement of high net worth individuals, and I apologize I'm coming in cold to this. I haven't had a preintroduction. Where is the language...I know that the director had mentioned that a threshold of \$200,00, is that right, net...? [LB389]

DOUG EWALD: I don't think that that's in here anywhere. I think that's what he referred to is that's what the standards that they allude to as a high net worth individual by some standard out there in the... [LB389]

SENATOR PIRSCH: So that's what they intend to employ in terms of write regs and (inaudible). [LB389]

DOUG EWALD: Yeah. I mean that would be up to them at that point in time--DED. [LB389]

SENATOR PIRSCH: Very good. And with respect to again the language on page 4 when we're talking about companies that would qualify, "Be engaged in, or committed to

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engage in, innovation in Nebraska in one...activities as its," as the language says, "primary business activity." In your reading of the word "primary," does that mean 51 percent of business operations or does that mean we do seven things and, you know, kind of the difference between majority and plurality? [LB389]

DOUG EWALD: Well, I think that is designed to be determined by the Department of Economic Development. But in the Department of Revenue we would say primarily would be the 51 percent or greater predominance of your business operations. . [LB389]

SENATOR PIRSCH: Okay. And that can be with respect to a subsidiary, correct? [LB389]

DOUG EWALD: Correct. On an individual entity-by-entity basis. Yes. [LB389]

SENATOR PIRSCH: Okay. Thanks for fleshing that out. [LB389]

SENATOR UTTER: Senator Adams. [LB389]

SENATOR ADAMS: Thank you, Senator. Commissioner, can you give me just a real quick one-liner. The Nebraska Rural Development, what qualifies for that, and the same on the Nebraska Microenterprise. [LB389]

DOUG EWALD: Yeah, there are specific rules with respect to each of those programs. [LB389]

SENATOR ADAMS: What's our target industry? [LB389]

DOUG EWALD: Our target industry for Rural Development is some livestock modernization, a lot of feedlots, cattle, you know, those type of programs in particular, and those are the people that primarily have participated in this program in the past, feedlot operations in particular. So you can see the number. And, you know, there must have been some smaller ones early on that first year. Obviously, there's some pretty good numbers. And then we've just kind of dwindled from there in the last couple years. Microenterprise is not really restricted whatsoever, so. And you can get up to \$10,000 every other year, every two years with respect to that. It is a program that, as you can see, we have a significant number of applications on an annual basis. That money is approved on a first-come first-serve. When we, today, when the \$2 million is gone, we basically let people know, you know, when the money is out, and any applications after that date...we have run into several situations where we've been oversubscribed in that case. I know a couple years ago somebody may have received 50 cents on the dollars or something along those lines. Because it's first-come first-serve, the Legislature changed the law several years ago that allowed us to start accepting applications on November 1 for the subsequent year. So we'll see people file between November 1 and

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the end of the year, they were deemed to be received on January 1. And if they request all the funds, we kind of prorate at that point in time. [LB389]

SENATOR ADAMS: Okay, so the Microenterprise, in some sense it's also targeted, is it not, to incent small entrepreneurship? [LB389]

DOUG EWALD: It would be for a small, very small entrepreneurs from that standpoint, with a cap at the \$10,000. [LB389]

SENATOR ADAMS: Okay. Let me go back to the question that I was asking Richard too. As I'm looking at this, and we're going to take credits from these two and move it to this one if this were to be successful, just looking at these numbers I see how one could say, well, look, we're not using these so let's move them. I'm wondering if, particularly like in the Rural Advantage Act, possibly, or any of them, if it's the downturn in the economy that has reduced the use. And if we see an upturn, will we have starved these two programs? [LB389]

DOUG EWALD: That's a great question. We don't know what we'll see, but that's...I mean if you look at the numbers there, there was definitely a tailing off. And the last year...for example, on Nebraska Advantage, in total, the first year we saw a significant number of applicants. And then we averaged about...I want to say about 45 in the intervening years, and then we saw a real drop in 2009, down to, like, 26. But then in 2010 we're back up at right around the 50 range. So we were greater than we were...I mean, I think we restored to the average what we saw in what I would call an ordinary year from Nebraska Advantage. So a real big dip in '09, but '10 was a very positive resurgence of the number of applications received under Nebraska Advantage--that's for the entire program. [LB389]

SENATOR ADAMS: Thank you. [LB389]

SENATOR UTTER: Other questions? Commissioner Ewald, just one question. The approval process for the Nebraska Advantage Microenterprise was entirely handled in the Department of Revenue? [LB389]

DOUG EWALD: Yes, it is, Senator. [LB389]

SENATOR UTTER: And the criteria...were there any type of criteria or was it kind of open to all comers? [LB389]

DOUG EWALD: It's fairly open to all comers, real small business, less than five employees. But there weren't really any specific restrictions.. [LB389]

SENATOR UTTER: Is there any kind of a track record of success that has been

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achieved because of the grants under this program? [LB389]

DOUG EWALD: That is a great question. I know we need to...we report every year the number of people that apply and receive funds. I don't think, as part of that statute when it was enacted, that there was anything that requires us to go back and find out the fiscal viability in two years, five years down the road, whether they're still in existence. [LB389]

SENATOR UTTER: Do you feel like that would be a good idea to kind of track the good that we're doing with the taxpayers' money in these cases? [LB389]

DOUG EWALD: That may be something of value. Obviously, some of that information is confidential. Whether or not...I mean they wouldn't be compelled, I guess, to tell you it if you picked up the phone and asked them, I guess, unless that was something that was written in the statute, obviously. If it is voluntary, that's one thing. If it's... [LB389]

SENATOR UTTER: Thank you. Other questions for the Commissioner? Thank you very much for your testimony. [LB389]

DOUG EWALD: Thank you. [LB389]

SENATOR UTTER: Next proponent. Welcome to Revenue. [LB389]

DOUG MCGREGOR: (Exhibit 4) Yes. Good afternoon. Good afternoon, members of the Revenue Committee. My name is Doug McGregor, D-o-u-g M-c-G-r-e-g-o-r. I haven't done this before so spelling my name was my first accomplishment here. (Laughter) I'm the chief executive officer of WebEquity Solutions, a Nebraska-headquartered software company in downtown Omaha. Our company designs, develops, and sells software tools to banks, credit unions, and other financial institutions in modernizing their lending area. I'm here to testify in support of LB389, which I believe is a great step forward in developing Nebraska as a rising star in the high-tech world. In May 2008, I came to Nebraska after our private equity fund purchased a small company headquartered in Glenwood, Iowa. My plan was to aggressively grow the business by adding additional talent and ramping up the company's product R&D. As a private equity fund with more than \$2 billion of capital under management, our first thought was to move the company to a talent-rich high-technology area of the country. We looked at Boston, Minneapolis, Silicon Valley, and several other well-known high-tech locations. During the relocation search, our COO, who is a native Nebraskan, suggested we talk to the Omaha Chamber of Commerce. And, reluctantly, I agreed to that. Meeting with the Omaha Chamber of Commerce was an eye-opening experience. The chamber touted the state's strong high-tech talent pool, fueled by top tier educational feeder institutions, such as UNL, UNO, Kiewit Institute, AIM Institute, and Creighton. They emphasized Nebraska's strong ethical standards as well as work ethic that is rarely found anywhere

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else in the country. In addition, the chamber showcased investment of fiber connectivity and data centers, such as FNTS center and CoSentry that exists within the state. WebEquity is a cloud computing platform. We have taken advantage of this infrastructure by hosting our software at FNTS in downtown Omaha. This infrastructure was incredibly enticing for a software company such as WebEquity. With all these factors aside, what truly influenced our decision to headquarter in Nebraska was the Nebraska Advantage legislation. In January '09, we moved 37 employees to our headquarters in downtown Omaha and decided to headquarter in this state. These incentives, combined with the technology foundation within the state, were the main reasons we decided to headquarter here. My support for the legislation such as LB389 is genuine and serious. Now that we have made this investment in Nebraska, we are hoping to see this type of legislation and further fostering a high-tech hub, which would be to our benefit. LB389 is the right kind of legislation to further expand and build strong economic diversity within the state. According to the Angel Capital Education Foundation, 20 states currently have similar angel investor programs to attract early-stage investment--and these incentives do work. As an example, in Wisconsin, from 2005 to 2008, the amount of angel money invested has jumped nearly threefold, from \$5.3 million to \$15 million, according to a report by the Wisconsin Angel Network. The number of deals ballooned from 18 to 53. If you're looking for an example of how proactive legislation such as LB389 can work to bring high-tech jobs to Nebraska, you'll find it in our company, WebEquity. Just in the past 6-9 months, we've added 15 new staff members and plan to hire six or more over the next nine months. Last year, we grew revenue 70 percent. We are the fastest growing company in the U.S. within our space, which includes competitors such as Moody's and Experian. Our new hires typically earn two to three times the state average wage and have a minimum of a four-year degree, and many of our employees have master's degrees. They are highly educated, high-wage, and provide the state significant ancillary revenue from sales tax, income tax, housing, and countless other spending within the state. LB389 will create higher paying jobs and assist in the development of dynamic companies like WebEquity doing business in Nebraska. It will increase the talent pool and enhance Nebraska's momentum and continued growth and, as important, add significant revenue to the state. Aiding Nebraska's growth doesn't stop with LB389. High tech is an ever-evolving sector with changes that occur in months, not years. I encourage you, like today, to listen to the business community and continue updating the high-tech legislation such as the Nebraska Advantage Act and LB389 each year to continue to attract emerging high-tech businesses and to keep those companies that have made those commitments here in the state. Thank you for championing this effort. I'd be happy to answer any questions you might have. [LB389]

SENATOR UTTER: Thank you very much for your testimony. And let me just say on behalf of the Nebraska Legislature, if you haven't heard this: We're glad you're here. [LB389]

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DOUG MCGREGOR Thank you. We're excited. [LB389]

SENATOR UTTER: And I also want to mention that while you were giving your commercial for the Omaha Chamber of Commerce, a chamber representative was sitting back behind you and just grinning from ear to ear. (Laughter) [LB389]

DOUG MCGREGOR: That wasn't staged. (Laugh) [LB389]

SENATOR UTTER: Questions? Senator Pirsch. [LB389]

SENATOR PIRSCH: Well, I wanted to echo the thought of thank you for investigating our state. And we, as a body, I think, are pretty committed to working with anybody that wants to come and create jobs in the state, and so. And I do agree with you, we can't sit still as a state and hope for the best. Even amidst this economic downturn, we have to keep our economic engines on as we look to the future. And, you know, we are operating in a new competing, not just nationally, but globally as well. So I guess I wanted to pick your unique background insofar as you were...WebEquity was based out of, before you came to... [LB389]

DOUG MCGREGOR: Glenwood, Iowa. [LB389]

SENATOR PIRSCH: Glenwood. But prior to that, were you located on the West Coast? [LB389]

DOUG MCGREGOR: I was in Minneapolis and I ran M&A for a public company; a computer science degree. Worked for Unisys for ten years, ran several divisions of a \$400 million public company. And also was in venture capital; assisted a funds on the West Coast when the crash occurred in early 2000, and then raised a private equity fund in '06. We looked at over 90 companies across the country. As a matter of fact, when I found about this one, I had two letters of intent: one in Dallas and one in San Francisco, and decided here. And we are happy to be here. We love Nebraska. [LB389]

SENATOR PIRSCH: Wonderful. And I just wanted to get a sense for you, because you do share this background, in-depth understanding. Do you think that this would be...that this is going to have a profound effect then in raising money for companies of these size? Are we going to be able to attract, you know, angel investment, an area we've been sorely in need of. [LB389]

DOUG MCGREGOR: Yes, wholeheartedly. In Minnesota I was involved in an angel network. I am an angel. I have my own money in this deal and I'm one of those people who were described earlier. I also had a software company that I built from scratch back in the early '90s that I wish I would have had an incentive like that in Minnesota--and they did not--and ended up selling that in the mid-'90s. But we ploughed through a lot of

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money and heartache. So it definitely would help. There's several tier levels in investing. At the level that we're talking about with this particular legislation, this is a nice feeder into what WebEquity became in attracting larger funds into the state. Unfortunately, Nebraska is a fly-over state when it comes to funds. And what I mean is they fly from the East Coast to the West Coast and back, and then they fly over. And the idea of this is to get funnels of money into the feeder system and work its way up, so that attraction occurs not only at this stage, because this is a feeder stage, but also at the stage where funds with second rounds, third rounds, and fourth rounds come in. And you can't get there unless you start. [LB389]

SENATOR PIRSCH: Thank you. [LB389]

SENATOR UTTER: Other questions? Senator Louden. [LB389]

SENATOR LOUDEN: Yes, thank you, Senator. Well, thank you for being here today. And did I understand you correctly that you got started up in Nebraska with Nebraska Advantage? [LB389]

DOUG MCGREGOR: Yes. We moved the business from Glenwood, Iowa, to Nebraska. [LB389]

SENATOR LOUDEN: Okay. And what did you use that money for that you got from the Nebraska Advantage Micro... [LB389]

DOUG MCGREGOR: We average, because of that effect...we're 50 people so we are...we are a small business but growing rapidly. We average about two to three more people we can hire. We're in rapid growth mode. If we didn't have that tax break or credit, the payroll tax credit, we would not hire those two to three people. [LB389]

SENATOR LOUDEN: Okay. But you use that money then for extra, you hire... [LB389]

DOUG MCGREGOR: Correct. [LB389]

SENATOR LOUDEN: Hire more people, more staff. [LB389]

DOUG MCGREGOR: Yes. [LB389]

SENATOR LOUDEN: Okay. Thank you. [LB389]

SENATOR UTTER: Senator Hadley. [LB389]

SENATOR HADLEY: Senator, thank you. And it's a great success story. Did I hear you correctly that you had been involved in Minnesota in the angel... [LB389]

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DOUG MCGREGOR: In the angel community, correct. [LB389]

SENATOR HADLEY: Angel community. Did that work primarily for just Minneapolis-St. Paul, or did it work, you know, for people in Duluth or Rochester or other places around the state? [LB389]

DOUG MCGREGOR: A great question. And it's funny you mention Duluth--I grew up there, so. And when I moved down from Duluth into the cities, you know, that was an issue, is whether or not, you know, I was going to be able to get started in that community. And northern Minnesota went through a real hellacious time during the early '80s, and there was state money funneled into northern Minnesota and, arguably, has gotten it going again with China emerging now as a taconite grabber from northern Minnesota when it failed. So all of that money...there was a company that we looked at in Duluth when I was with a public company that we were going to acquire. They actually got funding through an angel network as well, and I can tell you that this type of legislation would have helped that company in Duluth. They were based out of the air base out of that community. And have also been involved with, you know, Hibbing, Virginia, and other parts. It's not just the Twin Cities. [LB389]

SENATOR HADLEY: Okay. I think that's an important thing that we as a Legislature representing all 93 counties and such as that, you know, so that we get passed legislation that not only benefits the larger cities but also gives some chance to the smaller rural areas, because we want to try to help them. And I know that the angel network has been involved in Kearney in my district in looking at some... [LB389]

DOUG MCGREGOR: Yes. Well, we have had remote people in actually western Nebraska work for our company, virtually. And that's the beauty of this type of investment. It does cross over. [LB389]

SENATOR HADLEY: Thank you. [LB389]

SENATOR UTTER: Other questions? Seeing none, thank you very much for your testimony. Good afternoon. [LB389]

RON WITHEM: Good afternoon, Senator Utter. My name is Ron Withem, R-o-n W-i-t-h-e-m. I'm the registered lobbyist for the University of Nebraska. We have quite a number of people whose work is directly related to angel investment and high-technology development. Unfortunately, you got stuck with me here today, so I am going to be relating the general views of the university on legislation like LB389. We believe that Senator Cornett's bill will provide a major impetus to link the laboratories of the university with the marketplace and is critical for university-related inventions. Faculty members at the university engage in millions of dollars of research each year,

many of them involved in discoveries that produce marketable products. However, there is often a missing link between the researcher's bench and the making the products readily available to consumers. What is often needed is funding at the developmental level. After the research grants that led to the discovery have been exhausted, but before the product can generate income, angel investors can provide this missing link. Angel investors are one of the few sources to get a discovery or an invention from a research project to something in which a venture capital firm or industry would be interested. Angel funds are critical to take the next step for an invention to reduce risk for an interested company. Angel is critical for university inventions, a discovery that may reach a point where scientific inquiry has been exhausted so federal funding agencies won't fund it, but discovery is not yet a commercial product ready for the marketplace. Angel investors are one of the few sources to get a discovery or an invention from a research project to something in which a venture capital firm or industry would be interested. Angel funds are critical to take the next step for an invention to reduce risks for an interested company. Angel funds are used for three general categories: prototype development, additional data collection, and scale-up validation. For example, a university researcher may have developed a new drug and has data in mice, but the new drug has not been tested in large mammals or humans. Farm and industry won't fund it because they have so many likely drug candidates to invest in that they don't need to take a large risk on a yet untested drug. Great new discoveries may never advance because the market discounts the idea because of the risk. Angel funding can create a prototype, demonstrate viability through data, or validate discoveries through scale-up for potential industry buyers. These are reasons why the university is pleased to be here supportive of this legislation and would urge you to advance it. [LB389]

SENATOR UTTER: Questions for Mr. Withem? Ron, you're getting off scot-free. [LB389]

RON WITHEM: Hey, thank you very much. [LB389]

SENATOR UTTER: Thanks for coming. Welcome. [LB389]

JENNIFER WOLF: (Exhibit 5) Hello. Members of the Revenue Committee, my name is Jennifer Wolf; that's W-o-l-f. I am the executive director of Dawson Area Development, which serves the communities of Gothenburg, Cozad, and Lexington. I also sat on the oversight committee for the Battelle study and I serve on the board of directors for the Nebraska Enterprise Fund. I can attest that there is a need for private investors to facilitate small business start-ups, especially in rural Nebraska. Their credit markets are very tight and they have left many entrepreneurs with promising and viable business plans that are looking for capital. Many of these entrepreneurs lack the significant owner equity that is currently being required by many lenders. We have seen firsthand in my county how tax credits can encourage development projects. We have undertaken four

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housing development projects in the past three years, using local investors to facilitate housing projects. We have also been able to leverage several million dollars of private investment in community development projects by utilizing the Community Development Assistance Act. We feel the angel investment tax credits could have the same positive impact in the facilitation of new business start-ups. We currently have a few projects that could come to fruition if legislation like this is enacted. The impact of the angel investor tax credit is significant to all of Nebraska, but it could potentially have the greatest impact on rural Nebraska. Thank you for considering this significant resource to create jobs and bring new investment to Nebraska, and I would be open to any questions if you had some. [LB389]

SENATOR UTTER: Senator Pirsch. [LB389]

SENATOR PIRSCH: Yeah, I just wanted to kind of pick your brain with respect to the...under the act on page 2. There are certain high-technology fields that would be eligible. And for the area in which you're kind of working in, do you think those would be heavily used and applicable? [LB389]

JENNIFER WOLF: Heavily used might be overstating it. You know, we occasionally do have the high-technology companies but probably not as much as the rest of the state, the eastern end of the state, but we do have. [LB389]

SENATOR PIRSCH: But you think it would be significant and you're supportive of it. [LB389]

JENNIFER WOLF: Yes. Absolutely. [LB389]

SENATOR UTTER: Other questions? Senator Louden. [LB389]

SENATOR LOUDEN: Yes, thank you, Senator Utter. Well, the way I understand this thing, Jennifer, if we go to this angel deal, then we kind of get rid of this Nebraska Advantage...Rural Development and Nebraska Advantage, Microenterprise, or we kind of fold it into there. Seeing as you're part way across Nebraska, which do you think would be the most advantageous for you in a farming area such as Cozad and Gothenburg and that area like that. Do you think you would actually draw in more of these high-tech businesses rather than some of your more value-added enterprises that would probably happen in your area? [LB389]

JENNIFER WOLF: Well, some of our value-added ag projects could be considered high tech in the ones that we've seen in the past. If you look at the Monsanto Water Utilization Center in Gothenburg, that's not small business. But we do see some high-tech value-added ag projects out there in western Nebraska. What we've found when we're working with most start-up companies is that they are looking for that

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injection of capital on the front end of their project to get going and to get started up versus the refund of tax credits or having it come later on in the development of their business. [LB389]

SENATOR LOUDEN: In order to make this work, though, you'd have to find somebody with a bunch of money in order to do that. Is that available in your area? [LB389]

JENNIFER WOLF: We do have some qualified investors in our area. However, we would be open to having qualified investors from the rest of the state come and invest in Dawson County. That would be a real win-win for us as well. [LB389]

SENATOR LOUDEN: Okay. Thank you. [LB389]

SENATOR UTTER: Other questions? Senator Fischer. [LB389]

SENATOR FISCHER: Thank you, Senator Utter. Thank you for being here today. [LB389]

JENNIFER WOLF: Thank you. [LB389]

SENATOR FISCHER: To follow up on Senator Pirsch's question, what companies do you see coming to the cities in your area? What type of companies would this bill help you to attract? [LB389]

JENNIFER WOLF: We would be looking at some smaller maybe software development companies, particularly that are centered on the agricultural industry, and we've seen some of those as well. What we've...one company that we have in Cozad, Nebraska, is a biopharmaceutical which actually utilizes some blood from the Tyson plant and extracts the iron from the blood, and they develop iron supplements. And so, I mean, those are types of high-tech value-added ag projects that would be actually viable and probably reasonable to expect in our area of the state. [LB389]

SENATOR FISCHER: How did that company start that you referenced in Cozad, that gets the by-product from Tyson? [LB389]

JENNIFER WOLF: Colorado Biolabs. The research and development was done in Colorado. However, they had to be within a certain radius of a beef packing facility to get that blood. And so we were, with Tyson's presence in Lexington, we were a logical fit for them. [LB389]

SENATOR FISCHER: Did you go out and try and bring them in, or did they find you? [LB389]

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JENNIFER WOLF: They actually came to us just because they had a circle drawn around Tyson. And they could have located within any community within 60 miles of Tyson, and so we worked with them on locating in Cozad. [LB389]

SENATOR FISCHER: Okay. Thank you. [LB389]

JENNIFER WOLF: Okay. [LB389]

SENATOR UTTER: Further questions? If not, thank you very much for your testimony. We appreciate you coming. [LB389]

JENNIFER WOLF: Thank you, guys. [LB389]

SENATOR UTTER: Next testifier. Welcome to Revenue Committee. [LB389]

DENNIS SCHULZ: Thank you, Senator. Senator Utter and members of the committee, my name is Dennis Schulz, S-c-h-u-l-z. I represent and I'm CEO of MaxxFire Industries, LLC, which is headquartered in Kearney, Nebraska. And this is my first time doing this, similar to Mr. McGregor. And I'm here today to testify to what I'm seeing currently as CEO of MaxxFire as far as the state status of higher-risk investment, where I see it going to, and as well as about five years of experience of being a person that's in the trenches and seeing where that investment dollar is going. I do not have prepared remarks so I'll just start by telling you a little bit about our company, MaxxFire. It's a company with patent pending technology where it's an innovation and a next generation of the spark plug for the internal combustion engine. It creates a...the plug itself creates an electromagnetic field at the tip, which creates less draw on the coil. We produce up to 100 times more spark with a comparable gap in the quench zone of an engine, creating additional power...or additional fuel efficiency if you don't have a lead foot using that extra power, and significantly cleaning out the emissions. And the stage we're at currently is we're about to roll out private placement memorandum, and the dollars which we are competing for in what would traditionally be considered high risk is we're seeing a lot of those dollars actually go to projects outside of the state. A lot of people that are in central Nebraska are putting their money into...a lot of people are putting them into exploration energy partnerships, things of that nature, because of the tax advantages that they can gain by those types of investments. So you're seeing a lot of money out of central Nebraska actually roll into the west Texas oil fields. I see that. I know a lot of people that have done that, that are in central Nebraska, that are high net worth individuals. And one of my partners within MaxxFire Industries is also a financial advisor, and an awful lot of his clients are in central Nebraska and they're putting their money in those areas because within their portfolios they're identifying a certain percentage of their dollars for higher risk, but they look at what other benefits they could have in addition to the potential upside on the investments as a result because of bonus depreciation schedules are the tax benefits of that particular type of investment, a lot of

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money is going to west Texas. And that's the kind of thing that we're competing against in this venture stage of the company. As far as historically, I've...as I said, kind of been in the trenches for the last five years working on developing ethanol plants, ag processing, worked on pulling groups together for restructure of Chapter 11 ethanol plants, and working with inventors that have great innovations and really, really substantial intellectual property but then not being able to effectively compete for dollars to invest in their companies to give them a chance to get to where they need to be. And I could list off numbers of instances where there's companies that need a little something to help them compete for those dollars that are Nebraska dollars that aren't necessarily in Omaha or Lincoln, because a lot of these people are in rural communities and they're competing for those rural dollars. And there's a fixed pool of it and they're going to invest it based on how they sit down with their financial advisor, how they lay out their investment strategy. And a lot of those dollars just go elsewhere. And when you look at, in my opinion, where the benefit...greatest benefit would be, in my opinion, from this type of legislation, would actually be in the rural areas. And that's because I work with and see so many of these different companies that are trying to get into tertiary product processing off of the ethanol plants. So, for example, you see the state of the technology that's improving on production, for example, of high oil-based algae. And what you need to properly produce those algae, you need a strong, very pure carbon dioxide source, which is perfect for every one of the ethanol plants around the state. And, in particular, in the rural areas, you don't have your traditional carbon dioxide market for flash freezing items or for the beverage industry. So as a result, none of these plants, or very few of these plants I should say, are actually capturing the CO2 and utilizing it as a carbon source for growing algae or other sources. There's a group out of Israel actually that is putting together a package that you're going to see going towards all the larger livestock producers where they're capturing...they're putting together electricity agreements going forward for 15 years. They monetize that commitment in order to secure debt to put microturbines, modularized microturbines to process methane that they're producing off of the waste to produce electricity direct to the producer, so there's less loss additionally, so you don't have the 12 percent loss going on and off the grid, inversion/conversion factors are much less significant, and you start looking at the fact that they want to do that but they don't want to work it where they own it outright or even have a majority. They want a partner in each area with a local group that would have the physical assets in their name. They would be a partner within that. So when you see what's going on out there and where the next wave of technology is going to be, in my opinion this helps the rural areas significantly. And I know I get long-winded so I'll just stop here and take questions if you have any. [LB389]

SENATOR UTTER: Questions of...Senator Fischer. [LB389]

SENATOR FISCHER: Thank you, Senator Utter. Thank you, Mr. Schulz, for being here. Where did you say you were from again? [LB389]

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DENNIS SCHULZ: I live in Lincoln. MaxxFire Industries, where I'm CEO, that's in Kearney, Nebraska. [LB389]

SENATOR FISCHER: I bet Senator Hadley wished you lived in Kearney. [LB389]

SENATOR HADLEY: We'll get that going here in a minute. (Laugh) [LB389]

SENATOR FISCHER: Have you ever looked into using the Nebraska Advantage Rural Development Act or the Microenterprise Act for any of these ideas that you're thinking of? [LB389]

DENNIS SCHULZ: As far as applicability, working either on projects where I was directly involved or consulting for other groups, typically where the advantage would have been for them was to use the Nebraska Advantage Act from the tax benefits for employees, what have you, and overall capital expenditure more so than the other acts, from what we would have put together and talked to an accountant. And it never really seemed to be something that would help bring the dollars in. It would help the business, it seemed like, more for an ongoing. But to get that initial capital, to get it running, it just...it didn't seem to be that helpful. [LB389]

SENATOR FISCHER: You believe it's that initial capital that's important, obviously, for these types of businesses. How difficult is it now to get a group of investors together to go to a bank? I have a pretty good relationship with my banker in order to do business. So how...you know, how difficult is it to be able to do that to promote a business and get it started? [LB389]

DENNIS SCHULZ: What we've seen from the...if there's going to be personal guarantees from all the members coming into it or anyone over, say, 10 percent ownership, the bank is willing to do that because there's individual accountability. But when you have an LLC structure where you could have 200 different members that come in on a private placement, to get all the members that are above a certain ownership to sign off on it, it's very difficult, because if you just have one member that's not willing to do that, everyone says, well, why am I on the hook and not so-and-so, and what have you. And so it becomes very difficult from that standpoint as far as... [LB389]

SENATOR FISCHER: Is it...I'll interrupt you for just a moment. Is it common to have 200 investors? [LB389]

DENNIS SCHULZ: It is, depending on the overall size of the project. And as you look at the banks are less willing on the start-up companies to have the equity/debt ratio be as low as it was traditionally. You start running into issues, okay, now you need to raise, say, 50 percent equity to get 50 percent debt if you're going to put up a processing facility. And then if you're able to get a USDA rural development guarantee on it, then

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everyone over 20 percent ownership in the company has to place personal guarantees, and they no longer will go up to that 80 percent even though technically they're allowed to. They're not comfortable going 80 percent of a guarantee on a \$5 million project. [LB389]

SENATOR FISCHER: And why aren't the banks willing to do that? [LB389]

DENNIS SCHULZ: Just from my experience, what I'm witnessing in talking with people in the banking industry, it seems like everyone is kind of gun-shy at something that's start-up or considered higher risk. It's just kind of the swing of the pendulum right now as far as risk tolerance of the banks.. [LB389]

SENATOR FISCHER: Okay. Thank you. [LB389]

DENNIS SCHULZ: You're welcome. [LB389]

SENATOR UTTER: Other questions? Dennis, thank you for coming. I must admit Dennis has a nice ring to it. [LB389]

DENNIS SCHULZ: That's right. Thank you, Senator. Thank you very much. [LB389]

SENATOR UTTER: Another proponent, please. How many more, just for curiosity, do we have that want to testify in favor of this bill? Just one more. Okay, thank you. Welcome. [LB389]

JOHN MILES: Welcome, Senator Utter. Thank you. Revenue Committee, thank you. My name is John Miles, J-o-h-n M-i-l-e-s. I am a partner in the law firm of Cline Williams Wright Johnson and Oldfather here in Lincoln. I'm also a member of the board of directors and executive committee of the Lincoln Chamber of Commerce, and I come today on both my own behalf and the chamber's behalf. My partners and I have represented start-up companies, research and development companies, other development-stage companies, and have represented investment bankers, individual angels, partnership, and venture capital funds for many, many years. We were counsel to the Nebraska Research and Development Authority, which was Nebraska's first and only state-funded attempt at promoting venture capital in the state of Nebraska. This was established during the Kerrey administration and was funded with tax dollars for several years. It made specific direct investments as seed investments in private companies in Nebraska specifically for the same purpose that we face today, and that is an entire lack of real equity availability to start-up and development-stage companies in Nebraska. Our experience confirms that Nebraska has struggled to attract risk capital to start-up and development-stage companies. And while recent efforts of the Nebraska Angels, Invest Nebraska, NUtech Ventures, and others are encouraging, we still need more angels, big and small. We believe that we should do whatever we can to

encourage such innovation and investment from a wider range of people, and the angel tax credit will do just that. Nebraska is a conservative state and is risk adverse, probably even more adverse today based upon our current economic conditions. Banks aren't lending money to these types of companies on a regular basis without substantial net worth behind them. When dealing with start-ups and development-stage companies with new and innovative ideas and services, investors are also very wary. After all, they make investments to make a profit, and many times these companies have no existing operations. They have an idea; they have a patent; they have an invention. And they just hope that it's going to end up being commercializable and make them money. Investments in these companies are always speculative and most such companies fail. I will agree with earlier statistics today that said that 1 in 10 are truly successful; 3 and 4, marginally profitable; and most of the others fails. As to the tax question that was raised earlier, I will say that if you invest in a company as equity--or debt, but this is an equity piece--and the company ultimately fails, you will take an investment loss, a capital loss which is deductible under the code. I would defer to the Tax Commissioner specifically to see what the actual consequences of that are, but that would be the result. On the recapture issue, if it is refundable, my guess is, is that your ability to deduct the entire loss is going to be reduced by the amount of the tax credit received. Lack of capital is usually the biggest culprit in any business's failure. As a result, doing something to soften the risk of investment by angels and further incent other investors to become angels is extremely important and positive. This statute is patterned after similar statutes in many other states. And as you've heard, there are various ways of accomplishing this, various percentages, various other qualifications, but the template is largely the same. A certification process that ensures that only certain investors invest in certain companies will get the credit. The qualified companies in this case must be small and involved in various entrepreneurial, innovative-type businesses. Investors can't be majority owners who get most of the income from the business. They can't be banks or venture capital funds. The statute, as proposed, has caps on the amount of credit that can be generated from one company and on the amount an investor can receive. It has an overall cap on the amount of credits that are granted in any one year. It has, in my opinion, adequate protections. Earlier, there were questions relating to the types of investors that can be qualified for this credit. The statute today does not have any specific requirements as to net worth. However in the securities markets when a business decides that it wants to conduct a securities offering, it must do so under various federal and state exemptions from securities registration. Those rules have a variety of definitions that allow for private offerings to certain types of people, both accredited and nonaccredited. Accredited investors are reflective of the types of income requirements that were indicated earlier and also entire net worth issues. But nonaccredited investors can also invest in these types of companies, and do so regularly. In Nebraska, some companies that engage in this type of capital raising restrict their offerings to a limited number of investors residing solely in the state of Nebraska. In fact, Nebraska has an exemption for sales of securities to 15 or fewer people within a 12-month period. In many cases, these companies are using that

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exemption from registration to allow them to raise the capital they achieve, and can do so without regard to whether the individual is accredited or nonaccredited. Other types of offerings use federal exemptions that allow them to make broad offerings across interstate borders. Those requirements are more onerous and require significant disclosure documents and other requirements to make certain that the exemptions are met. Angels can come in any size. I personally do not believe that the angel credit should mandate any specific accredited requirement. It should be made available to anyone who makes an investment in one of these qualified companies, whether they're high net worth or lower net worth, whether they be greater angels or lesser angels. This is not a credit that will result in benefitting only the rich and/or in Lincoln or Omaha. My firm has been involved with small offerings across the state of Nebraska and have been involved with communities from Laurel to Ogallala to Sidney to O'Neill, who have banded together, local businessmen, and raised money from local people to try to attract and retain companies that would meet these requirements across a wide variety of areas. As a result, I don't believe this should be looked at as simply an eastern Nebraska-type of bill. It benefits the entire state, and ultimately benefits the investor--the individual who puts their capital at risk to make these ventures fly. As a result, we encourage you to approve this bill and I'll answer any other questions that you might have. [LB389]

SENATOR UTTER: Questions? Senator Pirsch. [LB389]

SENATOR PIRSCH: I don't want to do it to Senator Adams twice when he had his raised before. Go right ahead, Senator. [LB389]

SENATOR ADAMS: I was slow. You were at the gun first. [LB389]

SENATOR PIRSCH: I don't think so. Well, thank you. If I heard your testimony correctly, you were indicating that you think that this type of benefit should not be cut off to anyone, right...I'm sorry...in terms of investor, right? [LB389]

JOHN MILES: I don't think you should qualify the type of investor that ultimately invests in it, no. [LB389]

SENATOR PIRSCH: And yet the green draft does on page 6, right? Doesn't it exclude...first, in Section 5 it's talking about who shall not be a qualified investor, so it's in the negative, and then there's a listing of three. And it includes an individual who controls 50 percent or more of the business, and then secondly, a venture capital company. So you take issue with respect to that subcategory (b), is that...? [LB389]

JOHN MILES: No, not at all. Not at all. What I'm saying is the statute as it stands right now does not place any net worth requirements... [LB389]

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SENATOR PIRSCH: Oh. [LB389]

JOHN MILES: ...on the investor to qualify under the bill--and it shouldn't. [LB389]

SENATOR PIRSCH: Okay. With respect to that, since I'm on that (b), though, venture capital company, do you understand the policy reasons for excluding, as a qualified investor, a venture capital company? [LB389]

JOHN MILES: I've not had any discussions with anybody specifically about that. But venture capital companies are companies that raise capital from angels, from large net worth, high net worth individuals, institutions, and others, to make venture capital investments in companies all across the country. In most cases, they're making investments in companies that are already operating and have a seasoned history in terms of operations, and are usually involving large operations on the East Coast, West Coast, and in Chicago and your major metropolitan areas. We do not have, in Nebraska today...just a handful of small venture capital companies. [LB389]

SENATOR PIRSCH: Well, I don't...yeah, I'm not even sure we have a handful anymore. [LB389]

JOHN MILES: Yeah, I agree. [LB389]

SENATOR PIRSCH: But is there any reason or policy reason that you can think of why you would want to exclude...and obviously there's going to be these venture capital companies have certain criteria that they look at, that they employ, which may exclude a lot of these small companies. But is there any reason to categorically exclude them from a bill in terms of when we're looking for investment dollars? [LB389]

JOHN MILES: The only reason that I can see, of the fact, is that this credit is going to relate to Nebraska income, and so you're looking at Nebraska investors at the end of the day. And some of these venture capital funds are from all the country, and so it really wouldn't benefit then as a practical matter. [LB389]

SENATOR PIRSCH: Sure. Thank you. [LB389]

SENATOR UTTER: Senator Adams. [LB389]

SENATOR ADAMS: Thank you. Let me ask you the same question I asked Richard Baier, and you may not have an answer. But given your background, I'd like to give you a try. So where have all of our risktakers gone that bring us to a point, not just here in this state, but nationwide, where government has to be the incentor for risk rather than the return? [LB389]

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JOHN MILES: One, I don't think our risktakers have gone anywhere. They're just not taking as many risks anymore. They're still there. [LB389]

SENATOR ADAMS: Because there are tax credits available. [LB389]

JOHN MILES: Not necessarily. In fact, I think that in terms of the angel tax credit, nationally, we're not talking about a large fiscal number, quite frankly. But this bill, what it does is bring into play perhaps other individuals that are higher net worth that haven't engaged in these types of activities before that would be incented to make an investment in a company that wouldn't have otherwise done so. And that's the issue. I think the gentleman from Kearney indicated that, you know, from his perspective money in the Kearney area was perhaps going to the west Texas oil fields because they saw that as a better opportunity to invest than investing in local companies that might have the same need. So I think there's a different focus today in terms of where risk capital is going, and it needs to be refocused within the state. [LB389]

SENATOR ADAMS: Thank you. [LB389]

SENATOR UTTER: Senator Fischer. [LB389]

SENATOR FISCHER: Thank you, Senator Utter. Thank you, Mr. Miles, for being here. You mentioned that during the Kerrey administration there was a program. What happened to it? [LB389]

JOHN MILES: The Nebraska Research and Development Authority I believe was established by this Unicameral in 1986, I believe is when the legislation was passed. We represented it until the legislation sunset, which I believe was in roughly 1993 or thereabouts. The Nebraska Research and Development Authority made several investments over that time period, and provided a variety of services to entrepreneurs within the state of Nebraska. They provided all sorts of assistance in creating business plans. They tried to link entrepreneurs with investment capital, and then they made direct investments in these companies, both in terms of loans as well as equity investments. In the early 1990s, the funding for that particular program had ceased. So they had already spent the money that they needed to spend in terms of making the investments, and, ultimately, the investments were privatized into a private, basically, venture capital fund, which ultimately sold off those assets, and the proceeds were returned to the state, basically. It had several successes. It had several failures. [LB389]

SENATOR FISCHER: Do you have any information on those specific outcomes of the program? Do you know where that... [LB389]

JOHN MILES: I don't have at hand today. [LB389]

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SENATOR FISCHER: Do you know where that would be available or if it's available?
[LB389]

JOHN MILES: I'm sure it's available. I can probably find out for you. But it was a fiscal number and the state would have gotten the proceeds. I know of one particular sale in roughly 1994 or 1995, something like that, so. [LB389]

SENATOR FISCHER: And you said it had a sunset... [LB389]

JOHN MILES: The legislation was... [LB389]

SENATOR FISCHER: I guess you could say then that the Legislature at that time determined not to re-up the program, correct? [LB389]

JOHN MILES: It was...when it was established, many states around us, including, I believe, Kansas and Missouri and others, had developed similar types of programs. Some of those states continue with those programs today. [LB389]

SENATOR FISCHER: I had to step out to introduce a bill in another committee so I didn't have the opportunity to ask a question on the Omaha Chamber, but I, reading their letter here--and you made reference in your testimony to some of this, too, so I'm going to ask you. I hope I'm not unfair. In their letter, they say that the Nebraska law would be one of the best angel tax credits in the country. To me...and then they go through some specifics what they determine as key positives of the law. Can you speak to what this proposal is compared to other states? Does it go beyond what other states are doing? Is this going to be one of the best...as the Omaha Chamber says, one of the best? [LB389]

JOHN MILES: I haven't done in-depth study on comparing this particular proposal with the other. There's at least 19 other states that have programs like this. But again, the tax credit in this case I think, at 40 percent, is in the upper tier of credits returned, which is excellent from that standpoint. [LB389]

SENATOR FISCHER: Excellent for whom? [LB389]

JOHN MILES: Well, ultimately for the incentive that it's going to provide to the investor, because the investor is going to benefit from this at the end of the day. If an investment goes bad, they'll get a loss but it will be reduced by the credit. But they will have made the investment in the first place and they might not have made the investment to begin with, so. [LB389]

SENATOR FISCHER: You also...you ended your testimony saying that ultimately this benefits the investor. I was happy to hear, though, during your testimony that you felt it

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was also good for all parts of the state. [LB389]

JOHN MILES: Oh, absolutely. I think that this will...there are angels all across this state, and there are, again, lesser angels out there that will be angels because of this legislation, in just about every major area of the state and many rural areas too. There's going to be companies come to this state that are going to build new plants and new facilities out in the cornfield, so to speak. And that's good. [LB389]

SENATOR FISCHER: Because of the tax credits... [LB389]

JOHN MILES: I think it will help. [LB389]

SENATOR FISCHER: ...that the state will be offering under this new program, they'll come. [LB389]

JOHN MILES: I think this one and the rest of the incentives that the state of Nebraska and our Department of Revenue has adopted over the last several years, absolutely. [LB389]

SENATOR FISCHER: Okay. Thank you. [LB389]

SENATOR UTTER: Mr. Miles, I just want to clarify the tax issue thing just a little bit. I'm not a...I'm a long ways from a tax expert except I know I have to write a check for it occasionally. The state tax credit, the 40 percent tax credit that it's proposing, in the event of a failure and you have a capital loss, then the amount of that loss would be reduced by the credit that you had earlier received. Is that correct? [LB389]

JOHN MILES: I don't know the answer to that specifically. That's what I'm surmising. That would be typical tax policy--and again I would defer back to our Tax Commissioner for that. [LB389]

SENATOR UTTER: I assume the expert is still coming. I hope he doesn't get tired and go home before I get to ask that question. [LB389]

JOHN MILES: But that would be typically what happens, because you've received a benefit. [LB389]

SENATOR UTTER: The other thing that I'm concerned about just a little bit is that the lesser angels, the half-winged angels, or whatever they are, that you are talking about. And as I look at the language, it seems to me like we're trying to...we're trying to talk to well-heeled people. [LB389]

JOHN MILES: It's true. [LB389]

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SENATOR UTTER: And does the language really need to be changed in this bill to make provisions for other folks who aren't quite as well-heeled to participate in this if they saw fit? [LB389]

JOHN MILES: The language of the bill today, Senator Utter, does not specifically address the well-heeled nature of these angels. It qualifies them in terms of what they may do in connection with their particular businesses and how they can invest. So it doesn't address that. And I would oppose, myself personally, trying to qualify this to meet a certain type of class of individual. Because there are friends, there are in some cases individuals within the community that may have assets available that would want to put them at risk in a venture in that community, for the betterment of the community, quite frankly, and they should not be prevented from getting a tax credit. [LB389]

SENATOR UTTER: It seems to be, like particularly in the rural areas, the lesser...there may be a larger predominance of the lesser angels... [LB389]

JOHN MILES: That's true. [LB389]

SENATOR UTTER: ...in the rural areas of the state. And so what I'm hearing from you is when you talked about qualified investors, we're not going to qualify them on the basis of net worth or... [LB389]

JOHN MILES: That's correct--and we shouldn't. [LB389]

SENATOR UTTER: Any further questions? Thank you, Mr. Miles, very much, for your testimony. Appreciate it. [LB389]

JOHN MILES: Thank you very much. [LB389]

BRADLEY WALKER: Good afternoon. [LB389]

SENATOR UTTER: Welcome to Revenue. [LB389]

BRADLEY WALKER: Thank you very much, members of the committee, for having me. [LB389]

SENATOR UTTER: You must be the tax man. [LB389]

BRADLEY WALKER: No, not at all. [LB389]

SENATOR UTTER: Oh, darn. [LB389]

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BRADLEY WALKER: I don't even play one on TV. My name, however, is Bradley Walker, W-a-l-k-e-r. I'm a resident of Lincoln, Nebraska, and I'm currently serving as president and CEO of Nanonation Incorporated, a digital media software development company headquartered here in Lincoln. I'm here to offer my support to LB389--and from two perspectives. Initially, as a software entrepreneur, I've seen firsthand the impact of angel investment in my businesses and in other businesses around the country that friends and acquaintances own and operate. Today, Nanonation employs 47 high-tech, high wage-earning, best and brightest Nebraska has to offer. We do have one employee outside the state of Nebraska, so that allocation of sometimes having employees outside of the state is important for this legislation. We include in our cast of characters the retention of four Raikes scholars from the Raikes School program here at the University of Nebraska. So as the university testified, that ability to engage young people in exciting, high-tech ventures is an important role of start-up software organizations. All of this was made possible by my own funding and the angel investments made over ten years ago in our business. We're not a candidate to receive funds from this but we certainly benefitted from them long, long ago with foresighted angel investment that has created great opportunity. Ninety-five percent of our revenue today comes from outside the state of Nebraska. Our intention, like many other software and high-technology companies is not to market services and goods solely to the state of Nebraska, but to generate new revenue and new opportunity from outside and the rest of the United States and around the world. This legislation will serve as a launch pad for future venture investments by angels in the state of Nebraska. Simply put, we got lucky ten years ago to find people who believed in our vision and were willing to make an investment. This legislation will make a more predictable, risk-mitigated investment possible for many angels in the state of Nebraska. The second reason I'm in support of this legislation is as a community member. I believe that it's a great investment in the future of the state of Nebraska. We know our state is a net exporter of capital, as has already been testified, with high net worth individuals sending our resources to other regions, funding other businesses in other states. This legislation creates an incentive to do the right thing, to keep our resources here at home, and to create job potential and opportunity here in Nebraska. It's also a way to keep our kids, our best and our brightest, right here at home. They will follow the money. They will follow the ideas. If we can do this small part to create that seed stage capital, to create new opportunities for them, we have a much higher chance of retaining those individuals. The seeds that get planted today are the ones that will grow our future opportunities down the road. We cannot ignore that piece of the risk calculation. While these companies do present a risk--any software or start-up venture in high technology can be risky--we're also risking the investments we make today in education. If we educate our children only to find that they leave the state and take their revenue, their families, their future to other businesses in other states, we've done ourselves an absolute disservice by not creating this type of legislation here today. A couple of other points I might make based on some of the other testimony and questions that have been offered. First, it is a question of risk mitigation. We're not intervening, I don't

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believe, as a state governmental organization into the economic system, but we are changing the risk mitigation. The risktakers are still here, I think as John may have said. What needs to happen is to up the ante, if you will. Make that risk calculation mitigated to a point that they're willing to either bring new money into the market or reenter the market into high-tech start-up types of organizations. I also think that if we don't choose to fund early stage development, we will risk creating a stagnated economic system where the companies we have are the companies we've always had. If we don't find ways of creating the next Gallup, the next Fiserv, the next Design Data--the list of software companies is endless and you've heard from others here today--if we don't create those new opportunities, we will absolutely be putting at risk this state's financial future as well as the future of our citizens. And with that, I'd answer any questions. [LB389]

SENATOR UTTER: Thank you, Mr. Walker. Questions for Mr. Walker? Senator Hadley. [LB389]

SENATOR HADLEY: Mr. Walker, as probably one of the larger angels in outstate Nebraska,... [LB389]

SENATOR UTTER: In size. [LB389]

SENATOR HADLEY: In size. Yeah, I meant in size, not in money. In your experience, the successful companies that have used angel investing and risk investors and such as that. Are there ever any hard feelings when a company is successful and the entrepreneur that started it suddenly realizes how much they're giving up when it is successful? [LB389]

BRADLEY WALKER: Oh, sure, sure, sure. Yeah. You know, I don't wish entrepreneurship on anyone. I'm not sure I would have taken that deal if I'd understood it. But it is my calling in life and, yes, you have to understand that it's a fair exchange of value, that you are working for your shareholders, that you are trying to maximize their return on investment. And that's fair if you accept money as an investment at an early stage. [LB389]

SENATOR HADLEY: I could see that, that when it's in an early stage you really want the money. Then when you're successful you suddenly look back and say, I'm giving this person a significant return or equity piece of my business. So I can see that that could be a... [LB389]

BRADLEY WALKER: It can. But I think almost any entrepreneur with a great idea and the passion to go pursue it would rather have the opportunity to experience that disappointment than to have the idea just go away. [LB389]

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SENATOR HADLEY: I happened to watch the movie Social Network the other day, and that certainly was brought home in that kind of situation. Thank you. [LB389]

BRADLEY WALKER: We would be very fortunate to have three or four of those opportunities happen here in Nebraska. [LB389]

SENATOR UTTER: Other questions for Mr. Walker? Seeing none, thank you very much for your testimony. [LB389]

BRADLEY WALKER: Thank you. [LB389]

SENATOR UTTER: And I am sorry I thought you were the tax man. (Laughter) Other proponents? Is there anyone that wants to testify in opposition? How about neutral testimony? Commissioner Ewald. [LB389]

DOUG EWALD: I know you're begging. Doug Ewald, D-o-u-g E-w-a-l-d, Nebraska Tax Commissioner. A couple...address a couple of questions I heard earlier. Number one, I guess related to recapture. Recapture of tax credits provided under this legislation, we do not...this legislation...and this is page 11, line 18, we do not go after a defunct company. We will go after the individual we gave the credit to. Page 11, line 18, that paragraph, Section 8 there, talks about up to "...within six years after the allocation of credits is made, the director determines that a qualified investor or qualified fund did not meet the three-year holding period required in section 6 of this act" we can go back and recapture those dollars from the investor, the individual, the person, whoever we gave those credits to. Why six years? Well, three years plus a...the three-year requirement plus a three-year statute of limitations in most cases for filing an amended return and being able to go back and make adjustments on tax returns. So we go back after the individual or whoever received the credit. [LB389]

SENATOR UTTER: Questions for Commissioner Ewald? Senator Pirsch. [LB389]

SENATOR PIRSCH: Well, just a couple since I...and, you know, it's kind of a...some pages here to the...and the language, and so I'll just ask you. The intent is to bring new projects, new jobs, to the state. Is there anything, in looking at the language, that would ensure...how do we ensure that these are new projects as opposed to just existing projects, expansion, you know, of...some things are always going to just drift bigger and bigger. How do we know that we're... [LB389]

DOUG EWALD: Right. According to this, that's at the discretion...I mean you file an application. I'm assuming the...with the Department of Economic Development. That will be up to them in this particular situation. [LB389]

SENATOR PIRSCH: Okay. Good. So there's a screen in there with that. And from a

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policy perspective--and I don't know if you're the appropriate person to ask this--but with respect to who is not eligible, it disqualifies a venture capital company. Can you just kind of speak to that in terms of...I don't know if you can, but if you prefer to defer, that's...I could... [LB389]

DOUG EWALD: Right. Yeah, I'm not a venture capitalist from that perspective. I mean obviously you have to be a Nebraska resident to get the credit. So out-of-state contributors or investors, they don't...they won't receive anything under this. [LB389]

SENATOR PIRSCH: And that would disqualify them. But if there's...I mean obviously you'd have to be a venture capital company from this state. And granted, these types of...the size and the scope of the companies we're looking at with this bill would not normally be considered by venture capital companies. [LB389]

DOUG EWALD: Yeah, Senator, I really can't speak to what they may or may not look for. [LB389]

SENATOR PIRSCH: Okay. Thank you. [LB389]

SENATOR UTTER: Senator Louden. [LB389]

SENATOR LOUDEN: Yes, thank you, Senator Utter. Perhaps it's in that bill and I have missed it, Doug, but how far back...when can these people get their tax credit, or can they push that back out into the future or that sort of thing? [LB389]

DOUG EWALD: Well, it says once it's approved and we get the notification from the DED that they are an approved investor and if they have made their capital investment, it would be, say, they made it in December 2010, it would apply to their 2010 tax return, for example. Cash-basis taxpayer, so which is really basically, well, what year did you make that investment and when did you get that certificate from the Department of Economic Development, what year that relates to. [LB389]

SENATOR LOUDEN: Then it won't be something like LB775 that could be pushed out into the future? [LB389]

DOUG EWALD: Well, the way this is written it would have to go...and since it's refundable, it would have to go with the year. I mean I don't know why somebody would want to invest and then want to wait three years to get their money. They would want that return on that, that 25 or 40 percent return on their investment as soon as possible. [LB389]

SENATOR LOUDEN: Okay. And that's what I was wondering if that had...and if it had to be taken that next year. [LB389]

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DOUG EWALD: Well, I don't know why someone wouldn't, but, I mean, I would say yes. I mean if you're going to...we're going to look for that on that return, because we're going to match up the certificate provided to us by DED, we would expect that in that particular year for that year. [LB389]

SENATOR LOUDEN: Now is that money that they get refunded then, is that a taxable income, or how will that be treated, or capital gains, or how will that be treated? [LB389]

DOUG EWALD: Well, if it's a refund of a credit...I mean it may be taxable income to them at the federal level in the year in which they received the credit, the refund. Yes, it could be at the federal level. It wouldn't be for Nebraska purposes. [LB389]

SENATOR LOUDEN: Now if they go into something like this and they put I think a minimum of \$25,000 or whatever into a corporation, I would presume when they put that money in, they would expect to be a partner in that corporation? [LB389]

DOUG EWALD: Yes. I mean it's required. It's an equity ownership so they need to own some fractional percentage of the corporation or the business at that point in time. [LB389]

SENATOR LOUDEN: Can this money be considered part of your ownership or do you have to own a... [LB389]

DOUG EWALD: Absolutely. I think it has to be deemed part of your ownership. Yes, the way this is written. [LB389]

SENATOR LOUDEN: Okay. Then if you got that refunded, then how would you treat that with your taxes? Or would that cut down your ownership in that corporation if you got this money refunded back out? [LB389]

DOUG EWALD: Well, I think what it would do is probably...I mean it's a federal question and I'm not necessarily a federal expert, but I'm assuming it would basically reduce your basis in the investment. So you put \$25,000 in, you get a 10...40 percent is a \$10,000 credit, so now your basis in that investment is now \$15,000. So when you go to sell it someday, if you sell it for \$50,000--you know, \$50,000 minus \$15,000, instead of \$50,000 minus \$25,000--you have a higher capital gain at that particular point in time. [LB389]

SENATOR LOUDEN: Well, that's...okay, and that's where I'm getting at. Now perhaps somebody puts something in it and this corporation takes off like Bill Gates or something like that, you know. And you wouldn't want to redeem your money in there or your tax credit because when you did that... [LB389]

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DOUG EWALD: Triggers. [LB389]

SENATOR LOUDEN: ...that triggered the amount of stock or whatever it is you owned in that company. How would you handle that? Will you just forget about your tax credit and hope that you made more money to offset the... [LB389]

DOUG EWALD: Well, I mean that's going to be an individual decision at that point in time. And the credit is one thing versus the decision, I think, to go and sell your ownership interest in whatever you invest in. I mean I think you're going to get the credit up-front, and then what you do down the road is going to be a personal decision that you're going to make at that... [LB389]

SENATOR LOUDEN: You'd just be out the \$200 that you put in to apply for the...your application fee then, or... [LB389]

DOUG EWALD: I mean whatever. Yeah, I don't know that there's an application fee. Is there an... [LB389]

SENATOR LOUDEN: I think there's an application... [LB389]

DOUG EWALD: That \$200. [LB389]

SENATOR LOUDEN: Or something like that. [LB389]

DOUG EWALD: Right. Exactly. [LB389]

SENATOR LOUDEN: Okay. Thank you. [LB389]

SENATOR UTTER: Senator Hadley. [LB389]

SENATOR HADLEY: Senator, thank you. Doug, and you might not be able to answer this, but I just...other states around, are they backing off of the angel investment-type of programs because of the economic times, or have you heard anything from your national associations? [LB389]

DOUG EWALD: You know, Richard spoke about some of that stuff earlier, what other states had. It's not something we have studied in the Department of Revenue specifically. Like I said, there's a number of them that exist around the country, as Richard spoke to--anywhere from 10 percent all the way to 100 percent in Hawaii. So I really don't have any knowledge for you there. [LB389]

SENATOR HADLEY: Okay. I was in another committee, so thank you. [LB389]

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SENATOR UTTER: Other questions? Seeing none, thanks. [LB389]

DOUG EWALD: Thank you. [LB389]

SENATOR UTTER: (Exhibits 6, 8, and 9) Anyone else testifying in a neutral capacity? If not, Senator Cornett. I do have a note, as Senator Cornett comes forward to close, that Bio Nebraska Life Sciences Association has sent a letter of support for LB389 and will be entered into the record. [LB389]

SENATOR CORNETT: Thank you, members of the Revenue Committee. Myself and Senator Fischer have to be at a presentation at 4:15, so I am going to open on both of my remaining bills, and testifiers can please come up and testify in the order of their introduction.

SENATOR UTTER: Thank you.

SENATOR CORNETT: And I'll waive closing on both, obviously. Good afternoon, members of the Revenue Committee. LB361. This bill is a Revenue Committee-introduced bill that meets the goals of our LR542 budget cutting process. This bill will reduce the current budget of the TERC commission by reducing some commissioners' salaries. The fiscal note shows a \$42,000 reduction in that budget. I believe this bill will help with the fiscal...meet our fiscal goals, along with other budget cuts made by TERC. It will provide a solution to our shortfall and move us forward towards balancing our next biennial budget. I think everyone that was a part of the process this summer, the LR542, remembers the hearings on how we arrived at that number for cutting salaries. [LB361]

SENATOR UTTER: So are you telling us you...would you like to take questions on that...on this right now? [LB361]

SENATOR CORNETT: Yes, I can take questions on that one. [LB361]

SENATOR UTTER: Are there questions for Senator Cornett from any of the committee members? Senator Louden. [LB361]

SENATOR LOUDEN: Yes, thank you, Senator Utter. Senator Cornett, this is part of our LR542 discussion we had last... [LB361]

SENATOR CORNETT: Yes, it was. [LB361]

SENATOR LOUDEN: And this is what came out of it. Yeah. Yeah. [LB361]

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SENATOR CORNETT: Yes. This is bringing all the TERC salaries down to the same level. [LB361]

SENATOR LOUDEN: Yeah, when we had our hearing with them. I think we had an executive hearing with the TERC committee members and that sort of thing. [LB361]

SENATOR CORNETT: Yes. Correct. They brought forward to us the idea of a budget...or cutting salaries. We cut them further than their recommendation was at that time, though,... [LB361]

SENATOR LOUDEN: Okay. Thank you. [LB361]

SENATOR CORNETT: ...in this bill. [LB361]

SENATOR LOUDEN: Yeah. Thank you. [LB361]

SENATOR UTTER: Further questions for Senator Cornett on LB361? Seeing none, Senator Cornett, go ahead and open now on LB384. [LB361]

SENATOR CORNETT: Good afternoon again, Vice Chair Utter and members of the Revenue Committee. I am Abbie Cornett, C-o-r-n-e-t-t, representing the 45th Legislative District. I introduced LB384 at the request of the Governor. The bill is a component of the Governor's biennial budget recommendation. We have just heard testimony on--well, we haven't heard it--on LB361, which would implement our committee's LR542 recommendations to address the Tax Equalization and Review Commission's budget. As an alternative approach to address TERC's budget, LB384 would require our committee elects to enact a budget solution for TERC that would restructure it from a four-member commission to a three-member commission. The bill's primary purpose is to achieve budget savings by eliminating one of the current four TERC commissioners. TERC was originally created with three commissioners by the laws of 1995, LB490. A fourth at-large commissioner was added following the enactment of the laws 2001 in LB465. Under current law, TERC has four commissioners, each of whom are appointed to a six-year term by the Governor with confirmation by the majority vote of the Legislature. Three commissioners are appointed specifically to represent Nebraska's three congressional districts. LB384 proposes to eliminate the fourth at-large commissioner. Additionally, the bill proposes to streamline the TERC operations by authorizing it to conduct single-commissioner hearings on property tax appeals. The single-commissioner hearing provisions of LB384 are derived from our committee's amendment to LB1079 from last year. LB384 would become operative October 1, 2011. I appreciate having the opportunity to place the budget options before the committee. And just so the committee is aware, this bill was not drafted by my office. And when I say that, we have another bill that addresses single-commissioner hearings also that has some components that I do believe have to be in whatever we do, and we will be

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hearing that later. I'm assuming, with whatever we do with TERC, we will combine what we have with the other bills that are coming up and send out one bill with the components of these in them. Thank you. [LB384]

SENATOR UTTER: Questions for Senator Cornett on LB384? Seeing none, we will now take testimony on...of proponents of LB361. Seeing no proponents of LB361, we will hear from opponents of LB361. Is there anyone that would like to testify in a neutral capacity on LB361? Welcome. [LB384 LB361]

BOB WICKERSHAM: Good afternoon. Getting to be a little later in the afternoon, but not too bad perhaps. Senator Utter, members of the committee, my name is Bob Wickersham, W-i-c-k-e-r-s-h-a-m. I am a commissioner on the Tax Equalization and Review Commission. I think Senator Cornett did a good job of giving you the background or the genesis for LB361. I want to make just a couple of comments about it. (1) I think at the time that we suggested that there might be a reduction in commissioners' salaries to meet the LR542 objectives, we suggested to the committee that you do need to be careful about the setting the level of a salary that will attract future qualified members to the commission. The salaries of the commission, as I understand it, are already below salaries of persons who hold comparable positions in other states. They're certainly below the levels that you would see for a district judge, and those are the persons that we replaced. Part of our function used to be carried out by district judges. Now I'm not here to complain about the fact that the committee is recommending a salary of \$86,500. I recognize what the realities of the situation are. And if that's the salary, that's the salary. But I do think you need to be aware of what the future implications might be. In addition, if there was some way to institute or place in the bill a mechanism for adjustment of the salary, I think that would be appropriate. I know that the Legislature struggles periodically with setting of salaries, for the Governor, for other elected officials, I think for the Public Service Commission, for other members of the executive branch that are set specifically by the Legislature. It is a never-ending and difficult process. But you can ameliorate some of the difficulty, I would suggest, by putting in an adjustment mechanism perhaps and a mechanism that adjusted the base salary at the same rate that the nonrepresentative...or state employees received. The other thing that I would recommend with regard to LB361, it carries the emergency clause, which means it would go into effect upon signature by the Governor. You might still want the emergency clause. That isn't my caution. But you might want an effective date so that you have a better idea of exactly what the impact is and when the legislation would go into effect, if passed. If you're going to have a set salary, it may be desirable to have a specific date on which that would go into effect. I'd be happy to try to respond to questions if there were any. [LB361]

SENATOR UTTER: Senator Hadley. [LB361]

SENATOR HADLEY: Senator Utter. Commissioner Wickersham, we appreciate your

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being here. Could you give us just a short rationale of why there is the difference between the salaries between two commissioners now and two other commissioners, just for our edification? [LB361]

BOB WICKERSHAM: Two of the commissioners serve as presiding hearing officers and draft all of the orders and have other responsibilities within the commission. I...and if I might suggest, there is a...like, serving on a committee or being the chair of a committee and being responsible for the supervision of the hearing, the...and perhaps even the production of documents after the hearing. There are simply added responsibilities that are compensated by the differential. But again, if the decision of the Legislature is that we should all receive equal salaries, that's your decision and we will live by it or we will leave. [LB361]

SENATOR UTTER: Any other questions for...? Senator Louden. [LB361]

SENATOR LOUDEN: Yes, thank you, Senator. Well, Commissioner Wickersham, yeah, thank you for being here for your testimony today. When you mentioned, like, the salary. And, of course, the Legislature can change that whenever they so desire, I guess. If we put in some kind of a mechanism that they would be an advancement or something like that, and economy continues to stay like it is, well, then some other Legislature would have to change it. And on the other hand, if the economy improved and there was a need for we thought to improve the salaries, then the Legislature could change it again. Is that correct? [LB361]

BOB WICKERSHAM: Yes, sir. [LB361]

SENATOR LOUDEN: I mean it's at the discretion of the the...like every other salary around here, it could be... [LB361]

BOB WICKERSHAM: Yeah. I doubt that there is a perfect system for determining compensation. [LB361]

SENATOR LOUDEN: No. Yeah. [LB361]

BOB WICKERSHAM: That probably doesn't exist. [LB361]

SENATOR LOUDEN: And do you think, as this is a question as I read through some of these and some of these issues we discussed, to have single-commissioner hearings. Do you think that's something viable that could be worked in with this that salary scale or at what they're doing here? [LB361]

BOB WICKERSHAM: Yes, sir. I don't think the use of single-commissioner hearings would impact the decision, necessarily, that you would make about salaries. But...well, I

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don't know that you want me to discuss it now or not, but the single-commissioner hearings was an idea initially proposed by the commission more than two years ago now. It was contained in an amendment to LB1079 which ultimately did not advance. The commission did ask Senator Cornett, and she was very kind to do it, reintroduce the concept again this year. It's in the form of LB405. [LB361]

SENATOR LOUDEN: Now I guess my question should have been: Will that increase your work load? [LB361]

BOB WICKERSHAM: It is difficult...you mean the single commissioner? [LB361]

SENATOR LOUDEN: Yes. [LB361]

BOB WICKERSHAM: I think that is difficult to tell. And Senator Utter...what...and I don't...I'm not quite sure which bill I should testify about here now. I'm starting to testify about LB384. [LB361]

SENATOR LOUDEN: Well, I just asked you that question. [LB361]

BOB WICKERSHAM: Yes, sir, I understand. But I'm cognizant that sometimes you want to keep your records separate. [LB361]

SENATOR UTTER: I think maybe we should reserve that to...for the...so that the record is straight. [LB361]

BOB WICKERSHAM: And, Senator, I just... [LB361]

SENATOR UTTER: Let's reserve that for the testimony of the next... [LB361]

SENATOR WICKERSHAM: And I'd be more than happy to respond to that question I think in the context of that bill. But if you... [LB361]

SENATOR UTTER: The next bill. [LB361]

SENATOR WICKERSHAM: If you went back and read the transcript of this hearing, you wouldn't quite know what we were necessarily talking about. If I might give a little bit of a preview, I do have some...I'm not at all sure that single-commissioner hearings will, in fact, reduce the commission's work load. It will change the work load but I'm not entirely sure it will reduce it. [LB361]

SENATOR LOUDEN: Yeah. I wondered if it would increase it with this bill that we're going to cut your wages. [LB361]

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BOB WICKERSHAM: Senator, I can't tell you... [LB361]

SENATOR LOUDEN: Okay. Thank you. [LB361]

BOB WICKERSHAM: ...for a fact. I have concerns that it...as I've said, it may change the nature of our work load but I don't know that it will decrease it. [LB361]

SENATOR LOUDEN: Okay. Thank you. [LB361]

SENATOR UTTER: Are there other questions for Commissioner Wickersham on the LB361? Senator Pirsch. [LB361]

SENATOR PIRSCH: I just wanted to...how many staff work at the commission there? [LB361]

BOB WICKERSHAM: We have six. [LB361]

SENATOR PIRSCH: Okay. And so I just wanted to get an idea of...well, thank you. Appreciate it. [LB361]

SENATOR UTTER: Senator Hadley. [LB361]

SENATOR HADLEY: No. I was waving you but (inaudible). [LB361]

SENATOR UTTER: Senator Fischer. [LB361]

SENATOR FISCHER: Thank you, Senator Utter. Thank you, Commissioner, for being here. We had a meeting in my office and you provided me with some information, and I appreciate that, especially as a new member here on Revenue Committee. As I looked through the materials you provided and also did some digging on my own, my concern with lowering salaries and with eliminating commissioners or eliminating staff or changing any of your duties that would increase your work load is the fact that I think you have a very heavy work load right now. I'm not asking you to confirm that, that you're just working like a dog, but it seems to me that you have a heavy work load. So I think you make a good point when you are concerned that if we lower salaries too much people might not stay on the job or may not apply for it. You made the comment that the TERC replaced some of the duties of district judges. Could you tell me more about that, please? [LB361]

BOB WICKERSHAM: Well, prior to 1996, if you had an appeal from the district court...or from the county board of equalization, for example, that involved the valuation of your property, you took that appeal to the district court--and again, this is something we might discuss in another context; I'm not quite sure. But you went to the district court.

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The district court was much more expensive. If people think you should or should not have a lawyer at the commission, you sure should have a lawyer if you go to the district court. And it was a long and difficult process. We've heard...at the time we were making the change in 1996, we heard many, many stories about people whose cases simply went to the bottom of the docket. And you can imagine that somebody has got a criminal matter, that's going to go to the top of the docket. You have somebody with maybe a dissolution and with children and you have to determine child support or custody, that's going to go to the top of the docket. There are all kinds of things that are going to go to the top of the docket. The appeals from the county boards of equalization tended to go to the bottom of the docket, and it might be three or more years before you had your appeal heard in the district court. [LB361]

SENATOR FISCHER: So do you feel that your process allows people with their property concerns to move through the system faster now because of TERC? [LB361]

BOB WICKERSHAM: Yes. I... [LB361]

SENATOR FISCHER: Do you see an end...have you ever looked at the work load that you have and compare it to the way it was before and the number of cases that would go to district court? [LB361]

BOB WICKERSHAM: There weren't good statistics about that, but that...1996 was before the current JUSTICE system was in place so that the kind of information that you'd be able to get from the courts now about the kinds of case, the amount of time it took to resolve them, all those...who the parties were, whether they had attorneys, all that kind of information just was not generally available. I'm not sure how much of that you could capture now but I'm sure you could get more of it because of the JUSTICE system. [LB361]

SENATOR FISCHER: Okay. Thank you. [LB361]

SENATOR UTTER: Other questions for Commissioner Wickersham? If not, thank you very much for your neutral testimony. [LB361]

BOB WICKERSHAM: Thank you. [LB361]

SENATOR UTTER: We will now open the hearing on LB384 and ask for testimony of those proponents. [LB384]

LAUREN KINTNER: Thank you, Senator Utter and members of the committee. For purposes of the record, my name is Lauren Kintner, K-i-n-t-n-e-r. I'm the director of the Governor's Policy Research Office and the Governor's general counsel. Thank you for the opportunity to present the bill to you today. As has been discussed, this bill would

permanently restructure the Tax Equalization and Review Commission by eliminating one at-large commissioner. The purpose, in the Governor's view, he did several things and I would appreciate the opportunity to explain a little bit his thinking on the budget. As you know, he reviewed every budget request, as you will all do eventually, by state agencies, and rejected an across-the-board reduction approach. As you know, when you were considering LR542, a target range was approximately 10 percent reductions from agencies, either particular ones or in total of the amount assigned to the substantive committees. After prioritizing spending levels for education and programs related to our state's competitiveness, then each agency was individually reviewed. Like many programs in state government, the TERC had been impacted by reductions of 7 percent in the most two recent fiscal years. As the Governor considered options for finding budget savings in this agency, he reviewed but rejected the agency's proposal to temporarily use excess cash funds rather than enact a permanent budget reduction. He then reviewed your committee's LR542 recommendations for the TERC. While not necessarily disagreeing with your policy option, the Governor elected to recommend a permanent structural change to the TERC that would achieve more budget savings and would streamline the operations by seeking authorization for the TERC to engage in the single-commissioner hearings; the goal being to lighten up the process and allow more flexibility for the commission members to clear cases in their backlog and not jeopardize future case hearings for taxpayers who present before the commission. The total two-year General Fund savings of the previous bill, LB361, is \$85,400, and the total two-year General Fund savings of LB384 is \$185,101. I would like to just briefly touch on comments and rationale for three changes that are proposed in the bill and specific sections. The addition of reducing the number of commissioners, in addition to that, the bill is structured to authorize the Governor to appoint the chairman. This would restore the appointment powers provided to the Governor prior to a 2001 law change which now authorizes the commissioners to elect their own chairman from amongst their attorney members. Again, this would, in the Governor's view, provide more flexibility to make leadership changes or to keep things moving at the commission should a need arise. Next, I'd like to highlight that the bill would strike the current law which discusses when a commissioner can be removed from his or her position by the Governor. Without getting into complicated constitutional law, this change is proposed to correct a potential constitutional defect in the current statute under Article IV, Section 10 of the Nebraska Constitution. Whenever the Legislature creates an appointed position in law that serves for a specific term of years, the Governor may remove that official from the position, for cause, after conducting a public hearing and conducting notice. So there's a due process component to that. That is contrary to discretionary appointments where we, like my position serves at the pleasure of the Governor, can be removed for any reason for any...any time for any reason. The constitution does not limit the definition of cause that the Governor must demonstrate prior to initiating a removal proceeding. To the contrary, the current statute the Governor believes limits a Governor's removal authority of TERC commissioners only if he or she could demonstrate...only if a Governor can demonstrate misfeasance, malfeasance, or willful neglect of duty or other cause. Just

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want to state for the record that Article IV, Section 10 already applies to the TERC commissioners for so long as this Legislature or future Legislatures elect to establish that they serve for a six-year term or any other specified term of years. This change is suggested merely to comport to the Governor's constitutional powers and not to signal any intention to invoke the section. And then finally, as has been stated, the single-commissioner hearing component of this bill was added in exchange for a reduction of a permanent commissioner, and it was modeled after this committee's work in LB1079 of last year in the committee amendment. Thank you for the opportunity to present on the bill and I'd be happy to answer any questions that you might have. [LB384]

SENATOR UTTER: Senator Adams. [LB384]

SENATOR ADAMS: Thank you for being here. And I know you just spent a moment talking about the appointment power, the reduction. If we remove the language about a commissioner may be removed by the Governor for misfeasance, malfeasance, willful neglect, then if we remove that language, are we, in effect, saying that the Governor can remove a commissioner, period? [LB384]

LAUREN KINTNER: No, Senator Adams. The constitution still preempts any statute. The constitution says the Governor may only remove for cause after notice and a hearing. So a substitute structural change could have been to change that language and reduce the delimiting only for malfeasance, misfeasance...and I can't recall the statute language, to just say the Governor may remove for cause to mirror the constitutional provision. If there's a concern that it's a perception to do something other than just clarify the law to the constitution. [LB384]

SENATOR ADAMS: Okay. So I guess then the word "cause" gives me cause. [LB384]

LAUREN KINTNER: (Laugh) The word "cause" probably gives any Governor cause. There have been a handful of cases that have been decided by the Nebraska Supreme Court. There is not a lot of guidance on what is cause. To my knowledge of working for two Governors, that provision has never been invoked by a Governor. [LB384]

SENATOR ADAMS: Thank you. [LB384]

SENATOR UTTER: Other questions? Senator Louden. [LB384]

SENATOR LOUDEN: Yes. Thank you, Senator Utter. Well, thank you for your testimony, Lauren. If they would go to a three-commissioner commission, would all the hearings then be held just down here in Lincoln, or would they go statewide with any of those hearings like they do now? Of if they did go statewide, would there be single-commissioner hearings for every kind of appeal brought out, or just certain

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residential appeals? [LB384]

LAUREN KINTNER: As proposed in the bill, there's no change to how the commission would want to have flexibility in structuring its hearings across different parts of the state, whether they went with it being a full panel of three or if they went with single-commissioner hearings. So nothing in the bill prohibits them from doing what they're doing now. The cases...the bill does specify that informal hearings could be elected only for people with tax values less than \$1 million--\$1 million or less. [LB384]

SENATOR LOUDEN: And that's that way, now, or that would be that way in this bill? [LB384]

LAUREN KINTNER: That's proposed in the bill. [LB384]

SENATOR LOUDEN: Proposed in the bill. Yeah. [LB384]

LAUREN KINTNER: By authorizing the single commissioner, there's which level of cases would be eligible to be heard by a single commissioner. So that's proposed in the bill. [LB384]

SENATOR LOUDEN: Would there have to be three-commissioner hearings then if you went out into the other part in western Nebraska or someplace like that, if there were...? Usually when you go out there, you'll have all kinds of property hearings. Some would be high value and some not. Then would three commissioners still have to go out there? [LB384]

LAUREN KINTNER: It's not clear to me if the commission was going to hear cases across the state as it does now and continue that practice, whenever they heard a case that would be more than \$1 million it would have to...it would not be a single-commissioner hearing. So the commission...I'm just not familiar enough with how they structure their operations and schedule the hearings statewide. Clearly, under the bill, they'd still be allowed to do that, have the flexibility to do that. [LB384]

SENATOR UTTER: Senator Hadley. I'm sorry, are you finished, Senator Louden? [LB384]

SENATOR LOUDEN: I'm done. Yeah. [LB384]

SENATOR UTTER: Senator Hadley. [LB384]

SENATOR HADLEY: Senator. Lauren, thank you for coming. I'd like to follow up on a question Senator Adams asked. You know I read subsection (4) under 77-5003, and it says, "A commissioner may be removed by the Governor for malfeasance,

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misfeasance, or willful neglect of duty or other cause." So we have the "or other cause" in there right now. [LB384]

LAUREN KINTNER: Yes. [LB384]

SENATOR HADLEY: And it says, "after notice and a public hearing unless notice" are written. So now if we take that out and the Governor wishes to remove a commissioner, they can do it for cause. Is that what you're saying, they could do it for cause? [LB384]

LAUREN KINTNER: Yes. The Governor could never, even if this provision is drafted, the Governor...a Governor could never remove someone without demonstrating cause, because that's locked in the constitution. Any of the commissioners, because they are created in law for a specific term, are entitled to...can only be removed by a Governor after notice and an opportunity to be heard unless they waive. That language matches the constitution. [LB384]

SENATOR HADLEY: So would there be a notice of a public hearing? If we remove this, would there be notice and a public hearing then guaranteed to the commissioner who is going to be removed? [LB384]

LAUREN KINTNER: Yes. The only way that right would be eviscerated is if the Legislature ever changed commissioners to be discretionary appointees or did not set a term of years. When these commissioners or any appointee has a term of years, the Governor may not remove without cause and notice...showing cause and notice and a hearing...opportunity to be heard. [LB384]

SENATOR HADLEY: And a hearing. Okay, so if I'm hearing you correct, basically this is...what you're saying is this is redundant because this is already...the commissioner is afforded all the safeguards that we have in this section or this part (4) already as a...in the constitution. Is that correct? [LB384]

LAUREN KINTNER: Yes. In a way, and in a sense, the Governor's contention is, it's narrow. The language that says...for example, if it said a commissioner may be removed by the Governor for cause after notice and a public hearing unless notice and hearing are expressly waived in writing by the commissioner, that language would match the constitution. It's the addition of misfeasance, malfeasance, or willful neglect which, arguably, infers a Governor would have to prove those standards versus other cause. [LB384]

SENATOR HADLEY: Okay. Thank you. [LB384]

SENATOR UTTER: Senator Fischer. [LB384]

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SENATOR FISCHER: Thank you, Senator Utter. Thank you, Lauren, for being here. Can you tell me how these hearings work? If somebody has a protest and...are there two commissioners at a hearing now, or are we able to have one single commissioner at a hearing now? Are there four? Are there three? How many are there? [LB384]

LAUREN KINTNER: There...well, the full commission is a four-panel hearing. In recent law change, changes were made to say: or the commission may be convened in a panel of commissioners. It's my understanding that the practice is to convene in a panel of three and then one may be absent. So essentially it's two commissioners hearing a case. But I believe technically they're convening as a panel of three, and the full commission is a four-person... [LB384]

SENATOR FISCHER: Okay. And at the full commission meetings I assume that it is treated like a court of law. There's transcripts happening, is that correct? [LB384]

LAUREN KINTNER: Yes. [LB384]

SENATOR FISCHER: Does that also happen with the panel when you have maybe only two commissioners in a panel? Are there transcripts taken or documents entered into evidence? Is that also like a court? [LB384]

LAUREN KINTNER: I'm sorry. I just don't know that for sure on the panel hearings. [LB384]

SENATOR FISCHER: Do you know what would happen with a single commissioner? Are there transcripts taken or is there evidence entered? I mean I...I guess I'd ask that question, do you know what would happen there? [LB384]

LAUREN KINTNER: Yes. Thank you. As proposed in LB384, under the single-commissioner hearing, first, a party can elect to request a single-commissioner hearing. When he or she would do that, if they fit in that property of \$1 million or less, then they are electing essentially a much less formal proceeding. They do not...they're not subject to the formal rules of evidence. They could come in and say, "Here's what I would like to present on the value of my property; I ran printouts of all my neighbors' properties who look like mine," without establishing foundation and other things required for the formal proceeding. [LB384]

SENATOR FISCHER: I guess how does that work then? Where do appeals go? If there's...if the person who wants this single-commissioner hearing, if they aren't pleased with the result, how do they appeal and what happens, because you have no evidence that's been entered, you have no transcripts. So basically you just wasted everybody's time on a single-commissioner hearing? [LB384]

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LAUREN KINTNER: Well, the goal is to have a much more informal process for those taxpayers who want it to be an informal process and are feeling intimidated by the legality of the formal process. [LB384]

SENATOR FISCHER: Right. But what happens, though, if they aren't happy with the ruling, with the single commissioner? What can they do? [LB384]

LAUREN KINTNER: In the bill, as proposed, they could request for a rehearing before the commission of an appeal heard under the section may be made as provided in other sections. So...but in order... [LB384]

SENATOR FISCHER: Okay. So if... [LB384]

LAUREN KINTNER: Oh, excuse me. [LB384]

SENATOR FISCHER: I'm sorry. So if they go for this appeal then, basically they're starting all over and it was a waste of time, is that correct? Because you can't have an appeal if you have no evidence. I'm not an attorney so I'm just guessing here. [LB384]

LAUREN KINTNER: Yes. I think you're trading off. If you elect a single-commissioner hearing, you're getting an informal proceeding that would, you know, move faster, not be so bogged down. You would not need the formal evidence. But you're not going to have the same protections and safeguards. I mean having formal rules of evidence is a trade-off. In the law business, there are those who say that it protects people's due process and interests because everything is very formalized. From a citizen perspective on complaints that are presented to the Governor's Office, it's very formal, very structured. They're very intimidated. They don't know how to handle themselves and they do not come prepared to face, potentially, a county attorney or a county assessor and have valuation figures and they...so, therefore, essentially they aren't prepared; they lose. [LB384]

SENATOR FISCHER: What happened before Nebraska had TERC? What did people do? Where did they go? Did they go to the Board of Equalization? [LB384]

LAUREN KINTNER: Yes. [LB384]

SENATOR FISCHER: And how...who was on that board? [LB384]

LAUREN KINTNER: I should be aware of...well, a set of constitutional officers for the State Board of Equalization... [LB384]

SENATOR FISCHER: Right. [LB384]

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LAUREN KINTNER: ...was established in law. And I just don't...I believe it was the Governor, the Treasurer, and I'm not sure of the other member or members. [LB384]

SENATOR FISCHER: I would think that would be intimidating too, but. So TERC basically then replaced the State Board of Equalization. Did it replace the district court? Because I would assume if people didn't like what the State Board of Equalization did, they would then appeal to district court. Does that happen with TERC now, or did it happen with the State Board of Equalization? [LB384]

LAUREN KINTNER: Yeah. And I may be mixing two concepts. There's statewide equalization... [LB384]

SENATOR FISCHER: I could easily be mixing two concepts. (Laugh) [LB384]

LAUREN KINTNER: No, I mean me. I'm sorry, I might be. To be clear, there's statewide equalization and there's a procedure for that, and then there's all...that is before the TERC right now. And then there are individual taxpayer protest appeal filings. And as Commissioner Wickersham said on the prior bill, an individual, if they go through the TERC process, then there's appeals. But before the TERC, they used to appeal from their county board of equalization directly to district court. And then the TERC replaced that process. [LB384]

SENATOR FISCHER: I see. Okay. In the bill, the chairman of TERC the Governor would now appoint. Is that correct? [LB384]

LAUREN KINTNER: Yes. [LB384]

SENATOR FISCHER: Are there nonattorney members that can be appointed to TERC? [LB384]

LAUREN KINTNER: Yes. [LB384]

SENATOR FISCHER: Do you think that's wise, that there's the possibility then that the Governor can appoint a nonattorney to be chairman of the TERC board? I don't think you would really want somebody like me to try and chair it, would you? [LB384]

LAUREN KINTNER: Well, I'll answer by saying (laugh) I won't answer the last question. But I don't believe there's a problem...I mean this would be a case-by-case situation of who you felt your members of the commission are and what their criteria and qualifications were for conducting themselves. In current law, and continuing under the bill, there's a requirement of specific capabilities for the members who are appointed to the commission. And then they each...for example, if an appraiser is appointed. So when you say nonattorneys, there's other requirements and then they have to kind of

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effectively do what I would call cross-training. If you're the nonattorney, you have to get trained in the appraisal procedures. If you're the attorney...excuse me...for the attorney members, you get trained in the appraisal techniques of procedures, and for the nonattorney you get training in administrative law, proceedings, hearings, conducting formal proceedings. [LB384]

SENATOR FISCHER: But I guess I see a problem with the possibility that a Governor could appoint a nonattorney as chairman of the TERC board, because it's my understanding that, how the cases are handled and with rules of evidence and everything coming in, I would think that being an attorney would be a requirement to be chairman. Obviously you don't agree with me on that. [LB384]

LAUREN KINTNER: I'm presenting from a pragmatic point of view as a Governor's staff person watching Governors try to appoint the very best people that they can. I don't think it would be in any Governor's best interest to make an appointment on the "just because" without having a really firm confidence that that person could match the skills required to be the chairman. [LB384]

SENATOR FISCHER: Okay. Thank you. [LB384]

SENATOR UTTER: Other questions? Seeing none, Lauren, thank you. [LB384]

LAUREN KINTNER: Thank you. [LB384]

SENATOR UTTER: Are there further proponents of LB384? Welcome. [LB384]

JAREL VINDUSKA: Thank you. Senators, thank you for letting me have the opportunity to testify on this. I'd like to thank Senator Cornett for sponsoring this bill. I've had a lot of recent experience with the TERC board... [LB384]

SENATOR UTTER: Would you first give us your name and spell it for the record? [LB384]

JAREL VINDUSKA: Oh, I'm sorry. It's Jarel, J-a-r-e-l, Vinduska is the last name, V-i-n-d-u-s-k-a. [LB384]

SENATOR UTTER: Thank you. [LB384]

JAREL VINDUSKA: And like I started to say, I've had a lot of recent experience with the TERC--actually six and a half hours' worth a few months back. And that's how long my hearing was in front of the TERC. And I'll state, right up-front, especially seeing how I see Commissioner Wickersham behind me (laugh), I was planning on saying this anyway, but he did conduct himself with a very...in a very polite and efficient manner,

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and polite and courteous. And so I have no complaints in that regard. But having said that, I'll tell you, right up-front, the TERC is a joke compared...as far as taxpayers are concerned. That's the result of because the burden of proof is on the taxpayer to prove that the county assessor is wrong, and most taxpayers are not trained lawyers. In my instance, two Sarpy County attorneys were sent to my case. And the reason my hearing lasted six and half hours...and like I say, that's a testament, too, to Chairman Wickersham's patience, because, you know. I'm not joking: two 10-minute breaks. Six and half hours I talked constantly except for two 10-minute...virtually constantly. And the reason it took so long is because the burden of proof is on me, so I had to ask the same question a dozen or 15 times because the attorneys were objecting, all the time, on grounds, or relevance, or whatever other attorney terms there are. And the reason, as you know...see, we're still here in 2009 cases in Sarpy...tax year 2009 at the TERC for Sarpy County. There's going to be another one next week. You know, we're approaching where the 2011 taxes come out, so we're pushing three years behind. And the reason we're three years behind: There was a lot of cases or several cases from Sarpy County, and they were all on the same issue: this farm homesite evaluation, which our county assessor just went totally berserk and thought that it was relevant to take the highest-priced lot in the highest-priced subdivision he could find and say that if we extrapolated the price of this lot, which was a \$40,000 lot...if we extrapolated it up to an acre, it would be worth \$64,000. And then he took all 800 farm homesites in the county and made it all the same value. Well, common sense will tell you, if you have any knowledge about appraisal law, there is no way on earth that 800 properties could all be the same value--it would be \$64,000. It's just an impossibility. But that impossibility was justified by the county assessor by a phenomenon called diminishing marginal utility, and it's called the contributory value. So basically he said because this house in this subdivision was \$64,000, that means all these acres on the house are \$64,000. And even though the taxpayer can come with comparable sales showing that an acre on a farm is not worth anywhere near \$64,000--isn't even close--the burden of proof is on us. He doesn't have to prove what he said--so we lose. That's how it amounts to. And it took six and a half hours for me to lose. But (laugh) and a lot of headache of research and all kinds of stuff. But anyway, let me give you quick examples to show how it works. You call down to the TERC attorney. I asked...our farm is in a family trust, my mother and father's family trust. Well, they're both 87 years old and my mother has dementia and she's the primary trustee. So I make a simple question of the TERC attorney: Can I testify on behalf if I have a power of attorney? He says: Can't give you legal advice. And I say: I'm not asking for legal advice; I just want to know if a power of attorney works. That's not legal advice. The TERC has been around for a number of years; surely that question has been asked before. You can give a simple answer. Well, you can't give a simple answer. So we go to...we have to spend money for our attorney. And I go to our attorney and they draw up...they said, well, let's be safe; let's make you an equal trustee with my mother and father. So we draw up a big fancy document, spend money for this document. I start out and I come before them and there's a problem right away because they thought I was going to testify with a power of attorney,

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and Chairman Wickersham knew that that wouldn't work and so he informed me that there was a problem. And I came forward, handed my document to him. He looks at it for approximately 30 seconds. Slides it back to me: That's no good. And I said: Boy, you better look at it again because I paid good money to an attorney to say that's good enough. He looks at it again and he looks at the Sarpy County attorney and says: Do you have any problem with this? And she says, no--one of the attorneys. And I'm thinking to myself at the time: Wow, I'm versus Sarpy County, and the Sarpy County attorney gets to determine if that's good enough or not, you know? And so anyway, then it goes on, and about half of my evidence got thrown out because for lots of various reasons. Some of it was public documents. But unless, like a lot of them were letters that I had been corresponding with the Department of Revenue with Ruth Sorensen who is supposed to be monitoring the...none of this would have happened, basically, if she was doing what I want I see in statute where monitor these assessors to make sure they weren't out of line. So I had letters, with her reprimanding the Sarpy County assessor and telling him how he should do it. But I wanted to submit those as evidence, but I couldn't because Ruth wasn't there. I didn't realize she had to be subpoenaed to be there to be able to cross-examine. So I'm just giving some of these examples. One more; one more real good example. Our assessor went to a professor of real estate, a guy by the name of Dr. Steven Shultz. He's an internationally known real estate...he's a professor and wrote numerous...hundreds of articles and books...and several books on how to assess real estate. Our assessor went to him to get some validation of his technique. And the professor said: Well, you can use properties in high-end subdivisions, but you have to put in your computer model to remove the value of the amenities, like a paved road, like this subdivision he used was a lakefront subdivision with paved roads, underground utilities, protective covenants, community water system--you know, high-dollar stuff. So in order to make it comparable to a farm site, of course, you would have to...if your farm site is on a dusty road on an acre on a farm, of course you'd have to remove that. You couldn't pretend like that acre on the house...if it was in a subdivision, it would be the same on the farm. So, of course, he said the obvious: that you'd have to remove those things. Well, I couldn't...and our county assessor gave his recommendation to our county board of equalization. And it was a public document; so I assume, seeing as it was a public document, that I could put his recommendation to the TERC hearing. Nope, couldn't do that, because the guy wasn't there to cross-examine even though it was a public document that's on the record. And I thought that was very important because he said the obvious. But anyway, I gave those--I don't want to take up a lot of your time--I give those examples to show why this is just the start, and I appreciate what Senator Cornett did. It's the start of many reforms that need to be done at the TERC for the taxpayer to have half a chance to get a fair shake. And so if you have any questions I'll be glad to answer them to you. But I hope you approve this and I hope that she comes forward with a lot of other changes that need to be done. [LB384]

SENATOR UTTER: Senator Pankonin. [LB384]

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SENATOR PANKONIN: Thank you, Senator Utter. In full disclosure, Mr. Vinduska is a constituent of mine and we have talked about this issue. And you can see, he's very passionate and he can write e-mails like you can't believe. So he's done a very good job. But we've had a unique situation. My legislative district has much of the rural part of Sarpy County. As I tell people, Sarpy County, even though it's the fastest growing county in the state, there's areas I could drive you to and you wouldn't believe you're in Sarpy County. It's very rural. And so we've had a particular issue there that I've talked to Mr. Vinduska and many others about, and it's been very frustrating for them. We've talked about statutory changes. I've asked the Department of Revenue. I asked Mr. Wickersham when he was in my office not too long ago, and no one seems to be able to guide us in that area. And we may have to take a stab at it ourselves over the interim. But it has been a unique problem. It has been very frustrating for many citizens. And I think one other question to ask you, Jarel, just to briefly answer, is that we also had a unique situation of two different referees--I think that's the right word--that had different methodologies that presented to the county board that were very different, and this has been part of the problem as well. Would that be a true statement? [LB384]

JAREL VINDUSKA: It's a true statement, yeah. And...yes. And like I alluded to earlier, the problem is, it's very clear in statute that the Department of Revenue is supposed to monitor the efforts of the county assessors. And we've got a lack of will on that part too. In fact, they're trying to shift it over to the TERC, that the TERC is the final say on this. Okay, so I agree with that, that in certain instances, yeah, they're there...but they're supposed to do the monitoring ahead of time, and they are supposed to bring in the level of assessment the Department of Revenue puts a certification that they're doing it right. Well, the taxpayer is fighting with a short stick if the Department of Revenue sends a certification to the TERC that says the level of assessment is between 97 and 100 percent versus...you know, the assessment versus actual sales. Well, then the TERC starts out with already a flawed analogy based on these farm properties, because there is no comparable sales to go by because an acre of a farm can't be sold by itself. It's only part of the farm. So you can't assert that that level of assessment is correct. And like I said...and so when it goes to the TERC, I went before the TERC saying, right up-front, I don't even want you...I don't even care if you rule on my particular farm; I want a rule on the methodology so you don't have to be listening to the same case over and over and over, and writing up the same report over and over and over. That's why they're three years behind. If you could make one ruling that would cure all the cases, then we'd be out of this. We'd have some efficiency in the system. So I don't know if I answered it right, but. [LB384]

SENATOR PANKONIN: Thank you. [LB384]

SENATOR UTTER: Other questions? Hearing none, thank you very much for your testimony. Appreciate it. [LB384]

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JAREL VINDUSKA: Thanks for letting me be here. Hope something good comes of it. [LB384]

SENATOR UTTER: Mr. Edwards. [LB384]

JON EDWARDS: Good afternoon, Vice Chair Utter and members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm here representing the Nebraska Association of County Officials in support of LB384. And I will tell you that our support is basically only on the single-commissioner portion of this particular bill in terms of the number of commissioners. We essentially don't have a position on that so I'm only here in support of the single-commissioner hearing aspect of this particular bill, and that is Senator Cornett had mentioned earlier that there's going to be another bill that this committee will hear. And from our perspective, as we look at this issue, there's been a lot of talk about trying to find a less formal way for taxpayers to access this system when they're trying to find some sort of way to mitigate their grievance. And so through conversations, we believe the single-commissioner process may be a way to do this--a little bit more taxpayer friendly, and also there is this idea that maybe this can mitigate the caseload a little bit. So with those ideas in mind, that's basically why we're here supporting this idea. I know there's been a lot of technical information and questions from the committee and testimony presented, and I think there will probably be some testimony behind me that can address some of those technical issues of the process and the overall appraisal process, and how TERC works and why it does what it does, and the formality of it and those types of things. So with that, I won't take any needed time of the committee. [LB384]

SENATOR UTTER: Questions for Mr. Edwards? Senator Louden. [LB384]

SENATOR LOUDEN: Yes, thank you, Senator Utter. I have a problem with your testimony because now NACO has come out and testified in favor of this bill. And if this come out to a committee statement, when it's listed there, when we go through our machine, NACO then will be in favor of this bill, but yet you're telling me you only have that one portion that you're in favor of. Shouldn't your testimony be neutral testimony? [LB384]

JON EDWARDS: I understand that, Senator, and I appreciate that, and our official position is conditionally supporting this bill. And as such, I felt an obligation and a duty to represent NACO as supporting the bill on the single-commissioner part aspect of the bill. And I can appreciate your concern. And my understanding is with the information that Senator Cornett presented today is that there may be some stand-alone bill come forward regarding... [LB384]

SENATOR LOUDEN: Yeah, but that isn't going to be in any committee statement that

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will come out, I guess. [LB384]

JON EDWARDS: I understand that and I'm... [LB384]

SENATOR LOUDEN: Just so you know that it's going to come out on the committee statement that NACO is in support of this bill and I'll probably hear this from a bunch of... [LB384]

JON EDWARDS: And I understand that, Senator, and I...and my position is such that I have to represent the organization such as their position is. And I can no more clearly state it than it is conditionally supportive of this particular LB384 and... [LB384]

SENATOR LOUDEN: Okay. Thank you. [LB384]

SENATOR UTTER: Other questions for Mr. Edwards? If not, thank you for your testimony. [LB384]

JON EDWARDS: Thank you. [LB384]

SENATOR UTTER: Anyone else testifying in support of this bill? If not, we will go to the opponents. [LB384]

ROBERT HANS: Almost went to sleep, I was back there so long. [LB384]

SENATOR UTTER: Well, I'm sorry about that. But welcome. [LB384]

ROBERT HANS: That's all right. My name is Robert Hans, H-a-n-s. I'm here representing just myself. For 11 years, I was a commissioner on the TERC. I've been retired for five years, and so I didn't have to give up any paid holidays or vacation time to be here. But I was upset by what I saw in the bill. I started with the commission when it was a three-member board. I worked there when it was a four-member board. And there's certain parts of the bill that I'd like to address. I really think you should keep the commission with four members. They can run two hearings at one time by naming three members to each of two panels, and only two of them show up. That's a quorum. And that cuts down on the work...not so much the work load, but the length of time it takes to hear hearings. The fact that the Governor might appoint the chairman, it makes it sound like it would be a lifetime appointment--a chairman forever. It seems to me to make much more sense to alternate and let the commissioners choose their own chairman and do that every two years like they've been doing now. The...you just have to have two commissioners hearing in order to both pay attention to the procedure and to understand what is being said by both parties. The single-commissioner hearing has been suggested many times, not just five years ago. It was suggested when we had three commissioners; it was suggested when we had four commissioners. I was

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strongly in opposition to a single-commissioner hearing then and I still am. You had your single-person hearing when you met with the assessor or the county referee. If you had a TERC hearing with a single commissioner, and you lost, I think you could appeal to a board, a full panel of the TERC. I don't think you save any time at all. I can almost guarantee you that anybody that lost to a single-person hearing, be it the county or the taxpayer, would ask for a full-panel hearing. Just...and to me it doesn't make sense. It won't do anything to cut the backlog, and I don't have anything else to say. I didn't know the commissioner was going to be here and he didn't know I was going to be here. [LB384]

SENATOR UTTER: Thank you, Mr. Hans, for your testimony. Questions? Senator Hadley. [LB384]

SENATOR HADLEY: Senator. Mr. Hans, thank you. Just from a historical looking, since you were on it when it went from three to four, what was the reasoning from going from three to four commissioners? [LB384]

ROBERT HANS: I'm not sure. It was the Governor's idea; not ours. In fact, I thought we were working rather well as three, and I even told the Governor's chief of staff that it was ridiculous to have four. I have since changed my mind, that in order to split it's important to have an attorney--and I'm not one of those that was cursed with a legal degree--it's important to have an attorney running that hearing because you are building a record for appeal by a court...an appeal to a court. [LB384]

SENATOR UTTER: Senator Pirsch. [LB384]

SENATOR PIRSCH: Yeah, you made the comment that having...requiring more commissioners on it would cut down on the length of time it takes to hear the hearings? [LB384]

ROBERT HANS: Having two...a panel of two or a panel of three, as opposed to a single person will cut down on the time involved in the hearings because, if I lose a single-person hearing, I'm going to immediately turn around and appeal for a panel of TERC to rehear the case, which is what the law provides...or the bill provides. [LB384]

SENATOR PIRSCH: And could you tell me, with your experience, what percentage of the time do they...when they lose a lesser...your experience. Were you there when they were doing the two, you were...? [LB384]

ROBERT HANS: No. No. [LB384]

SENATOR PIRSCH: Okay. [LB384]

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ROBERT HANS: We always heard in panels of three or four. [LB384]

SENATOR PIRSCH: But you've been following and you're saying that there's a pattern emerging, if you have a one-commissioner hearing, that they almost certainly... [LB384]

ROBERT HANS: They don't have one-commissioner hearings now. [LB384]

SENATOR PIRSCH: Oh, I'm sorry. With the...that's what you fear, though, is that they're going to turn right around... [LB384]

ROBERT HANS: That's common...to me it's common sense. You know, if you go before one person in here and you lose, why would you not appeal to the whole panel? [LB384]

SENATOR PIRSCH: Thank you for your opinion. I just wanted to ask your opinion on another thing, or your understanding, is when TERC would then issue...when you were on the board and a finding that was disadvantageous to the property owner, how often would they...what percentage of the time would they then appeal from the TERC to the district court? [LB384]

ROBERT HANS: They do not appeal to the district court. TERC took the place of the district court in the chain. They either appeal to the Court of Appeals or the Supreme Court. [LB384]

SENATOR PIRSCH: Yeah. And I'm sorry... [LB384]

ROBERT HANS: And it was...it's a very small percentage. [LB384]

SENATOR PIRSCH: And that's based upon the length of time that the Court of Appeals would ever reach that, right? And the cost--you'd have to have an attorney. [LB384]

ROBERT HANS: Probably the cost. And it is normally the bigger dollar items. [LB384]

SENATOR PIRSCH: Um-hum. They hear those...well, let me ask you this. When they...if they were to go to the Court of Appeals then, in those cases, would they...there would be an evidentiary record that would be sufficed by TERC because... [LB384]

ROBERT HANS: Yes. It's on the record. [LB384]

SENATOR PIRSCH: ...because there's formal rules of evidence that TERC employ, right? [LB384]

ROBERT HANS: Yes. [LB384]

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SENATOR PIRSCH: And...okay. And so it wouldn't be a de novo, brand new; it would be based upon the evidence that was presented at the TERC hearing. [LB384]

ROBERT HANS: Right. And sometimes TERC would have a split and sometimes the case would go directly to the Supreme Court because it was an issue of first impression. The Supreme Court would take it away from the Court of Appeals. [LB384]

SENATOR PIRSCH: And there was testimony earlier that the reason TERC was created was because there was dissatisfaction. I mean it used to be that your remedy after the board of equalization was through the district court, right? [LB384]

ROBERT HANS: Yes. [LB384]

SENATOR PIRSCH: But what was the basis of the change, then, where they took it away from the district court and created this entity called TERC? [LB384]

ROBERT HANS: It was explained to me by the person that twisted my arm to do this, because I was happily retired, that it was going to save the taxpayer money because they wouldn't have to pay for an attorney; they wouldn't have to pay district court fees. It would be faster because they could get into TERC a lot faster than they can get to the district court. I think you heard the explanation that Senator Wickersham gave, or Chairman Wickersham gave, about how the property appeals got pushed to the bottom of the dockets. [LB384]

SENATOR PIRSCH: Is it working out that way, that TERC now is ending up to be considerably faster or cheaper than using the...? [LB384]

ROBERT HANS: I know it's cheaper. And I don't know how far behind they are right now. I know that during the 11 years that I worked there, they were pretty fast. We very seldom had a big backlog. The thing that I noticed was an improvement in the quality of assessment because the assessors didn't have that many people second-guessing what they were doing. They were providing evidence as to why they weren't doing it right. [LB384]

SENATOR PIRSCH: Thank you for your comments. [LB384]

SENATOR UTTER: Other questions? Thank you very much, Mr. Hans. [LB384]

ROBERT HANS: Yes. You're welcome. [LB384]

SENATOR UTTER: Other testimony in opposition? Seeing no one else that wants to testify in opposition to this bill, is there neutral testimony? [LB384]

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BOB WICKERSHAM: (Exhibit 7) Senator Utter, members of the committee, it is starting to get a little bit late and I'll try to be brief, but I'm sensing that you'll have questions so I'll try to...I'd be happy to try to answer questions later. My name is Bob Wickersham, W-i-c-k-e-r-s-h-a-m. I'm a commissioner on the Tax Equalization and Review Commission. I think Lauren described most aspects of the bill as presented to you. There is one additional provision that I would call to your attention and that is a change in the educational requirements for the commissioners. It appears on page...if you wanted to follow along...I'm sorry, I thought I could turn to that quickly. Yes, on page 5, line 20, it changes just a subsection reference. But the effect of the subsection reference, I believe, is to remove any requirement that there be continuing education by a person who holds the qualifications to be an appraiser or an assessor. It's...I doubt that that's what is intended, but I think that's what happens. Now I'll tell you that there is a proposed change to the educational requirements as contained in LB363 that Senator Cornett has introduced on behalf of the commission, and if you wanted to make some changes in the educational requirements, I would recommend that to you. And here we are, talking about other bills in the context of this one. But it's...and I realize that makes it a difficult, perhaps, issue. But it's a...I think it was probably a mistake in the drafting of the bill it would be my guess. Not to suggest that anybody from the Governor's Office could make a mistake, but that doesn't appear to be what they would have intended. Other provisions in the bill I think have been discussed in a general fashion that I don't...if...I might be able to add to that in response to questions, but I don't know that I should attempt to do that directly. It seems to me that the remaining...one of the remaining questions--and Senator Loudon, you were starting to ask about it. And perhaps we can give a fuller discussion now, the question that you asked, and that is whether or not the implementation of the single-commissioner hearings would do very much for our work load or would allow us to work faster. And again, I'm going to state that, frankly, I don't know. But I did have a handout that I hope has been circulated to you now where I tried to break out how much time I thought it took to conduct various activities of the commission. And it is quite long and it is detailed, and I apologize for that. And I know that because you haven't seen it before now, that you might not wish to take the time and go through it with detail, and certainly you probably don't want to hear me do that. What I'm going to offer is that if you read through it and you have questions about the assumptions that are made or you have any other comments or you want additional information, I'll be happy to provide it. The sum and substance of the analysis is that you can't quite get there with three commissioners. You probably need, candidly, about three and a half, and I think that is a very conservative estimate for a couple of reasons. One, the factor that was used for the potential for rehearings--and that was something that was raised by Mr. Hans--is present. Now in Kansas, they have experience with a similar system, and about 25 percent of the persons who go through a single-commissioner hearing then appeal that decision to the balance of the commission. Now I might note, in Kansas, what we're characterizing your single-commissioner hearings are not conducted by commissioners. They're conducted

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by attorneys or other persons that are hired and they conduct the proceedings, and then if there is an appeal from one of those proceedings, then you go to the commissioners. But about 25 percent in Kansas appeal. We have a similar structure in Nebraska for the Workers' Comp Court, where you have a review by a single judge and then a full right of appeal to a panel of the Workers' Comp Court. And about 33 percent of those proceedings are appealed to a panel. So you can choose 25, 33 percent, maybe some other number. The number I used in my analysis was 25 percent that would be appealed. Now there are also effects--and Senator Loudon, again, you started to raise the issue I think of what happens with the appeals that we would conduct outside of the city of Lincoln? And we do conduct hearings outside the city of Lincoln. We go to Kearney, we go to North Platte, we go to Scottsbluff on a regular basis. Those...and Norfolk. On an annual basis you will find us in those communities. You'll find us in other communities as the need arises. This year, we're going to go to Chadron, for example. But if we conducted a single-commissioner hearing in Scottsbluff, and they appealed, then we would have to go back to Scottsbluff to have a full-panel hearing, or they would have to drive to Lincoln. Now we can't guess about what that's going to mean in terms of time and commitment. But you'll see that one of the factors in the analysis I made was travel time. We will be on the road for about 10 weeks. Some of that is simply dead time. You've got to get from Lincoln to someplace. It's dead time. With the current structure of the commission, with four commissioners, we take two commissioners on the road. We hold hearings on the road and we hold...we continue to hold hearings in Lincoln at the same time. If you reduce the number of commissioners, that would not be possible. So it is a difficult analysis to try to determine whether single-commissioner hearings and the other provisions in the bill would actually save the commission time and we would actually be able to work more efficiently. You just...I don't know how you could give a completely definitive answer. But based on the analysis that I made, I doubt it. I don't think it's going to work out quite the way you might hope it would. Now in that respect, what I would suggest...and there are other bills that may affect the work load of the commission. You have LB457 that, if it passes, could reduce the work load of the commission, because it may reduce the number of appeals that come to the commission. And when we have a hearing on that bill, my apologies, Senator Utter, but you'll hear more about LB457 later. But it has the potential...if it passes, it has the potential for reducing the number of appeals that come to the commission--reducing our work load. LB363 that I've already noted has a provision that increases the filing fee from \$25 to \$50. If increasing the filing fee from \$25 to \$50 discourages people from appealing, we'll have less appeals. What I'm going to suggest to you is that you've got a number of balls in the air here, and I'm not quite sure where they're all going to land, and I don't know how anybody could tell you where they're going to land. But I am going to suggest to you that it would be a time for caution, because it wasn't easy to get a fourth commissioner and make the commission operate as effectively as it does now. That wasn't easy. If you remove a commissioner and find out that that was a mistake, that you really did need four, you're going to find it very hard to get a fourth commissioner back again. It was hard the first time; it will be harder the second time.

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That's my advice. If, given the changes that are being discussed, you postpone the decision about the size of the commission, that might be appropriate. If you let...if you wait and see what happens with LB457, it will take about a year and a half or two years for the effects of that bill to show up in the commission's work load. If you waited to see what an increase in the filing fee, if that passes, does; if you waited to see what happens when you run single-commissioner hearings, how many appeals do you get? Do you get...what happens? How do we administer? How do we tend to those appeals that are outside the city of Lincoln? How do we answer some of the, I think, unanswerable questions that are now presented to us? Is it more prudent to wait until you have answers or is it more prudent...or is it necessary? Is it necessary to make a decision that assumes the answers? With that, I would try to respond to questions. [LB384]

SENATOR UTTER: Senator Pirsch. [LB384]

SENATOR PIRSCH: Thank you for your testimony. I just want to make sure I understand. Part of your concern with going to a single-member commissioner--I'm sorry, hearing--the cases... [LB384]

BOB WICKERSHAM: Oh, Senator, let me make clear: The commission does support the use of single-commissioner hearings; I do. I think it has the benefit of what was described as an informal setting in which people can make a presentation and get a decision. If they're satisfied with that, fine. If they're not satisfied with that, then you're going to get a fuller review. I think that's the only way we can characterize it. [LB384]

SENATOR PIRSCH: Yeah. [LB384]

BOB WICKERSHAM: I'm just not sure. As I suggested before, it will change the nature of what we do. I don't know that it will reduce our work load. And, in fact, I think it has, frankly, it has some potential for increasing it. [LB384]

SENATOR PIRSCH: Yeah. And I'm sorry to unfairly characterize it. [LB384]

BOB WICKERSHAM: Yeah. [LB384]

SENATOR PIRSCH: But it's...so, fair to say, though, you're saying that you're not certain that it will reduce the caseload, necessarily, right? [LB384]

BOB WICKERSHAM: No, sir. [LB384]

SENATOR PIRSCH: Okay. And with the one-commissioner hearing, though, would the rules of evidence, the formal rules of evidence then be supplanted? [LB384]

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BOB WICKERSHAM: No. No, sir. And maybe I should have commented on that earlier. The...and it goes a little bit to the issue that was raised by Mr. Vinduska. The single-commissioner hearings are proposed, both in LB384 and in LB405--although we do favor the provisions in LB405--basically the same way. No record. No record at all. Now that means that it's not a proceeding that falls within the Supreme Court's rules for the unauthorized practice of law. That's what the issue was with Mr. Vinduska. Are you a lawyer? Are you going to represent someone? Well, we're required to abide by the law...by the rules of the Supreme Court on an unauthorized practice of law. If there's no record and we aren't going to apply any rules of evidence, then you're not subject to those rules. In the hearings that we conduct now, there is a record. It goes to the Court of Appeals. And we apply limited rules of evidence--not the full formal rules of evidence that you would find in the district court. But there are limited rules, what I would characterize as limited rules of evidence. We are required by statute to apply the hearsay rules. There is a...and that again is an issue that Mr. Vinduska raised. But by statute, we're required to allow a person to cross-examine a witness. The statute says that--77-5016(4). The Supreme Court has said that that means that we apply the rules of evidence in commission hearings. And if we have an objection from a county that something is hearsay or we have an objection from a taxpayer that something is hearsay, we'll rule on that objection in accordance with the statutes and what the Supreme Court tells us to do. [LB384]

SENATOR PIRSCH: Thank you. Whether a single commissioner... [LB384]

BOB WICKERSHAM: I don't mean to...that sounded a little defensive. But that's the way it is. [LB384]

SENATOR PIRSCH: Whether a single commissioner, though, or a full panel as currently existing, the rules of evidence will relax, though they may be applied, will still... [LB384]

BOB WICKERSHAM: There would be no rules of evidence in the single-commissioner hearing. None. [LB384]

SENATOR PIRSCH: Okay. And you would envision...even given that, you are saying, based on other states, you think it perhaps not unwise to, ballpark guesstimate, somewhere...25 percent, 33 percent appeals rate. [LB384]

BOB WICKERSHAM: Well, yeah, I don't know how to get a number. Kansas, the experience in Kansas is 25 percent. [LB384]

SENATOR PIRSCH: What? Yeah, 25 percent. And I appreciate that. I guess what I wonder is, now that we have the full panels operating, or at least the...it requires, two, right, to be present out of the three and to have a quorum, right? [LB384]

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BOB WICKERSHAM: Yes, sir. [LB384]

SENATOR PIRSCH: What is the rate of appeal on the existing system? [LB384]

BOB WICKERSHAM: To the Court of Appeals? [LB384]

SENATOR PIRSCH: Yeah, to the next higher... [LB384]

BOB WICKERSHAM: You know, I have not...I haven't calculated that, but it's very low. It's very low. And I am going to speculate, and this would be...if you want an exact number, I'll get it for you, Senator. But I'm just almost confident it's below 1 percent. Now one other thing, and this isn't what you've asked about, but I think I'm going to take this opportunity to say it: The record in the Court of Appeals for the commission is very good. We prevail...the commission's orders are upheld about 90 percent of the time. [LB384]

SENATOR PIRSCH: Okay. And I just wanted to make sure that I understood you when you said you weren't sure that by changing to a one-judge hearing, that you would be... [LB384]

BOB WICKERSHAM: A commissioner. [LB384]

SENATOR PIRSCH: I'm sorry. [LB384]

BOB WICKERSHAM: We're commissioners. [LB384]

SENATOR PIRSCH: Right. I'm sorry. I apologize. To changing to a one-commissioner hearing, rather, would decrease the time, so. [LB384]

BOB WICKERSHAM: I just don't know. [LB384]

SENATOR PIRSCH: Yeah. Okay. Well, thank you. [LB384]

SENATOR UTTER: Senator Hadley. [LB384]

SENATOR HADLEY: Senator Utter. Commissioner Wickersham, just a quick question. Changing that the chairperson does not have to be an attorney, would that have any ramifications that you would see in the workings of TERC? [LB384]

BOB WICKERSHAM: Well, I...the...when the commission was formed, it had one attorney and two lay people. The attorney was chair of the commission because that person presided at the hearings. And as Mr. Hans, former Commissioner Hans

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indicated, the presiding officer has to make some rulings on evidentiary and procedural matters. And it was advisable that that person be a lawyer. So the chair was the lawyer, and that's what the statute said. When the commission increased in size to four, and then had two lawyers--and now it has three--the commission changed its own rules so that on a biennial basis it elects the chairperson from the lawyers on the commission. And we do have kind of a term limit provision. It's in statute that you can't serve two consecutive terms as chair of the commission. So the most you're going to be at any one time is two years, and then it will rotate to the next. [LB384]

SENATOR HADLEY: I guess I am asking if we... [LB384]

BOB WICKERSHAM: Maybe that wasn't responsive. [LB384]

SENATOR HADLEY: ...if we adopt it the way it is, would there be a problem with a nonattorney making evidentiary rulings such as that? Or is that something that a person... [LB384]

BOB WICKERSHAM: I don't...I... [LB384]

SENATOR HADLEY: ...could pick up or...I guess... [LB384]

BOB WICKERSHAM: I think it would be quite difficult for them. [LB384]

SENATOR HADLEY: Okay. Thank you. [LB384]

BOB WICKERSHAM: In all honesty, I think it would be very difficult. Commissioner Hans served on the commission for 11 years. I think the implication of his testimony was that he still wouldn't have wanted to preside. [LB384]

SENATOR HADLEY: Okay. Thank you. [LB384]

BOB WICKERSHAM: So I don't think it's something you're going to get by experience. [LB384]

SENATOR HADLEY: Thank you, Senator Utter. [LB384]

SENATOR UTTER: Other questions? If not, thank you, Mr. Wickersham. [LB384]

BOB WICKERSHAM: All right. Thank you. [LB384]

SENATOR UTTER: Good afternoon. Almost good evening. [LB384]

MIKE GOODWILLIE: Good afternoon, Senator and the rest of the members of the

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committee. I am Mike Goodwillie, G-o-o-d-w-i-l-l-i-e. I am a deputy assessor in Douglas County. I am aware that I am probably the last thing standing between you and dinner and/or a cocktail, and so I will be brief. We are here testifying in a neutral capacity about LB384 and really only about one issue, and that is the idea of single-commissioner hearings. In a previous work life I was the legal counsel for the Department of Property Assessment and Taxation, and we sure got a lot of calls from taxpayers, and county people alike, about how formal the commission's process was. And Commissioner Wickersham has explained the difference between formal and informal in terms of the rules of evidence. I think we got those calls because of a misunderstanding people had. When they heard informal hearing, they thought it was people sitting around a coffee table discussing value. That's really not the commission's fault, but they do still have to provide some rules and structure for their hearing, by law, even if they are not the stringent rules of evidence that are applied in district court. I think the other item that makes the process seem very formal is also not of the commission's making, and that is there is a long array of Supreme Court decisions that says to administrative agencies, when you adjudicate in a quasi-judicial fashion, you have to abide by the constitutional dictates of due process in terms of notice and hearing and how you conduct your process. And they have not been hesitant to say to administrative agencies that they think have been...have sacrificed those dictates on the altar of informality to send those decisions back on a rocket ship, and say, do it again, because we don't think you granted, you know, the proper deference to those rights. So the system we have now, I think the commission takes a lot of blame that they don't really deserve. That said, it does seem to me it does make sense to have some kind of a place for a simple, perhaps low-dollar hearing, appeal to go where there could be perhaps a faster and less formal resolution. We like the idea of one-commissioner hearings, but because there are some issues we wanted to raise before the committee, we're testifying in a neutral capacity. These may be issues you want to think about in conjunction not only with this bill but I think the other one up for a one-commissioner hearing is LB405, is that right? I think it is. Former Commissioner Hans makes a point. The way this bill is structured, the one-commissioner hearings are structured, if your appeal deals with an assessed value of less than \$1 million, you would get on this one-commissioner track. But either party, whether it's the taxpayer and typically the county board, either party can opt out and get out of that track and request a full commission hearing, and they would be granted that. Similarly, if you go through your one-commissioner hearing and are not happy with the outcome, you are able to seek a rehearing by the full panel, and that appears to be something that would be granted to you. I think former Commissioner Hans is absolutely right. So there is the risk of a short, meaningless hearing, followed by a lot of waiting, and then a longer and more formal hearing, which might not double your pleasure at all in terms of how the process works. I also think that duality is perhaps linked to the dollar amount. I think if I were a taxpayer and had a million-dollar property and was unhappy with what I got out of the single-commissioner hearing, darn right, I'd go with the full commission. There's a lot of money on the table. And so I guess my initial reaction to the dollar amount was that perhaps that would be a little bit high, especially because

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you're not dealing with any record and there aren't any rules. In Douglas County, a million dollars is a lot of money in the tax base, but it's not nearly as much as in some communities with a lesser tax base. And I'm sorry there aren't county people from counties that have less taxable value to maybe discuss whether a million dollars is a good amount or it should be \$500,000 or \$250,000. You know, we're not necessarily wedded to a particular amount. I would just say that \$1 million seems a bit high. Now the real question, I think here, is how do you get people to stay on that one-commissioner track, use it, and then not come back like a boomerang to the full commission? And although I've never been a criminal law practitioner, it does seem to me that there are quite a number of Nebraska Supreme Court cases that say people can waive their due process rights as long as it's a knowing and voluntary waiver. And so one suggestion that might be worth thinking about is, if both parties will agree that all they want is "one and done" in front of a single commissioner, then maybe they effectively...could effectively waive their right to go to the full commission. I suspect that the people most interested in doing that would be residential taxpayers with not a heck of a lot of value at stake between what the assessed value is and what they wish their property value to be. But you don't know. That may be an option. And I guess the other question that occurs to me, too, in just looking at the structure is, who will represent the taxpayer? Who will represent the county? If there is no formal rules of evidence nor any kind of rules of evidence, I guess you would not run into those problems with an unauthorized practice of law. But it might be useful to specify going forward, you know, who should be there? Should the assessor be there? Should the county attorney be there? Should somebody designated by the county board be there? And who can be there on behalf of the taxpayers? With that I would like to say one more thing: that it's really nice to be at a legislative hearing where there is some tangential discussion of appraisal practice and not to hear my county bashed unmercifully. So with that I would conclude my formal testimony and be happy to answer any questions that you may have. [LB384]

SENATOR UTTER: Senator Hadley. [LB384]

SENATOR HADLEY: Senator Utter. I don't want to go and let him go away... [LB384]

SENATOR UTTER: Disappointed? [LB384]

SENATOR HADLEY: Yeah, disappointed. (Laughter) Just a quick question. When we were talking about a lot of things this summer, we thought that...we kicked around the idea of requiring an informal hearing between the taxpayer and the assessor or a designee of the assessor. [LB384]

MIKE GOODWILLIE: Sure. Certainly, Lancaster County does it and they send an informal notice.... [LB384]

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SENATOR HADLEY: Right. What are your thoughts on that? [LB384]

MIKE GOODWILLIE: Well, I don't want to get too far ahead of myself, because obviously LB457 is going to have its own hearing. From an assessment standpoint we would actually like it. What it would do is it would enable us to get a handle on...there is always some percentage of protests to the county board each year that we would call no-brainers, where maybe we just have the data about the property wrong. We've got them on for an extra bathroom or a finished basement or something that's really readily able to be solved if you just inspected the property and found out. The informal process would let us get that information and make those changes to the value without having to go through the county board. [LB384]

SENATOR HADLEY: We had hoped that going down those lines could cut down on the work load. [LB384]

MIKE GOODWILLIE: I think it probably would. Now... [LB384]

SENATOR HADLEY: Or the person who says...comes in informally and you say: Well, you didn't let us in the house, you know, so we had to...you know, we were trying to make judgments. So I just wondered where, you know... [LB384]

MIKE GOODWILLIE: Now that said, in the interest of completeness what I will tell you is for those counties that are not doing that, and our county in particular, in the first year of implementation it would require us to smash about six months' worth of valuation work into three. And so, administratively, we would have some issues. [LB384]

SENATOR HADLEY: Sure. Okay. [LB384]

MIKE GOODWILLIE: I know our county board would come down here and say, well, we have no money. I really don't want to take the beating about 19 cents of unused levy authority right now, thank you very much. I'm just saying that that's probably the response you're going to get from our county, that we like the idea but have implementation issues. And the county board is probably not going to like the idea at all because of the monetary concerns. [LB384]

SENATOR HADLEY: Thank you. [LB384]

SENATOR UTTER: Mr. Goodwillie, I assume in your county there's not that opportunity for the taxpayer to have a face-to-face meeting with somebody in the assessor's office. [LB384]

MIKE GOODWILLIE: More than you would think, although it kind of is backwards. What will typically happen is the county board will do its work in June, July, and early August,

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and people will get their notice. And maybe they'll appeal to the commission and maybe they won't and they'll just grouse about it. What they will do often though is if they didn't get satisfaction at the county board, say in 2010, they may well pick up the phone and call us and say, well, you know, I think you have something wrong in 2011. And what we'll typically do is have an appraiser contact that person and chat with them and perhaps they get together. Maybe there's an inspection done on the property. We can't go back and fix it retrospectively for 2011, or 2010 rather, but what we can do is get more accurate information going forward in 2011. And especially if we get calls after the first of the year, where our valuation work is in full swing, it actually fits in pretty well. But no, we don't do anything where we actually...well, I will say we do send something out to the commercial property owners in April, saying: Here's what your value is going to be; come talk to us. And then maybe we can come to a meeting of the minds and make a recommendation to our county board. But they would still have to protest. [LB384]

SENATOR UTTER: Your county board does not sit as a board of equalization at any time? [LB384]

MIKE GOODWILLIE: They designate everything to hired referees who are real estate appraisers. And the real estate appraisers do not do a face-to-face with taxpayers. Given the volume we have, it's a decision that they've made. And, quite frankly, what they...they have achieved some efficiencies in doing it that way. In the old days, when there would just be a line of taxpayers and they take the first available referee, what you might have is a referee hear a protest on a commercial property, then a low-dollar residential property in south Omaha, then a high-dollar residential property in Fairacres, then some ag ground out in the rural part of the county. And there tended to be kind of a lack of consistency for equalization purposes in the decision-making process of the different referees. What the board has done the last couple of years is what they will do is they will assign certain portions of the county and certain types of properties to different referees. And they will deal with all...you might have the same referee who deals with all of the appeals from, say, the Dundee and Country Club areas in the city of Omaha. The thought is that they will be much more consistent and view the protests as part of an integrated whole as opposed to dealing with them on a piecemeal basis. As a practical matter, and I'm not a big believer in batting averages, but as a practical matter there actually is a higher percentage of protesting parties getting some reduction in their value under this sort of paper process where we ask them to send in any evidence they think is germane to their value, whether it's an appraisal or pictures or whatever it happens to be. They actually are doing a little bit better under this process than they did in the old sort of random face-to-face process. It's kind of counterintuitive, but that seems to be what's happening. [LB384]

SENATOR UTTER: It almost seems as if that process, though, encourages the people in Douglas County to file with TERC. [LB384]

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MIKE GOODWILLIE: I think there is some...there is some element of that. I'm not going to bash the people who go to TERC here. What I will make is the observation that, you know, we try really hard to settle cases that get filed either with the county board or with the commission prior to any kind of hearing in front of the Tax Equalization and Review Commission. I mean we do. We contact them. We look for any way to settle that's reasonable and sort of within a reasonable valuation range. We try not to give away the store but we do try and look at it from their point and find some reasonable place to be. What ends up happening are the folks that end up going to a hearing in front of the Tax Equalization and Review Commission from our county, they, by and large, fit two categories. One might be somebody who has an, honest to God, complicated appraisal issue, whether it's a commercial property or some kind of a tricky residential or ag kind of issue. And a significant percentage of the rest tend to be, for lack of a better term, "likes to yell guy" who isn't going to be happy no matter what number you give him, and he's down there and he's going to rant about this is the "tax me" state and we pay these outrageous police pensions and build ballparks and everything under the sun that may not necessarily even have anything to do with the assessment of his real property. I'm not sure you're ever going to do anything to make "likes to yell guy" happy. I do think that tends to maybe skew some of the perception of the commission because when that person goes there, if the commission doesn't immediately give him what he wants, he is not going to be really happy. And if he loses because he didn't talk at all about the value of his property, he's going to lose. So I will take that with a little bit of a grain of salt, Senator Utter. [LB384]

SENATOR UTTER: I'd like to pursue this conversation but it's late in the day so I'm not going to ask any further questions. [LB384]

MIKE GOODWILLIE: Senator, if you would like, give me a shout. I'm easy to find. [LB384]

SENATOR UTTER: Any other questions? Hearing none, thank you, Mr. Goodwillie. [LB384]

MIKE GOODWILLIE: Thank you, members of the committee. [LB384]

SENATOR UTTER: Any further testimony? Well, that closes the hearing then on LB384, and I thank you all for coming. [LB384]