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Revenue Committee  
February 11, 2011

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[LB174 LB370 LB423 LB483]

The Committee on Revenue met at 1:30 p.m. on Friday, February 11, 2011, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB174, LB370, LB423, and LB483. Senators present: Dennis Utter, Vice Chairperson; Greg Adams; Deb Fischer; Galen Hadley; LeRoy Louden; Dave Pankonin; and Pete Pirsch. Senators absent: Abbie Cornett, Chairperson.

SENATOR FISCHER: Good afternoon and welcome to the Revenue Committee. My name is Deb Fischer and I'm the senator from Valentine, the 43rd District. Our Chairman of the committee, Senator Abbie Cornett, of Bellevue is not with us today. And our Vice Chair, Senator Dennis Utter, who is from Hastings, is across the hall introducing a couple of bills in Natural Resources. So it's my pleasure to be able to chair the Revenue Committee until Senator Utter returns. At this time, I would like to introduce the members of the committee. On my far right is Senator Dave Pankonin who is from Louisville; next we have Senator Pete Pirsch who is from Omaha; next, Senator LeRoy Louden from Ellsworth; next to him is Senator Galen Hadley from Kearney; next we have Steve Moore who is the research analyst. On my immediate left is Senator Greg Adams who is from York; and our committee clerk is Matt Rathje. And we also have two pages that are helping us this year: Marilyn Buresh and Amara Meyer. We do have some sign-in sheets for the testifiers and those are on the tables by both of the doors. And you need to complete those sign-in sheets before you come forward to testify on any bill. If you plan to testify on more than one bill, I have to have you have a sign-in sheet for each bill. When you come forward to testify, please hand those sign-in sheets to the committee clerk before you sit down at the table to testify. If you do not wish to testify but you would like to indicate your support or your opposition to a bill, there are sheets back at those two tables by each door where you can indicate if you are in support or opposition to a bill, and those sheets will be a part of the official record. We will follow the agenda as it was posted on the door. We will have the representative of the bill, the introducer, come forward, then followed by proponents, opponents, and neutral testimony. As you begin your testimony, I would ask that you please say and spell your name. We have a computerized transcription equipment and we need to have each name spelled so we make sure we have the record correct. If you have any handouts, the pages would be happy to hand those out for you. At this time I'd ask that everybody please turn off their cell phones. I'm pretending this is Transportation and Telecommunications Committee so I would ask that you please turn off your cell phones because in this committee we do not allow them on and that includes texting. So no texting today since I get to open. And with that, I would like to welcome Senator Avery to open the hearing on LB174. Good afternoon, Senator Avery.

SENATOR AVERY: So I can't text my testimony, right? [LB174]

SENATOR FISCHER: No, you may not. [LB174]

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SENATOR AVERY: Thank you, Madam Chair. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in the heart of Lincoln. I am introducing LB174 to allow taxpayers to check off funds for the Campaign Finance Limitation Cash Fund even if the taxpayer has a tax liability. The way the law is written now, taxpayers may only check off money to the CFLA Cash Fund if they are receiving a refund. If you know, the Campaign Finance Limitation Act was enacted by this Legislature to provide fair fight funds to candidates who abide by certain campaign expenditure limitations. The cash fund to which I refer provides the fair fight money to the candidates. When the Legislature passed this law back in 1992, it put only \$50,000 General Fund money into the fund. Since that time, late filing fees and civil penalties, donations, interest, and tax checkoffs have contributed to the fund. And currently it is sitting at about \$900,000, and that is all Cash Fund now. And it is used for, as I said, fair fight funding. On average, the annual sum that is contributed to the fund is about \$11,000 through the checkoff. And that checkoff, again, is only if you are receiving a refund. It is likely that additional funds could be raised if taxpayers had the option of donating to the fund if they owe a tax bill. Here is how the specifics of the bill would work. Beginning with the tax form filed for the 2011 tax year, the Tax Commissioner will include on the individual income tax form space for the taxpayer to designate \$1 or greater as a contribution to the Campaign Finance Limitation Cash Fund. If a refund is due, the contribution will be deducted from the amount refunded. If a tax is owed, such contribution then would be added to the total amount to be paid by the taxpayer. It's pretty simple and straightforward, and we believe it might help bring in additional funds to that very important Cash Fund. With that, I will end my testimony and let you know that Frank Daley is here if you wish to ask any technical questions. Thank you. [LB174]

SENATOR FISCHER: Thank you, Senator Avery. Are there questions? I see none. Thank you very much. [LB174]

SENATOR AVERY: Thank you. I will not be able to stay because I have to get to my own committee. Thank you. [LB174]

SENATOR FISCHER: Okay. Thank you. Are there proponents for the bill? Good afternoon. [LB174]

FRANK DALEY: Good afternoon, acting Chairman Fischer, members of the Revenue Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission. And I'm here today to express the commission's support for LB174. LB174 does one simple thing and that is it allows individual Nebraska taxpayers with a tax liability to check off funds into the Campaign Finance Limitation Act Fund. As Senator Avery pointed out, under current law, a taxpayer can only check off funds into the CFLA if they're owed a refund. If you were to look on line 42 of your individual income tax form, you would see where that opportunity

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existed right now. So essentially what would happen under the bill is that if you were receiving a refund you could check off at least a dollar or more into the fund. If you were expecting a tax liability or if you had a tax liability and were required to pay in, you could add to that tax liability by adding to the amount that you send in to the Department of Revenue. So it's a very simple thing. In essence, a taxpayer who supports CFLA and the program could show support by voluntarily reducing his or her refund or voluntarily increasing his or her tax payment. So I want to thank Senator Avery for bringing this bill and thank you all for the opportunity to testify. [LB174]

SENATOR FISCHER: Thank you, Mr. Daley. Are there questions? Senator Pankonin. [LB174]

SENATOR PANKONIN: Thank you, Senator Fischer. Mr. Daley, thanks for being with us today. Is that amount like a dollar or is it an open amount or how does that work? [LB174]

FRANK DALEY: It is an open amount but it has to be at least a dollar. So a dollar or more the taxpayer may contribute. [LB174]

SENATOR PANKONIN: Do you have any idea of the average or how much...any information on that? I mean is the average \$5 or do you have any? [LB174]

FRANK DALEY: We don't. We only get from the Department of Revenue an amount. [LB174]

SENATOR PANKONIN: You just get the blank sum. [LB174]

FRANK DALEY: Just some anecdotal information leads me to believe that probably the average is \$2, \$3, somewhere in there. So what that means is since we're typically receiving between \$8,000 and \$16,000 a year, what we've got is potentially 4,000 to 8,000 taxpayers a year that are voluntarily putting money into the fund. [LB174]

SENATOR PANKONIN: Out of their refunds, of course. [LB174]

FRANK DALEY: Out of their refunds, that's correct. [LB174]

SENATOR PANKONIN: And obviously this is a simple concept, understand that. Senator Avery did say, though, that this fund has grown to be approximately \$900,000. [LB174]

FRANK DALEY: It's somewhat less than that, but it's more than \$800,000 right now. [LB174]

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SENATOR PANKONIN: Does that, from your past experience with the commission, is that getting too large or is the reason you're concerned you want it to grow faster or? [LB174]

FRANK DALEY: No. Actually it's not too large. And the reason I say this is because there was always a concern from the beginning how to fund this. And as Senator Avery pointed out, the Legislature put in an initial \$50,000 and then had it set up so that late filing fees and civil penalties would go into the fund and taxpayer checkoffs would go into the fund. But there was also a scheduled entry of different offices to be covered by the CFLA. So it started with the Legislature, and when the fund grew to a certain level, the Public Service Commission and Board of Education came in and then it grew to another level and more offices came in. So right now all offices that could be included have been except for the Governor's Office. We need to get up to about \$910,000 so the fund has been growing slowly over the years. But we're not there where the scheduled coverage over all potential offices has occurred yet. [LB174]

SENATOR PANKONIN: Okay. [LB174]

SENATOR FISCHER: Thank you, Senator Pankonin. Senator Pirsch. [LB174]

SENATOR PIRSCH: And I'm sorry, to the Governor's Office, are the other state executive offices covered right now? [LB174]

FRANK DALEY: The other constitutional officers are and the Legislature are covered. [LB174]

SENATOR PIRSCH: Okay. With respect to this particular bill, this would give where a tax liability for the first time is experienced you would still be able to pledge \$1 or \$3 or \$5 or even \$500, right? [LB174]

FRANK DALEY: That's correct. [LB174]

SENATOR PIRSCH: What would happen if there was a pledge of some \$50 or \$100 and you still owe a tax liability and for some reason they never end up paying? With monies you owe the Department of Revenue, there's late fees, penalties, those kind of things, interest accrue. Would that occur with respect to this if you had pledged \$20, would that continue to accrue interest, etcetera, as time goes on? [LB174]

FRANK DALEY: I don't know the answer to that. I think that maybe is a question for the Department of Revenue. My speculation is that it would not because it's not ultimately a tax liability. It's a voluntary contribution. [LB174]

SENATOR PIRSCH: Okay. That makes sense to me. Thank you. [LB174]

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SENATOR FISCHER: Thank you, Senator Pirsch. Senator Louden. [LB174]

SENATOR LOUDEN: Yes. Thank you, Senator Fischer. Mr. Daley, you say it's about \$900,000 and that fund is used to...if somebody, what was it, they sign, go over their limit and somebody else then can draw from that fund to help with their campaign fund. Is that what part of that fund is for? [LB174]

FRANK DALEY: That's essentially the way that it works. The way the program is set up, candidates for covered elective offices such as the Legislature agree either to abide by the spending limits or decide that they're not going to abide by the spending limits and provide an estimate of their expenditures. If you have a race in which one candidate is abiding and one candidate is not and the estimate is above the spending limits, then there's some potential for the award of CFLA funds under those circumstances. And that can occur under one of two circumstances: Either (A), the nonabiding candidate spends more than 40 percent of the limit or actually exceeds the limit and that determines how much the abiding candidate would get. In simple terms, let's just say the limit is \$50,000 and one candidate agrees to abide by that and the other candidate says I'm not going to abide and I'm going to spend \$60,000. The abiding candidate may become eligible for \$10,000, the difference between the limit and the actual spending or the limit and the actual estimate. [LB174]

SENATOR LOUDEN: Okay. Now my other question is here a year or so ago, why, when they were looking for money they were, as I say, digging into old purses. Now is this an old purse that can be dug into or is that money safeguarded there that can't be used for other things than only? [LB174]

FRANK DALEY: Well, I would have said a year ago this was safeguarded and absolutely sacred, no one could touch it. But frankly the Legislature did and so we lost some of it in the last year. That's correct. [LB174]

SENATOR LOUDEN: But that was mostly because action of the Legislature. But it could be raided, that fund could be raided? [LB174]

FRANK DALEY: No. Actually under current law, the Accountability and Disclosure Commission, for example, has no authority to do anything with that money other than to use it for awards to candidates. [LB174]

SENATOR LOUDEN: Okay. But I mean can the Governor or someone? [LB174]

FRANK DALEY: No, no. [LB174]

SENATOR LOUDEN: Okay, because that was my concern if we put money in there and

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then somebody raids it, why, then it kind of puts a different slant on it then. [LB174]

FRANK DALEY: Oh, agreed, agreed. Now I will tell you that there are a variety of bills floating around this year that would make some potential changes to that. And I suppose there's always the possibility, as with any other cash fund, that it's a potential target in this type of budget year. But under current law, the funds cannot be used for anything other than awards to candidates. [LB174]

SENATOR LOUDEN: Okay, thank you. [LB174]

SENATOR FISCHER: Other questions? I have a couple, Mr. Daley. What's the total amount of disbursements you've made from the fund to candidates? [LB174]

FRANK DALEY: The total amount of awards since 2000 is \$876,000 roughly. The total amount of disbursements is \$530,000. And so one may ask, well, why is there a difference? And the reason for the difference is there's a provision in law that allows candidates to take less than what they're actually eligible for. And we've had several occasions in which candidates have said, well, I don't want all that I've been awarded. I can't use it all. I want this much. So there was one occasion where an award was pretty close to election day and the candidate declined to accept it. Another occasion, by way of example, where a candidate took the position, ah, that's too much money. I've got a campaign plan. I just want to take enough money so that I can fulfill my plan and we'll leave it at that. [LB174]

SENATOR FISCHER: So you said \$800,000 in awards and about \$500,000 in disbursements. [LB174]

FRANK DALEY: Correct. [LB174]

SENATOR FISCHER: And how many candidates would that be? [LB174]

FRANK DALEY: How many candidates are we talking about? [LB174]

SENATOR FISCHER: Yes. [LB174]

FRANK DALEY: Oh, I think we're talking about 12 to 15, something like that. [LB174]

SENATOR FISCHER: Okay, thank you very much. Other questions? I see none. Thank you, Mr. Daley. [LB174]

FRANK DALEY: Thank you very much for having me. [LB174]

SENATOR FISCHER: Other proponents, please. Any other proponents for this bill? Any

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opponents to the bill? Opponents? Anyone wishing to testify in a neutral capacity? I see none. With that, I will close the hearing on LB174. I see Senator Wightman is here. We will open the hearing on LB370. Good afternoon, Senator Wightman. [LB174]

SENATOR WIGHTMAN: Good afternoon. Vice Chair Fischer... [LB370]

SENATOR FISCHER: No, I'm just acting Chair, sir. [LB370]

SENATOR WIGHTMAN: Just acting Chair. Okay. Members of the Revenue Committee, for the record I am John Wightman, spelled J-o-h-n W-i-g-h-t-m-a-n, from Lexington. Represent District 36. LB370, if passed into law, would eliminate provisions relating to the issuance of tax deeds. If property taxes are unpaid, an investor can purchase from the county a tax sale certificate that pays 14 percent interest on taxes due. If the taxes remain unpaid, Nebraska law currently allows two methods for foreclosing on the real property--or at least for eventually getting a deed to the property--on the real property to pay off the tax certificate. One method is a judicial foreclosure of the tax certificate to obtain ownership of the property, and that is the one most commonly used. The other method authorizes the county treasurer to issue a tax deed without a public sale of the property at the time title to the property passes and other procedural safeguards. LB370 is introduced to eliminate the treasurer's tax deed method. The counties, of course, need their tax revenues, and they get that by selling taxes, and this provides them cash flow to pay the various bills that...and pay out the various taxing entities. Investors are encouraged to purchase tax sale certificates issued by the counties for past-due taxes. Tax sale certificates currently pay a pretty attractive interest rate of 14 percent per annum--particularly attractive today with the 1 and 2 percent interest rates. The vagueness of the current treasurer's tax deed statute, the investor has a legal argument that the tax sale certificate can be used to purchase property with a market value that may be far in excess of the taxes due. If this interpretation of the law is correct, which it has been held to be correct, the treasurer's tax deed process is unfair to prior lienholders and the former owner of the property who loses any equity in the property. LB370 would eliminate this inequitable and unfair result. The fair method to collect past-due taxes is under the judicial sale method we would say and contend. Under the judicial foreclosure process, a public sale is conducted where there can be a determination of the fair market value of the property by exposing the property to multiple buyers, not just the holder of a tax sale certificate whose investment was for unpaid taxes that may be far less than the property's fair market value. From the onset, the judicial foreclosure process ensures that people have knowledge that their rights are under dispute. The foreclosure process is a court process where the parties must receive legal process served by the sheriff, not just by certified mail, return receipt requested, or by publication in a newspaper. As we have learned from LB157 which was a law changing guardianships and conservatorships--not a law; it's still a bill...service by this type of mail is problematic. After the judicial sale process in the courts and the public sale, the proceeds of the sale are applied to past-due taxes and

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interest so that the tax certificate holder or investor is repaid. He's not only repaid his principal but the 14 percent interest that accumulates. An important difference is that any surplus is then expressly applied to the discharge of debts, and then any further surplus is applied for the use of the former owner. The judicial sale method provides protections that have evolved in the law over the years to protect the owner and any lienholders. It assures that the property is sold at fair market value and the maximum amount of funds is raised from the sale for distribution to the interested parties. I'll tell you a little bit about the tax sale foreclosures and where you buy the property taxes. You have to wait at least three years after the taxes are due. You then start a foreclosure proceeding much like you would foreclose a mortgage, and the property would be sold, probably out of the tax sale certificates. My guess is that maybe somewhere between 1 and 10, and perhaps as low as 1 in 50, would probably ever go to foreclosure. That notice is sent to them by maybe an attorney representing the holder of the tax sale certificate, and most of them are paid. A lot of them are paid when property is sold, and so they get paid very well on their investment. So with that, I would urge the committee to advance LB370. The judicial sale method is fair to all parties. I would be happy to answer any questions. And I will be followed by Rob Waterman who has had recent experience in this area, and...Robert Waterman. We call him Rob out in Lexington. And he can tell you a rather unpleasant experience that they're in the middle of right now. With that, I'd try to answer any questions that you may have. [LB370]

SENATOR FISCHER: Thank you, Senator Wightman. Are there questions? Senator Wightman, do you know if there's a fiscal impact on counties with your bill? [LB370]

SENATOR WIGHTMAN: There is none. And we've talked to the treasurers and they're going to be paid, no matter what, so I don't think there would be any...there's no fiscal note shown. [LB370]

SENATOR FISCHER: Okay. Thank you. Senator Louden. [LB370]

SENATOR LOUDEN: Yes. Thank you, Senator Fischer. Well, Senator Wightman, I'm not that familiar with it but a little bit familiar with it. Now if these...when this land is sold for taxes, and it hasn't been...and usually the county or city or somebody bids it in for what they got in taxes, does that affect this? Or does this affect that? [LB370]

SENATOR WIGHTMAN: Oh, no. The county can still bid it in. Actually once a year they advertise--it might be more than once a year--they advertise and tell everybody the various properties that they're going to sell taxes on, and it'll be published in the newspaper. And the county could still buy them if they want to do that, but they'd rather get the money from outside the county, in most instances, because they can continue their operation, just as they've done before, just the same as if the taxpayer had come in and paid the taxes. So I don't see it having any effect upon that. I might explain a little bit about what sometimes happens in these situations. Somebody will come in and they

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actually buy up the taxes the same way. Then they can either start the foreclosure or this alternative method exists that they can go in and ask for a tax sale deed. They have to fill out some sort of a certificate or affidavit to the county treasurer. Well, a lot of times you have owners of these properties that have been so beleaguered by creditors calling them that they've gotten to where they not only sometimes don't answer their phone, they don't even look at their mail when they get in a situation like this. And some of these people have a fair equity in that home. And it doesn't have to be a home. It can be a piece of farmland. It could be anything. And so if there happened to be no lienholders, they could go in and actually own that property for the amount of the taxes that they have paid. They'd have to pay up any back taxes because the taxes are always a first lien. So if there's some they hadn't purchased yet--say, the last year--they would have to...they'd still take it subject to that, but that would be the only lien that they'd be subject to. [LB370]

SENATOR LOUDEN: Well, yeah, I wondered. Well, in my district out there, it's these small towns where people have moved out. And these lots, they go off and leave them, and they're...yeah, there's tax sales going on all the time for lots. And usually the city or county or somebody has to bid them in for what they got in them, because otherwise, somebody can go in and bid five bucks for them and then usually the county erases everything off of there. Because my understanding is, once it's sold for that taxes, then any liens before that aren't against it anymore. Is that correct? [LB370]

SENATOR WIGHTMAN: That's probably true of either method, even if...but the lienholder is going to be in and would have a right to answer and to participate in the legal proceeding if it was in district court. I think the one you're going to hear about is somebody in this instance that worked for a credit union or a bank. Filed away a letter that came--a registered letter. Put it in the file and then nobody ever looked at it again. And now they're fighting to even get anything out of the property because the buyer of the tax sale certificate went in and requested the treasurer's tax deed, which he got, and claimed he owns the property. Sometimes a title examiner will require the person to quiet title to the action, which is a lot different than foreclosing the lien. [LB370]

SENATOR FISCHER: Other questions? I see none. Thank you, Senator. [LB370]

SENATOR WIGHTMAN: Thank you. [LB370]

SENATOR FISCHER: First proponent, please. [LB370]

ROBERT WATERMAN: Good afternoon. [LB370]

SENATOR FISCHER: Good afternoon. [LB370]

ROBERT WATERMAN: My name is Rob Waterman, R-o-b W-a-t-e-r-m-a-n. I've been

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employed in the banking industry for the past 27 years as a lender. Thank you for the opportunity to address your committee today in support of Senator Wightman's bill, LB370. As Senator Wightman indicated, LB370 is a bill that eliminates the tax deed method of foreclosing real property tax sales certificates. Nebraska law presently allows two methods for foreclosing tax sale certificates. One method authorizes the county treasurer to issue a treasurer's tax deed to the real property. The other is the judicial foreclosure of the tax sale certificate. I do not support the tax deed method, since it lacks clarity and brings into question the extinguishment of any other liens of record and delinquent taxpayer's equity interest. Some tax sale certificate investors have argued that a treasurer's tax deed entitles them to title to the real property, free and clear of the delinquent taxpayer's equity interest and valid perfected liens of record. This is clearly not an equitable result--same point Senator Wightman made. For example, let us assume that an investor has purchased a tax sale certificate for a piece of real property. Under the tax deed method, if the delinquent taxpayer does not redeem and a lienholder of record elects not to redeem, the tax sale certificate holder can obtain a treasurer's tax deed from the county treasurer. Tax deed method statutes, as presently enacted, do not clearly state whether or not a lien of record is extinguished by the issuance of a treasurer's tax deed. This may result in unnecessary and expensive litigation for lenders who elect not to spend more money on a bad loan in order to redeem a tax sale certificate prior to the issuance of a tax deed. In addition, if the market value of the property exceeds the present value of the tax sale certificate, the tax deed recipient may be enriched over and above the present value of the tax sale certificate. On the other hand, the judicial foreclosure of a tax sale certificate clearly provides protection to lienholders and owners that have equity in their property. Under Section 77-1916, after the satisfaction of foreclosure costs and unpaid taxes, surplus proceeds of the sale of the property are applied in the same manner as a mortgage foreclosure. The surplus then would be used to satisfy other liens, and if available, the excess would go to the property owner. In summary, I believe the tax deed method, as is currently written, encourages some to believe that they obtain title to the real property free and clear of any valid liens and any equity interest to the property owner. Elimination of the tax deed method of foreclosure would eliminate the gray area that exists in the current law. In addition, holders of tax sale certificates would still have an adequate remedy through the judicial foreclosure method. That's the method that also protects lienholders and property owners from an inequitable result. That's my statement and that's my testimony. If I can answer any questions, I would be happy to try to do that. [LB370]

SENATOR FISCHER: Thank you, Mr. Waterman. Are there questions? Senator Pirsch. [LB370]

SENATOR PIRSCH: You know, I think I see Bob Hallstrom around the...so I'm going to probably...it's of a legal nature. I'll hold that question for Mr. Hallstrom. [LB370]

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SENATOR FISCHER: Thank you, Senator Pirsch. Senator Louden. [LB370]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Now if you buy a piece of property at a tax sale, are you liable for any of the liens against that property from that date previously? [LB370]

ROBERT WATERMAN: Okay, I'm not sure what you're asking me. [LB370]

SENATOR LOUDEN: Whenever a piece of property is sold at a tax sale and you purchase... [LB370]

ROBERT WATERMAN: By the sheriff or...? [LB370]

SENATOR LOUDEN: What? [LB370]

ROBERT WATERMAN: The sheriff, I believe, sells it at a tax sale... [LB370]

SENATOR LOUDEN: Yeah. [LB370]

ROBERT WATERMAN: ...under a foreclosure. Is that what you're talking about? [LB370]

SENATOR LOUDEN: Yeah. Whenever you have your tax sales, when they're advertised in the paper, when you buy that piece of property that day are you liable for the liens that are on there previously? [LB370]

ROBERT WATERMAN: That's the gray area. That's the gray area. If you're talking about buying tax sale certificates. I'm not sure I understand what you're saying. If you're talking about buying a tax property...a tax sale property, that's... [LB370]

SENATOR LOUDEN: The property itself. [LB370]

ROBERT WATERMAN: ...that's a sale that the sheriff conducts. And there are people...you go, you can bid. Anybody can bid. So if they buy that from a sheriff's sale, I believe then it's free and clear of all liens. [LB370]

SENATOR LOUDEN: Right. So that's the reason usually when you have those sales like that, the county or city or somebody that has that tax lien against it will usually have...or if someone has bought that certificate, they have to bid that in, in order to get their money back, or else they will lose...if it doesn't bring that value of what that lien is, then they lose that much. [LB370]

ROBERT WATERMAN: That's true, but the treasurer's tax deed is a totally different

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situation. That would be what would occur if you had a judicial foreclosure. The treasurer's tax deed, we don't ever get to a sale. [LB370]

SENATOR LOUDEN: Okay. Now that's the other deal. When you...you've got a bunch of money and you want to go down to the courthouse and invest it. You pick up these tax...delinquent tax notices for 14 percent interest and those people don't pay you. Then after three years you're allowed to go ahead and foreclose on that piece of property, correct? [LB370]

ROBERT WATERMAN: Yes, you are. [LB370]

SENATOR LOUDEN: Now when you foreclose on that piece of property, does that have to be put up for public auction? [LB370]

ROBERT WATERMAN: Under the judicial foreclosure it does. But under the treasurer's tax deed there is no sale. They simply ask the county treasurer to issue them a treasurer's tax deed and that takes the sale question clear out of the subject...or out of the equation. So that's my problem. That's my heartburn. [LB370]

SENATOR LOUDEN: Okay. And that's what's in the statute now? [LB370]

ROBERT WATERMAN: Yes. [LB370]

SENATOR LOUDEN: Okay. Thank you. [LB370]

SENATOR FISCHER: Thank you, Senator Louden. Any other questions? I see none. Thank you, Mr. Waterman, for coming in today. [LB370]

ROBERT WATERMAN: Thank you. [LB370]

SENATOR FISCHER: Other proponents, please. [LB370]

BOB HALLSTROM: Good afternoon, "General" Fischer, members of the committee. My name is Robert J. Hallstrom. I'm the registered lobbyist for the Nebraska Bankers Association, appearing today... [LB370]

SENATOR FISCHER: And welcome to my soldier. [LB370]

BOB HALLSTROM: Yes. I think I'm the only foot soldier that's here from yesterday. But at any rate, Robert J. Hallstrom, registered lobbyist for the Nebraska Bankers Association, appearing in support of LB370. The last name is spelled H-a-l-l-s-t-r-o-m. I would echo many of Mr. Waterman's statements but perhaps give the committee a little bit more of a historical background. As recently as 2008, the NBA came before the

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Legislature with a bill to provide greater clarity on the foreclosure process. There was some old case law at that time that had questioned whether or not a lienholder who was not made a party, not served with the process in connection with a foreclosure action respecting the tax sale certificate, would nonetheless have their liens extinguished. So in 2008, the Legislature passed a bill that effectively eliminated that potential problem, made it clear that you must have been made a party to the proceeding in order for your liens to be extinguished. That is the type of process that applies in almost any case when a third party gains ownership, whether it's a lender foreclosing on a defaulted loan or any other type of process. When we switch over to the second option or the prong of the tax sale certificates, the situation where you can have a treasurer's tax deed issued, unlike virtually any other type of process the statute only requires one notice. It is by certified mail. But it's after a period of three years have elapsed from the issuance of the tax sale certificate must occur within three months of the actual issuance of the treasurer's tax deed and is a one-time notice. By contrast, for example, and may be of interest to the committee, when you have the exercise of a power of sale under a trust deed, when a lender has taken a security interest in real estate, you have a notice of sale, you have a 30-day time frame, you have a notice...or, excuse me, a notice of default, a 30-day time frame, notice of sale, five published notices after that before you finally have an opportunity to sell the property. And even at that aspect, when the property is sold the liens are extinguished. If there's any money left over, it goes back to the owner of the property. That does not occur with respect to the treasurer's tax deeds. While I would certainly indicate that it's our preference to have the treasurer's tax deed option repealed as proposed under LB370, if anything different were to be done, certainly enhanced notification would be a prerequisite. Another issue is with respect to the election of remedies. I recently had a practicing attorney who told me that someone had sent a notice to an owner and a lienholder regarding the fact that they intended to obtain a treasurer's tax deed within the next three months. Subsequent to that, they filed a foreclosure action. They did not include the lienholder as a party, as they're required to, but the lienholder, through the borrower, caught wind of the proceedings, contacted the attorney, gave them a payoff statement of which they intended to be paid when the foreclosure was finalized. And lo and behold, they switched gears and went back and got a treasurer's tax deed. Then the question that Mr. Waterman posed is, does the issuance of the treasurer's tax deed extinguish all of those liens? If so, the lienholder may have been duped of sorts by saying we're going through a foreclosure, and then all of sudden, in the still of the night, a treasurer's tax deed is issued. So an election of remedies type of aspect might be significant if there is to be any vestige of the treasurer's tax deed that is retained. And then finally, I think the issue in and of itself, the clarification of what is the effect of a treasurer's tax deed, our preference would be that if they're retained that it should clearly state in the law that it does not extinguish those prior liens and the interest of the owner in any type of deficiency, and so you have an opportunity to protect your interest. Having said that, if that's the case, then the question would become, what good is the treasurer's tax deed if it doesn't extinguish the prior liens? So our suggestion would be to move on with LB370 for full consideration by the

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Legislature. Be happy to address any questions. [LB370]

SENATOR FISCHER: Thank you, Mr. Hallstrom. Questions? Senator Pirsch. [LB370]

SENATOR PIRSCH: How often is this popping up? I mean is this popping (inaudible)? Have you seen a number of these cases (inaudible)? [LB370]

BOB HALLSTROM: There are older cases, Senator, that gave rise to us coming forward in 2008. It's not necessarily one that has bred a lot of litigation that would lead to changes in the statute. I think it's just the continuing frustration with the uncertainty and confusion in those cases where someone gets a treasurer's tax deed. There are many, many cases where people are purchasing the taxes, so to speak, by getting a tax sale certificate issued. They bide their time. They wait their three years to see if anybody is going to come forward, redeem the taxes up front, pay them 14 percent interest. But occasionally they'll find an opportunity where...I had a case in my own practice where an individual had passed away, for example. He had been divorced, had been separated from his family. No one knew what he owned in terms of the property. And on the cusp of someone going in and getting a treasurer's tax deed or a foreclosure, someone happened to step in. But there was over \$50,000 equity in the property that would have walked away had someone not caught wind of this, so. [LB370]

SENATOR PIRSCH: Are title examiners requiring these purchasers then to file the quiet title? And then in all cases that would... [LB370]

BOB HALLSTROM: I don't know whether it's in all cases, Senator, but I have had a number of attorneys who I have visited with on this issue say that it is not uncommon when someone gets a treasurer's tax deed, that if and when they go to resell the property, that the title insurance commitment will indicate that they ought to go in and get a quiet title action to make sure that those liens are, in fact, extinguished because of the uncertainty under the current law. [LB370]

SENATOR PIRSCH: It seems like you are engaging...if you are purchasing, you're putting money out, these...I mean maybe that's why they're a little bit rarer than common is that you're taking some risks with respect to... [LB370]

BOB HALLSTROM: Yeah. There's risk, and the value of the property may have someone say, gosh, it costs more money to go in and foreclose on it. But at the same time I think the uncertainty on the treasurer's tax deed side would lend itself to logically terminating or repealing that option. [LB370]

SENATOR PIRSCH: All right. Thank you. [LB370]

SENATOR FISCHER: Thank you, Senator Pirsch. Senator Loudon. [LB370]

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SENATOR LOUDEN: Yes. Thank you, Senator Fischer. Well, Bob, I guess what are we trying to do here? Then we're trying to do away with this treasurer's tax deed? [LB370]

BOB HALLSTROM: Yes. That was what the intent of LB370 is, Senator. [LB370]

SENATOR LOUDEN: Okay. And then...and why...and how will it be handled after that? [LB370]

BOB HALLSTROM: Okay. There are two options currently: the treasurer's tax deed and the process like a judicial foreclosure. And so that would still be available, that after the three-year period someone could go in, institute a legal proceeding, would be required to include the owner and any lienholders that have an interest in the property as parties to that foreclosure proceeding. And once the determination had been made, the foreclosure finalized, they would have title to the property free and clear of all the liens. But all those parties would have had an opportunity to have been involved and to have protected their interests through the judicial process. [LB370]

SENATOR LOUDEN: Then we're doing away with the tax deed and going in with a judicial foreclosure. [LB370]

BOB HALLSTROM: Which is already available under law. [LB370]

SENATOR LOUDEN: Yeah. But I mean that...you just do away with it...with the tax deed. And I'm wondering, what does that cost to do that? [LB370]

BOB HALLSTROM: I have not done one, Senator, so I don't know what the... [LB370]

SENATOR LOUDEN: What I'm wondering is if we have some of this land in some of these towns out there, that the stuff isn't hardly worth the grass that's growing on it, if it's going to cost you too much to go through that whole process and that land will...well, the county will just eat it forever, you know, because nobody wants to go through that process to buy it, will there be a cheaper way of acquiring that land? [LB370]

BOB HALLSTROM: That might be out there, Senator. I don't have actual knowledge but my suspicion would be that some of those properties are not being purchased on tax sale certificates currently because of the amount of taxes for an empty lot in...pick a town, Nebraska. [LB370]

SENATOR LOUDEN: Antioch. [LB370]

BOB HALLSTROM: Yes, in Antioch...or Ellsworth. [LB370]

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SENATOR LOUDEN: No, it's all sold in Ellsworth. That's high-dollar property there. [LB370]

BOB HALLSTROM: Okay. But if the taxes are so low, nobody is interested in obtaining 14 percent interest on little or nothing. So they may not be purchased by tax sale certificate method now, anyway. [LB370]

SENATOR LOUDEN: But when you look at our county paper, I mean it's all over--Hay Springs, Bingham, and Lakeside, and places like that, that lots are for sale all the time. And that's what they are, is for that... [LB370]

BOB HALLSTROM: Yeah. And there's a distinction between whether the lots are for sale or whether the tax certificates are being... [LB370]

SENATOR LOUDEN: Well, it's for taxes...delinquent taxes on them. [LB370]

BOB HALLSTROM: Right. But if they're offering them for sale is different than if somebody has come in when they, once or twice a year, make these offerings for people to come in, pay the taxes, and get the tax sale certificate issued. [LB370]

SENATOR LOUDEN: Well, I think you can...I think some of that's advertised in the paper there, that there's a delinquent tax on property. I think you can go in and pick up the delinquent taxes and start your interest at that time, can't you? [LB370]

BOB HALLSTROM: Correct. Correct. [LB370]

SENATOR LOUDEN: Yeah. Okay, thank you. [LB370]

SENATOR FISCHER: Thank you, Senator Louden. Senator Pirsch. [LB370]

SENATOR PIRSCH: Yeah. And this might be outside your knowledge. I'm just looking towards the historical origin of this dual track. Why did we, if you know, have this treasurer's tax deed created? Or do other states have this dual track? [LB370]

BOB HALLSTROM: I don't know whether they have the dual track. In fact, I just...coincidentally, I had a question through the American Bankers Association legal counsel network that was asking what states are doing in this area. There's probably all kinds of things, Senator. Some states don't allow tax sale certificate procedures like Nebraska, at all. Others only have judicial foreclosure proceedings to realize on the tax sale certificates. So there's probably all kinds of different processes and procedures out there. [LB370]

SENATOR PIRSCH: Thank you. [LB370]

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SENATOR FISCHER: Thank you, Senator Pirsch. Other questions? I see none. Thank you, Mr. Hallstrom. [LB370]

BOB HALLSTROM: Thank you. [LB370]

SENATOR FISCHER: Other proponents, please. Good afternoon. [LB370]

DENNIS ROOKSTOOL: Good afternoon. My name is Dennis Rookstool, spelled D-e-n-n-i-s, last name is R-o-o-k-s-t-o-o-l. I'm the property tax manager for the Douglas County Treasurer's Office. I'm here today speaking on behalf of John Ewing, the treasurer, in support of LB370. In recent years, the Douglas County Treasurer's Office has issued dozens of treasurer's deeds. We've been tasked with the responsibility for assuring tax deed applicants complete all statutory requirements prior to issuing the deed. This process can be very technical and time-consuming. For example, one of the statutory requirements is that the applicant must notify all owners, occupants, and lienholders of the property and their intent to apply for a treasurer's deed. This specific provision in the law is very troublesome because it is virtually impossible for the treasurer's office to assure proper notice has been given. Generally, we must rely on the information provided by the applicant of the deed. For this reason it is our concern that this may cause the treasurer's office and/or county undue liability. We believe that the current tax deed process is insufficient and outdated. Having treasurer's deeds issued, impacting property rights, sometimes with little or no legal expertise, does not provide a concrete conclusion to these issues. Enacting LB370 will provide additional due process in a more formal venue to resolve these disputes. Lienholders may use the foreclosure process to protect their interests and it will allow property owners the opportunity to dispute those claims. In the end, there will be a clear-cut legal decision and the dispute will be resolved. One of our main concerns is in going through this process we need to assure that the tax lien investors are provided security in their investment, or else they won't invest. And the counties and the schools and all the taxing subdivisions need that money. But at the same time we want to limit the liability of the treasurer's office in these issues. The way the law is written now, it is vague, and it's very difficult for us to put these deeds together and it causes a great deal of concern. And lastly, we're also concerned with the due process of the property owner. I could give you a quick story about a deed issued for a nominal amount--I think it was a couple thousand dollars on a \$50,000 property. The homeowner was sent an eviction notice. They contacted our office for advice, which we cannot offer legal advice. We directed them to contact the person that sent them the letter, and that person requested that they pay them an amount ten times what the initial lien was for or else they were going to evict them from their property. At that point, we were helpless to assist this person; we advised them to seek legal counsel. We did not know if they had means to get legal counsel, and we have since lost contact with the customer and we don't know what ever happened with their property. So just a quick story on some of the difficulties that goes on with these

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liens. And I concur with some of the other people, we do want to protect the interests of the investors because we need to collect the money, but we also need to protect the counties for the liability, and I think we need to offer some due process to the homeowners and lienholders for that matter. That's it. If I can answer any questions. [LB370]

SENATOR FISCHER: Thank you, Mr. Rookstool. Are there questions? Senator Pirsch. [LB370]

SENATOR PIRSCH: Thanks for your testimony. If I hear you right, the current paradigm of statute says that you have to give notice, right? In your affidavit you have to make the representation that, even to lienholders, notice was properly given. Right? [LB370]

DENNIS ROOKSTOOL: The applicant of the deed--so that would be the tax lienholder--has to give notice to all owners, occupants, and lienholders. They present that information to our office as part of the deed application. And that is what is very difficult for us to verify, is did they provide proper notice? [LB370]

SENATOR PIRSCH: And I understand. From your perspective that would be very difficult. But in terms of then the...should a prior lienholder exist and not have been given notice, that would...obviously, not meeting the statutory requirements, they would have an ability to go back in court. But it's the expense and difficulty of those lienholders to do so, is that what you're suggesting is...? [LB370]

DENNIS ROOKSTOOL: Yeah, exactly. You know, we don't have a mechanism to verify, so it's really not our...the treasurer's office's responsibility. [LB370]

SENATOR PIRSCH: You have an affidavit... [LB370]

DENNIS ROOKSTOOL: Right. [LB370]

SENATOR PIRSCH: ...and you'd have to go based on prior (inaudible). [LB370]

DENNIS ROOKSTOOL: Exactly. So we basically have...we have to issue the deed. [LB370]

SENATOR PIRSCH: Yeah. [LB370]

DENNIS ROOKSTOOL: Regardless. [LB370]

SENATOR PIRSCH: But it's undoable, of course, if a prior lienholder existed, to the extent they hadn't been given notice. But they would have to take positive action to protect their interest. [LB370]

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DENNIS ROOKSTOOL: Yeah, and that's the point exactly. Most of those issues would end up in a court setting. [LB370]

SENATOR PIRSCH: And it would happen in a way that would be greater than under this method, than the foreclosure method. That's your point, right? [LB370]

DENNIS ROOKSTOOL: Right. And that's...you know, we're not 100 percent opposed to issuing a treasurer's deed. It just never seems to be the final solution. From our experience and just from, you know, using hearsay, a lot of these issues wind up in a court setting anyway, you know. So the process just seems like a prelude to what is going to eventually happen anyway, which is going to be a formal court hearing. [LB370]

SENATOR PIRSCH: Let me ask you this since you worked...are you aware of how neighboring states address this issue? Do they just have the one mechanism, the foreclosure traditional method? [LB370]

DENNIS ROOKSTOOL: The only one that I'm fairly certain of is Florida, because I just had a discussion this morning. They have, I believe, just a foreclosure method. [LB370]

SENATOR PIRSCH: And you don't know Iowa or any...? [LB370]

DENNIS ROOKSTOOL: No. [LB370]

SENATOR PIRSCH: Okay. Thank you. [LB370]

SENATOR FISCHER: Thank you, Senator Pirsch. Other questions? I see none. Thank you very much for coming in. Next proponent, please. Good afternoon. [LB370]

BRANDON LUETKENHAUS: Good afternoon. Acting Chair Fischer, members of the Revenue Committee, my name is Brandon Luetkenhaus, B-r-a-n-d-o-n last name L-u-e-t-k-e-n-h-a-u-s. And I appear before you today on behalf of the Nebraska Credit Union League. Our association represents Nebraska's 72 credit unions, here to offer our support for LB370. We concur with the comments made by Mr. Waterman and Mr. Hallstrom and for those reasons we would support this bill. [LB370]

SENATOR FISCHER: Thank you, Mr. Luetkenhaus. Are there questions? I see none. Thank you very much. Next proponent, please. Good afternoon. [LB370]

MATT SCHAEFER: Good afternoon, Senator Fischer, members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, appearing as a registered lobbyist on behalf of the Nebraska Land Title Association. Just briefly, the Land Title Association views the judicial foreclosure process as superior to the issuance of a tax deed. Thank

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you. [LB370]

SENATOR FISCHER: (See also Exhibit 4) Thank you very much, Mr. Schaefer. Are there questions? I see none. Thank you. Other proponents, please. Do we have other proponents? Are there any opponents to the bill? Any opponents? I see none. Anyone wishing to testify in the neutral capacity? I see none. Senator Wightman, would you like to close? Senator Wightman waives closing. With that, I will close the hearing on LB370. And our Vice Chair Senator Utter is back, and so I will turn the next hearing over to Senator Utter. Thank you. [LB370]

SENATOR UTTER: Thank you, Senator Fischer, for your able assistance in allowing me to present a couple bills next-door. We will open the hearing then on LB423. We'll stand at ease for a moment until Senator Krist shows up. Senator Krist, we're waiting for you. [LB423]

SENATOR KRIST: Oh, sorry. [LB423]

SENATOR UTTER: Welcome to Revenue. [LB423]

SENATOR KRIST: Thank you so much. I feel like I've actually arrived. Good morning, members, or afternoon, members of the Revenue Committee. For the record my name is Bob Krist, K-r-i-s-t, and I represent the 10th Legislative District in Omaha. I appear before you today in introduction and support of LB423, a bill I introduced at the request of the Eastern Nebraska Development Council. Sanitary and improvement districts allow areas outside of a city's corporate boundaries to borrow money to finance and construct infrastructure improvements needed for residential, commercial, and industrial real estate developments such as road, sanitary and storm sewers, and certain utilities. The SID operates as a political subdivision, one with the ability to levy special assessments and taxes up to a certain amount. Both the special assessments and the taxes are designed to pay back the borrowed money used for the infrastructure. The special assessments in an SID are liens against the properties within the SID. Current Nebraska law provides that these liens for SID special assessments when the real estate has not been previously offered for sale by the county treasurer survive a tax foreclosure. LB423 replaces the term "real estate" with "special assessment" to clarify when such lien survives a tax foreclosure sale. The bill further makes it clear in the related conveyance and foreclosures statutes what is really provided for by law--liens for SID special assessments survive a tax foreclosure sale. There are recent conflicting Douglas County and Sarpy County District Court decisions concerning the survival of an SID special assessment in the event of a tax foreclosure. The Legislature long ago recognized the importance for an SID special assessment to survive a foreclosure because the special assessment pay back the money borrowed to construct the infrastructure in the SID: the roads, the storm drains, and sanitary sewers, and some of the utility lines. In summary, this bill merely clarifies existing law in Nebraska and will

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help protect the further use of sanitary and improvement districts in Nebraska. I want to thank you for the opportunity of presenting LB423. And I assure you that there are some strong legal minds that can answer all of your questions. But I think essentially we clean up the language and make it absolutely clear that those kind of special assessments survive in a tax foreclosure situation. I'll note also that there's no bill attached to this one so thank you so much. [LB423]

SENATOR UTTER: Thank you, Senator Krist. Are there questions for Senator Krist? Seeing none, are you going to stick around to close? [LB423]

SENATOR KRIST: Yes, sir. I always try to clean up the mess I start. [LB423]

SENATOR UTTER: Okay. Thank you. Proponents of this bill. Welcome to the Revenue Committee. [LB423]

JOHN BACHMAN: Good afternoon. Members of the committee, my name is John Bachman, J-o-h-n B-a-c-h-m-a-n. I'm an attorney in Omaha, and our law firm represents approximately 65 sanitary and improvement districts. I'm here on behalf of the Eastern Nebraska Development Council as well as the various sanitary and improvement districts which we represent. As a historical background, in 1996 amendments were proposed in LB1320 which were subsequently included as an amendment in LB1321 in Section 77-1858, 77-1901, and 77-1902, which excluded and permitted the survival of special assessment liens levied by sanitary and improvement districts from a tax sale foreclosure unless the special assessments had been previously offered for sale by the county treasurer at the request of the sanitary and improvement district. I was involved in the drafting of both of those legislative bills. The following is from the introducer's statement of intent for LB1320: Section 3 proposes to amend Section 77-1902 to exclude a holder of a tax sale certificate or deed from seeking to include the foreclosure of a lien for taxes represented by the certificate or deed the foreclosure of any lien for special assessments levied by a local political subdivision when the land had not previously been offered for sale by the county treasurer at the request of the levying political subdivision. In the case of a sanitary and improvement district, special assessments are generally levied at the time of formation of the SID but are not paid until the lot is sold, sometimes years later. While other taxes are generally paid on time, the special assessments can sit unpaid and technical delinquency for several years. This bill would authorize the SID to control any action on the lots resulting from the unpaid special assessments and thus would enable the SID to keep out speculators and retain the financial and physical integrity of the district and the development as a whole. These statements are reiterated in the transcript of floor debate regarding LB1321 which provides the amendment would separate out special assessments from a general grant of authority to county treasurers to sell real estate on which taxes are not purveyed as provided by law. The county treasurer would still be authorized to sell property for delinquent property taxes at any appropriate time, but the sale of delinquent

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special assessments alone would not occur, except the request of the SID which originally levied the special assessment. Section 3 would exclude a holder of a tax sale certificate or deed from seeking to include in the foreclosure of a lien for taxes any lien for special assessment levied by the SID when the land has not previously been offered by sale by the county treasurer at the request of the SID. It was the intent and certainly appears from the statement of intent and floor debate that the Legislature did intend to treat sanitary improvement districts' special assessments differently than other inferior liens in the real estate tax foreclosure process. Currently there are two district court decisions in Douglas and Sarpy County which are in conflict concerning the survival of sanitary and improvement district special assessments in the event of a tax foreclosure. To emphasize the importance and need for special assessments to survive a tax foreclosure, there are special assessments outstanding of approximately \$54,315,557 in Douglas County and \$8,898,939 in Sarpy County. LB423 clarifies the Nebraska statutes by adding similar language from that approved in 1996 into several other sections of Chapter 77 of the Nebraska statutes relating to tax foreclosure decrees and the conveyance of tax foreclosure deeds to make it clear that sanitary and improvement district special assessments survive a tax foreclosure. I urge your support of LB423. [LB423]

SENATOR UTTER: Thank you, Mr. Bachman. Questions for Mr. Bachman? Senator Pirsch. [LB423]

SENATOR PIRSCH: Thank you very much. I appreciate your testimony today. In this way with respect to the special assessments for SIDs unique in terms of having their...the liens survive? [LB423]

JOHN BACHMAN: Yes. We believe they're unique because they are liens and our way in the sanitary and improvement district of recouping our costs for the infrastructure such as the streets, the sanitary and storm sewers, and the utilities. Otherwise, the only way to recoup that money is through tax levies which would then make the tax levy unreasonably high for any property owner within that sanitary and improvement district. [LB423]

SENATOR PIRSCH: Well, very good. I appreciate that. And so if I understand this correctly, it's just you've had courts coming down...there's some ambiguity in terms of how the courts have been interpreting the statute even though it's clear, you're saying, from the...what you believe from the intent of the Legislature to when they acted in the area to come down clearly on the side of protecting the extinguishment to make sure that these don't get extinguished. So this is not a big change to existing law, is that right? [LB423]

JOHN BACHMAN: We don't believe it's a change to any law. We wouldn't be here except for the fact that we have a district court decision that puts into question the

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survivability of the special assessments. [LB423]

SENATOR PIRSCH: And that was in Sarpy, was it, in recent years? [LB423]

JOHN BACHMAN: The...well, they are both 2010 decisions. The Sarpy County decision, which went into great detail, allowed the special assessments to survive. The Douglas County District Court decision, which was very brief, said they did not survive and were foreclosed through the tax sale foreclosure process. [LB423]

SENATOR PIRSCH: Thank you for clarifying that. [LB423]

SENATOR ADAMS: Thank you, Senator Utter. How does this...what we dealt with in the last bill and now this one, how does this relate, this particular bill, to the way special assessments are handled now by municipalities? Say you got a tax sale on a lot in a cul-de-sac that's within an annexed area and there are street, water, and sewer assessments. How is that handled? [LB423]

JOHN BACHMAN: That is handled if the SID requests the county treasurer to foreclose. The county treasurer can foreclose. Otherwise, the SID will foreclose those special assessments. [LB423]

SENATOR ADAMS: Now I guess I wasn't very clear. I'm asking you if you know within a city, forget about SIDs for a moment. How are...on a tax sale, how are special assessments handled for street, water, and sewer? [LB423]

JOHN BACHMAN: Generally, at least in the Omaha area... [LB423]

SENATOR ADAMS: Is the city's position on a special assessment protected? [LB423]

JOHN BACHMAN: Yes. Well, if the city annexes an SID, then there are SID special assessments and, in my opinion, because the SID levied those special assessments the city then would be protected. [LB423]

SENATOR ADAMS: Okay. Thank you. [LB423]

SENATOR UTTER: Senator Louden. [LB423]

SENATOR LOUDEN: Yes, thank you, Senator Utter. This bill just addresses sanitary improvement districts, right? [LB423]

JOHN BACHMAN: Yes, sir. [LB423]

SENATOR LOUDEN: And it doesn't have anything to do with like garbage and refuse

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collection that wasn't being paid and was lien against the property. [LB423]

JOHN BACHMAN: No, no. This is strictly related to SID special assessments. [LB423]

SENATOR LOUDEN: Okay. Thank you. [LB423]

SENATOR UTTER: Further questions for Mr. Bachman? If not, thank you very much. [LB423]

JOHN BACHMAN: Thank you, Senators. [LB423]

SENATOR UTTER: Next testifier. Welcome to Revenue. [LB423]

JOHN KUEHL: Good afternoon, Senators. Thank you, Senators of the Revenue Committee. John Kuehl, J-o-h-n K-u-e-h-l. I'm here testifying on behalf of the Eastern Nebraska Development Council. I have provided financing for sanitary and improvement districts for nearly 29 years so I'm just here. I'm going to hope to explain to you in kind of practical terms what we're looking at on behalf of this proposed change. On the SID side, if a developer comes in to establish an SID, and let's just say that SID is going to borrow a million dollars to put in that infrastructure--I'll pick a number but these will be a little bit fictitious but fairly accurate--60 percent of that cost is specially assessed back again so that property for those improvements that enhance that property of those...let's say they're single family lots. So in other words, that property benefits from having a street in front of it, the ability for the house to hook up for sewer, water, etcetera. The other 40 percent of that cost or \$400,000 is determined to be a general obligation of the entire district. It benefits all the property owners of that subdivision on a general basis. So practically those specials get levied against each of those lots and, again, we'll pick a number--let's say a particular lot has a \$15,000 special assessment that is owed for those improvements because the value of that lot has been enhanced by those improvements. Well, if a tax certificate holder comes in to acquire that property and gets to acquire that piece of property for taxes only, general taxes only, and they don't have to assume that \$15,000 special assessment that has enhanced the value of that property, in my opinion it's a windfall to that property purchaser not to have to pay that special assessment. And then the burden of that shortfall of that collection of that special assessment then falls on the taxpayers generally of the subdivision because if that still needs to be repaid, you'd have to increase your taxes that Mr. Bachman alluded to would become more of a burden on the taxpayers of the district. One comment, Senator Adams, I'll try to answer if I can the question that you asked... [LB423]

SENATOR ADAMS: Fire away. [LB423]

JOHN KUEHL: ...of Mr. Bachman. Cities generally don't levy special assessments. They

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usually borrow the money as a general obligation. If they put the improvements in themselves, they do it as a city and it's paid back through notes or long-term bonds. To my knowledge, they usually don't have a special. Does that help at all? [LB423]

SENATOR ADAMS: May I ask? [LB423]

SENATOR UTTER: Yes, you may. Senator Adams, go right ahead. [LB423]

SENATOR ADAMS: My point was, and I was just trying to recall back to my old mayor days when we had a tax foreclosure how we protected our...the city's assessments. They may be old and yet to be paid back. And if there was a sheriff's sale on a lot in town, where was the city's position protected on those assessments or did the lot go for? [LB423]

JOHN KUEHL: No. I believe what would happen is the city would bid in the amount of what was owed to them. And then if there was no bidders above that price, the city would take title to that property and then they could sell it for whatever they determined to be a price. Does that help? [LB423]

SENATOR ADAMS: Or the city misses the ball and doesn't show up at the sale. [LB423]

JOHN KUEHL: Or the city misses the ball, yes. Yes. [LB423]

SENATOR ADAMS: Yeah. [LB423]

SENATOR UTTER: Senator Pankonin. [LB423]

SENATOR PANKONIN: Thank you, Senator Utter. Mr. Kuehl, as I understand it with this one court case then, you talked about the consequences for an individual that wouldn't have to pay these specials and the consequences to the SID. But I think it's easy to interpret that if this was widespread it could be a big problem as far as state...and SIDS, as I understand it, are unique to Nebraska. [LB423]

JOHN KUEHL: There are other states that have other versions of S...yes. [LB423]

SENATOR PANKONIN: Okay. [LB423]

JOHN KUEHL: Generally that's a correct statement. [LB423]

SENATOR PANKONIN: But if this was allowed to continue without this clarification in the law, it could have dramatic effects. [LB423]

JOHN KUEHL: Yes. We're seeing more of that. I think Senator Pirsch asked in an

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earlier bill about the frequency of these things in today's economy, the way with unemployment, etcetera, and just the economy in general, we're seeing more and more of these issues come to rise. [LB423]

SENATOR PANKONIN: Thank you. [LB423]

JOHN KUEHL: So yes, this would be very helpful to have it clarified moving forward. [LB423]

SENATOR UTTER: Further questions for Mr. Kuehl? Seeing none, thank you very much for your testimony. [LB423]

JOHN KUEHL: Thank you very much. [LB423]

SENATOR UTTER: Next proponent. Are there any further proponents? Are there opponents to this bill? No opponents? Anybody that wishes to testify in a neutral capacity? Seeing none, Mr. Krist or Senator Krist, you're free to finish up. [LB423]

SENATOR KRIST: Thank you, Senator Utter. In fair disclosure, before I became an appointee and then was elected back to this job, I was the president and still am a member of an association, an SID 1 in Cass County. Should any one of those 300 homes go into foreclosure and the special assessments not be held as accountable, it would indeed create havoc for our SID because the assessment would still have to be paid within the association. That's why I found this so interesting and why I think it's important to protect the interest of the individuals who buy into an SID and into the environment. SIDs are an interesting creature and it's a way for us to develop and to establish a different tax base, but I think there's some protection that needs to be (inaudible). I thank you for listening to us today and for your consideration in this matter. And I think this is a good thing for some of the residents in the state of Nebraska who live in those sanitary and improvement districts. Thank you. [LB423]

SENATOR UTTER: Thank you, Senator Krist, for bringing that bill to us and appreciate you coming. Are there further questions? Seeing none, thanks a lot. [LB423]

SENATOR KRIST: Thank you, sir. [LB423]

SENATOR UTTER: We'll close hearing on LB423 and we're ready to open the hearing on LB483. Senator Hadley, the floor is yours. [LB423]

SENATOR HADLEY: (Exhibits 1, 2) "Corporal" Utter, I'm happy to be here. My name is Galen Hadley, that's G-a-l-e-n H-a-d-l-e-y. I represent the 37th District and that's Kearney and Kearney County. And I'm here to talk about net operating loss carried forward. And I feel a little bit like Senator Adams. He kind of every now and then is a

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teacher for the TEEOSA with his whiteboard. I'm going to try to be a little teacher today without a whiteboard because these are some of the things I hopefully at one time taught. When we talk about income, the ideal way to determine income is to basically you count the cash at the beginning of a business, you wait until the business ends, you adjust for payments of capital or infusions of capital by the owners, and you count the cash at the end. And if there's a difference, that's the income that the business has made. Well, we can't do that in our society because we have owners that want to know how much they make, what the return is on their investment. We have the taxing people who like to tax income. We have a lot of people who are interested in making test measurements of how much income is made by a business during that time from the beginning of its time...its life to the end. It is interesting that the IRS still uses every now and then the net worth approach to income, especially when they're going after tax cheaters. They look at their bank accounts and try to determine the change in the amount of their bank accounts that the person can't explain where it comes from, it becomes income. So years ago we decided to use the harvest tradition of income, basically the idea of one year being that test measurement. So we would test a business or an individual every year to try to make an estimate, and I use the term estimate, of how much income they made. And everything works fine as long as the entity or person is making a profit every year because from that profit they can pay the owners a return on their investment if they want to. We call that a dividend. They can pay the tax person what is due the king and still have funds left over to keep the process going. Where we've run into problems is when we take that test measurement and there's a loss, when there isn't income. If there isn't income, we may not have anything to pay the tax person, the owners, the banker always gets theirs, but the rest may not. So in order to make it equitable, we developed a concept called the net operating loss, carry back or carry forward. We're going to talk only about the net operating loss carry forward. What this says is because we're just taking test measurements every year of your income that maybe if you take a little longer period where you can offset income and losses to get a truer picture of what the net worth has either increased or decreased for the business. So we want to take a little longer view of this test reading, and that's what we're about today. Because if we take too short a period, we can run into the problem of actually paying either the tax man taxes on capital or we can pay owners back. Technically we might give them a return of capital that could be returned...as an income rather than a return of capital. So what my bill does is basically expands the time period that we're going to take that test reading. Right now in the state of Nebraska we can carry forward that net operating loss for five years and offset it against income. So our period goes from one year of taking a test reading to potentially five years. It's an arbitrary number--five years. I would like to hand out to the committee a map that shows what happens to other states around the country as far as how they handle net operating loss carried forward. That is the number of years that they allow businesses to carry forward that net operating loss. As a start, the federal government says you can carry it forward 20 years. The federal government says you can take a test reading basically over 20 years so you can offset gains and

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losses over that 20 years so you're not effectively paying taxes on capital. If you'll look at the map I gave you, there's one, two, three, four, five, six, seven states that are less than ten years. Nebraska is one of those ten years that are less than ten years. We only allow that test reading to last for five years. I think that five years is inappropriate. It is an arbitrary number. I'm asking it to go to ten years. And if you look around, ten years is relatively short compared to a lot of others. Now I would like to hand out one last thing and then close my opening. I'd like to give you just a little example of how I feel this is unfair. And while that's being handed out, I want to emphasize we're spending a lot of time in the Legislature this year talking about changes in our...the way we help businesses. And a lot of it deals with start-up businesses, new businesses, entrepreneurships that quite often will end up with a net loss to start. Now just quickly, if we have a business that loses \$200,000 its first year and then makes \$270,000 the next nine years, their period over ten years they've made \$70,000. They've increased the net worth of their business \$70,000. In Nebraska, since we only allow the tax loss carried forward for five years, we're going to have taxable income to that business of \$170,000. Iowa, Missouri, Kansas, and Colorado will have only taxable income of \$70,000 because they allow that tax loss carried forward to go more than ten years, ten years and longer. So my argument is the way...in my example, the state of Nebraska has effectively charged taxes on \$100,000 of capital of that business. They have taken the taxes they have charged on that \$100,000 is capital they've taken out of that business and put into the state treasury. As we work with start-up businesses, as we work with businesses that expand, businesses look at all aspects when they're making decisions of where to locate. They make capital budgeting, capital investment decisions. And one of the things that they look at quite often is the tax impact the state will have. I'm arguing that we have basically a confiscatory tax policy with the five years. Now I got a fiscal note and I need to talk to you about it right now. It did surprise me. We have talked to the Department of Revenue, and they are standing by it. They estimate when this is fully operating it's expected to reduce revenue \$38 million to \$40 million. Let me put that into perspective. That's the taxes. That means that at a 7 percent rate that's about over a half a billion dollars in losses that our companies would be having that they would be paying taxes on those losses if we don't change the tax law. That means \$40 million a year of capital is going to be taken out or is being taken out of our companies and put into our state treasury. Maybe that's a good idea. I think most people will tell you that taking capital from businesses as taxes is not a good idea. The Revenue Department is standing by their fiscal note so I'm not going to argue with it, but I...just to let you know we have about a \$1.6 billion in income, corporate income, and this would be about a third of it is the loss. So it's a significant...it's just a mind-boggling amount to me that this is what the tax...that this is what the change would give. With that, again, I think it is good tax...we talk a lot about tax policy. I think this is a good tax policy question. Thank you, Senator Utter. [LB483]

SENATOR UTTER: Thank you, Senator Hadley. Questions for Senator Hadley?  
Senator Pirsch. [LB483]

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SENATOR PIRSCH: I appreciate that. For me one of the critical determinants is going to be looking at locating here. It's economic development, right? [LB483]

SENATOR HADLEY: Absolutely. [LB483]

SENATOR PIRSCH: Locating here or expanding here, and you're right, capital is kind of an important consideration. So I'd like to have testimony--I don't know who is going to follow you--as to there's a number of criteria that I'm sure companies look at that are important: adequate work force, cheap electricity, depending on the company, you know, transportation, that kind of thing. How important or critical of a determinant is this particular in either (inaudible)? [LB483]

SENATOR HADLEY: I think there will be...Senator Pirsch, I think there will be people behind me. I think it is one of the factors. When you make a capital budget decision, you lay out all of the factors that impact your cash flow, and obviously this is one of them. And if you're sitting and you're talking about going to Iowa, Council Bluffs or Omaha, one of the factors you look at is you have 20 years in Iowa for a net operating loss carried forward. You have five years in Nebraska. [LB483]

SENATOR PIRSCH: And I'd like anecdotal comments as to we lost this company as opposed to that just because they raised it as an issue, that sort of thing (inaudible). [LB483]

SENATOR HADLEY: Yes, okay. [LB483]

SENATOR UTTER: Ladies and gentlemen, I apologize for that airplane that's having a hard time getting off of the ground because I know that's making it difficult for you to hear. [LB483]

SENATOR HADLEY: I tried to talk loud, Senator Utter. [LB483]

SENATOR UTTER: I appreciate that. Senator Pankonin. [LB483]

SENATOR PANKONIN: What is it? Is it just the wind? [LB483]

SENATOR UTTER: I can't...I was...if I could have found it, I would have shot it, but I couldn't find it. [LB483]

SENATOR PIRSCH: It's the seal of the window. There we go. That (inaudible) just stay like that for the next (inaudible). [LB483]

SENATOR PANKONIN: Thank you. Thank you, Senator Utter. I assume you were

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acknowledging also I had a question. [LB483]

SENATOR UTTER: I did. I call on you right now. [LB483]

SENATOR PANKONIN: All right, thank you. Senator Hadley, I bet you taught accounting somewhere along. [LB483]

SENATOR HADLEY: I...someplace. I think this was about the third day in accounting theory. [LB483]

SENATOR PANKONIN: And didn't you study under the famous Ray Dein, University of Nebraska? [LB483]

SENATOR HADLEY: I studied under the famous Ray Dein. [LB483]

SENATOR PANKONIN: Yeah. I can tell that. [LB483]

SENATOR HADLEY: He thought I was an A student so I got an A no matter what I got. [LB483]

SENATOR PANKONIN: After that presentation, I can believe it. Senator, besides Senator Pirsch's comment about companies may be looking at this policy as part of the criteria of looking at where to locate, would you also agree that companies that are here that this policy, because of your demonstration that it actually takes capital out of the company, could affect companies that are here, their employment, their reinvestment in the company, and the environment that they work in--they could be a company that's been here for a hundred years--but with this policy if they do hit a rough stretch, it could make it tougher for them to come out of it. Would that be a true statement? [LB483]

SENATOR HADLEY: Absolutely. I think there are companies in Nebraska...we've gone through a tough stretch here. And if companies...as we come out of that and companies look to expand, if a company has a choice of expanding in two or three different states, this again could be a factor of where they expand to. Because if they have a tax loss in, let's say in Missouri, a plant in Missouri and a plant in Nebraska, and they have a tax loss that they could carry forward, to me they could very well go to the state that gives them longer to carry that forward. I just think it's a bad tax policy to tax capital. I really...I think that's just a terrible tax policy. And we can take it to an individual standpoint. As an individual, if you invest in a company and you get what is called a liquidating dividend, which means they're paying you back part of your capital, you certainly don't want to pay Uncle Sam taxes on that liquidating dividend. [LB483]

SENATOR PANKONIN: Thank you. [LB483]

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SENATOR UTTER: Further questions? Senator Louden. [LB483]

SENATOR LOUDEN: Yes, thank you, Senator Utter. Well as I look at this, you can carry this for ten years. You have a net operating loss for one year then the next year they make \$2 worth of profit. Now does that stop the whole thing or can they skip that over and then they got nine years after that or do they start over again as ten years? [LB483]

SENATOR HADLEY: My understanding is they start over again. If one year you lost \$100, the next year you made \$110, you pay profits on \$10 and then the third year it starts it over again. [LB483]

SENATOR LOUDEN: And you can carry that loss forwards. Now as some of these corporations that I've known family corporations, they work it around so that they don't pay any...the corporation doesn't pay any taxes. Any taxes paid went out in wages to some of the corporate members. How does that thing work with this here? Is this something that they could be actually working around to their advantage? [LB483]

SENATOR HADLEY: Well, I think, Senator Louden, there are IRS rules and regulations on what is appropriate income or appropriate salaries and wages so that owners cannot manipulate the tax code one way or another. So I think there are safeguards to do that. You know, it seems to me that the IRS is going to make sure that you don't play games and evade taxes. [LB483]

SENATOR LOUDEN: I've known some of these family corporations that the corporation hasn't made a dime for 30 years, you know. The people in there have done quite well that are members, but with the issues that they've been (inaudible). [LB483]

SENATOR HADLEY: I think the IRS takes a pretty dim view of you've got to...I think if you're challenged, you've got to prove that the compensation is appropriate for the work that the person is doing in the corporation. [LB483]

SENATOR LOUDEN: But they could still carry this, that loss forward. [LB483]

SENATOR HADLEY: They could still carry...but remember, it only helps if they have income later. You know, if you have a corporation that has 20 years of losses, it doesn't help. You got to have income sometime. [LB483]

SENATOR LOUDEN: In order to recoup some of... [LB483]

SENATOR HADLEY: To reduce the net operating loss, you've got to have income sometime. [LB483]

SENATOR LOUDEN: Okay. Thank you. [LB483]

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SENATOR UTTER: Further questions of Senator Hadley? Senator Hadley, you're pretty passionate about this. [LB483]

SENATOR HADLEY: Well, I am because I think this is...I think we're working on a lot of things to try and grow Nebraska because we can either cut our way out of it, out of problems, we can raise taxes, or we can grow the economy. And I hope we spend time trying to grow the economy. [LB483]

SENATOR UTTER: Senator Hadley, we've talked an awful lot about corporations. But to make the record clear, this same thing applies to entrepreneurs... [LB483]

SENATOR HADLEY: Oh, absolutely. [LB483]

SENATOR UTTER: ...individual taxpayers in addition to corporations. [LB483]

SENATOR HADLEY: Yeah, yeah, businesses, right. If there are businesses and they have a family-owned business, yes, and they have a tax loss carry forward. [LB483]

SENATOR UTTER: Well, some of these businesses are tough to get started. There's no question. And I remember an admonition of a professor that I had back when I was in college said, really the only way for a young guy to get started in business these days and age was by the womb, tomb, or altar. And now maybe we can help them a little bit by extending that period of time that they'd have to recover those losses. [LB483]

SENATOR HADLEY: Senator Utter, I will leave with you with one comment that I've made to all my nieces and nephews: You can marry more money in one minute than you can make in a lifetime. [LB483]

SENATOR UTTER: Proponents. Welcome to Revenue, and we won't treat you near as hard as we treat Senator Hadley. [LB483]

NICK NIEMANN: Thank you very much. Senator Utter and members of the Revenue Committee, my name is Nick Niemann. I'm here as a proponent to LB483, and I'm here today to testify on behalf of the Nebraska State Chamber of Commerce, the Omaha Chamber of Commerce, and the Nebraska Bankers Association. I have to say I'm happy to follow a fellow accounting student. I got my accounting degree under the guidance of Mr. Bill Heaston out of Creighton University years ago and went on to law school from there. So, Senator Hadley, I'm happy to be here with you. Just a little background on myself, I am a longtime partner with the McGrath North Law Firm in Omaha. My main area of practice has been state and local taxation. A little further background, I've been involved working with the business community since 1986 in an economic development capacity. I...starting then I was one of the principal drafters of the LB775 economic

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incentives that came up that year and have also been involved in drafting and designing some of the later legislation, including the Nebraska Advantage Act in 2005. I was asked to testify today just to give a little additional information on the nature of the net operating loss carry forward. And I...and perhaps I can also help answer some of the questions that the committee has already had. It is an item that I found as we work with companies that are looking to grow either coming into Nebraska or that are here and trying to decide where is it that they want to expand, there's a number of factors, both tax and nontax factors that are looked at. One of the tax factors is this type of provision. Because as Senator Hadley explained, as we look at what is it that a company earns, the tax reporting system does a one-year snapshot. But the true reality of what a company earns is really something that's spread over a period of years. And so the net operating loss provision is intended to reflect taxes on your average income. One of the studies that site selection consultants look at is the Tax Foundation study out of Washington, D.C. And I might, if I could, just quote a couple of lines from their study. This is one of the factors that goes into how do they rank the different states as far as their tax climate goes. The NOL carry forward is one of those factors. And so in the course of their report, they had this to say. They said, "The deduction for net operating losses helps ensure that over time the corporate income tax is a tax on average profitability. Without the NOL deduction, corporations in cyclical industries pay much higher taxes than those in stable industries, even assuming identical average profits over time. Put simply, the NOL deduction helps level the playing field among cyclical and noncyclical industries." That's from the 2010 report by the Tax Foundation. A couple of items: Senator Hadley passed out the map which is very telling in terms of how Nebraska looks to companies that are looking to expand. It is something that as we work with companies, we will put things on a map to get a good perspective as to how the different states stand. So that map is a good illustration of something that we would typically use. Another item to mention is that this legislative bill looks at the rules for C corporations, meaning those corporations that themselves pay corporate income taxes. Other corporations, of course, are S corporations, which means that their income or loss flows through to the individual shareholders. The same holds true for partnerships. The same would hold true for sole proprietors. That business income is taxed on their personal income tax return. The net operating loss carry back and carry forward rules is a better story for those kinds of entities: for S corps, for partnerships, and for sole proprietorships. In that situation, Nebraska allows a 2-year carry back and a 20-year carry forward. So we follow the federal rules for that. But we have this substantially shorter period of just five years carry forward and no years carry back for C corporations. A couple of other quick points: I know there was a mention of the fiscal note, and I have not had the chance to look at the detail behind the note so I can't comment on it in any great detail other than as I understand it, that fiscal impact is what is considered to start in the years 2015 and '16. So this bill would not have an impact until those years because it's really starting with loss incurred in 2010 and then saying that loss can be carried forward now for five years. So this would then start to extend NOLs out into the future after that. A couple other items: One of the points was

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mentioned, does this start over after a certain year? The NOL carry forward, it's like a rolling average. If I incur a loss this year, then I can use it up over five years. If I partially use it up next year, I carry forward the balance the following years until I use it up. If I incur a net operating loss next year, then I carry that loss forward five years from there until it's used up. So it is a rolling type of carry forward based on when the net operating loss was first incurred. I might comment just lastly on a question that, Senator Louden, I think you had was in some of the tax planning that different companies are able to do and are they perhaps able to pay out their income as far as just compensation or wages or salary. And does that have the effect of zeroing out a company's taxable income? I agree with Senator Hadley. There are IRS rules that limit the ability to do that because the IRS only allows you to deduct reasonable compensation. That's the key terminology is reasonable compensation. So if a company were to try to pay all their income out to avoid a corporate income tax and they tried to pay it all out as salary, IRS could look at that and say, have you exceeded what is reasonable? And if they did, the IRS would reclassify it and say we're not going to give you that deduction. Instead, part of what you paid out is going to be treated as dividends, which is double taxed for C corporations. So there is, to your point, there is policing that is done of that type of tax planning under the IRS audit guidelines. With that, I have nothing further. I'd be happy to take any questions if the committee has any questions for me. Thank you. [LB483]

SENATOR UTTER: Thank you for your testimony, Mr. Niemann. Senator Pankonin. [LB483]

SENATOR PANKONIN: Thank you, Senator Utter. Thanks for your testimony and being here today and taking time to be here. I think it's very significant to note that on sub S, individual, and partnerships, which I would assume includes LLCs as a form of partnerships, correct? [LB483]

NICK NIEMANN: Correct. [LB483]

SENATOR PANKONIN: Have the 2 back and 20 forward like the federal. Why do you think from a historical standard...standpoint that this policy in Nebraska was different on the Cs? [LB483]

NICK NIEMANN: I don't know the reason for that as to why it was differentiated. So I can't tell you that I have any specific knowledge of that. I would say, just comment that the Department of Revenue did issue a revenue ruling in 2009. It's 99-9-4. And it does confirm the point that I just made on the federal carry back and carry forward rules are the ones that apply for those other entities. [LB483]

SENATOR PANKONIN: For those other type of business entities. But I think that's a significant statement that there's that much difference between those forms. Because as you well know, sub S companies can be fairly substantial. [LB483]

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NICK NIEMANN: Right. And it is something that as we look, especially I know there's been some discussion about start-up companies and that we want to encourage that kind of activity here. I think we want to be a state that says a couple of things, if I can offer this for your consideration is certainly want to consider start-up companies and be a good state for them. And start-up companies often have losses in the first year. And so this would allow them to take those losses when they finally start to have some income. The other thing that I believe this bill does is we all know we've had some tough times here and certain companies have suffered more than others. And so those that have incurred those losses or are still trying to dig out we would be saying to those, we're with you; that we're a state that allows you to recoup or deduct those losses as you start to find your way out of this recession and start to earn income again. [LB483]

SENATOR PANKONIN: Thank you. [LB483]

NICK NIEMANN: Thank you. [LB483]

SENATOR UTTER: Senator Pirsch. [LB483]

SENATOR PIRSCH: I'm sorry. I think Senator Adams... [LB483]

SENATOR UTTER: Senator Adams. [LB483]

SENATOR ADAMS: Let me ask you a hypothetical, and you have a lot of expertise in this area. And you don't get to say "a combination." All right? I'm putting you on the spot--you have to choose one or the other. If we offered this, the bill that we're talking about, the carry forward, or a 40 percent tax credit for angel investment, Nebraska couldn't have both, you'd have one or the other, which one is better? [LB483]

NICK NIEMANN: Senator, I have not studied the impact of the angel investor credit. I know there's a bill out there. [LB483]

SENATOR ADAMS: Okay, fair enough. [LB483]

NICK NIEMANN: I don't want to testify beyond my expertise so I have not studied that. I can sympathize. Those are the kind of, perhaps the kind of balances that you need to make. [LB483]

SENATOR ADAMS: All right, that's fair. [LB483]

NICK NIEMANN: I would say from what I do know is that in terms of...a couple of things: In terms of fiscal impact, this has none until we get out to those later years, first of all. And secondly, I believe the angel investor credit is geared towards the start-up situation.

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And correct me if I'm wrong, this bill would affect in a good way both the start-up situation as well as the long-term Nebraska company that's been here for could be decades and that happen to have some hard times. And this bill would also apply to that because it would extend that carry forward. But I...other than that, I'm sorry I can't make that choice for you other than to maybe point out those, just some observations. [LB483]

SENATOR UTTER: Further questions? Thank you very much, Mr. Niemann. [LB483]

NICK NIEMANN: Thank you. [LB483]

SENATOR UTTER: Appreciate your testimony. [LB483]

NICK NIEMANN: Absolutely. [LB483]

SENATOR UTTER: Next proponent. [LB483]

CLAGUE HODGSON: Good afternoon, Senators. [LB483]

SENATOR UTTER: Welcome to Revenue Committee. [LB483]

CLAGUE HODGSON: I am Clague Hodgson, that's C-l-a-g-u-e H-o-d-g-s-o-n. I'm president of Nature Technology Corporation, which is a small northwest Lincoln based biotech company. We are involved in research and product development related to gene-based biopharmaceuticals and DNA vaccines. A recent Battelle study that was commissioned by the Nebraska Legislature and the Bio Nebraska Life Sciences Association provides us with a road map for developing our particular industry, the bioindustry, in this state. And one of the action items in the report that came out a few months ago was develop a strategy to build comprehensive venture capital infrastructure in Nebraska. Well, this will not be easy because right now Nebraska ranks 50th or dead last in venture capital investment of any state, with zero deals having been done in 2009, which is the last year that we have records. So one could ask if there's currently no venture capital investment going on in the state, why are there any start-up companies here? And what I've learned from being a start-up company myself is that Nebraska start-ups mostly exist here because the founders like me have a connection to Nebraska, i.e., we live here. I live in Omaha by the way. However, we need to ensure that we do not provide disincentives for people who are going to invest in businesses like this. And some of the best examples come from my industry--drug development and biopharmaceuticals. You don't start a drug development project and then expect to make a profit within five years. To give you an example, there are no FDA approved gene-based pharmaceuticals on the market and we've been working in the research end of it for 20 years now. We currently have about ten customers of our company that are heading into phase one clinical trials. So one could predict that the successful people coming out of this process should get FDA approval in three to ten years. So

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what can we do? I think it's pretty obvious that Senator Hadley's bill is a step in the right direction. If we can't have everything, at least we don't have to show a potential investor that their investment is going to be taxed away within five years. So having said that, the vast majority of states now allow 15 years or greater. You've seen the map, so with that all I can say is I urge you to support LB483. [LB483]

SENATOR UTTER: Thank you very much for your testimony. Senator Adams, would you like to ask that question again? [LB483]

SENATOR ADAMS: I...no, that's fine. But if you want to respond to it, you certainly can. [LB483]

CLAGUE HODGSON: The answer is both. [LB483]

SENATOR ADAMS: That's what I thought (laughter). [LB483]

SENATOR UTTER: Curt, welcome. [LB483]

CURT SMITH: Senator Utter, members of the Revenue Committee, thank you for letting me be here. I hope it is appropriate to also thank Senator Hadley and the other testifiers who I've learned more from them than they're going to learn from me, just in the short primer. My name again is Curt Smith, C-u-r-t S-m-i-t-h. I'm executive director of the Nebraska Chapter Associated General Contractors, highway contractors. And although most of...a lot of the testimony has been directly regarding to start-ups, I can say...or as I sat here and changed my testimony that my experience...I worked about 35 years with a contractor, long-term contractor here in the state of Nebraska, still in business. They're about 100 years old, and they don't make money every year I'll guarantee you. We had a conversation almost every year about losing net loss carry forward from previous years with the state levels. So I do know that it does affect long-term companies just as well as I can understand how it would affect start-up companies. And I think it affects our local contractors who are struggling within the state. There's lots of capacity of contractors in the state, not a lot of work going on right now, and we don't know what the future is going to bring. But I think it would be a help to smooth out the flow of income as contractor...one year is good, one year is bad, and can tell you that probably one bad year can offset several good years in the contracting business. But from our member standpoint, we are in full support of Senator Hadley's bill and would ask your support also in advancing this bill. If you have questions, I would be pleased to try to answer them. [LB483]

SENATOR UTTER: Questions for Mr. Smith, anybody? Curt, you're going to get off free today. Thank you. [LB483]

CURT SMITH: Thank you. [LB483]

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SENATOR UTTER: Thanks for your testimony. Further proponents. Welcome to the Revenue Committee. [LB483]

PATRICK GORUP: Thank you. Senator Utter and members of the Revenue Committee, my name is Pat Gorup, spelled G-o-r-u-p. I'm vice president of Ash Grove Cement Company in charge of the materiel companies. And prior to this position, which I assumed last year, I was president and CEO of Lyman-Richey Corporation--that's an Ash Grove subsidiary--for 22 years and I remain its vice chairman. I want to thank Senator Hadley and Senator Pankonin for sponsoring the bill. I know some of you in this room because we have facilities in some of your districts or have worked with you on transportation issues. Appreciate the work that you do, particularly those who we share our communities with. For those who do not know Ash Grove, we're the largest U.S. cement company. We're privately owned. It's a fourth generation company. Our headquarters are in Kansas City, but we employ 150 people in Nebraska with most of them working in Louisville. Nationally in 2009 we produced 8 million tons of cement that's used in the construction of highways, bridges, commercial projects, residential projects. And as we've heard before, the economy is pretty tough. Our tonnage this year is down to 6 million so we're certainly experiencing some of those difficult times. Our subsidiary, Lyman-Richey Corporation, which includes operating companies Ready Mixed, Lyman-Richey Sand and Gravel, Gerhold Concrete, produces and delivers ready mixed concrete and sand and gravel products. Lyman-Richey employs approximately an additional 500 employees in Nebraska and has locations in approximately 40 communities across the state from McCook to Omaha, to South Sioux City to Plattsmouth. I'm here today in support of LB483 on behalf of Ash Grove Cement Companies and its 600 employees across the state. We're one of those companies that we're not a start-up company. We've been around for a long time--Lyman-Richey since 1984 and Ash Grove a similar time frame, but they built their plant in Louisville in 1929. And while we talk about companies deciding where to locate or where to do additional investment, especially when they have multistate operations, the other thing that it can affect is how you operate those companies in a shorter time frame in terms of how you staff them and where you produce your products at, particularly cement that can be shipped a little further. Everyone is familiar with the downturn in the economy, especially those that are involved in Transportation Committee have certainly heard from their...from the construction companies in Nebraska. But we're certainly affected by those markets from home building and highway construction. One thing you may not be familiar with is the fact that as an industry we have been mandated by the EPA to make substantial investments in our plant and equipments due to new EPA environmental regulations. They are the national emissions standards and also Portland cement maximum achievable control technology. As good environmental stewards, we certainly intend to comply with these new requirements, but they're also very expensive. We also continually make productivity and process improvements to our facilities. It's very capital intensive, and we compete with producers from other states and we even compete with

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foreign companies, China, that import cement into our country. We're in a perfect financial storm right now because of this need to make additional capital expenditures due to environmental regulations while experiencing the biggest downturn in our history, economic downturn, and also competing with imported cements. We support LB483 because it allows us to carry forward losses for ten years instead of five years. This is especially important, as was mentioned before, to cyclical businesses like ours and gets us closer to being competitive with other states, especially the surrounding states. I think you have a map that illustrates that. Even with this change, LB483 puts us on equal footing only with the state of Kansas. We're still behind every other state which provide 20-year NOL carryovers and two bordering states that we compete with have no corporate income tax at all. Because Lyman-Richey, our concrete and aggregate operations, has locations near our state borders, we also compete with nearly every surrounding state in the concrete and aggregates business. Ash Grove over the years has competed with producers from Iowa, Missouri, Kansas, Colorado, Wyoming, South Dakota, Oklahoma, and Texas. We're committed to the state of Nebraska, hope to be here a long time, and continue to be a strong corporate citizen. We're a longtime employer that provides valuable manufacturing jobs with good pay and benefits. We're also longtime taxpayers--as I mentioned, Ash Grove Louisville since 1929 and Lyman-Richey Corporation since 1884--that we not only support the state with corporate income tax, sales tax, payroll taxes over the years, but also our local communities and schools with our property tax, especially given our capital intensive nature of our business. This bill is a small step the state can take to make Nebraska more competitive with other states and help us survive during these difficult times. And I want to thank you for your time. I urge the committee to advance LB483 to the floor. I'd be happy to answer any questions that you may have. [LB483]

SENATOR UTTER: Mr. Gorup, thank you for your testimony. We really appreciate that. Questions? Senator Pirsch. [LB483]

SENATOR PIRSCH: Appreciate that. The fact it...would a large net operating loss make a company an attractive target for a takeover by a currently profitable company that could use the NOL now? [LB483]

PATRICK GORUP: Well, that would be a Nick Niemann question, but our company is fourth generation. We have no intention of selling. I really can't...getting out of my area of expertise when you start dealing with tax, specific tax questions. [LB483]

SENATOR PIRSCH: Yeah. I appreciate that and we appreciate having your company in our state. [LB483]

PATRICK GORUP: Thank you. [LB483]

SENATOR UTTER: Senator Pankonin. [LB483]

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SENATOR PANKONIN: Obviously in disclosure that the Ash Grove cement plant, the plant part of Lyman-Richey is all over the state, but is in my hometown Louisville and longtime good corporate citizen and we appreciate that. But I think there's another even dimension about that plan and the employment and the reinvestment and all those sort of things is from Senator Fischer's perspective, if we ever do get this back ramped up to where we're going again, tell us about the footprint, that plant and the difference it would make because transporting cement is very costly. I mean it's a bulk item that is...you take that plant out of the mix, how far do you go before you hit the next in a radius, especially the Omaha-Lincoln areas? [LB483]

PATRICK GORUP: In terms of our manufacturers in Colorado, Kansas, Missouri so obviously your transportation costs would rise significantly, also manufacturers in Iowa. But again, it's located because of the deposit and it's very economical for Nebraska to have a cement mill located in our state. [LB483]

SENATOR PANKONIN: And that's the point I'm trying to make. [LB483]

PATRICK GORUP: Right. [LB483]

SENATOR PANKONIN: I think there's even from a policy standpoint, it's very advantageous to have that plant where it is and close to transportation. It makes a big difference in the cost of construction to have that facility. So we appreciate your investment. And as you know from living in that community for many generations, we appreciate you being there. [LB483]

PATRICK GORUP: Make our transportation challenges even greater if we didn't have a cement mill in Nebraska. [LB483]

SENATOR PANKONIN: That's the point. [LB483]

SENATOR UTTER: Other questions? Seeing none, thank you very much, Mr. Gorup, for your testimony. [LB483]

PATRICK GORUP: Okay. Thank you, Senator. [LB483]

SENATOR UTTER: We appreciate it. Further testifiers? Further proponents? Seeing none, are there any opponents? Is there anyone that would like to testify in a neutral capacity? Senator Hadley, would you like to make an impassioned close? [LB483]

SENATOR HADLEY: I learned many years ago on Friday afternoon classes at 3:30 you ring the bell. (Laughter) [LB483]

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SENATOR UTTER: (Exhibit 3) That closes the hearing then on Senator Hadley's bill. Oh, excuse me just a moment. I read into the record that the Lincoln Chamber of Commerce has submitted a letter of support for LB483. [LB483]