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Revenue Committee
February 23, 2011

[LB65 LB253 LB360 LB362 LB432]

The Committee on Revenue met at 1:30 p.m. on Wednesday, February 23, 2011, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB65, LB432, LB362, LB360, and LB253. Senators present: Abbie Cornett, Chairperson; Dennis Utter, Vice Chairperson; Greg Adams; Deb Fischer; LeRoy Loudon; Dave Pankonin; and Pete Pirsch. Senators absent: Galen Hadley.

SENATOR UTTER: Good afternoon, ladies and gentlemen. I'm Senator Dennis Utter from Hastings. I'm the Vice Chairman of the Revenue Committee. Senator Cornett actually wanted me to sit over here and do this opening, but I was afraid you'd confuse me with her and I decided to move over here. We're a little short of senators yet, but I think we have more coming. I will introduce you to Senator Dave Pankonin from Louisville; Senator LeRoy Loudon from Ellsworth; Steve Douglas (sic) is our analyst that will be working with us this afternoon; Matt Rathje is the committee clerk. I am expecting that Senator Adams will show up, as will Senator Fischer, and Senator Hadley I know is ill this afternoon and won't be here, and hopefully Senator Pirsch will be along. Here's Senator Fischer now. First thing I would ask you all to do would be to turn off your cell phones and pagers while you're in the hearing room, turn them off or put them on vibrate. There are sign-up sheets for the testifiers. They're on the tables on both doors for those of you that wish to testify. You give one of those to the clerk as we...as you come up to testify. If you're distributing things to the committee, you need to have ten copies and if you don't have a sufficient number of copies, if you'll let one of our pages know that--and they are Marilyn Buresh and Amara Meyer today--they will make the copies for you. There are also clipboards in the back of the room to sign in if you do not wish to testify but would like to indicate your support or opposition to a bill. These sheets will be included in the official record. We will follow the agenda posted on the door. The introducer or a representative will present the bill, followed by proponents, opponents, and neutral. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, state your name and spell it for the record. If you...I guess I went over the handouts issue. So with that, I think we are ready to begin with the first bill this afternoon and, Senator Cornett, if you want to give the introduction on LB65, please.

SENATOR CORNETT: Good afternoon, Vice Chair Utter and members of the Revenue Committee. My name is Abbie Cornett, C-o-r-n-e-t-t, and I represent the 45th Legislative District. LB65 proposes to create an alternative method for wind energy projects to qualify as a community-based energy development project. LB65 would encourage wind developers to use products and services manufactured or based in Nebraska, which in turn would help encourage the development of manufacturing and service industries in the state around our existing and growing wind energy industry. Iowa, Kansas, and Colorado among our neighbors have developed substantial manufacturing industries around wind energy developments. These industries provide permanent jobs in

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economic community development. LB65 gives Nebraska companies a leg up and encourages other companies to locate here. LB65 is not a mandate, however. If Nebraska companies cannot competitively supply the necessary products or services, the wind developer may acquire them from anywhere and may still qualify as a C-BED project. LB65 would result in greater positive economic impact and greater revenue back to the cities and counties from the C-BED project. I'd like to thank you for your time and consideration on LB65. [LB65]

SENATOR UTTER: Thank you, Senator Cornett. Are there questions for Senator Cornett? Seeing none, we will take the first proponent of LB65. Good afternoon. Welcome to Revenue. [LB65]

DAVID LEVY: Good afternoon and thank you, and thank you to Senator Cornett for introducing this bill and for that opening. My name is David Levy, it's L-e-v-y. I'm an attorney with Baird Holm Law Firm in Omaha and a registered lobbyist for Bluestem LLC. Bluestem is a Nebraska-based wind energy developer and renewable energy company interested in growing these industries in Nebraska. Bluestem supports LB65 because it would improve upon an existing law to the benefit of our state's economy. Specifically, the community-based energy development statute currently encourages Nebraska investment in wind energy projects. LB65 seeks to build upon that concept by encouraging not just Nebraska investment in wind energy but also investment in the manufacturing industry in Nebraska to support wind energy projects. As Nebraska's wind energy industry develops, ideally it should spin off manufacturing industries and create many other jobs. That spin-off multiplies the economic benefit of the wind energy industry many times over. LB65 rewards investment in those industries and those industries would not only serve wind energy projects in Nebraska but ultimately could serve projects in other states and in other countries as well. So in that way we're further exporting our wind energy industry and growing our state's economy by bringing in revenue from companies in other states and other countries who purchase these products manufactured in Nebraska. That growth, of course, would then, in turn, result in jobs, economic development and tax revenue to the state and its municipalities. So for those reasons, I strongly urge the committee to send LB65 out to the full body for its consideration and I'd be happy to answer any questions that you might have. [LB65]

SENATOR UTTER: Thank you, Mr. Levy, for your testimony. Are there questions? Seeing none, thank you very much. [LB65]

DAVID LEVY: Okay. Thank you. [LB65]

SENATOR UTTER: Next proponent? Any further proponents of this legislation? Good afternoon. [LB65]

ANDY POLLOCK: Good afternoon, Vice Chairman Utter and members of the Revenue

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Committee. My name is Andy Pollock, it's P-o-l-l-o-c-k. I am here on behalf of and as a registered lobbyist for the Nebraska Energy Export Association. It's a group of landowners and ratepayers from across the state of Nebraska that support market-based wind development. I'm here also on behalf of the Banner County Wind Association and the South Kimball County Wind Association as well. We strongly support LB65 and we thank Senator Cornett for introducing the bill. Despite progress here in Nebraska, which we've all read about lately in the last year, we still lag further behind our neighboring states and other wind-rich states in development of this important natural resource. We applaud Senator Langemeier and the members of the Legislature, yourselves included, in passing LB1048 last year. It was a monumental bill and it certainly went a long way to creating a more competitive playing field for Nebraska in terms of wind development. But Nebraska's tax burden still remains high and it is high especially relative to neighboring states and other states that have a good wind resource. This bill, we believe, would reduce that tax burden and we also like it because it gives developers, most of whom are from outside the state of Nebraska, an incentive to work with Nebraska partners, Nebraska contractors, Nebraska manufacturers, Nebraska service providers of all sorts from accountants to laborers. And we believe, like Mr. Levy said, that it will spur growth of new businesses, manufacturing plants included, in the state of Nebraska. We believe the fiscal impact, which is noted on this bill, will be greatly outweighed by the economic benefits that the bill would generate, both in terms of nameplate capacity tax revenues under LB1048 passed last year and in jobs and then all the ancillary benefits that those bring. That concludes my testimony. I'd be glad to answer questions. [LB65]

SENATOR UTTER: Thank you, Andy. Questions for Mr. Pollock? Senator Louden. [LB65]

SENATOR LOUDEN: Yes, thank you, Senator Utter. Well, Andy, this is an extension of the C-BED, and the way I understand it, it's going to exempt sales tax if they buy repairs, equipment, material in the state with...from some corporation that's been in business for 18 months or something like that. That's what this is all about, is a sales tax exemption? [LB65]

ANDY POLLOCK: It creates...there's currently a sales tax exemption on the books, Senator Louden, under the current C-BED law. It creates a different way, if you will, of qualifying for that C-BED exemption. [LB65]

SENATOR LOUDEN: By purchasing local supplies. [LB65]

ANDY POLLOCK: Local inputs, it's been referred to, local supplies, utilizing and paying for local services as well. [LB65]

SENATOR LOUDEN: Do you think that if this wasn't passed would that be a deal

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breaker for these people coming in with windfarms and stuff because they're more concerned about transmission than they are about cost of putting them up? [LB65]

ANDY POLLOCK: Well, certainly transmission is an important issue. There's no question about that, Senator. You're right on in that observation. But I also know from discussions with developers from out of state that the tax, the taxes, the tax load in Nebraska, if you will, is high relative to other states that are developing wind, neighboring states, including Iowa and Kansas. With respect to the nameplate capacity tax, Nebraska stacks up very favorably comparing other states that have property taxes or production taxes or the like. It's really the sales tax that makes Nebraska look not so attractive to those out-of-state developers. So certainly transmission is a key issue, no question about that, but a fairly heavy tax load compared to other states is certainly less an incentive to build in Nebraska at this point. [LB65]

SENATOR LOUDEN: Now what kind of a federal tax credit do they get to build one of these windfarms? [LB65]

ANDY POLLOCK: You know, there's developers in the room that can probably speak better to that than I can. There are still...Congress renewed the production tax credit and that applies to the extent of it. There's people in the room that I'm sure are better equipped than I am to answer that question. [LB65]

SENATOR LOUDEN: Well, what I'm wondering is, as they build these, as they buy this material (inaudible) and expense and there's a sales tax on there, that's deductible off of your federal income tax, any sales tax you pay,... [LB65]

ANDY POLLOCK: I would expect that it is. [LB65]

SENATOR LOUDEN: ...because that's all part of your expense. I mean same way in the ranching business or anything else. Yeah, I pay sales tax but that is a deductible expense from my federal tax. [LB65]

ANDY POLLOCK: Certainly. [LB65]

SENATOR LOUDEN: True. And that's the reason I'm wondering how much of a deal breaker this would actually be by giving them the benefit of not paying a sales tax, because they're going to deduct it off of their federal income tax anyway. [LB65]

ANDY POLLOCK: Well, I don't know. There's people that are probably better versed in this than I am. I would say that we have to compare Nebraska with all the other states, and developers in those other states would get that federal tax credit just like they would here. This is something that increases the cost of doing business in Nebraska. There's no question about that. [LB65]

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SENATOR LOUDEN: Okay. Thank you. [LB65]

ANDY POLLOCK: You're welcome. [LB65]

SENATOR UTTER: Senator Fischer. [LB65]

SENATOR FISCHER: Thank you, Senator Utter. Thank you, Mr. Pollock, for being here. How many C-BED projects are currently in Nebraska and how many are on the books trying to get started? How many have made application? [LB65]

ANDY POLLOCK: Let me tell you what I don't know and that's I don't know how many are on the books right now. I believe that there's one that's been completed and that is the project in Bloomfield. [LB65]

SENATOR FISCHER: As I look at this bill, and especially the fiscal note on it, Do you really think companies will take advantage of this? As I'm reading it, they have to have it...they have to have those services obtained for at least 18 months prior to the date of the project application for certification. Do you think that's too long? Do you? I mean I...also, it, the fiscal note, is saying that we'll probably see an increase in the number of projects, maybe one a year, that will take advantage of this. But I look at that 18 months and I don't know how that's going to play. Do you have any ideas? [LB65]

ANDY POLLOCK: I don't have an opinion on that 18 months. If that would be a problem for developers, I know our group would not oppose elimination of that, but I don't know the basis for it so I don't want to step out too far on that front, Senator Fischer. I can tell you that when the C-BED law was passed that they envisioned more projects being generated than there have been. And so I think as you consider this legislation you should consider that fact, that the fiscal note that would have been attached to that bill, and I don't know what it was, presumed more development under C-BED than has happened. And we see this as a way to hopefully, and I can't ensure that it will work but it's a positive development, but hopefully spur some development that would kind of fill in the gaps left by that previous bill. And so the fiscal impact, compared to what was expected then and what would be generated by this bill, really shouldn't be any different. [LB65]

SENATOR FISCHER: Why would you think this bill would increase development of C-BED projects, because it would increase the tax breaks that they're getting if they would happen to obtain manufacturing here in the state? [LB65]

ANDY POLLOCK: It would...it wouldn't... [LB65]

SENATOR FISCHER: I mean, to me, I don't see that this is...I'm being devil's advocate.

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[LB65]

ANDY POLLOCK: Sure. [LB65]

SENATOR FISCHER: You're used to that on Natural Resources. [LB65]

ANDY POLLOCK: (Laugh) [LB65]

SENATOR FISCHER: So I guess I don't see that this is going to be a big draw to get any more C-BED projects. You know, we thought when we passed the C-BED law we were going to see a lot come in. We didn't. I don't think that this will help that. [LB65]

ANDY POLLOCK: This doesn't change the exemption. This makes...this gives another avenue that currently does not exist for obtaining that exemption. The current C-BED has not generated the projects that I think it was expected to and hoped to. This is a way of looking at it and saying perhaps trying to force, if you will, Nebraska investment won't work, but if we incentivize use of Nebraska partners then it will incentivize that development. I think it's a step in the right direction. It certainly wouldn't slow down development at all. [LB65]

SENATOR FISCHER: Okay. Thank you. [LB65]

ANDY POLLOCK: Thank you. [LB65]

SENATOR UTTER: Senator Pirsch. [LB65]

SENATOR PIRSCH: Just wanted to...well, I think you had mentioned that 18 months, you weren't...I think you deferred comment on that, would ask that to be addressed. So I'm not sure that you can shed light on my question, which is this requirement that says you obtain it from a company that's been organized or incorporated in Nebraska for...and has employed at least ten Nebraska residents prior to the date of the application. I guess the idea is a preference...I mean, well, not a preference but the benefit then accruing to a company that has some sort of contact with the state or...is that...? [LB65]

ANDY POLLOCK: I'm looking at that language now... [LB65]

SENATOR PIRSCH: On the 18 months. [LB65]

ANDY POLLOCK: ...and I think the intent of that, although we didn't draft this legislation and were not involved in the drafting of it, I believe the intent was to just make sure that they were utilizing established Nebraska businesses, not necessarily established for decades, but businesses that were true Nebraska businesses so that some outside

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interests couldn't come to town, set up a, if you will, sham operation and qualify for this exemption by doing that. I think its intent, in looking at this real quickly, Senator Pirsch, is simply to avoid the risk of that happening, people who are setting up businesses just to try to cash in on a tax exemption. [LB65]

SENATOR PIRSCH: I agree with probably your assessment of the intent. I wonder if this language taken from some other statutes employed in some state or was it...? [LB65]

ANDY POLLOCK: Again, was not...I'm sorry. [LB65]

SENATOR PIRSCH: I was just wondering if it was invented organically here in Nebraska or if this language was borrowed from some other state. [LB65]

ANDY POLLOCK: Not being involved in the drafting of this, I really have no answer to that question. [LB65]

SENATOR PIRSCH: I'll save that question. Thanks. [LB65]

ANDY POLLOCK: Yeah. [LB65]

SENATOR UTTER: Senator Pankonin. [LB65]

SENATOR PANKONIN: Thank you, Senator Utter. Andy, isn't it fun to be the one to have to answer all the questions? (Laughter) But, you know, the rub here is for all of us is we hear this in this committee and so many others, if you just do this it's going to be this, and that's always so hard to measure and decide. And I mean that can be in Health and Human Services, if we do this, you're going to save money down the road, or in this case, we're going to have all this development because of it, and from our perspective--this is more comment than question--but it's always why this one versus the other, whether it's, you know, balancing out with angel investment or whatever. So if you can tell me briefly why this is the golden one, that will really have a lot of bang. [LB65]

ANDY POLLOCK: (Laugh) I won't tell you that this is the golden one. There's another bill that will be heard by this committee later, I think maybe immediately after this, LB362. I think there's various ways of trying to crack this nut and create a level playing field for Nebraskans. This is one shot at trying to improve the system. I would submit to you that if it doesn't work there would be no fiscal impact. This anticipates this bill...the fiscal note anticipates this particular legislation working so we wouldn't be out of pocket by the tune of the fiscal note if it does not work. And I would submit to you again, like I said in my testimony, I think the benefits would outweigh the fiscal impact. That said, I don't know that there is a certain golden nugget. Certainly a lot of this depends on the

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economy, and the economy, as we all know, is in shambles right now and we hope it will improve. I think this bill and LB362 go a long ways at trying to level that playing field, make us competitive with other states. Whether that's going to work or not, I don't...you know, I don't have a crystal ball on that in that way, but I think Nebraska needs to look creatively at opportunities to level that playing field because we certainly are falling further behind our neighboring states. [LB65]

SENATOR PANKONIN: Thank you. [LB65]

SENATOR UTTER: Further questions for Andy? If not, Andy, thanks a lot for your testimony. [LB65]

ANDY POLLOCK: Thank you, Senator. [LB65]

SENATOR UTTER: Next proponent. Seeing no further proponents, are there opponents of this legislation? Anyone that wishes to testify in a neutral capacity? Mr. Hansen, welcome. [LB65]

JOHN HANSEN: Mr. Vice Chairman, members of the committee, for the record, my name is John K. Hansen, John, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union and appear before you today as our organization's president and also our lobbyist. The original LB629 language came from the result of efforts on the part of our organization and others and public power, along with Senator "Cap" Dierks, and as we constructed LB629 and as we looked at how it is that we crafted it and in its original form, this was an area that was considered as a part of the criteria in order to be able to meet the 33 percent threshold. The original law in Minnesota was 51 percent of the total revenue stream had to go to qualified owners. We lowered that to 33 because they were struggling a bit in Minnesota to be able to do that. So then as we looked at different kinds of things we could include in the mix on the original bill, to figure out how do you become eligible, this area, as we plumbed it and we looked at it and we considered it, became increasingly problematic. It's not...while we wanted to try to look at providing an appropriate kind of benefit to Nebraska content, that was a good thing to do, but what's in, what's out, how you count it and all of the particulars were a bit of a struggle. So I'm appreciative of Senator Cornett's effort here to bring the issue up because it's a viable issue. Whether or not this is the right way to do it is a question, I guess, that we have for two reasons. While we support the effort to try to do Nebraska content and if you're going to look at economic development and look at the benefits of economic development, the primary benefits are ownership, on the one hand, and from a jobs standpoint it's manufacturing. Manufacturing and components is...by far, you get the most economic benefit out of that. So anything that you can do to encourage Nebraska content is helpful. The issue that caused us to really drop it from further consideration when we were looking at the original package was that we felt, upon research, that we felt we were going to run...a high likelihood that we were going to run

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into commerce clause issues and we decided that it was just...it was as complicated and detailed as it was, that we could get to a qualifying standard without having to carry any additional commerce clause liability or concerns, that we were better off to do that. So we didn't, and the commerce clause treatment was certainly one of the primary reasons we did not. So the second issue is that, relative to the original bargain for sales tax abatement, which was in LB648, was Senator Preister's bill, was that we were going to get all of this Nebraska content and you were giving up sales tax abatement but you were going to get all this additional revenue coming in to offset it, and that was the bargain. And so when we made some of the changes that were made to C-BED to lower the standard from 33 percent to 33 percent minus the financing costs, then we've already lowered the threshold so that we're giving sales tax abatement but we're not getting near as much Nebraska ownership or economic development benefit. By lowering it with that amendment, that change really lowers it from 33 percent to somewhere in the single digits, so it's a very substantial reduction of benefit. So if you add this in it again then, you know, the question that we have is, do we have enough...do we have enough benefit left over to justify it or are we better off to try to do Nebraska content in some other fashion? And with that, I would be more than glad to answer...end my testimony and answer any questions if I was able to do so. [LB65]

SENATOR UTTER: Are there any questions for Mr. Hansen? LeRoy, Senator Louden. [LB65]

SENATOR LOUDEN: Thank you, Senator Utter. Well, John, if I remember, and we're talking about C-BED projects here, there was supposed to be John Deere or somebody would come in and build these wind machines and they'd take a tax credit for so many years and then they would give the thing to the farmer or whoever owned the property underneath. That was the whole idea of C-BED, wasn't it? [LB65]

JOHN HANSEN: Yep. C-BED was patterned after a bill in Minnesota that authorized the creation and use of community and farmer and rancher ownership and using equity financing was for about half the project and straight financing for the other half was one of the mechanisms that made the process that you describe possible. [LB65]

SENATOR LOUDEN: How many of those projects have happened so far in Nebraska? [LB65]

JOHN HANSEN: I believe that the Revenue Department data says that the one at Bloomfield that is 80 megawatts is...so far that's the... [LB65]

SENATOR LOUDEN: All of those are C-BED projects? [LB65]

JOHN HANSEN: Well, the one at Bloomfield is, the one at Crofton which is scheduled for construction this year is, and I'm not knowing for sure whether the 80 megawatts at

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Broken Bow, which is scheduled for construction next year, is or not, and I'm not sure whether or not the one at Petersburg, that was just completed this last year is or is not. I believe that the one at Table Rock, the 60 megawatts down there was not, definitely was not. [LB65]

SENATOR LOUDEN: But these are...that you say are C-BED, in so many years when they get their tax deduction then those are going to revert to ownership of the local people? [LB65]

JOHN HANSEN: Or the qualified owners. [LB65]

SENATOR LOUDEN: Now when you say qualified owners, is that the people who own the ground they're sitting on or who? [LB65]

JOHN HANSEN: The people who own the ground may or may not participate. They don't have to but they can. They at least have that option. [LB65]

SENATOR LOUDEN: Okay. [LB65]

JOHN HANSEN: And, you know, the wind development right now is we've got all this stuff in the pipeline, we've done a...we've made a lot of steps. If you look at the, you know, from 2007 to where we are now, we've made an enormous amount of progress in a short amount of time. But the overriding economics of the marketplace is why no kind of wind projects, period, whatever their ownership structure, particularly going forward, and that is because the economy is in the tank and the base load is flat. [LB65]

SENATOR LOUDEN: Now like the one in... [LB65]

JOHN HANSEN: So why build more projects when you don't need them, period? [LB65]

SENATOR LOUDEN: Yeah, the one in Bloomfield then, that isn't some investors that went in and built that thing? You're telling me that's a C-BED project and the local people own...are going to own that whole thing in a number of years? [LB65]

JOHN HANSEN: There are other folks here today who represent that project who could answer those questions. I get uneasy answering... [LB65]

SENATOR LOUDEN: Okay. [LB65]

JOHN HANSEN: ...particulars about other folks' projects. (Laugh) [LB65]

SENATOR LOUDEN: Okay. Thank you. [LB65]

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SENATOR UTTER: Other questions for Mr. Hansen? If not, John, thanks for your testimony. [LB65]

JOHN HANSEN: Thank you, Mr. Vice Chair. [LB65]

SENATOR UTTER: Any further testimony in the neutral? If not, Senator Cornett, you're free to close. [LB65]

SENATOR CORNETT: I'm going to be very brief on closing on this bill because we have a number of other bills dealing with wind today. This was one of the ideas that was brought forward to me. I think Senator Pirsch asked if this was kind of a homegrown idea and, yes, it is. We have a number of bills coming up all on how we can grow and maintain the wind industry that we have made so much progress with in the past few years. So I would like the committee to carefully consider this bill but also consider it as part of the whole package that we're going to hear today. Thank you. [LB65]

SENATOR UTTER: Questions for Senator Cornett? If not, thank you. [LB65]

SENATOR CORNETT: Senator, you are recognized to open on Senator Hadley's bill. [LB432]

SENATOR UTTER: Well, let me start out by saying I'm not Senator Hadley. I don't look like Senator Hadley. I don't act like Senator Hadley. I don't walk like Senator Hadley. And I'm not near as smart as Senator Hadley so I must not be Senator Hadley. But I am here in his absence this afternoon because he's ill to provide the opening for this bill. And I must admit I know very little about this bill, and so I'm just a messenger and I urge you not to shoot the messenger. I...LB432 is a bill that Senator Hadley brings to you that provides a mechanism for employees of wind development projects to own a piece of the rock or part of the action. And I'm sure there are folks behind me that can explain this bill in much more detail and with much more accuracy than I can. And so I urge you to not ask me any questions and to listen to them and ask them the questions. And because of my position here, why, I'll waive closing on the bill. Thank you. [LB432]

SENATOR CORNETT: With that, we will open testimony on LB432. Proponents, please. [LB432]

CHUCK HASSEBROOK: (Exhibits 1, 2) I also...I brought along a copy of written testimony from the Alliance Nebraska Chamber of Commerce to submit as written testimony in addition to my own so if I can do that I will do that. Thanks for having me. And here are my written copies. My name is Chuck Hassebrook, C-h-u-c-k H-a-s-s-e-b-r-o-o-k. I'm testifying on behalf of the Center for Rural Affairs of Lyons, Nebraska. LB432 provides incentives for developing export electricity in ways that build Nebraska wealth and Nebraska businesses and a foundation for our state's long-term

prosperity. We have the nation's fourth best wind resource as you know. The opportunities for our children and grandchildren, particularly in our rural communities but also in our urban communities, will depend in part on how we develop that resource and whether we capture as much of the benefit as possible right here in our state or whether the lion's share of the new wealth and opportunities created flow to investors and suppliers beyond our borders. Beginning in 2015, LB432 would lower the sales tax on wind turbines and towers for projects that contribute stock to employees and to employee-ownership arrangements or to a Nebraska Job and Rural Trust for investment and building our economy. The sales tax incentive for contributions to employee-ownership arrangements would be that sales tax would be reduced by 50 cents for every \$1 worth of stock contributed, at least those contributed up-front to an employee-ownership arrangement. For stock contributed to the Nebraska Job and Rural Trust, it would be a dollar-for-dollar reduction in sales tax. The incentive for employee stock ownership would ensure that ordinary rural Nebraskans share in the wealth created by renewable export energy development. It would enable them to gain assets that provide them and their families a cushion to weather economic storms and the foundation to remain as long-term, contributing members of their communities. Employee stock ownership is a proven concept adopted in some of the nation's premier companies. Research demonstrates that employee-owned companies perform better on most measures of economic performance. Simply put, the pride and commitment that come with ownership make a difference. As I mentioned, there are also incentives for contributions to the Nebraska Job and Rural Trust, modeled after the Nebraska Environmental Trust, to support critical economic and community development initiatives. The lion's share of the fund would be used for incentive payments modeled on Nebraska Advantage tax credits for Nebraska businesses to make investments and create jobs in the supply chain for windfarms and other generators of renewable electricity. So again, this tries to build that set of Nebraska businesses out there supplying the wind industry, whether through manufacturing or construction services or what have you. The board of the Trust Fund would establish guidelines for the incentive payments, with an emphasis on supporting businesses in economically distressed rural and urban communities, supporting microenterprise development, and creating quality jobs. In addition, about one third of the assets received by the Trust would be allocated to existing rural development programs and incentives and used in part to offset the cost of raising the \$2 million annual limit on tax credits allocated through the Nebraska Advantage Microenterprise Tax Credit. In closing, I would say that in 2010 this body took the first critical steps to enable development of Nebraska's world-class wind resource. But it's up to this Unicameral to establish incentives for tapping this golden opportunity in ways to build the strongest, long-term economic foundation for our state and for our communities. Like the Wyoming coal severance tax, this proposal would capture a portion of the windfall that arrives when wind development accelerates and then keep it and use it to invest in our future. Triggering the credit in 2015 ensures that it does not worsen the current budget crisis. But it gets the incentive in place to ensure that when the economy recovers wind is developed in a way that builds wealth among

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Nebraskans and a foundation for lasting prosperity. That ultimately is the best way to balance the state budget while meeting the needs of Nebraskans. I would welcome questions. [LB432]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB432]

CHUCK HASSEBROOK: Thank you. [LB432]

SENATOR CORNETT: Next proponent. Are there any further proponents? Opposition testimony? Neutral? That closes the hearing on LB432. [LB432]

SENATOR UTTER: We'll open the hearing on LB362 and, Senator Cornett, you're free to give your opening. [LB362]

SENATOR CORNETT: Good afternoon, Vice Chairman Utter and members of the Revenue Committee. My name is Abbie Cornett, C-o-r-n-e-t-t, representing the 45th Legislative District. I have introduced LB362 to amend the Nebraska Advantage Act by adding a new project tier, Tier 7, to provide sales and use tax refunds for qualified renewable energy projects, including wind energy projects. LB362 would allow a refund of all sales and use taxes paid at a qualified project by a qualified business. The bill defines "qualified business" to mean "any business engaged in the production of electricity by using one or more sources of renewable energy to produce electricity for sale. For the purpose of this subsection, sources of renewable energy mean wind, solar, geothermal, hydroelectric, and biomass." The required levels of investment and employment for a Tier 7 project is as yet undetermined which is why the bill requires investment in qualified property of at least undetermined millions--this is something that we I figure will discuss in the committee--and the hiring of at least unknown numbers of employees. We have quite a bit of data out there on how much each of these projects generates in the way of employment while they are under construction and then how many employees are retained for the project. However, the required level of investment and employment would be indexed for cumulative producer price index inflation since 2011. LB362 requires an application fee of \$2,500 for a Tier 7 project. LB362 also utilizes the recapture provisions of current law and makes them applicable to Tier 7. I'd like to thank you for your time and consideration on this bill. Like the bill that you heard earlier, these are all ideas that we have for helping further our wind industry in the state of Nebraska. [LB362]

SENATOR UTTER: Thank you, Senator Cornett. Questions for Senator Cornett? Seeing none, thank you. We have at least several proponents, and I would like to call at least the first four up in order and would like to ask David Levy if he would like to come up and give his testimony. [LB362]

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DAVID LEVY: (Exhibit 3) Senator, thank you. Good afternoon again. And again, thank you to Senator Cornett for introducing this bill and for that opening. David Levy, L-e-v-y, attorney with Baird Holm Law Firm in Omaha and registered lobbyist for Midwest Wind Energy and Edison Mission Energy. Midwest Wind and Edison Mission support LB362. I have also submitted to the clerk a letter from the Wind Coalition in support of this bill as well. Also Senator Cornett mentioned that there are a couple of key numbers in this bill that are having to do with this bill that are not set forth in the bill. In discussions among the industry, our thoughts on those numbers--and I know the committee I'm sure will have its own thoughts--but are \$75 million in investment and 5 permanent jobs because the jobs must carry on through the operation of the windfarm. There are many more jobs in the construction phase. The wind energy industry in Nebraska to date has resulted in over a half a billion dollars of investment since 2007. Yet Iowa, for example, with a much lesser wind resource, has over ten times more installed capacity. And I'm sure you all, as do I, get tired of hearing about Iowa and what they're doing in wind, but I think it bears stating here. Nonetheless, this industry in Nebraska has grown dramatically over the past three years. And this has occurred in part due to the actions of the Legislature in removing various barriers to this industry in our state to its growth and development. First, it was barriers related to eminent domain and land rights during the 2009 session. And then last year it was barriers related to the regulatory structure for the export industry. Our greatest remaining barrier in my view internally to our state regulatory-wise to our state to having a great and robust wind energy industry is our tax structure. Iowa, Illinois, Kansas, and Minnesota do not charge sales tax on the equipment used in a wind energy project whereas we charge a sales tax of over \$3 per megawatt hour or, in other words, many millions of dollars on a typical project, potentially tens of millions of dollars on a very large project. This tax burden, because it's up-front, constitutes over three-quarters of the tax burden for a wind project. LB362 tries to remove this barrier in a reasonable way that requires substantial investment in the state before a project would be able to take advantage of this incentive. And for those reasons, again, Midwest Wind Energy and Edison Mission Energy support this bill. I would encourage the committee to send it out to the full body for consideration. I'd be happy to answer any questions that you might have. [LB362]

SENATOR UTTER: Thank you for your testimony. Questions? Senator Pankonin. [LB362]

SENATOR PANKONIN: Thank you, Senator Utter. Thank you for being here today. If I heard you right, this bill if implemented would...three-quarters of the up-front tax burden on an entire project would be affected and eliminated or how treated? [LB362]

DAVID LEVY: Correct. The bill currently proposes to eliminate the sales tax on a wind project that qualifies for the incentives so meets that level of investment and that level of jobs. In absolute dollars, it's not three-quarters of the total tax paid over the life of the project. But because it's up-front rather than property tax, for example, that's paid out

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over the entire life of the project, to the project developer it feels like three-quarters of the tax burden. [LB362]

SENATOR PANKONIN: Okay. I think that clarifies because I think... [LB362]

DAVID LEVY: No, thank you for... [LB362]

SENATOR PANKONIN: ...or your statement could be a little bit misconceiving about the total tax... [LB362]

DAVID LEVY: Right. [LB362]

SENATOR PANKONIN: ...stream over a long period of time so that helps there. There again, once these projects are going, there's property tax obviously. But my assumption is once the initial setup of the wind field with the machines and whatever, that, you know, there's not...I mean obviously there's maintenance but there's not a lot of employment. Fair statement? [LB362]

DAVID LEVY: Correct. An 80 megawatt windfarm, for example, which is the majority of what we've seen so far, results in eight to ten permanent jobs at the site. We don't know the numbers of permanent jobs perhaps that are created by the spin-off economic effect. [LB362]

SENATOR PANKONIN: Sure. [LB362]

DAVID LEVY: But at the project, that's what you're talking about. So these numbers that I suggested, for example, match up with a project that's maybe 50 megawatts or larger. So this incentive would only apply to a fairly large or a fairly large windfarm would be eligible for this incentive. You know, and you asked a similar question I think about LB65: The C-BED type structure in the experience in Minnesota and a little bit here in Nebraska as well tends to work better for a smaller project whereas this bill is expressly aimed at bigger projects. So they do actually kind of work together to provide a similar incentive, but applied differently, they probably work better for one for a smaller project, one for a bigger project. As Senator Cornett said, I think that's right to consider it as a package. [LB362]

SENATOR PANKONIN: Thank you. [LB362]

SENATOR UTTER: Other...Senator Pirsch. [LB362]

SENATOR PIRSCH: And...I appreciate...you've had time to familiarize yourself with the way it's written, the bill is. [LB362]

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DAVID LEVY: Yes. [LB362]

SENATOR PIRSCH: And right now there's just, if I'm not mistaken, on page 13 placeholder's right in terms of hiring of at least a certain number of employees and investment and qualified property of at least a certain amount of millions of dollars. Right? [LB362]

DAVID LEVY: Correct. [LB362]

SENATOR PIRSCH: But you're saying you think that kind of the sweet spot to put is the 50 megawatts. Is that what you're... [LB362]

DAVID LEVY: That's discussions among myself, my clients, other wind developers, the Wind Coalition, yes. Those numbers that I suggested--\$75 million in investment and the five permanent jobs felt like a reasonable kind of threshold and that does translate to about a 50 megawatt project. [LB362]

SENATOR PIRSCH: And the...you're familiar with the operations that are now in the state, right? I think the previous testifier had said there are about five or seven going now in the state of Nebraska, C-BED projects, right? I think Crofton and... [LB362]

DAVID LEVY: My understanding actually is there are two...there is one operating C-BED project in the state in Bloomfield and there is one approved C-BED project which is in Springview. [LB362]

SENATOR PIRSCH: How big of operations are those in terms of megawatts? [LB362]

DAVID LEVY: The Bloomfield project is 80 megawatts and the Springview project is 3 megawatts. [LB362]

SENATOR PIRSCH: Okay. Thank you very much. [LB362]

DAVID LEVY: Certainly. Thank you. [LB362]

SENATOR UTTER: Senator Louden. [LB362]

SENATOR LOUDEN: Yes. Thank you, Senator Utter. You're familiar with how Iowa does their work, their costs, how they charge for the kilowatts and that sort of thing. In Iowa, are you familiar with how they do business over there? [LB362]

DAVID LEVY: Well, somewhat. I'm not sure what your specific question is, but I can try. [LB362]

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SENATOR LOUDEN: Now do they sell that power all locally or do they export it?
[LB362]

DAVID LEVY: It's a good question. I don't know and I suspect they export some of it, but I don't want to guess. [LB362]

SENATOR LOUDEN: Now do they have statutes and regulations over there because they're investor-owned corporations over there, do they have statutes that they could sell that power to the local investor-owned corporations for a certain price? [LB362]

DAVID LEVY: I don't know. [LB362]

SENATOR LOUDEN: Okay. Thank you. [LB362]

SENATOR UTTER: Senator Fischer. [LB362]

SENATOR FISCHER: Thank you, Senator Utter. Thank you, Mr. Levy. I'd like a clarification, please. Senator Pankonin, when he asked a question and he referred to property taxes and I think his comment was that he thought that the windfarms benefits the county or the school district that they're in because those entities receive property taxes. Is that true? [LB362]

DAVID LEVY: Yes. [LB362]

SENATOR FISCHER: How do we tax windfarms in this state? Is it just through property taxes and all those local entities receive it then? [LB362]

DAVID LEVY: Well, a windfarm developed in Nebraska today primarily would pay sales tax on the equipment up-front, would pay real property tax on the value of the real property, and then would pay the nameplate capacity tax which replaced the personal property tax. [LB362]

SENATOR FISCHER: So the property taxes that, say, a school district are going to collect, that will go on and on as long as the windfarm is there and operating, correct? [LB362]

DAVID LEVY: That's correct. [LB362]

SENATOR FISCHER: Do you know what those taxes average? [LB362]

DAVID LEVY: Well, the nameplate capacity tax is \$3,518 per megawatt. [LB362]

SENATOR FISCHER: But that's a nameplate capacity tax. [LB362]

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DAVID LEVY: Right. [LB362]

SENATOR FISCHER: That's...I guess I feel that's different than a property tax that I pay on a grain bin as an ag producer. Correct? [LB362]

DAVID LEVY: Yes and no. The nameplate capacity tax is intended to replace and work the same as the personal property tax so it's part of the property tax that you pay. Then there also is the real property tax which is paid at the same rate as any other type of land use that the county's levy rate times the assessed value of the land. [LB362]

SENATOR FISCHER: Which the counties are levying that real property tax on windfarms, is that correct? [LB362]

DAVID LEVY: There's some potential different interpretations about that, and we'll talk more about that with LB360. But the intent anyway is that they levy that. And certainly with Elkhorn Ridge, for example, Knox County has levied property taxes, real property taxes against the project. [LB362]

SENATOR FISCHER: Can you explain a little bit more about the nameplate tax? [LB362]

DAVID LEVY: Sure. In what regard or just sort of how it works? [LB362]

SENATOR FISCHER: Yeah. [LB362]

DAVID LEVY: Well, the nameplate capacity tax again was calculated to replace the personal property tax. And the idea there that was brought forth both by county representatives and industry representatives was that the personal property tax depreciates over five years. So it's a lot of money up-front the first year; second year it goes down very steeply to very little for the life of the project. The nameplate capacity tax was calculated with the intent being it would be the same amount of money, but it would be paid out in a level revenue stream throughout the life of the project. Some economists who worked on the bill last year determined that number to be 26 years is the average life of the project and so 26 times the \$3,518 per megawatt would presumably equal the personal property tax that had been paid. But the nameplate capacity tax continues for the life of the project. The Bloomfield project, for example, the power purchase agreement could go as long as 40 years. So after year 26, the nameplate capacity tax paid is money that under the previous tax structure would not have been due, would not have been received by the counties. [LB362]

SENATOR FISCHER: Okay. Thank you. [LB362]

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DAVID LEVY: Sure. Thank you. [LB362]

SENATOR UTTER: Other questions? If not, thank you, Mr. Levy, for your testimony again. [LB362]

DAVID LEVY: Thank you very much. [LB362]

SENATOR UTTER: David Bracht. Am I saying that right? [LB362]

DAVID BRACHT: That's correct, you are. [LB362]

SENATOR UTTER: Well, I'm pretty lucky today then, I'll tell you that. [LB362]

DAVID BRACHT: (Exhibits 4, 5) Mr. Chairman and...or Vice Chairman and members of the committee, my name is David Bracht and that's spelled D-a-v-i-d, last name is spelled B-r-a-c-h-t. I'm an attorney and testifying today in support of LB362 in my capacity as legal counsel to Clean Line Energy Partners. As the committee has already heard, Nebraska is recognized as having one of the leading, third or fourth in the country, wind resources. Like many of Nebraska's resources, our abundant wind resource can produce more wind energy than the residents of the state can use. It's therefore necessary for us to export that energy in order for the Nebraska citizens to enjoy the economic benefit of this wind resource. I think this is what the Nebraska Unicameral recognized when it passed LB1048 last year and created the mechanism really to allow that. Clean Line Energy Partners is an independent developer of high-voltage, long-haul transmission lines that connects renewable energy resources with large population centers. Clean Line uses a high-voltage, direct transmission lines or HVDC lines is what they're referred to. These utilize direct current instead of alternating current, which more efficiently transmits electricity over longer distances. A critical factor for wind development is to effectively and efficiently transmit the wind energy to markets that demand these renewable energy sources. And as I think has already been noted here before the committee, it's really one of the principal issues that the wind industry is working with. Clean Line is creating a significant opportunity for wind energy in the tri-state region via its Rock Island HVDC line. The Rock Island line is...the exact location is still under consideration, but its general focus will be on transmitting energy from Nebraska, Iowa, and South Dakota to points in Illinois and east. An HVDC line requires a significant capital investment. So to assure that the HVDC lines are utilized at high capacity, Clean Line needs to locate in areas where the most cost-effective and cost-competitive energy resources are available. Otherwise, wind projects in other areas in other states and utilizing other transmission lines will be awarded the long-term power purchase agreements by which energy buyers purchase power. How competitive a wind project is depends not only on the wind resource and the ability to transmit power, but also the costs associated with constructing and operating the windfarm. Attached to my testimony and also for the record is a white

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paper that was prepared by Clean Line comparing the 20-year "levelized" tax burden on wind projects in Nebraska with its neighboring states. As you look through the white paper, you'll note that the taxes paid by wind projects in Nebraska are higher than in our neighboring states and in some cases over twice as high. This added cost will make Nebraska wind projects less competitive, despite our better resource and will likely result in fewer wind projects being located in the state than would be if we had an equalized tax burden. Clean Line strongly supports LB362. We thank Senator Cornett both for sponsoring the bill and having the hearing today. We believe that the proposed revisions to the Nebraska Advantage Act to support wind development by reducing or eliminating the sales tax burden on wind projects will result in more wind projects in Nebraska. And as a result, Nebraska and its citizens would benefit by the increased investment, tax base, and jobs that these projects bring, along with the other supporting industries such as Clean Line Partners. With that, that concludes my testimony. I'd be happy to take any questions. [LB362]

SENATOR UTTER: Thank you for your testimony. Questions? Senator Pankonin. [LB362]

SENATOR PANKONIN: Thank you, Senator Utter. Mr. Bracht, thanks for your testimony and I think your chart is very helpful. Obviously for us that have some influence on state policy, you know, what I'd like to see is that we had the highest tax rates and people would still develop. Right? Wouldn't that be the best thing for the state, for state government and the government entities? [LB362]

DAVID BRACHT: Sure. [LB362]

SENATOR PANKONIN: Now obviously there's a sweet spot here and I understand the concept--we got to be competitive and people weigh it out, people that are making these gigantic investment decisions. But as I heard earlier today, even a big project, eight to ten jobs long term versus other industries, office-type projects, campus-type things that may come in, a roads bill that may have more effect, you know, we have to make decisions and choices. Why is this one important? [LB362]

DAVID BRACHT: Certainly and, you know, different industries there's always a balance of jobs and investment. And while I think the numbers that have already been talked about I think would reflect what Clean Line and my own personal understanding of the jobs that would result from a windfarm, the amount of investment and then the cash flow in investment and ongoing payments that are made by windfarms and windfarm operations to Nebraska landowners and to the other ancillary industries that surround those are significant. I think there will be some testimony following me that can give some more specifics to that. But just to give an example with very rough justice numbers, that 80 megawatt windfarm or the 50 megawatt windfarm that we had talked about there would probably be in the neighborhood of, if I'm thinking right, about \$100

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million or \$120 million of investment. And so there's a significant amount of cash flow that's going in the form of land payments and lease payments to landowners and then all the other ancillary industries that support. [LB362]

SENATOR PANKONIN: And the life span of these machines as you currently understand it is how long? [LB362]

DAVID BRACHT: Generally speaking or at least what I understand from again contact with the industry is 25 years. Certainly, like any industry, I think there's always upgrades and, in fact, with a windfarm, much like painting a bridge, they would say you start maintenance at one end and you do maintenance and then you go back and start over again. So there's an ongoing process of maintenance, to some degree upgrades as well. But generally speaking, the life span of the farms is thought of is 25 years. [LB362]

SENATOR PANKONIN: And that's why I think we need to be careful as policymakers that we do get benefit from this. You know, great to see them and there's a big push and I understand the investment that's required, but hopefully it's a benefit to not just a few but the entire state and the government subentities. So thank you for your testimony. [LB362]

SENATOR UTTER: Other questions for Mr. Bracht? If not, thank you. Thank you very much for your testimony. Mr. Williams. [LB362]

JAMES WILLIAMS: (Exhibit 6) Good afternoon. Mr. Vice Chairman and members of the committee, my name is James Williams, spelled J-a-m-e-s, last name W-i-l-l-i-a-m-s, and I am here in support of LB362. I am a wind developer. I work for Invenergy Wind Development and we are working and have been working in the state of Nebraska for several years now on a project in Antelope County called the Prairie Breeze Wind Project. I'm not sure if you've heard of it but just this past year we've gone through the process put in place the wind-for-export bill, LB1048, from last session and were successfully conditionally approved under...or from the Power Review Board to export power out of the state. That's been a very positive experience for us and has allowed us to market the power for our project in Antelope County outside the state of Nebraska. Removing the export barrier was very important to us as a wind developer to continue development in the state of Nebraska. I am here today to say that I think an additional barrier that would be very helpful to us in competing outside the state of Nebraska for power contracts would be the removal of the sales tax in the year one of these projects because when we're working out of state, as noted before and the previous speaker, sales tax aren't equal from one state to another. So you look at Iowa and you look at Kansas and you see that the taxes there are a lot lower and those are the projects. When you look at Nebraska and developing projects for export from Nebraska that have to go somewhere and they're going to these states, and we're directly competing for those projects. Some of these power contracts are won by literally cents on the dollar

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for a megawatt hour and so having an up-front sales tax burden removed would allow us and I believe many other export projects within the state of Nebraska to have that much more of a competitive advantage. I've handed out here just a brief summary of kind of the economic benefits of wind energy in the state, and I just would draw your attention to the dollars there. And what I looked at a typical power contract would be for 20 years. And for a 100 megawatt farm, you would see over \$30 million over that lifetime of taxes and full-time employment and payments to landowners and then also including the initial construction job that, while not meeting the criteria of LB362, demonstrate a lot of economic dollars into the local community and into the state of Nebraska through the construction of the project. So with that, I would say, you know, for us to compete for export it doesn't matter whether we sell the power here in Nebraska or outside the state. The economic benefits stay here for Nebraskans and having a sales tax exemption could allow for more projects to get built than otherwise would get built and exported out of the state. With that, I thank you for your time today and would be happy to answer any questions that you might have. [LB362]

SENATOR UTTER: Thank you, Mr. Williams. Senator Fischer. [LB362]

SENATOR FISCHER: Thank you, Senator Utter. Thank you, Senator Williams--Senator, I just demoted you, didn't I? I'm sorry (laughter). [LB362]

JAMES WILLIAMS: Not at all. [LB362]

SENATOR FISCHER: But thank you, Mr. Williams. Do you know how many applications are made a year here in the state to build projects? To NPPD when they put out their call... [LB362]

JAMES WILLIAMS: Oh, as I understood it there was 34 proposals... [LB362]

SENATOR FISCHER: Proposals. [LB362]

JAMES WILLIAMS: ...for the most recent Nebraska Public Power District request for proposals. [LB362]

SENATOR FISCHER: And how many were accepted? [LB362]

JAMES WILLIAMS: Zero. [LB362]

SENATOR FISCHER: Why was that? [LB362]

JAMES WILLIAMS: I guess I would... [LB362]

SENATOR FISCHER: Do you know? [LB362]

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JAMES WILLIAMS: ...let Nebraska Public Power District answer that question, but as I understand, I think that the load has been down in the climate that we're in. I think they felt compelled to call it off. They could probably answer that better than me. [LB362]

SENATOR FISCHER: So I guess my point is so even without more incentives we're...as a state we're receiving quite a number of proposals that we cannot accept because of the constraints with LB1048 for export. Would that be a correct statement? [LB362]

JAMES WILLIAMS: Certainly. I guess my point there would be that, you know, instate it is a level playing field. Where we feel that the benefits could be to Nebraska as a whole is the export opportunity. When you remove that barrier, you're not competing instate with proposals to Nebraska Public Power District. You're competing out of state with proposals in Kansas or Iowa or Missouri or Wyoming, you know, where have you. [LB362]

SENATOR FISCHER: Can we export any more power... [LB362]

JAMES WILLIAMS: Yes. [LB362]

SENATOR FISCHER:currently? Do we have the transmission lines to do it, carry it out? [LB362]

JAMES WILLIAMS: Yes. [LB362]

SENATOR FISCHER: Why aren't we doing it? [LB362]

JAMES WILLIAMS: It was not a possibility until last year when the LB1048 wind-for-export bill was passed. And currently Prairie Breeze Wind Project in Antelope County is, as I understand it, the first certified renewable export facility. We are actively hoping to become the first project constructed that would export power out of the state. [LB362]

SENATOR FISCHER: But do you see a number of projects that are lining up to do that? [LB362]

JAMES WILLIAMS: I have talked with folks and I know there are other projects that are lining up to do that. I do think that other things could happen to help that such as Mr. Bracht mentioned a private transmission line coming into the state would certainly open up the ability to export power. [LB362]

SENATOR FISCHER: Can that happen under current law here in Nebraska to have a private transmission line come in? [LB362]

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JAMES WILLIAMS: I think that is possible. I think that for the particular project that Mr. Bracht was talking about the sales tax exemption could be a barrier, you know, a barrier to that line making it all the way in to the state of Nebraska because of the high cost on that project and the alternative of placing this line in Iowa, for example. Did I confuse you? [LB362]

SENATOR FISCHER: I'm just trying to follow your reasoning. So you believe that the...do you believe that we're not seeing these transmission lines built, private ones, because we don't give a sales tax exemption? [LB362]

JAMES WILLIAMS: I think that that's part of it. But I also think that Nebraska continues to take steps forward to open up the state for exported projects. And since that just happened last year, this is the first opportunity for private lines to be built for a reason to actually export the power. Now that being said, you know, there's certainly a company represented here today that is interested in doing just that, and my understanding there are other companies that are interested in building these lines. So I don't think it would be fair to say it's not going to happen. I just think it's starting now and I hope to see it continue. [LB362]

SENATOR FISCHER: We're pretty windy in Cherry County. Do you think that there will be lines out there? [LB362]

JAMES WILLIAMS: Yes. [LB362]

SENATOR FISCHER: Thanks. [LB362]

JAMES WILLIAMS: You're welcome. [LB362]

SENATOR UTTER: Senator Louden. [LB362]

SENATOR LOUDEN: Yes. Thank you, Senator Utter. Are you familiar with how other states charge and how their rate structures are with wind power in Iowa or Minnesota or something like that? Those are public...those are investor-owned utilities over there. Do they have a different rate structure? My understanding is that there's some legislation that the local investor-owned utilities have to purchase a certain amount of that power. Is that correct or are you familiar with any of that? [LB362]

JAMES WILLIAMS: I would say with Iowa specifically I'm not familiar. I think different states have different goals in terms of...or requirements in terms of the renewable energy that they need to purchase. [LB362]

SENATOR LOUDEN: Now in Iowa are there any regulations that they have to export a

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certain amount of that wind power? [LB362]

JAMES WILLIAMS: I'm not aware of any of those regulations. [LB362]

SENATOR LOUDEN: Okay. Because when you talk about, what, LB1048 or whatever it was last year,... [LB362]

JAMES WILLIAMS: Yes, sir. [LB362]

SENATOR LOUDEN: ...all that did was...since Nebraska is a public power state, we have a Power Review Board and they don't allow any generation to be built unless it was cost-effective. And what that LB1048 did was allow them...took the Power Review Board out of that construction of those generation systems, providing they exported 90 percent of the power. Is that safe to say that? [LB362]

JAMES WILLIAMS: Yeah. The way the...my understanding of it is... [LB362]

SENATOR LOUDEN: I mean that's all LB1048 did was take the Power Review Board out of the construction of wind towers. Isn't that correct? Providing they... [LB362]

JAMES WILLIAMS: I do not believe so. I think that what LB1048 did was to remove eminent domain from...as an ability of the Nebraska Public Power District. And for those generation projects that were going to go through the export process, like our project Prairie Breeze, we went before the Power Review Board and submitted our application to be an export project. [LB362]

SENATOR LOUDEN: Yeah, and you got approved beings you were exporting 90 percent of your power. You had to export 90 percent of that power, did you not? [LB362]

JAMES WILLIAMS: Correct. [LB362]

SENATOR LOUDEN: Yeah. As far as the eminent domain, that was just something that people used to beat public power over the head with because I don't think they wanted to...why would they want to take eminent domain and take over a wind generation outfit when it wasn't cost-effective to generate anyway? So I mean that... [LB362]

JAMES WILLIAMS: Sure. I see your point but I respectfully would disagree and just offer this. [LB362]

SENATOR LOUDEN: But, yeah, they put it in there to make everybody feel good. [LB362]

JAMES WILLIAMS: The way we build wind projects is that we finance our project based

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on a power purchase agreement with a utility such as Nebraska Public Power District. When we go to our lenders to say we'd like to build this project but there's a chance, you know, we think it's an outside chance but Nebraska Public Power District or a public power district in Nebraska still has the rights of eminent domain, that makes our lenders extremely nervous. And that for us was a big step forward. [LB362]

SENATOR LOUDEN: Well, I know because I sat here for about six years and heard that argument about, oh, we can't build wind power because that public power will take it away from us as soon as we get it built. I mean I heard those arguments. What I'm wondering is, is when you export that power now, is that power...is there any taxes paid on that power that you're exporting? [LB362]

JAMES WILLIAMS: Yes. [LB362]

SENATOR LOUDEN: Excise taxes or severance tax or what? [LB362]

JAMES WILLIAMS: We're paying...well, you know, this bill would possibly remove the sales tax but we do pay, as discussed before, the nameplate capacity tax which is essentially replacing the property tax. [LB362]

SENATOR LOUDEN: And that's mostly to take care of the local fees and that sort of thing. But as far as I mean like we export uranium we have to pay a severance tax and we export...if we're exporting some of that wind power, is there any kind of severance tax on that? [LB362]

JAMES WILLIAMS: Not that I'm aware of. [LB362]

SENATOR LOUDEN: Okay. [LB362]

JAMES WILLIAMS: I would say that we would have to pay for our transmission service from the point to... [LB362]

SENATOR LOUDEN: But that's all just cost. That's not an excise tax. [LB362]

JAMES WILLIAMS: I'm not aware of any. [LB362]

SENATOR LOUDEN: Okay. Thank you. [LB362]

JAMES WILLIAMS: Thank you, sir. [LB362]

SENATOR UTTER: Further questions for Mr. Williams? Mr. Williams, I have just one question. Are you...can you tell me how if you were a wind developer in Iowa or Kansas, what would be the taxes on a windfarm in Iowa or Kansas in terms of sales tax, income

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tax, nameplate capacity tax, property tax? [LB362]

JAMES WILLIAMS: Okay, sure. I guess I would point you to the previous handout, but I can...I don't have it memorized. I can read it here for you. On a megawatt hour basis in Iowa, you'd be looking at \$2.37 per megawatt hour on average. In Kansas, you would be looking at zero dollars and zero cents per megawatt hour. And then compared to the current structure in Nebraska, you'd be looking at \$4.17 per megawatt hour. [LB362]

SENATOR UTTER: So it looks like Kansas is the place to really development. [LB362]

JAMES WILLIAMS: It sure does. But we have developments all over the country... [LB362]

SENATOR UTTER: So if Kansas is really that good... [LB362]

JAMES WILLIAMS: ...and certainly do have developments in Kansas. [LB362]

SENATOR UTTER: If Kansas is really that good, what brings you to Nebraska? [LB362]

JAMES WILLIAMS: Well, the wind in Nebraska is a little bit better and we think that we'd like to have a wind project in every state. [LB362]

SENATOR UTTER: Thank you. [LB362]

JAMES WILLIAMS: All right. Thank you very much. [LB362]

SENATOR UTTER: Oh, I'm sorry. We're not done with you yet. [LB362]

SENATOR LOUDEN: I was just going to make a comment on Kansas and Nebraska. And it's just like, you know, if you got it, exploit it. [LB362]

JAMES WILLIAMS: I agree. [LB362]

SENATOR UTTER: All right. I think he just wanted to make a statement. You're free to go. [LB362]

JAMES WILLIAMS: Thank you. [LB362]

SENATOR UTTER: Next witness, please. And I would have pronounced your name, but the hieroglyphics here are a little difficult for me, so I'm going to let you do it yourself. [LB362]

STEVE BOYER: (Exhibit 7) Okay. Good afternoon, Mr. Vice Chairman, committee

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members. My name is Steve Boyer, B-o-y-e-r, and I'm a project developer with Third Planet Windpower, which is a development company, and we are in the process of building a 40.5 megawatt windfarm in Boone County east of Petersburg, Nebraska. And that power will be resold to Omaha Public Power District. As a side note, I'm also a resident of the state, having lived in Kearney for over 14 years. Over the past year, the Nebraska Unicam has focused on legislation to entice more wind development within the state. LB1048 in particular has provided a significant option for wind development to occur. I believe LB362 will add another incentive to lure wind development and help chip away at the barriers to additional development that exists in the state. If Nebraska is compared to several of its neighbors, the current sales tax and production tax put Nebraska on the high end of the tax burden charts for windfarms. The current C-BED structure can offer sales tax relief and additional avenues for tax relief are needed to incent larger scale development in the state. As wind companies evaluate potential sites across the country for development, many criteria are considered before choosing where to invest millions of dollars in development and construction costs. The tax footprint is an important criteria and it is closely scrutinized. Nebraska needs to maintain its competitive advantage with surrounding neighbors to ensure we enjoy the maximum benefits wind development has to offer. Nebraska is home to the third best wind resource in the country. This world-class wind resource has been targeted as one of the top areas of economic development by the recently completed Battelle lab study done for the Nebraska Legislature and Department of Economic Development. According to the National Renewable Energy Lab, if Nebraska met their national target of developing 7,800 megawatts of wind, the 20-year payback to Nebraska would be \$570 million in increased property tax payments; \$547 million in lease payments to Nebraska ranchers and farmers; and upwards of \$14 billion in private investment; and 64,000 full-time equivalent construction and operation jobs. And those are pretty high numbers, but to put it in more relatable terms, our project in Boone County--and this is along with an adjacent existing 80 megawatt project which is the Laredo Ridge Project--it's anticipated to add over 10 full-time jobs; create over \$8 million in production tax revenue; and also pay out over \$10 million in lease payments to landowners and represent over \$200 million investment and that's just in one county. As reported by the Boone County economic development director, taxable sales hit all-time highs last summer during the construction of the Laredo Ridge 80 watt megawatt farm. I've also made available in that handout more economic development impact information. I think there's no doubt that windfarms provide an economic boost to communities. Nebraska is also increasing its manufacturing capacity for wind-related parts. A wind turbine has over 8,000 parts, and over the last two years the United States has increased its percentage of American-made parts from 25 percent of the total to over 60 percent of the total. Nebraska will see an increase in manufacturing jobs because as more wind capacity is developed, manufacturing grows to support the existing market and the adjoining market. Nebraska's central location and its rail bars and highway transportation systems make Nebraska an ideal site for manufacturing expansion. Construction of windfarms in the state will facilitate manufacturing so tax incentives encourage wind development will

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drive the development of wind equipment manufacturing. Several polls concerning wind development have been conducted in the state and the responses were overwhelmingly in favor of utilizing our wind resource in the state. With this great support, I ask for your support of LB362 so it can maximize economic benefits wind development has to offer. That concludes my testimony. Thank you. [LB362]

SENATOR UTTER: Questions for Mr. Boyer? Senator Louden. [LB362]

SENATOR LOUDEN: Yes. Well, thank you for being here today. When you talk about...is this handout, is this this Crofton Hills, is this what you're talking about, the one in Boone County? [LB362]

STEVE BOYER: No. That's a separate project. [LB362]

SENATOR LOUDEN: Okay. But you're talking about a 40 megawatt one that you're building. [LB362]

STEVE BOYER: Forty megawatt is the size that we're building in Boone County currently. [LB362]

SENATOR LOUDEN: Okay. And what's your...what do you figure is your efficiency rate on that thing? I mean day in and day out, how many megawatts will that actually generate? [LB362]

STEVE BOYER: Well, if it's operating at full capacity, it would be 40.5. [LB362]

SENATOR LOUDEN: Yeah, but that's when the wind is blowing... [LB362]

STEVE BOYER: Right. [LB362]

SENATOR LOUDEN: ...at 20 miles an hour all day long and all night. [LB362]

STEVE BOYER: Yes. [LB362]

SENATOR LOUDEN: But it don't happen. [LB362]

STEVE BOYER: No. [LB362]

SENATOR LOUDEN: And I mean all of them...we all know there's a different efficiency rating, and I was wondering what you're figuring that at now. [LB362]

STEVE BOYER: We think it will be about 40 percent. [LB362]

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SENATOR LOUDEN: Forty percent. [LB362]

STEVE BOYER: Yeah. [LB362]

SENATOR LOUDEN: And at 40 megawatts, then you're looking about 20, 22 megawatts is what you're generating actually out of that thing? [LB362]

SENATOR PANKONIN: 16. [LB362]

STEVE BOYER: Yes, maybe; maybe a little less than that. [LB362]

SENATOR LOUDEN: Okay. Now...and you're selling that to Omaha? [LB362]

STEVE BOYER: Omaha Public Power, yes. [LB362]

SENATOR LOUDEN: Which isn't that big of a deal, 18 megawatts or 20 megawatts to Omaha isn't...I mean they're...that's just the boys are kind of playing with the kids, aren't they? [LB362]

STEVE BOYER: (Laugh) Well, I don't know if I'd... [LB362]

SENATOR LOUDEN: I mean what I'm wondering is we're trying to do legislation here that might affect everybody... [LB362]

STEVE BOYER: Sure. [LB362]

SENATOR LOUDEN: ...and you've got this, oh, little operation here that's going to be nice, but I mean it isn't like it's going to save the world a shipload of oil every week. [LB362]

STEVE BOYER: No, no. And I'm not speaking strictly for our project, Senator. I think that LB362 will provide incentive to bring additional projects, and I think that's the goal. It's not all about just our, as you put it, our little project out there. [LB362]

SENATOR LOUDEN: And by having a small project like that, you're able to utilize local transmission lines I presume. [LB362]

STEVE BOYER: Yes, sir. [LB362]

SENATOR LOUDEN: So you don't have to build transmission lines. [LB362]

STEVE BOYER: No. We were not required to. We could have used existing infrastructure out there. [LB362]

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SENATOR LOUDEN: Now is this going to be a C-BED project or? [LB362]

STEVE BOYER: No, it is not. [LB362]

SENATOR LOUDEN: It's an investor-owned. [LB362]

STEVE BOYER: Correct. [LB362]

SENATOR LOUDEN: Yeah. And do you pay rent, you pay lease where you set these on the property of these landowners, what do you pay them to set that thing there? [LB362]

STEVE BOYER: We pay them a percentage of the sale of electricity to Omaha Public Power. [LB362]

SENATOR LOUDEN: In other words it's like a royalty situation. [LB362]

STEVE BOYER: Correct, yes. [LB362]

SENATOR LOUDEN: Yeah. Okay, thank you. [LB362]

STEVE BOYER: You bet. [LB362]

SENATOR UTTER: Senator Pankonin. [LB362]

SENATOR PANKONIN: Thank you, Senator Utter. Mr. Boyer, thanks for being here. Thanks for being a Nebraskan... [LB362]

STEVE BOYER: You bet. [LB362]

SENATOR PANKONIN: ...who's got a job in wind energy. I'm glad to hear, you know, there's someone here who's representing that. I've asked about that before. I am intrigued a little bit. You talked about the column repair parts or maintenance parts that may be involved and how many parts these machines have. In one of my lives I'm a farm equipment dealer. [LB362]

STEVE BOYER: Um-hum. [LB362]

SENATOR PANKONIN: I like combine, bit parts bills on shop tickets. These things...what kind of parts business does it generate and what will be the structure of the servicing? Will the windfarms themselves service them? Will it be suppliers that are...I'm familiar with the dealer-type network, but how do you think that's going to work

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and what type of...? [LB362]

STEVE BOYER: That's a good question. I think that most developers want to use a reliable machine, it's like anything else. You don't want to have a machine that has a lot of mechanical difficulties. And so for the first several years, a lot of developers will use the actual supplier to provide warranty parts and maintenance. But after that, I think you'll see a secondary market open up: gear box parts, yaw motors, the electrical components, the cabling. There's preventive maintenance that has to go on that could be third-party sourced, all the way down to simple tasks such as keeping the access roads maintained, plowed, proper drainage. You even have to clean the towers on a regular basis as part of the preventive maintenance. I'm sure a secondary market will spring up for that. [LB362]

SENATOR PANKONIN: Specialty lubricants involved? [LB362]

STEVE BOYER: There are some lubricants but, you know, hard to tell where that will come from. That's a petroleum product typically but, yeah, that could be a possible secondary market as well. [LB362]

SENATOR PANKONIN: Thank you. [LB362]

STEVE BOYER: You're welcome. [LB362]

SENATOR UTTER: Further questions? Mr. Boyer, are we looking at an all or nothing situation here? Is there... [LB362]

STEVE BOYER: With the...are you talking about the tax credit? [LB362]

SENATOR UTTER: Yes. [LB362]

STEVE BOYER: Well, I think Senator Pankonin has a very good point he made earlier is looking for the sweet spot, as you put it. And sure, as my developer hat on, I'd like to see 100 percent sales tax credit. But I think with my Nebraska hat on there's a balance that can be struck there. But certainly right now we're not maximizing the benefit of all the development opportunities we have in the state. And, no, we don't see a lot of C-BED projects right now. We don't see a lot of any projects right now because the market is depressed. But we all know that cycle won't last forever. And what I think we should keep our eye on is when the worm turns, so to speak, we've got to be ready and we have to pull the companies in when the market is there because these are such long lead time projects. If the market turns, it takes at least 12 to 24 months to get something through permitting or all the long-term lead items that need to be ordered for a windfarm. And if we're not ready on the tax structure or any other incentives, we're going to lose on that pot potential development. [LB362]

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SENATOR UTTER: Thank you. Are there further proponents? Welcome back, Mr. Pollock. [LB362]

ANDY POLLOCK: Thank you, Senator Utter, Mr. Vice Chairman, members of the Revenue Committee. Again, my name is Andy Pollock, P-o-l-l-o-c-k. I am here as a registered lobbyist for the Nebraska Energy Export Association and also speaking on behalf of the South Kimball County Wind Association and the Banner County Wind Association. We support LB362. I appreciate and agree with Senator Cornett's characterization of this bill as well as LB65 which you heard earlier and Mr. Levy's characterization, too, that really we're looking at bills that address two different scales of farm. The small one was LB65. This addresses much larger potential farms. This is a substantial bill. This is a bill with substantial changes, very beneficial changes to Nebraska law. We believe that it would send a very much-needed message to developers that Nebraska is truly open for business. Is this the best way to do it was asked the golden egg question by Senator Pankonin. And I don't know that this is the golden egg. I do think that what Senator Cornett said in terms of there being a package is probably a wise way of looking at solutions here. We believe this would be beneficial. It's up to the Legislature, of course, to decide what the best thing is. But the concept and the key elements of this bill are worthy of your support and the Legislature's support. I would say that LB362 is not about tax incentives, rather it is, as you've heard earlier today, about leveling the playing field; about making us competitive with Kansas, Iowa, and other states. Right now we're not. I would urge you to seriously consider LB362 and move forward with legislation that will give Nebraska a shot at being a competitive player in the wind industry. And before I conclude, I'd just comment on a couple of things that came up earlier in a question to Mr. Williams. There was talk about the incentives in this bill. And I think the real goal of this bill, as I understand it--not purporting to speak on behalf of anybody but an interested onlooker--is to create an opportunity for the construction of a very sizable transmission line to the state of Nebraska that will go through Iowa, that will connect to Chicago. Chicago needs electricity just like the Front Range needs electricity. Transmission, as Senator Loudon pointed out earlier, is needed to get it there. With LB1048, it paved the way. You paved the way for the creation of a public-private partnership for construction of transmission lines in Nebraska. It's possible now. What this bill does is give rise to a better environment within the state for building windfarms. And without those windfarms, that line will not be built in Nebraska. We will miss out on an opportunity that Iowans will see and that other people along the way on that line to Chicago will see. And I would suggest to you that there's also discussions of similar lines in the works in the Front Range that the people of Kimball County and Banner County are very interested in connecting to. And without some reason to develop in Nebraska like this bill would give, you won't see those lines continuing across the border into Nebraska. You'll see them end at the windfarms that you can already observe. If you, like myself, have driven on the interstate, it's easy to see the border between Colorado and Nebraska these days.

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Where the windfarms end, that's Colorado. Where there are none, that's Nebraska. Finally, just a little bit more about...just to bring this home a little bit, Mr. Boyer spoke in real numbers and big numbers. The Boone County projects, there's two up in Boone County; one that he spoke about specifically. Their school district, which I've had numerous conversations with in the past few years, after this year, after the Third Planet wind site is built will be seeing on an annual basis \$250,000 in new revenues from the nameplate capacity tax. For a school district that size, that's huge. That gives them opportunities that they don't have right now. That's real money for real people, for educators, for students in the state. And this bill opens up those kind of opportunities further. With that, I would conclude my testimony and I would be glad to answer questions. [LB362]

SENATOR UTTER: Questions for Andy? Senator Louden. [LB362]

SENATOR LOUDEN: Yeah, thank you, Senator Utter. Well, Andy, when you mentioned...I mean you certainly paint a glowing picture I'll have to admit. When we build all these windfarms and stuff, now how do we make those people buy our power in Colorado or wherever you want to pipe it to because Colorado has some type of incentives that they'll just buy Colorado power. Xcel over there has a pretty tight hold on that thing because Xcel has got a big handle over there. They have the windfarms all over and the reason they have them is because they're actually a natural gas company and they can afford to have gas generation to pick up when the wind quits blowing. And I'm wondering if we do this stuff there's no guarantee that those people are going to buy that from us, is there? [LB362]

ANDY POLLOCK: There's never a guarantee. There is certainly noise right now I could submit to you from conversations that I've had. I've been out in Kimball County and Banner County probably three times this year, conversations I've had with the people out there who are being approached by developers who very much want to build in Nebraska. And these are developers who have sites in northern Colorado right now. They want to build here and they want to see a reason to build here, and frankly this is a bill that they like the looks of because it gives them a better reason to build here. So again, like with LB65, no guarantees. We can't hold a gun to a buyer's head. We shouldn't hold a gun to a buyer's head and tell them to buy Nebraska wind. But there is a market out there. It's just a matter of (1) figuring out how to reach it through transmission and (2) figuring out how to create a business climate in Nebraska that will make it sensible to building windfarms here. [LB362]

SENATOR LOUDEN: Now and when you mention the one in Kimball and Banner County and there, and the reason they're building there, they're on the west side tie so they don't have to go through that east-west tie. [LB362]

ANDY POLLOCK: True. [LB362]

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SENATOR LOUDEN: But when they...do they have some kind of a hookup with Xcel or Tri-State or who? Because who is buying their power over there when they do send it over? Is it Xcel or is it Tri-State? I mean that's about all that's left over there in Colorado. [LB362]

ANDY POLLOCK: I don't know who. I don't know who is buying that power. I know it's going to the Front Range. How it's getting there I'm not certain, Senator Louden. [LB362]

SENATOR LOUDEN: Okay. As I...as we...you say when you go there and, yeah, south of Cheyenne and all that, that's all...you couldn't hardly put another tower up there. But that's all Xcel's property up through there. And I mean that's where they go. And, of course, they live in Minnesota and suck all the money out of Colorado and ship it to Minnesota. [LB362]

ANDY POLLOCK: I would say that in earlier comments about the tax right now, I've heard the nameplate capacity tax described as being more akin to an excise tax than anything. We can't have a tax due to the commerce clause that only applies to out-of-state sale. That would be unconstitutional. But the nameplate capacity tax, which dollar for dollar was intended to replace the personal property tax, is very much like a severance tax and applies that way. [LB362]

SENATOR LOUDEN: Now the nameplate tax, does that go to the state or does that go to the local agencies? [LB362]

ANDY POLLOCK: It goes to the local counties and schools. [LB362]

SENATOR LOUDEN: And then it's more of a property tax if it... [LB362]

ANDY POLLOCK: It replaced the personal property tax. That's correct. [LB362]

SENATOR LOUDEN: If it was going to the state, then it might be an excise tax. But if it goes to the locals, then it's more of a property... [LB362]

ANDY POLLOCK: It's a decision on where the tax goes. [LB362]

SENATOR LOUDEN: ...in lieu of a property tax. Okay. Thank you, Andy. [LB362]

ANDY POLLOCK: You bet. Thank you. [LB362]

SENATOR UTTER: Other questions? If not, Andy, thanks for your testimony. [LB362]

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ANDY POLLOCK: Thank you very much. [LB362]

SENATOR UTTER: Next proponent. Are there any further proponents on this bill? I will mention that we have received a letter from the Alliance Chamber of Commerce and the Wind Coalition that will be entered into the official record in support of this bill. Opponents? Anybody opposing this bill? Anybody wishing to testify in a neutral capacity? Senator Cornett. Senator Cornett waives closing. We'll close the hearing on LB362 and open the hearing on LB360. Senator Cornett. [LB362]

SENATOR CORNETT: (Exhibit 8) Good afternoon, Vice Chair Utter and members of the Revenue Committee. I'm Abbie Cornett, C-o-r-n-e-t-t, representing the 45th Legislative District. I have introduced LB360 to clarify and change taxation of wind energy electrical generation facilities in Nebraska. The main focus of this bill is clarifying the property tax treatment of such facilities, but also addresses a credit against the nameplate capacity tax for certain property taxes previously paid on wind, energy generation facilities commissioned before July 15, 2010. That credit and related property tax treatment of wind energy, electrical generation facility is the result of laws 2010 LB1048 which was referred to the Natural Resources Committee, not the Revenue Committee, which will now have to weigh in on the matter. For the people that were here last...when LB1048 was passed, the Natural Resources Committee came in and briefed us on some of their ideas in regards to the revenue component of LB1048. LB1048 has done a tremendous amount for wind energy in the state of Nebraska. We just need a little bit of clarification. As introduced, LB360 would strike the language added by the LB1048 Section 10 which redefines trade fixtures to include all property used in the generation of electricity using wind as a fuel source, and it would clarify that the property tax exemption enacted by LB1048 Section 11 applies only to depreciable, tangible personal property and not to real property also. LB360 would also eliminate the credit against the nameplate capacity tax for certain property taxes previously paid on wind energy generation facilities commissioned before July 15, 2010. That provision needs clarification also, so as to distinguish the permissible exemption of depreciable tangible personal property from the impermissible exemption of real property. That is the common thread or theory of LB360, and it is something that we need to address this year. LB360 provides a retroactive operative date of January 1, 2010, to remedy such complexities and contains a severability clause as well as the emergency clause. These are very important issues, so that they were subject of an interim study, and they are the reason why I'm offering an amendment, AM369...if the page could hand this out for me, which rewrites LB360, so that its intent is perfectly clear. A copy of the AM369 is available, and the page is passing that out. Essentially, AM369 would change much of the language stricken in the introduced version of LB360, simply by clarifying that property tax exemption applies only to depreciable, tangible personal property, and that the credit against the nameplate capacity tax applies only to depreciable personal property taxes previously paid on wind energy generation facilities commissioned before July 15, 2010. AM369 also reinstates the stricken trade fixture language, the itemized

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list of personal property that may qualify as tangible personal property for the purposes of property tax exemption and the credit against the nameplate capacity tax, all for the purpose of clarifying that depreciable tangible personal property is the subject of the bill's property tax exemption and its credit against the nameplate capacity tax. AM369 also provides for the retroactive date of January 1, 2010, and contains a severability clause as well as an emergency clause. When these changes become law, Nebraska's budding wind energy industry will have built upon a foundation of solid and reasonable tax policy principles and rules of law. So please take advantage of having the wind as an industry in the state of Nebraska by passing this very important clarifying language. Thank you for your time and consideration on LB360 and AM369. As the members of the committee know, we had an interim study in regards to LB1048 which was passed last year in regards to some of the taxation issues. It became apparent over the course of the last year that we had to have some clarifying language in regards to LB1048 in regards to the tax issues on that. The bill following this will also address some of the issues that we heard from Knox County, but Senator Larson will be introducing that bill. This has to do with clarifying the language that was in LB1048. [LB360]

SENATOR UTTER: Senator Pankonin. [LB360]

SENATOR PANKONIN: Thank you, Senator Utter. Senator Cornett, I see in the write-up that it talks about a clawback provision on this property tax on commissioned projects July 15, 2010. Is that in the amendment then as well? Or... [LB360]

SENATOR CORNETT: I believe it is. The amendment was... [LB360]

SENATOR PANKONIN: Okay. I mean, I just got it, obviously, to look at it. [LB360]

SENATOR CORNETT: Well, I read the amendment earlier, but I've, unfortunately, read a lot of wind amendments over the past couple of days. [LB360]

SENATOR PANKONIN: You've had a busy day with wind. This clawback, do you know how many...what the potential is on that, and how many projects it might be to go back and recap, you know, let them have a credit on this...the property tax they had already paid per this bill? [LB360]

SENATOR CORNETT: I would have to get an exact number on that for you, but I can do that. We have all the data in the office. [LB360]

SENATOR PANKONIN: Because that could be fairly expensive, you know, if it's a lot, thank you [LB360]

SENATOR CORNETT: This was specifically drafted not to hurt any of the existing projects. We are trying to clarify the language, so we can move forward with the

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industry. [LB360]

SENATOR PANKONIN: Thank you. [LB360]

SENATOR UTTER: Further questions for Senator Cornett? If not, we'll take the first testimony from proponents of LB360. Mr. Levy, thanks for coming back. [LB360]

DAVID LEVY: Thank you for having me back. I promise, I won't testify on all of your bills any other afternoon this session. Again, David Levy, attorney with Baird Holm Law Firm in Omaha, L-e-v-y, appearing here this afternoon as a registered lobbyist for Midwest Wind Energy and Edison Mission Energy. I want to tell you a little bit about those two companies and their partnership, and I should have probably done that earlier. The partnership of Midwest Wind Energy and Edison Mission Energy is the biggest wind developer in Nebraska at this time. The partnership has 160 megawatts of wind energy projects operating now in the state and has at least 80 more megawatts coming on-line next year; has over 4,000 megawatts of wind energy under development in the state. This partnership has invested over a quarter of a billion dollars in Nebraska since 2007. This partnership was very active in the development of LB1048 and supported the nameplate capacity tax. We sincerely appreciate the work of Senator Cornett and her staff on these issues, and, in particular, her introduction today of AM369. My clients were opposed to LB360 as it was originally introduced, because we feel that it goes far beyond a mere clarification and potentially results, in fact, in double taxation of certain wind farms. But as AM369 seeks simply to clarify LB1048, and we agree with Senator Cornett and believe that that is what it does, Edison Mission and Midwest Wind Energy wholeheartedly support AM369 or LB360 as amended, replaced by AM369. To the extent LB1048's tax provisions were not clear or have been interpreted differently than may have been intended, I think AM369's clarification will most likely result in the increase in dollars flowing to the counties where wind energy projects are located. Now, it may sound funny for a lobbyist for wind energy developers to be sitting here supporting a bill that's going to result in more tax paid, more tax received by the counties, but the intent of LB1048 was not to do anything on the real property tax, not to take anything away from the municipalities on the real property tax. And so, to the extent that AM369 confirms that and clarifies that, my clients support that. But if there was that misinterpretation and it was to the county's detriment, then AM369 will be a good thing for those municipalities, because it will result in that revenue coming back to those counties or them realizing that again where they thought they might not have, and that could be hundreds of thousands of dollars per year. So, again, Edison Mission and Midwest Wind Energy support LB360 as amended by AM369 and encourage the committee to send that out...the amendment out to the full Legislature. And I'd be happy to answer any questions. [LB360]

SENATOR UTTER: Senator Adams. [LB360]

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SENATOR ADAMS: Thank you, Senator Utter. Could you describe for me in a little more detail your clients' concern about double taxation and where that was in the original, and how it's cleaned up here? [LB360]

DAVID LEVY: Sure. In the original...well, let me back up a little bit. As we talked about before, the purpose of the nameplate capacity tax was to replace the personal property tax but leave the real property tax where it is. Typically, property is either real property or personal, so if you're under the kind of typical system, if somebody says, well, this part of your project or your facility is personal property, you're not getting taxed on it at least as real property. It's one or the other. Where you have the flat nameplate capacity tax that's supposed to have replaced personal property tax, you don't have that sort of inherent check and balance. So if something was intended to be captured in the nameplate capacity tax, but somebody later says, well, we think that's real property, you're paying for it under the nameplate capacity tax, and you're paying for it as real property. So in LB1048, the drafters and the committee and the Legislature were careful to define what's personal and what's not personal property in this context for that very reason to avoid that. The original LB360 proposed to strike that language that I think was very important to trying to clarify that and avoid that double taxation. And I think AM369 even does a better job, because it clarifies that it's personal property that's in that list which is now back in the statute...proposed to be back in the statute that is exempt and, therefore, then subject to the nameplate capacity tax. [LB360]

SENATOR UTTER: Further questions? Seeing none, thank you. [LB360]

DAVID LEVY: Thank you. [LB360]

SENATOR UTTER: Appreciate your testimony. Next proponent. Are there any further proponents of this bill? Opponents. Anybody opposing this bill? [LB360]

ANDY POLLOCK: Vice Chairman Utter and members of the Revenue Committee, again, my name is Andy Pollock, P-o-l-l-o-c-k, here as a registered lobbyist for the Nebraska Energy Export Association. My testimony is going to sound strangely similar to Mr. Levy's, and you'll probably ask why we're opposed. We do oppose the original copy of the bill, the green copy of LB360 as introduced, two concerns the credit that he talked about, and there was just an exchange of that. And I'll talk about that a little bit more on LB253. And then the deletion of the list of items from a wind farm that were to be deemed personal property. We were concerned about the deletion of that list. It was good guidance. It would ensure any uniformity, and we were concerned that it was being left out. We do have some trouble seeing how LB1048 as drafted could be read to apply beyond personal property, and also possibly exempt real property. We don't agree with that interpretation. That said, we totally support the idea of clarifying the language in that bill. If others think that there's some confusion there, we support that. I have reviewed this morning AM369 which Senator Cornett offered and explained to the

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committee. We support that in principle, and we support that completely, and we think that that clarification does nothing but good. And with that, I would conclude my testimony. [LB360]

SENATOR UTTER: Thank you, Andy. Are there questions? If not, thank you. [LB360]

ANDY POLLOCK: Thank you. [LB360]

SENATOR UTTER: Next opponent. Welcome to the Revenue Committee. [LB360]

DARREL HAYEK: Thank you. My name is Darrel Hayek, D-a-r-r-e-l H-a-y-e-k. I represent the Saline County Wind Association, and we...the part that we're worried about is the decommissioning in here. It's not decommissioned, there's still going to be tax on it, if it's not taken down. And without taking it down, the landowners could get stuck with a big bill at the end or they would be paying tax on this, and that's where we see the problem right now. It could be a crisis management like we're having right now with a couple of these bills to try to go back, and that could be what's going to...because no wind farm yet that I'm aware of has lasted ten years. Palm Springs has got over 14,000 abandoned wind turbines. And I don't think we want that to happen here. Thank you. [LB360]

SENATOR UTTER: Thank you, Mr. Hayek. Are there questions? Seeing none, thanks for your testimony. [LB360]

SENATOR FISCHER: Senator Utter. [LB360]

SENATOR UTTER: Oh, Senator Fischer. Excuse me. [LB360]

SENATOR FISCHER: Thank you, Senator Utter. Do you have any suggestions for language that would help with the decommissioning? Decommissioning has always been a concern of mine when I was on Natural Resources, too, so (laugh). [LB360]

DARREL HAYEK: Yeah, I know. Have a fund put up where it's a 50 percent of the decommissioning is put into a fund for ten years, so there's 150 percent of the decommissioning money there, so you have a little cushion when it's decommissioned. The excess money goes back to the company that put it in. [LB360]

SENATOR FISCHER: Do you think the contracts that the developers sign with landowners can cover the decommissioning cost? [LB360]

DARREL HAYEK: They can, but they don't. Even NPPD testified last year, they do not have decommissioning in their wind turbine contracts. [LB360]

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SENATOR FISCHER: Do you think the farmers are protected in any way with paying this tax once the developers leave, and the towers are standing there. Who's going to pay the tax? Can that be covered in the contract or are the farmers going to pay it? [LB360]

DARREL HAYEK: It's going to be a fight for a while to figure out who owns them, because if the company is an LLC that goes bankrupt or just walks away, the landowner isn't going to have control of them for a while. And then maybe there will be a...they'll go back to the landowner, but now they got three, four, five years of taxes they got to come back. [LB360]

SENATOR FISCHER: Thank you. [LB360]

SENATOR UTTER: Further questions? Thank you. Further opponents? Anybody wishing to testify in a neutral capacity. [LB360]

DAVE DOMINA: Mr. Vice Chairman, I'm Dave Domina, D-o-m-i-n-a. I am a lawyer. I am helping Knox County out on some issues related to hanger-on matters from LB1048, but my scope here is beyond that work. My interest in these bills today is because of my work for Knox County over some issues lingering as a result of some of your work last year, and that interest led me to look at this bill. I have not read AM369 that will alter some of the comments I might otherwise have made. I wanted to be sure you understood that the language that was substituted here for the list in the original statute describing all depreciable tangible personal property used directly in the generation of electricity using wind as a fuel source appears to broaden the exemption from the property tax. I don't know what the amendment does to that, because, as I said, I haven't read it, but the original intent was a broadening intent, I think, pretty clearly. Secondly, it's pretty clear that the Legislature has presumed that a viable basis for substituting for the property tax is to use the manufacturer's rating structure expressed on the nameplate as the mechanism for taxing these machines. The federal government does that, too, but the federal government has some regulations that define and control what the nameplate rating process is, and I presume that's done to prevent collusion between manufacturers and large purchasers who might otherwise at the expense of states imposing nameplate taxes fudge on what the nameplate capacity is. I would urge your committee to give some consideration to that federal definition which is at 40 CFR Part 73, Subpart F, 40 CFR Part 73, Subpart F, and consider whether that should either be given statutory voice or perhaps regulatory voice under the rule-making authority that's in this bill. The third thing I'd like to mention to you is that Knox County, I'm certain, I, as a lawyer working on its behalf see the elimination of that credit or clawback provision that was discussed a little bit ago as not only a good thing but an essential thing. Article VIII, Section 4 of the state Constitution, as I am sure you know, prohibits the commutation of taxes. It appears to us as though the credit is, in fact, a commutation. I think that, as members of this particular committee, any time you hear a

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reference to a clawback against taxes or anything that structurally forgives or shifts or modifies a tax burden after it has become fixed and final, as in a 2009 obligation being tinkered with in '10 or a 2010 obligation being tinkered with in '11, you have to assume you're at serious risk for violating Article VIII, Section 4's prohibition. So the fix, if there needs to be one, needs to be one that is clearly constitutionally permissible. We think that getting rid of the credit is a very good thing, and I simply urge you to be cautious about any kind of clawback you substitute for what we see as a problem, and we believe we have an obligation on behalf of the people of Knox County to test in a court proceeding. Let me mention one more thing that's entirely technical, but a little bit odd about this bill, and probably too legalistic for a lot of time. Section 3, Part 7 imposes civil penalties, and those penalties include a \$10,000 fine for failure to file reports and to do other things. There's a statute now, Section 77-1726 that creates a felony for failure to pay taxes. It's imposed specifically on "corporations or companies". That statute doesn't reach failure to file, and it doesn't reach underreporting, and it doesn't reach untimely reporting. The civil penalty section of this bill does. I think that's desirable, and it might be desirable to expand 77-1726 to assure that the state has even more force at enforcing the nameplate tax against large taxpayers than a simple, civil penalty of \$10,000 which could be nominal in some settings. The final thing technical for your review committee is that Section 4 which provides an operative date here of January 1, 2010, does not appear to be written like typical operative bill provisions. It says the statute is effective or is operative on January 1, 2010, and you're enacting it, of course, in a subsequent tax year. I'm not really sure that's entirely what the drafters of the bill meant, and it might be appropriate to consider a technical amendment there. Pardon me for the legalese, and I appreciate your attention. [LB360]

SENATOR UTTER: Questions for Mr. Domina? [LB360]

DAVE DOMINA: Thank you. [LB360]

SENATOR UTTER: Thank you very much for your testimony. Further testimony in a neutral capacity? Senator Cornett. Senator Cornett waives closing. [LB360]

SENATOR CORNETT: Senator Larson, you're recognized to open on LB253. [LB360]

SENATOR LARSON: Thank you, Senator Cornett and members of the Revenue Committee. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I represent the 40th District of Nebraska. Today I am introducing LB253 which repeals a provision in Section 77-6203 that allowed a wind energy generation facility to credit previously paid property tax against the nameplate capacity tax due. Rather than more narrowly defining the credit as the amendment to LB360 does, LB253 offers an alternative approach to address this complex issue. My constituents in District 40 have raised concerns about the negative fiscal impact of this tax credit on the local political subdivisions, and I introduce this bill to address those concerns. The tax credit in this section applies only

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to the wind facility in Knox County. Knox County's tax base increased dramatically when the inclusion of the wind energy generation facilities property...in the 2009 property tax assessment. After the passage of LB1048, Knox County and the Bloomfield School District had to substantially raise property taxes. Because of these tax provisions, not only are the county and Bloomfield public schools unable to collect property taxes, but they are not able to collect even the nameplate capacity tax for the next several years. Eliminating the tax credit would require wind energy companies to pay the nameplate capacity tax each year for each megawatt of energy produced beginning with taxes assessed for 2010. This credit changed the rules of the game for Knox County after there was an expectation of revenue, and in the interest of fairness to the taxpayers and political subdivisions of the county, I urge the Revenue Committee to support this bill. And I know there's a number of my constituents from Knox County that will be coming up to testify both from the county and the school board. And I'd entertain any questions. [LB253]

SENATOR LARSON: Thank you. [LB253]

SENATOR CORNETT: First proponent. [LB253]

ROBERT MARKS: (Exhibit 9) Chairman Cornett and members of the committee, my name is Robert Marks, R-o-b-e-r-t M-a-r-k-s, and I am superintendent for Bloomfield schools as well as Wausa public schools. And the adage that comes to mind is, you don't miss what you don't have, and if you don't have it applies to this process. It started several years ago for me getting anticipation of funds, didn't know for sure what it was, and the pages that I am distributing to you are information sheets that I use to base my first years' collection of taxes. And if you'd take a minute to look at that, what we did was based a lot of our projects off of this. It gives you a five-year schedule, and then year 6 through 15, as I understand it, would be kind of a level amount of assessed value; at the time, \$26 million. So over five years, we would have had a total assessed value of \$366,381,999 and then year 6 through 15 an additional \$261 million. So, over the five years alone, based at \$1.05--and that's what I taxed at, \$1.05 which is the maximum you can go for the General Fund and the Special Building--we would have collected the \$4,039,361, and then we also have a qualified Cap fund that we assessed, and that's over five years. So, that was an additional \$183,190. So, the five-year plus the addition 6 through 15, if the wind farm lasted that long, would have give us, for the school alone, a net of \$6,970,051. Now, in our eyes, that would have taken care of the replacement of maybe a building fund or a...not a building fund but a bond to build a building or renovate our buildings, and that's what we had planned on. We started this planning process a couple years, maybe three years before the wind farms were a reality. To my knowledge, the wind farm that we have up there is the only one that was caught in this dilemma. Midyear for us...I believe it was in 2009 or 2010, before they did the change on the wind farm, I was called by, I believe, maybe an aide in Senator Langemeier's office, and wanted to know if I could just pull everything out of my budget, that it

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pertained to the wind farm, and then start over. And I said, well, no, it's just not that simple, and so we proceeded. But the fact of the matter is that we, on the second page, we had several projects, and for the first year, we collected about \$1,232,696, and that was all good and fine until the remaining schedule of the depreciation schedule was pulled out, and that created all kinds of problems. All of a sudden my budget shrunk and so did everything else that was associated with it along with cash reserve limits, things like this. More importantly, our projects that we had discussed and passed to do through the patrons of the district were put on hold. So, you know, with Senator Larson, his bill to remove the part in there that would allow the wind energy entity to bank money that we were paid the first year until the two equal, I still think is not suitable, and I applaud having that language removed, if we could. It's complex, and we greatly appreciate the help we get from the senators down here, and I know you have a daunting task. But it's like playing pinball when you put a budget together, and this certainly threw a big curve in our budget process. And beyond that, you know, I guess I would like your consideration on this bill. Senator Cornett, I just saw your bill before, and I haven't had a chance to study it. But the parts of your bill I like, but the other part that they still are allowed to bank against what we were given, I disagree with. Now, I guess just, that's my opinion. So beyond that, I would entertain any questions on how it would affect our school or how it did affect our school. Because what I understand, we're the only one that was affected by this...Knox County. [LB253]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB253]

ROBERT MARKS: Thank you. [LB253]

SENATOR CORNETT: Next proponent? [LB253]

JIM FUCHTMAN: (Exhibit 10) Good afternoon, members of the Revenue Committee. This is my first testimony; I'm a bit nervous. My testimony...my name is Jim Fuchtmann, F-u-c-h-t-m-a-n, and I'm a Knox County supervisor. My testimony reflects my opinion as a Knox County taxpayer and also as a Knox County supervisor, but not necessarily the opinion of the entire county board of supervisors. I'd like to start by saying that I support LB1048 which the Nebraska Legislature passed in 2010. It is my understanding the main purpose of this bill allowed for the export of wind energy out of the state of Nebraska. The passage of LB1048 helps to draw potential wind energy development to the state. As a taxpayer and county supervisor, I see the importance of new development adding and diversifying the local taxpayer base. As a resident of a rural area, I also see the value of new jobs created by the development of wind energy facilities in rural areas of the state. Earlier testimony talked about eight to ten jobs. Eight to ten jobs is huge in Knox County. A small section of LB1048 gives a tax credit to wind energy facilities that were commissioned prior to July 15, 2010. Knox County has a wind energy facility that was commissioned prior to this date. This facility was included in the

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county's valuation process for budget year July 2009 through June 2010. LB1048 also created a new nameplate tax which did not allow Knox County to include the facility in the valuation process for budgeting year July 2010 through 2011. As a result, Knox County saw a drop in valuation creating an extra tax burden for all taxpayers of the county. LB1048 credits personal property taxes, previously paid by the facility to be used as future nameplate tax payments. This credit adds to the new tax burden already placed by Knox County taxpayers. It is my understanding that LB243 (sic) removes this credit. Therefore as a taxpayer and a member of the county supervisors, I support LB253. Thank you for your time and I'll entertain any questions. [LB253]

SENATOR CORNETT: Questions from the committee? Senator Adams. [LB253]

SENATOR ADAMS: Thank you. How much did your valuation increase in Knox County as a result in that first budget year that you were planning for? [LB253]

JIM FUCHTMAN: I do not remember off the top of my head. It seems like it was around \$126 million of new valuation that was thrown into our valuation process. [LB253]

SENATOR ADAMS: Okay. So, am I correct in wondering if like the school roll, the county had made preparation? You had anticipated revenues coming in, and you had projects that... [LB253]

JIM FUCHTMAN: We set...not projects. We set our mill...new valuation, we lowered our mill levy from...and these are rough figures, roughly about a .32 down to a .25, so we lowered it about six points. [LB253]

SENATOR ADAMS: So when you talk about additional tax burden, you're saying that you're going to have to raise the levy? [LB253]

JIM FUCHTMAN: We did raise the levy for the next fiscal year. That is correct. [LB253]

SENATOR ADAMS: Okay. Thank you. [LB253]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB253]

JIM FUCHTMAN: Thank you for your time. [LB253]

SENATOR CORNETT: Next proponent? Are there any further proponents? Opponents? [LB253]

ANDY POLLOCK: Madam Chair,... [LB253]

SENATOR CORNETT: Go ahead. [LB253]

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ANDY POLLOCK: All right. Didn't know if that was a do not talk signal or... [LB253]

SENATOR CORNETT: Yeah, I wasn't sure what was beeping over there so (laughter). [LB253]

ANDY POLLOCK: Madam Chair, members of the Revenue Committee, I promise this is the last time I will be up here today and probably this year. Andy Pollock, P-o-l-l-o-c-k, again representing as a registered lobbyist the Nebraska Energy Export Association. We oppose LB253 for reasons I mentioned briefly with respect to the green copy of LB360. We opposed the removal of the credit that was established in LB1048. Just a little background real quickly. I won't elaborate. LB1048, as you've heard today, in particular, in response to some questions that Senator Fischer had of Mr. Levy on an earlier bill, established the nameplate capacity tax. It was intended and, in fact, did replace the personal property tax. That change was a win for Nebraskans who want to see wind development. It was a win for developers. It was a win for local schools and counties. It removed for developers an initial...a substantial up-front cost along with all of their other capital costs of building a wind farm. Essentially, over the first five years of the farm, they had a responsibility for paying the entirety of the personal property taxes, just another big up-front cost which was another disincentive to development in Nebraska. For counties and schools, and I know you heard testimony about this up in Bloomfield this summer, it was a windfall for the first five years of the project. Thereafter, an absolute revenue stream of zero. So LB1048 created long-term predictable revenue stream for counties and schools that would be good for the lifetime of the project, and it removed that barrier, that incentive to development that was up front for the developers. And, again, the calculations by the economists on the nameplate capacity tax of \$3,518 a megawatt were meticulously determined by economists including by one at the University of Nebraska. The credit provision was intended to create a level playing field. It was intended to avoid double taxation. It was intended to avoid a situation where a developer would have to not only have paid personal property tax, but would also have to pay the nameplate capacity tax. On top of that, it was a difficult issue which was considered by this Legislature last year, and I believe that they determined a very good way of handling the situation with the credit. However this is dealt with the Legislature, the state must avoid double taxation, paying property taxes and the nameplate capacity tax. It must avoid that, and I would say it's unfortunate that the situation was created for Knox County that you'd heard about. It's obviously easy and correct to sympathize with the situation that they are in, but they did get a windfall that first year, and they will after a period of time, continue to receive the nameplate capacity tax. It may be a few years, but in the end they will continue to receive that nameplate capacity tax which will be good for the lifetime of that wind farm. Of all the counties and school districts that I've talked to over the last 12 months or since the passage of LB1048, they're very pleased with the tax structure. I talked about that a little bit earlier, and it does create a very...very useful tool for counties and

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schools. For those reasons, we would oppose LB253. I'd be happy to answer questions. [LB253]

SENATOR CORNETT: Senator Pirsch. [LB253]

SENATOR PIRSCH: You know, I just had a question, and it had to do with the creation of the nameplate capacity tax. And I would assume is this utilized in other states as well, this kind of alternative to replace the personal property tax? [LB253]

ANDY POLLOCK: The nameplate capacity tax is fairly unique in the U.S. There are examples elsewhere. There are production taxes that are imposed by other states. The nameplate capacity tax, and I can't speak for the Legislature last year, but one of the valuable and beneficial things about it is that it provides a very steady stream of revenue for the counties and the schools that's independent of how the wind is blowing, whether the farm is actually producing. As long as it's commercially operating, that tax will be paid. [LB253]

SENATOR PIRSCH: Um-hum. Well, yeah, and there's the opportunity for win-win, lower up-front costs for the developer and for the state as (inaudible) for the tax amenity of a more stable revenue stream. But I guess my question was, is that an organic...something devised in Nebraska for the first time, or was that concept borrowed from some other jurisdiction? [LB253]

ANDY POLLOCK: There are production taxes in a number of other jurisdictions. I can't name them. This is used...a similar tax is used, Senator, in Nova Scotia, and that law was looked at in developing this legislation last year. [LB253]

SENATOR PIRSCH: And in terms of that then, is there a certain...since economists kind of structured this, right, this kind of more stable (inaudible)? Was there a...overall, is it revenue neutral? I mean, as opposed to if you didn't have that, and had the personal property tax, you'd have up front and then the amortization or the steep depreciation. But, overall, does it work out neutral, the two systems, or is there...I'd assume you'd have to build in a...I assume, a percentage rate, right? A certain percentage of interest or whatnot then over the years if you...do you know how that structure or you...? [LB253]

ANDY POLLOCK: I have all that information at my fingertips... [LB253]

SENATOR PIRSCH: Oh, okay. [LB253]

ANDY POLLOCK: ...in my office, and I have access to the economist. I can tell you that it was intended to be revenue neutral... [LB253]

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SENATOR PIRSCH: Okay. [LB253]

ANDY POLLOCK: ...for the first...and you heard this from Mr. Levy earlier, for the first 26 years of operation of that farm. That amount should replace what would be lost in the personal property taxes after they were exempted. Thereafter, everything beyond the first 26 years would be money that the counties and schools would not have experienced under the former personal property tax. [LB253]

SENATOR PIRSCH: Well, thanks. I'm just trying to refamiliarize. You know, I know that was...what year was that now? Was that just last year then? [LB253]

ANDY POLLOCK: That was last year, yeah, 2010. [LB253]

SENATOR PIRSCH: Okay. But we had encountered that concept in another bill, hadn't we? Well, I tell you what, I appreciate that, and if you can get me that information about how it was structured, that would be great. [LB253]

ANDY POLLOCK: I'd be glad to. It might be more help to have one of those economists who sat down with the numbers explain it to you, because I, frankly, would be speaking Greek. [LB253]

SENATOR PIRSCH: Thank you. [LB253]

SENATOR CORNETT: Senator Pankonin. [LB253]

SENATOR PANKONIN: Thank you, Senator Cornett. Mr. Pollock, thank you again. Let me just get this straight, and I missed the opening, so I apologize for that. Your position is, if this bill is passed even though there has been this single situation that didn't turn out as maybe intended or as well as it could be. But this...the policy in this bill would hurt future development and be a problem for the industry overall, is that what you're saying? [LB253]

ANDY POLLOCK: No, I don't think it really would have any impact on future development, but the nameplate capacity tax certainly will, and I think that will be beneficial for further development for counties, schools, and for developers. The credit provision which is the subject matter of this legislation really is an issue that's peculiar and particular to one county and one wind project. So it really wouldn't have an impact on further projects. [LB253]

SENATOR PANKONIN: Okay, but you're opposed then? Tell me again why you're opposed. [LB253]

ANDY POLLOCK: Because it would create a situation where there would be two sets of

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identical taxes paid in the same area. You would have a nameplate capacity tax which still applies, and then you would reinstate the...essentially, the personal property tax. It's not quite that simple, but you would not give a credit for personal property taxes that had been paid, but it would offset against the nameplate capacity tax. [LB253]

SENATOR PANKONIN: So if it benefits this one situation but doesn't hurt the rest of the industry or how it develops, why are you opposed? I guess I'm having a hard time understanding that. [LB253]

ANDY POLLOCK: I think simply because, again, not opposed for future implications, but I think LB1048 struck a very fair balance. Was it perfect? You know, I think that's to be debated. We're just concerned about the leveling effect that that would have with respect to that project there. [LB253]

SENATOR PANKONIN: Okay, thank you. [LB253]

ANDY POLLOCK: Yeah. [LB253]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB253]

ANDY POLLOCK: All right. Thank you. [LB253]

SENATOR CORNETT: Next opponent? May I see a show of hands for the number of opponents? [LB253]

DAVID LEVY: Senator Cornett and members of the committee, David Levy, L-e-v-y, attorney with Baird Holm, registered lobbyist for Midwest Wind Energy and Edison Mission Energy. I will make the same promise as Mr. Pollock that I will not testify on any more bills this afternoon. Seeing as there are none scheduled, that's an easy promise, but I will make it nonetheless. Midwest Wind Energy and Edison Mission Energy oppose LB253. One of the Legislature's goals with the nameplate capacity tax, and I think this gets a little bit to your question of Mr. Pollock, Senator Pankonin, was to ensure that every wind project would be treated equally in terms of tax burden and method of taxation. Accordingly, LB1048 included this credit provision that it would allow projects that predated LB1048 to come under the new system of taxation, would allow them essentially to catch up and get on the new system. One such project is Edison's and Midwest's Elkhorn Ridge Project in Knox County in which Tenaska is also a partner. It's an 80 megawatt project that costs nearly \$150 million to construct and generates enough electricity to serve approximately 25,000 homes. I want to say, and I think this is very important, and I'm very sincere in this. Knox County has been a great partner in this project, and it's a great place to do business, and my clients very much enjoy doing business there and are glad to be a part of that community. And it's unfortunate that now we have this situation where there are differing interests. That said, for 2009, the

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Elkhorn Ridge Project paid approximately \$1.5 million in personal property tax to Knox County. Under the nameplate capacity tax, that number would have been approximately \$285,000. Now, as we talked about earlier, the personal property tax effectively ends after five years whereas the nameplate capacity tax goes on for the entire life of the project. Hence, the dramatic difference in those numbers in year one of the project. Nonetheless, the project effectively, therefore, prepaid over five years of nameplate capacity tax. Accordingly, LB1048 includes this credit provision against the future nameplate capacity tax for projects like Elkhorn Ridge, so they can catch up and be on the new system like all of the other wind projects that come thereafter. There's no refund of the prepayment. Knox County gets to keep the \$1.5 million, and that's fine. It's simply a matter of the credit provision, so that there is not double taxation. The credit provision also serves the Legislature's intent with LB1048 of having all projects on the same system and taxed the same way. I'm sorry, LB253, then would be contrary to that intent. And, as I said, because the project paid the personal property tax in year one, and under this bill would be subject to the nameplate capacity tax immediately without any credit for that five years of prepayment, there would be a significant issue here of double taxation as well which is unconstitutional. So for those reasons, Edison Mission and Midwest Wind oppose LB253. As I said, Knox County has been a great partner, but LB253 sends the wrong message to the future potential wind developers and does not serve the greater good. Accordingly, I urge the committee not to send it out to the full body, and I'd be happy to answer any questions that you might have left at this point. [LB253]

SENATOR CORNETT: Seeing none, thank you. [LB253]

DAVID LEVY: Okay. Thank you. [LB253]

SENATOR CORNETT: Any further opposition testimony? Anyone in a neutral capacity? [LB253]

DAVE DOMINA: Madam Chairman, I'm Dave Domina. I'll be brief again. My points, again, are primarily technical as they were on the bill we talked about a few moments ago, I'm the lawyer who's working with Knox County in connection with some matters left over from LB1048. Again, that work is beyond...this work today is beyond the scope of that engagement, so I'm here speaking for me. But I think Knox County, at least, its board may appreciate what I have to say. Let me say, first of all, let's be completely clear about what this bill does and doesn't do. This is not a question of double taxation. It's a question of mistaken taxation for 2009, but taxation pursuant to a statute enacted by the Nebraska Legislature and signed into law by the Governor, and the law of this state. That statute created a tax that could be planned for by business, could be accommodated in its planning methodologies and its pricing structures and made a part of its processes, so it could be profitable. That tax became owed to the people of this state in 2009. A long time ago, the people of this state said in Article VIII, Section 4, that

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the Legislature of Nebraska shall have no power to forgive taxes or to commute them. A credit that erases a tax which became due in 2009 is a commutation of a tax. That cannot be fixed by subsequent legislation after the tax year ends, and the matter has come to a conclusion as to that old tax year, but it can be prevented as to current and future tax years which is what I think Senator Larson is trying to do, though I've never exchanged a syllable with him about this bill. To be sure that the problem of 2009 does not recur in 2011, to be fixed by the courts in 2012, to result in greater burden on business, and more benefit to Knox County ultimately, even though there's some starvation for revenue now. Theoretically, not in terms of good policy, theoretically, what Mr. Pollock said to you about Nebraska cannot impose a personal property tax and a nameplate tax. Theoretically, that's not correct. Theoretically, you could do both. I don't argue that would be good policy. What you cannot theoretically do is to grant a credit to eradicate a tax that has already become due in a closed tax year. This bill, to that extent, is worthy of merit. Thank you. [LB253]

SENATOR CORNETT: Questions from the committee? Senator Pirsch. [LB253]

SENATOR PIRSCH: Mr. Domina, are you saying that the action that was taken, and that purported them to create that credit, that was an unlawful act to the Legislature then? [LB253]

DAVE DOMINA: We filed suit in District Court, Lancaster County yesterday contending that that portion of LB1048 violates Article VIII Section 4 of the constitution. [LB253]

SENATOR PIRSCH: Okay. But with... [LB253]

DAVE DOMINA: And we think you can avoid an issue about that by simply making sure that the playing field is level going forward, but we do not believe you can forgive my income tax due in 2009 or change my tax rate for 2009 as an income tax payer or eliminate this tax for 2009. [LB253]

SENATOR PIRSCH: Thank you, appreciate it, sir. [LB253]

DAVE DOMINA: Thank you. [LB253]

SENATOR CORNETT: Further questions? Seeing none, thank you. Anyone else in the neutral capacity? [LB253]

JOHN HANSEN: Madam Chair, members of the committee, for the record, my name is John K. Hansen. John, J-o-h-n Hansen, H-a-n-s-e-n. I would say several things, just that are maybe obvious to the committee, but that the issue of how it is that we deal with this part of the tax liability for wind project is something that we have brought up to the committee in past years in terms of wind development, how we deal with this is

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important. When wind projects are in the up-front capital construction phase, they are badly tapped out for cash, and so that in the absence...given the federal treatment in the absence of state treatment, the federal treatment guides, and so it's appropriate for the state to have a position, and to create an appropriate public policy which I think that we've been attempting to do that is entirely appropriate, because to be able to take and spread that amount of...we hope the same amount of liability over an extended period of time is very helpful from a development standpoint for a wind project. It is also a way to have more long-term dependable income for the local governmental entities. And so, to that end, we have, in the past, offered up this issue as one that should be addressed. And so, when LB1048 came along, it got attached to LB1048, and I would just say that that if I were in charge, and, of course, I obviously am not in charge, but if I had my druthers, I would have ran that portion of LB1048 through the Revenue Committee. So the Revenue Committee is stuck with the transition issue here which was not one of your making. But we want to just say a good word for the long-term policy as you go forward, because it is very helpful. It's one of the things that the state can do that really doesn't cost very much money one way or the other, but it certainly makes the cash flow much better, and we think more positive for both the developers and the community over the long term. I have likened it to taking a drink with the fire hose. The first five years, you're done and you're out, and that's it. And so, it creates a real problem, and we are certainly sympathetic to the problems that Knox County and the school district and all of those folks are facing, because of the fact that they really were the only entities that were impacted during the transition. And with that, I just want to wish you guys well (laugh). This is a tough issue, and wish you well, and hope that in the long term, we can have these things in place, so that we're not having to deal with bills like this one that Senator Larson has appropriately brought before you. Thank you. [LB253]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you, Mr. Hansen. [LB253]

JOHN HANSEN: Thank you very much. [LB253]

SENATOR CORNETT: Is there anyone else in a neutral capacity? Senator Larson waives closing. That will end the hearings for today. Thank you very much. [LB253]