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Revenue Committee  
February 24, 2011

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[LB426 LB489 LB627 LB642 LB682]

The Committee on Revenue met at 1:30 p.m. on Thursday, February 24, 2011, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB682, LB627, LB642, LB489, and LB426. Senators present: Abbie Cornett, Chairperson; Dennis Utter, Vice Chairperson; Greg Adams; Deb Fischer; Galen Hadley; LeRoy Loudon; Dave Pankonin; and Pete Pirsch. Senators absent: None.

SENATOR CORNETT: Good afternoon and welcome to Revenue. I am Senator Abbie Cornett from Bellevue. To my left is Vice Chair Dennis Utter from Hastings; Senator Deb Fischer from Valentine; Senator Greg Adams from York. On my far right is Senator Dave Pankonin from Louisville; Senator Pete Pirsch from Omaha; Senator LeRoy Loudon is in another committee at the moment but will be joining us from Ellsworth; Senator Galen Hadley from Kearney. Our research analysts today are Bill Lock to my far left and Steve Moore may be joining us in a little bit. Pages are Marilyn Buresh and Amara Meyer. Committee clerk is Matt Rathje. Before we begin the hearings, I would ask everyone to please turn your cell phones to either vibrate or off while in the hearing room. Sign-in sheets for testifiers are by both back doors and need to be completed by everyone wishing to testify. If you are testifying on more than one bill, you need to fill out a form for each bill. Please print and complete the form prior to coming up to testify. When you come up to testify, please hand the form to the committee clerk before you begin testimony. There are also clipboards by both back doors if you wish to sign in and indicate either your support or opposition to a bill but do not wish to testify. These sheets will be included in the official record. We will follow the agenda posted on the door. The introducer or representative followed by the proponents, opponents, and neutral testimony. Only the introducer of a bill will be allowed closing remarks. As you begin your testimony, please state and spell your name for the record. If you have copies or handouts, please bring ten copies and give them to the pages, and they will distribute them to the committee. If you have only one copy, we will make copies for you. Because of the number of testifiers on the bill today, we are going to limit testimony to three minutes. When the light turns yellow, you have one minute left. With that, we will begin hearing bills today. Senator Mello, you are recognized to introduce LB682.

SENATOR MELLO: Good afternoon, Chairwoman Cornett, members of the Revenue Committee, my name is Senator Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District, which includes south Omaha and Bellevue. Over the next 15 years, the city of Omaha will undertake what will likely be the largest infrastructure project in the history of the state of Nebraska at a cost expected to exceed \$1.7 billion. The project has the potential to create thousands of new jobs and provide a long-overdue jump start in the local construction economy. Unfortunately, this same project will also have the effect of driving up utility costs, forcing some Omaha residents out of their homes and driving Omaha area businesses out of state. The problem of the Omaha combined sewer overflow, CSO project, is not unique. The city of Plattsmouth

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currently faces a similar unfunded federal mandate on a smaller scale. Ultimately, Omaha and Plattsmouth will not be the last Nebraska cities to face such a mandate on their sewer and storm water systems. Communities throughout the state will soon be forced to deal with their aging infrastructure. And without some form of assistance, local taxpayers will be the ones bearing the brunt of this increasingly heavy burden. As the committee no doubt remembers, last year's efforts to address the CSO project came in the form of former State Senator Tom White's LB952, which would have exempted sewer fees paid on CSO projects from state and local sales taxes. LB682, while also geared towards a CSO project, takes a completely different approach to the problem. Rather than exempting the sewer fees from sales tax, LB682 would allow communities and utilities to apply for state assistance in the form of a turnback of state sales taxes on increased sewer fees or monthly charges used to fund the project. Unlike last year's bill, LB682 is not an Omaha-only bill. LB682 provides a long-term financing mechanism for all Nebraska communities, not just those facing federally mandated CSO projects. The bill would also not impact the current biennial budget as it would only apply to increased fees after July 1, 2013. As far as the mechanisms in LB682 are concerned, the bill provides for a three-member board consisting of the head of the Department of Environmental Quality, the CEO of the Department of Health and Human Services, and the State Fire Marshal. Eligible municipalities or utilities would submit an application to the board with a description of the project and the proposed financing and the board will review the application for eligibility. Upon a finding of eligibility, the Tax Commissioner will determine the base level of sewer fees or monthly charges as well as the amount of assistance each applicant would be eligible for. Importantly, LB682 also includes safeguards and accountability measures to ensure that any sales tax dollars that are turned back are being used to fund the project for which they were intended. Recipients of assistance under the act must keep any assistance received in a separate fund and can only use those funds for the costs of acquiring, constructing, improving, or equipping the eligible facilities, including any financing costs. The Department of Revenue would also submit an annual report on the assistance awarded pursuant to the act, including the amounts of such assistance, the status of each project, and the number of jobs created by each project. Representatives from the city of Omaha, the League of Municipalities, and the Metropolitan Utilities District are on hand to answer any of the technical questions the committee might have in regards to the bill. Thank you for your time, and I'd be happy to answer any questions you may have. [LB682]

SENATOR CORNETT: Questions from the committee? Senator Pirsch. [LB682]

SENATOR PIRSCH: Yes. Thank you, Senator Mello. Is underlying I think LB952 from last year, and tell me if I'm wrong, that was the bill that exempted the sewer fees, implicit in that argument wasn't it, that there was a federal mandate, right, that went into place coming down to the states and localities that required expenditures that wouldn't ordinarily otherwise have been made to that extent? It was generating a windfall in terms of sales tax revenue for the state. Is that what your...part of your premise here as

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well? [LB682]

SENATOR MELLO: The premise behind the legislation is still I think somewhat similar to the premise of what the bill that we debated last year had, which is without this federally mandated or federally unfunded mandated project, at least for the city of Omaha and the city of Plattsmouth's purposes, we would not see any additional state sales tax because the projects wouldn't be going on. The projects are mandated by the federal government, thus making it a federal priority to do this. The state has seen, by the way the projects are being funded, the state has seen a windfall in regards to sales tax that's being paid on those projects due to the financing models of paying the projects off through sewer fees. [LB682]

SENATOR PIRSCH: Did you say that this does not impact the biennial, upcoming biennial budget? Is that right? How is that? [LB682]

SENATOR MELLO: The way the bill is currently drafted, and it was something that we had discussed last week with the city of Omaha and MUD in regards to their rate structures, which they will be able to testify after me to explain that in much greater detail, that we wanted to make sure to establish some baseline in the sense of making sure that the state doesn't lose any sales tax it is currently getting from the project, in part, I think, to be cognizant of the fiscal problems the state is currently facing right now. And so the way the bill is drafted is that the state would essentially remain flat in sales taxes from where it is currently receiving this biennial budget, and it would remain flat at that amount starting July 1, 2013. So the state would continue to see the same amount of money it's getting now. It's the additional money over the course and the lifetime of these projects that would go back to finance the project. [LB682]

SENATOR PIRSCH: Thank you. [LB682]

SENATOR CORNETT: Senator Adams. [LB682]

SENATOR ADAMS: Thank you, Senator Cornett. Senator Mello, I just, without getting into the details of it, I have some questions for some of the city folks that are here. But as a member of Appropriations, this is just one of many bills that delay implementation. Does it concern you as an Appropriations Committee member that in 2013, 2014 we have all these commitments that suddenly get dumped on us and we're trying to figure out how to put the next budget together? [LB682]

SENATOR MELLO: Actually, Senator Adams, and it's something that I believe the city of Plattsmouth will come in and testify on the bill in the sense of looking to make a date change in this legislation to make it more applicable to their CSO project, it's concerning in the sense of how the state's commitments might be... I again would say how the state's commitments might be made in regards to General Funds or potential General

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Funds of the state. This project, particularly I would say the projects in the city of Omaha and the city of Plattsmouth, are unique in nature. I think they're not a common project that other municipalities in the state are currently planning for or currently undergoing. And so in all practicality, and this was part of, I think, the debate we had last year on the former bill was the state normally wouldn't see any of these General Funds anyway. That without this federally mandated project and making this project a federal priority, Nebraskans wouldn't be paying this additional sales taxes. We would not see it. Their sewer fees would not go up the levels that they will be. Their water and natural gas fees would not go up the way that they are going to be. And thus, why is the state, in theory, based on conversations with our own Fiscal Office over the course of last year's debate as well as in discussing it with this bill, how does the state...and it's my understanding the state doesn't take into consideration projects like this in the sense of any economic revenue forecasting? So if we don't take revenue forecasting at the state level that we are going to see a significant increase in sales tax because of projects like the city of Omaha and the city of Plattsmouth right now, how is it that we can, you know, how is it in theory this really has an impact on the state's General Fund because the state can't plan accordingly of how much money we would contemplate in seeing in state sales tax? So I think it's unique in the sense of potential legislation, whether it's mine or anyone else's, where we are going to be asking for state General Funds in two years to fund a project. This actually is not that case where this keeps the state flat. The state in theory won't lose money that it's currently getting this biennial budget. And I think the city of Omaha and MUD will come up afterwards and explain they've already increased their fees over the next few years and they took place this current January. So over the next four years, you will see a flat amount of money, in theory, coming into the state sales taxwise for this project. It's what happens over the course of 15 years to pay off this project, over 20 years to pay off this project where we see the financing mechanism kick into place. [LB682]

SENATOR CORNETT: Senator Mello, some of us aren't going to be here in two years when this comes into play. If the budget situation has not significantly improved, as a member of the Appropriations Committee, what are you going to do when you're faced with the roads bill, which is \$125 million, which is a statewide priority, versus a priority for Omaha? [LB682]

SENATOR MELLO: Well, I would say I...with all due respect, Senator, I would say that the bill is not purely about the city of Omaha. So an interpretation that LB682 is solely about one city is mistaken. And knowing that this is a financing mechanism that any municipality, if they choose the financing model that's laid out in the bill, could utilize. The city of Plattsmouth utilizes the same financing model as the city of Omaha. Thus, they qualify for it the way it's laid out. With hypothetical legislation that we've yet to debate this legislative session on the floor, I think from an appropriations standpoint, I think, one, we have a process in regards to ensuring that we don't tie the hands of future legislatures in regards to funding. I view this as a tax policy. This is not a

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spending priority. This is not a spending policy. It's a tax policy, similar to what we have done with the Qwest Center, turnback related legislation in early 2000s. That is a tax policy as well. It's sales tax that's being generated at the local level and turning that back tax policywise to help pay for the project. I think trying to... [LB682]

SENATOR CORNETT: I was going to say, though, the difference, though, between the Qwest Center financing is part of the money generated from that also goes back to the rest of the state. And maybe saying Omaha was incorrect because it is written differently than Senator White's bill was. But at that time, you're going to possibly have to choose between a statewide priority and priorities for municipalities. [LB682]

SENATOR MELLO: I would say the way the legislation is currently drafted the state will see the amount of sales tax that's generated right now out of the CSO project for the city of Omaha alone the state will continue to get. So the state is...essentially statewide is receiving a benefit of additional state sales taxes that the residents within the city of Omaha were paying for this project. And I would also say residents of the city of Bellevue and other municipalities that are connected to the Metropolitan Utilities District are paying for this project, the state will receive those state sales taxes still. So this project will be providing roughly the amount of money it's providing right now--\$5 million give or take some--to the state's General Fund. So this project already and it will continue to do that into the future until the project is paid off. So that might be, in reviewing the fiscal note a little bit, I think that's a bit of the...maybe some communication that needs to be cleared up with the Fiscal Office in the sense that the state will continue to receive the amount of money it's receiving now from the project. It just flat lines that amount of money over the life of the project if the Legislature adopts LB682. [LB682]

SENATOR CORNETT: I think Senator Pankonin and then Senator Hadley. [LB682]

SENATOR PANKONIN: Thank you, Senator Cornett. Senator Mello, you've talked about the life of the project and whatever, but I...and it's probably here, I just have missed it. How long does this go? Is it in the bill or? [LB682]

SENATOR MELLO: It goes the...the bill as far as...without having the bill in front of me, let me double-check. [LB682]

SENATOR PANKONIN: We've talked about a start date. But just is there an end date in there? I just haven't seen it. I'm sure it probably is. I just missed it. You mentioned 15 years, 20 years. [LB682]

SENATOR MELLO: I believe, Senator, and I will use my closing to correct the record if I am incorrect, I believe it goes through the life of the project, till the project is fully financed. [LB682]

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SENATOR PANKONIN: So we don't know that going...and that could be 30, 50. [LB682]

SENATOR MELLO: Five, it could be 5 years, it could be 25 years, could be 30 years. [LB682]

SENATOR PANKONIN: Okay. [LB682]

SENATOR MELLO: But I will double-check and correct that for my closing. [LB682]

SENATOR PANKONIN: Thank you. [LB682]

SENATOR CORNETT: Senator Hadley. [LB682]

SENATOR HADLEY: Senator Cornett. Senator Mello, thank you for coming. Just a couple quick questions for you or whoever else might come in the future to testify. As I remember last year, one of the concerns I had is that...and I think I looked at Massachusetts, that they had started these projects 25 years ago and had them completely...they were done now. And why didn't we...if we knew there was a problem 25 years ago with sewage being dumped into the Missouri River, why haven't we done something in 25 years to take care of it? [LB682]

SENATOR MELLO: Senator Hadley, I'll do my best to answer your question, but that also might be wise to ask of the municipalities who come up and testify after me. To some extent, the federal government helped pay for combined sewer overflow projects up till recently actually. Over a number of projects across the country have had most of their projects federally financed. And to some extent, the sewer-related issues, at least for the city of Omaha and the city of Plattsmouth to some extent, can be attributed to growth. That the sewer system essentially has not kept up with growth over the course of the last 20 years. That would be at least my assessment in the sense of why we're currently in the position that we're in or why I'm bringing forth LB682, with the understanding that the federal government obviously is, through the Environmental Protection Agency, has mandated that we need to ensure certain thresholds in regards to our water discharge and our storm water management. I would feel probably uncomfortable going any further than that without providing more... [LB682]

SENATOR HADLEY: I was just curious... [LB682]

SENATOR MELLO: ...more environmental background from the city of Omaha. [LB682]

SENATOR HADLEY: I just do remember that certain cities across the country had tackled this problem 25 years ago. [LB682]

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SENATOR MELLO: Currently right now, there's over 700 cities across the United States who are in a similar position as the city of Omaha and Plattsmouth. [LB682]

SENATOR HADLEY: You know, how many of them are using some kind of state financing to handle the problem? [LB682]

SENATOR MELLO: You know, we have not seen I would say a financing mechanism like LB682 in the other states that we've been looking at for other municipalities. Many other municipalities have other financing options available, though, that they're able...that they have under existing state law that allows them to finance the project that currently we do not have under Nebraska state law. [LB682]

SENATOR HADLEY: And just one last thing, you don't have to answer, you talked about it earlier. I guess I'm grappling with the tax policy issue that, you know, we're dealing with the infrastructure of a local municipality. And what, you know, what's the overriding tax policy if the state government gets involved in the financing of it through either a turnback or however you do it? [LB682]

SENATOR MELLO: Senator, that's actually I think, Senator Hadley, it's the crux question, I think, of what LB682 is, which is in a state like Nebraska where we have a significant number of smaller communities, not just large communities, that are facing aging local infrastructure. We are facing a depopulation in certain areas of the state, we have to find a way to be able to finance, I think, the continued growth or the hopes of growth in municipalities and communities across the state. And with many communities who might face potential projects down the road, the loan mechanisms that really are available to them are property taxes or a similar financing model that Omaha and Plattsmouth use now, which is utilizing sewer use fees which, once again is, you're paying state sales tax on the current sewer use fee, which we want to have a separate tax policy on whether or not we should not be paying sales tax on that. That is what we had last year with LB952 where this in theory says, if you're going to be paying state sales tax on a project that normally you wouldn't be doing that project unless, one, you were mandated to by the federal government or your public utility, such in the case of MUD or other publicly owned utilities or political subdivisions, need to do because of, frankly, because of environmental concerns of water and natural gas piping or safety concerns, you shouldn't have to pay additional sales tax on something that essentially you have to do as a municipality. And municipalities are caught, I think, between a rock and a hard place of knowing they have to do this but they're also providing, I think, a windfall of money to the state that we normally wouldn't see otherwise. [LB682]

SENATOR HADLEY: Okay, thank you. [LB682]

SENATOR CORNETT: Senator Utter. [LB682]

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SENATOR UTTER: Thank you, Senator Cornett. Senator Mello, a couple of questions. It seems to me that there could be a substantial cost to the state of administering these programs on a year-to-year basis. Is it your contention that the state bear that cost or is it your contention that those be deducted from the turnback revenues? [LB682]

SENATOR MELLO: Well, I believe, and please correct me if I'm incorrect, I think the Department of Revenue's fiscal note provided a minimal cost of implementation, but I could be wrong. I think that was reading through some of the agencies that provided a fiscal note for the actual implementation of this was very, very minimal in that sense. And I think if anything, the underlying fiscal policy or fiscal-related issues is determining what that baseline is the state continues to get and what above that goes back to the municipalities. [LB682]

SENATOR UTTER: Secondly, I think is a...at least it's been my experience and I think it's probably been your experience, too, that from year to year, from biennium to biennium, we see increasing costs of state government, even if we don't institute new programs, new costs of any kind, just through the escalation of expenses. [LB682]

SENATOR MELLO: Um-hum. [LB682]

SENATOR HADLEY: Payroll costs, these type of things continue to escalate. And it seems to me like we're setting a baseline and we're holding this flat. And that means that on this particular portion of the sales tax that the state would normally collect, there's not going to be any increase that takes care of the annual cost of the inflationary costs of state government. And I guess that concerns me. Your response. [LB682]

SENATOR MELLO: Well, and once again, I'll allow the local municipalities people to go, I think, a little bit further into the financing and their perspectives on the financing and the fiscal components of this is that growth, for an example, a municipality's growth that might be affected by a CSO city. The state still will see an increase in sales tax in regards to sewer use fees because they're going to receive those funds still from the growth aspect of new people, new businesses, moving to a municipality, and using...utilizing sewer services and/or natural water-gas services. It's only in the sense of the sales tax that's paid on the CSO or the pipe and natural gas replacement fees. It's very singled out of saying the sales tax paid on just this line item essentially will remain flat because otherwise, the state would not normally receive those sales taxes because of it. [LB682]

SENATOR UTTER: As you look at this project, it's going to take place over a substantial period of time. So it seems to me like the administrative costs that we've talked about and the escalation and the lack of the increases in state revenue that may be needed, we're talking about 25...we're talking about a long, long time maybe. Right? [LB682]



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SENATOR MELLO: You know what, at least for the city of Omaha's purposes and I know the city of Plattsmouth actually is well ahead of the game. Their project should be finishing up very, very soon actually. The decree from the Environmental Protection Agency through the Nebraska Department of Environmental Quality has given the city of Omaha 15 years to rectify their problem. Now the financing of that could be significantly longer depending upon the bond financing the city of Omaha so chooses to partake in. That could last double that amount of time, could last longer than that. You'd have to find out or the city would have to be able to provide, I think, more information on the potential longevity of their financing. But the project itself to rectify the environmental problems mandated by the federal government is a 15-year process. Ultimately, though, LB682 is, I think, an innovative concept that we've taken from what this Legislature has done before, which is it's a financing mechanism. There's no real deadline or time line that so ultimately needs to be laid out because we're providing municipalities a financing tool which is right now they don't have that financing tool, in part because there's very few projects out there that are currently being mandated or feel they have to use. So we know this is coming down the road. This is a long-term perspective on the financing infrastructure of Nebraska municipalities across the state. This is a tool that will be able to help look long into the future and not solely make it a 5-, 10-year, 20-year kind of concept. [LB682]

SENATOR UTTER: So we're really not talking about turnback tax on the sales tax that's paid on the pipe. We're talking about a turnback tax that's going to cover from the date this project begins until the final payment on the bond is made. [LB682]

SENATOR MELLO: That, once again, I believe the way the legislation is drafted that the sales tax that's being paid for the project the state will remain flat and above that after that flat deadline. That money does go back to the municipality that paid for the project until the project is paid off. I want to double-check that, though, for the record and will mention that in my closing just to verify that fact or not. [LB682]

SENATOR UTTER: Thanks. [LB682]

SENATOR CORNETT: Senator Mello, and I will admit I have not fully read...well, I've read it through once but it's a question that occurred to me while I was sitting here. What about the local option sales tax? [LB682]

SENATOR MELLO: You know, the way the bill is drafted right now, we have not...we do not impact the local option sales tax. Now in conversations, I think that is something that I have had conversations with municipalities about in regards to the local option sales tax that they receive from these projects. And without speaking for them, I think it's up to the committee to talk at least with those today who will be coming in front of the committee to get their individual feedback. I think at the end of the day if LB682 moves forward and it's viewed as a financing option for the state, I see that as it's worthwhile

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policy for us to consider dedicating local sales tax option...the local option sales tax as well to pay for this project. But once again, I don't want to speak for any particular municipality or anyone else for that matter. That's my own personal opinion that I think we need to look to explore if the Legislature so moves forward with LB682. [LB682]

SENATOR CORNETT: But you would agree that dedicating a local option sales tax would pay off the bonds significantly quicker. [LB682]

SENATOR MELLO: Yes. Yes, it would. [LB682]

SENATOR CORNETT: And that that would be the local contribution to their financing issues. [LB682]

SENATOR MELLO: Yes. [LB682]

SENATOR CORNETT: Senator Pirsch. [LB682]

SENATOR PIRSCH: So I just want to make sure I'm...conceptually understand your...the premise of your bill. You're saying this...we should consider tax policy, right, and that you're carving off a narrow exception to general tax policy by saying if it involves federal mandates with respect to affecting sales tax this is...sales tax normally reflects growth and the normal rule is then there's (inaudible) when it comes to the state. But you're saying if it's due to a federal mandate it's not reflecting growth and that, therefore, it should be treated separate as an exception to the general rule. Is that fair to say? [LB682]

SENATOR MELLO: That's fair to say but I would say that with a caveat, Senator Pirsch, which is municipalities now and even if they are federally mandated by the Environmental Protection Agency for combined sewer overflow project, most municipalities have the ability to utilize property taxes in the state of Nebraska to help pay for these projects. The city of Omaha, for an example, cannot due to a decree, an agreement they signed with the Environmental Protection Agency well before my time in public office that bars the city of Omaha from utilizing property taxes to pay for combined sewer overflow projects. Thus, the city of Omaha is, frankly, very limited in regards to their own specific projects financing capabilities. Take a step back from that perspective, at the end of the day we hear constantly, I think, from a variety of entities in the state of Nebraska that property tax and property tax relief is a key issue. This financing model that's laid out in LB682 stems infrastructure financing away from property taxes and instead it utilizes sewer use fees and/or water and natural gas pipe replacement fees as the main financing mechanism. So it's not solely about purely the federally mandated component. The underlying issue is, is that municipalities, if they're faced with this issue, they can choose property taxes to finance their infrastructure if they so choose to. The underlying issue, though, is if we prefer to see municipalities

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stem away from further utilizing their property tax levy, this is the mechanism that's available. And it's a new mechanism that encourages, one, local resources stay for local projects. [LB682]

SENATOR PIRSCH: Okay. A couple of quick questions. It authorizes, LB682 does, a municipality, natural gas utility, or water utility to apply for state assistance. How is that application to be reviewed by whom and (inaudible)? [LB682]

SENATOR MELLO: There's a three-panel board that's laid out, and we modeled this component after the Qwest Center turnback legislation. There's a three-panel board there as well. We just...because of dealing with sewers, natural gas, and water pipe replacement, we chose the three directors of agencies that kind of oversee those areas: Department of Health and Human Services, Department of Environmental Quality, and the State Fire Marshal. So as it would be with similar to the Qwest Center legislation, it follows a very similar model of municipalities having to apply for this funding. [LB682]

SENATOR PIRSCH: Would it be...would you expect annual distributions then from this three-panel and from these funds that constitute the increase right in the sales tax that can be tied to this mandated project? Is it the expenditures and the upgrades alone? [LB682]

SENATOR MELLO: Ultimately the Department of Revenue, and if you look at the fiscal note, the Department of Revenue implements this act. The three-panel board is there in the sense of being able to review the applications, but ultimately...and approve them, but ultimately the Department of Revenue implements what they approve. And I feel we put in extra safeguards or extra, I would say, accountability measures in regards to the actual reporting of these projects and the reporting of the sales tax used for these projects in the sense that the Department of Revenue, similar to what they do with...I think we get a...and, Chairwoman Cornett, correct me if I'm incorrect, we get a letter...we get essentially information from the Department of Revenue every year regarding the Qwest Center turnback legislation, in regards to the amount of sales tax that's returned to the city of Omaha, as well as the amount of sales tax that's turned to the local civic and convention center fund that is operated out of the Department of Economic Development. We followed a somewhat similar mechanism, but we added some extra components because similar to, I think, the question that Senator Utter had asked is, I think it's in the best interest of the Legislature to know for municipalities who qualify for this funding to apply for the funding. After they receive their funding, we need to know how much longer this project may go on and what is the status of that project since the state essentially becomes a partner in local infrastructure financing. So...and then the last component we also include in this annual report is to measure the economic impact in the sense the number of jobs that are created because of this project. [LB682]

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SENATOR CORNETT: Senator Mello, you keep referring to the Qwest Center turnback funding mechanism. With that, there's a certain portion of that dedicated to offset the loss of sales tax to...that the state receives that could go back to the rural community. Correct? How many municipalities throughout the state are looking at these types of projects? [LB682]

SENATOR MELLO: Well, right now I can only express the three that will be testifying today: the city of Omaha, the city of Plattsmouth, and city of Lincoln. I think the League of Municipalities can maybe go into a little bit further of other potential entities that will be looking into this kind of financing. It doesn't just involve municipalities. It also involves municipal or public utilities. So whether it's a municipal water and gas utility, they could qualify as well. I would be remiss to say, though, that the financing model in LB682 does provide the rest of the state in a sense of General Funds, those existing General Funds that those General Funds at the baseline continue to come and can be spent in Hastings or Kearney or York or any other municipality, depending upon what the Legislature... [LB682]

SENATOR CORNETT: Correct. Which would be the same argument for the Qwest Center, but those funds were set aside because of that loss to the General Fund money. [LB682]

SENATOR MELLO: The difference, I think, in that respect, Senator Cornett, is that there's not a Qwest Center in every municipality across the state. But I think we can all agree that there's eight... [LB682]

SENATOR CORNETT: There's not a sewer project in every municipality across the state like this. [LB682]

SENATOR MELLO: There is aging water and natural gas piping infrastructure in every municipality in the state, and they qualify as well under this bill. [LB682]

SENATOR CORNETT: But that was somewhat to my point. Should we be setting part of this sales tax aside for some of our smaller rural areas to be able to utilize that their sales tax structure may not be large enough to work under this model for their needs? [LB682]

SENATOR MELLO: That's an innovative concept that I've not considered because any municipality in theory should be able to qualify for this financing under LB682. So it's a matter of whether or not one municipality qualifies for this financing and they're a municipality of 5,000 and they have, obviously, a tax base of a certain amount compared to a municipality of 225,000 whose tax base is significantly higher. Both would qualify for the financing mechanism. It's just the amount of money that gets turned back to each municipality to pay for their project. I would probably also agree,

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though, that's an issue of a matter of scale, so to speak, that projects in a municipality of 5,000 probably are significantly different than a project in the size of a municipality of 250,000. [LB682]

SENATOR CORNETT: I was going to say we heard some significant needs, though, last year on the other bill in some of the communities. [LB682]

SENATOR MELLO: There is. I don't disagree in that sense. I think partially I believe that, at least the city of Omaha will testify in the sense of a lot of other municipalities primarily outside of the greater metropolitan Omaha and greater Lincoln area can qualify for federal funds through the USDA which are not currently available through...or the city of Omaha and city of Lincoln do not qualify for, for funding assistance for those kind of projects. [LB682]

SENATOR CORNETT: Further questions from the committee? Seeing none. [LB682]

SENATOR MELLO: Thank you. [LB682]

SENATOR CORNETT: With that, we will open testimony to proponents. Again, I remind everyone we have the light system and will be holding testimony to three minutes. [LB682]

LYNN REX: Senator Cornett, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. First, I'd like to thank Senator Mello for introducing LB682. We do think that this is an important bill for municipalities across the state. There are currently about 15-20 municipalities that are facing these same federal unfunded mandates. It's important because that list will be growing and will continue to grow. And we do think that the model here of using the Qwest Center model for the turnback sales tax is an appropriate one for this effort. We think that, as Senator Mello has indicated, the state will not be losing any money in the sense that these funds, frankly, but for the federal mandate, many of our municipalities would have never done these projects. And so prospectively, we think that this is something that the state needs to address. In addition, I think it's important to point out that the state of Nebraska will also be collecting income tax from the jobs that are created through these projects. Mayor Suttle is going to be talking to you following me about the significant types of issues and problems that are being faced in Omaha with this and the amount of jobs that will be created as well. So there are others that will follow me that will go through the details of how this...the economics of this will work and will be happy to respond to any questions that you might have. We just think this is a very important bill for cities across the state. It's not just Omaha specific. It is fundamentally different than LB952. This is an approach that we can certainly support and strongly support and we do. [LB682]

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SENATOR CORNETT: Questions from the committee? Seeing none, thank you.  
[LB682]

LYNN REX: Thank you very much. [LB682]

SENATOR CORNETT: Next proponent. [LB682]

JIM SUTTLE: (Exhibit 1) Madam Chairman and members of the committee, my name is Jim Suttle, S-u-t-t-l-e. I'm the mayor of the city of Omaha and very pleased and honored to be here before you today. With me to provide information on the estimated impacts on the sales taxes associated with the Omaha regional sewer system is Marty Grate, our environmental service manager, and he will handle the fiscal and numbers side while I focus on the policy. I want to emphasize that Omaha operates a regional sewer system, and we take on the persona of a regional sewer utility with anything we do with this system. This system serves a population of over 600,000 and over 275 square miles in Douglas County, Sarpy County, and Carter Lake, Iowa, and Pottawattamie County, Iowa. In 2006, the city of Omaha entered into a consent order with the Nebraska Department of Environmental Quality to address the unfunded federal mandate to increase the wet weather capacity of a treatment system to reduce the overflows from its combined sewer systems and improve the water quality that was going into the Missouri River and the Papillion Creek. The estimated cost of the 15-year approved plan totaled almost \$1.7 billion in 2009 dollars. Although we continue to vigorously pursue federal funding assistance, significant sewer rate increases will be necessary to fund the design and the construction of the various infrastructure improvements to this plan. These increased sewer use fees are creating a burden on all of our regional ratepayers, both those inside and outside the city limits of Omaha and all residential, commercial, industrial, and wholesale ratepayers as well. LB682 would return our sewer fund...to our sewer fund a portion of the sales tax related to our combined sewer overflow program. Omaha has estimated that the windfall that the state would otherwise realize from the combined CSO debt service would total more than \$46 million through 2024. We believe that these sales tax revenues should be returned to the community sewer revenue fund of Omaha, Sarpy, Douglas County, and the communities within that system and that we share in this CSO burden between the regional ratepayers and the state. I would also point out that the city of Plattsmouth, which is also saddled with this CSO mandate, and they will speak later. The gas and water infrastructure sections of LB682 also have a potential to assist the community in large and small across the state and we strongly support this part of the bill. This bill would not result in the erosion of sales tax base. And Omaha asks for your full support in advancing this legislation to give us the tool necessary to get this federal mandate completed. I would now like to turn over the microphone to Marty Grate to explain some of the estimates that are behind the numbers that we're sharing with you today and what our rate consultants have professionally developed that we are using and applying in this regional system. And then I will be available to answer any questions that you might

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have at the close of this. Marty. [LB682]

SENATOR CORNETT: Mayor, we typically do not split the testifying and bring someone back up so I'm going to ask the committee if they have questions now, but I will allow you to come back and testify again if...we normally do not allow that. [LB682]

JIM SUTTLE: Okay. I just want to make sure we've got the technical things that he handles and policy things that I handle. Okay. [LB682]

SENATOR CORNETT: Senator Adams. I apologize, but it was in the opening that we don't allow any type of rebuttal. [LB682]

JIM SUTTLE: Okay, no problem. [LB682]

SENATOR CORNETT: I apologize. Go ahead. [LB682]

JIM SUTTLE: All right. What questions would you have? [LB682]

SENATOR ADAMS: Thank you, Senator Cornett. Mayor, thank you for being here today. For me personally, we deal with so many of these issues and I would rather hear the testimony of the elected official impacted more so than others who are here. I don't mean to demean their testimony, it's valuable too. But I think the fact that you're here really emphasizes the importance of this to your community. First of all, I wrote down how much time is left on the financing of the Qwest Center that involves turnback? Do you know? [LB682]

JIM SUTTLE: We have basically put that in place and I think we have another 30 years on the Qwest... [LB682]

SENATOR ADAMS: Thirty? Okay. [LB682]

JIM SUTTLE: I think it's 30 years on that particular fund, yes. We had just started paying the principal, you know, we had a balloon payment concept on this so we just started paying the principal this year. [LB682]

SENATOR ADAMS: Okay. My next question--I realize you weren't mayor, you probably weren't even involved in city government, but I'm going to ask you anyway. How long, aside from the EPA mandate, prior to that, how long has this been a problem? When there's excess overflow, for how long has this sewage been backing up in people's basements? [LB682]

JIM SUTTLE: Well, you asked two questions there. How long has this been a problem? Let's keep in mind that the standards in this country have changed since over the last

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100-plus years. At one point in time, combined sewer systems were the norm and that's what was favored by health agencies and that's where we got started. When the EPA came in, they began to look at the quality of the effluent that was coming out of the treatment systems, and we went through another phase where the city of Omaha regional system had to go to secondary treatment. We did that when I was public works director in the early 1980s. Then it changed again and then it changed again to where we are today as they have looked at this and decided that combined sewers are no longer the standard we should be using, but secondarily, it's the quality of the effluent coming out of either the treated system or when we do an overflow because of rain going directly into the river. This is what they're concerned about. The backups on the basements have been going on for quite some time because we had a change in our rain patterns. We've had a change in the types of storms that we are incurring here throughout the country, quite frankly. So capacities that were there once upon a time somehow got eroded over time as we looked at changes in the development, as we looked at changes in the rain pattern, and as we looked at changes in what the EPA requires us to now do. [LB682]

SENATOR ADAMS: Thank you. [LB682]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you for joining us. [LB682]

JIM SUTTLE: Are we ready for Marty Grate? [LB682]

SENATOR CORNETT: We are. [LB682]

JIM SUTTLE: Thank you. [LB682]

MARTY GRATE: (Exhibit 2) Good afternoon, Senators. My name is Marty Grate, M-a-r-t-y G-r-a-t-e, and I'm the environmental services manager for the city of Omaha. The testimony that I'd like to provide today constitutes kind of an analysis by our rate consultant and the public works department on the impacts to sales tax that are currently collected on a portion of waste water services charges to fund our CSO program. Coming around is a table that talks about the estimated impacts on state sales tax revenues associated with CSO cost. I'd like to kind of run through that table first and just kind of explain what it is. Column 1 obviously is the budget year, and this program, as the mayor said, will go on longer than this. So this isn't a total financial plan, but it's enough to show what the trends are. This goes through 2017. Column 2 is the total sewer revenue requirements. What that means is that's the amount of money that our system needs to fund not just CSO but operations, maintenance, other debt service that we may have. That's how much money right now is currently being...that will be needed in future years and how much is subject to sales tax. Column 3 would be that 5.5 percent of column 2. In column 4, we've got the more narrow CSO cost. That's the



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increment of column 2 that will be needed in order to fund the CSO debt service. Column 5 is again the 5.5 percent sales tax on that. And then column 6 is our application essentially of LB682 to show what those turnbacks, what those tax revenues that would come back into our fund and the fund of the other communities that utilize our service area. And then column 7 shows the sales tax that would be retained by the state. Going through then and looking and making some comments on this rate table, one of the things I want to point out is that obviously our costs in column 2 are going to drop dramatically over the coming years and that it is going to...if nothing is done, column 3 shows that instead of paying \$3 million a year in sales tax like we do now, by 2017 that will triple almost up to \$9 million. Again, if we look at these revenues to come back to the city, the first two years, as the bill is currently written, would kind of be nothing would happen. And then as we move forward, those amounts would grow over time. But the last thing I want to point out is this final column is that because of system growth, because of other projects that we have besides CSO, our costs are going to continue to grow and our revenue needs and the state sales tax that the state will realize, even with the turnback, is going to grow over time and provide more revenue than it does today. So in my mind, this is a revenue neutral sort of bill with respect to the CSO cost. [LB682]

SENATOR CORNETT: One quick question and then we'll go...I'll get the committee. And I could figure it out, but I don't have a calculator with me. What is the local option sales tax for this project? What would that total? [LB682]

MARTY GRATE: If you took column 2, that's 5.5 percent. Our local sales tax... [LB682]

SENATOR CORNETT: Is 1.5, that's what I meant but about... [LB682]

MARTY GRATE: ...is 1.5 percent. So if... [LB682]

SENATOR CORNETT: That's what I meant. [LB682]

MARTY GRATE: I don't have the number in my head. [LB682]

SENATOR CORNETT: How much more significant would you feel that that would be in paying off the bonds, that local contribution? [LB682]

MARTY GRATE: It's certainly not going to affect the time that we pay off the bonds. It may affect the rate increases that we have in future years. Again, when we ran some estimates and we went through 2024, that's the year that the program ends, those costs that would come back to the fund would be about \$46 million. So we've got a \$1.7 billion project, and this will bring back \$46 million. So, you know, \$46 million is a lot of money, and I think it would be helpful to our ratepayers. But it's not going to suddenly make the bonds go away or get it done. But it's enough money that it would be helpful to minimize

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some of these rate increases that we otherwise will have to impose. [LB682]

SENATOR CORNETT: Senator Hadley. [LB682]

SENATOR HADLEY: Senator Cornett. Mr. Grate, I guess I'm trying to reconcile some of the numbers we have on the fiscal note with some of the numbers you have. If I figure it using what the Fiscal Office says 27...Department of Revenue says almost \$28 million a year in lost sales tax. To me, that's over a half a billion dollars a year in amount of...that would be taxed that we're giving back. And your numbers aren't anywhere close. Does that mean the rest of the state would pick up the difference between the half a billion and your like \$170 million? [LB682]

MARTY GRATE: Sir, I just saw the fiscal note for the first time this morning, and those numbers I just frankly can't follow. I would be happy to work with the fiscal folks and try to iron it out, but right now I just...I can't tell you what they were thinking when they came up with those numbers. [LB682]

SENATOR HADLEY: Okay. I was just curious because it works out to about...we're giving up state sales tax on almost a half a billion dollars... [LB682]

MARTY GRATE: Yes, sir. I'd... [LB682]

SENATOR HADLEY: ...of buildings a year, which is, you know... [LB682]

MARTY GRATE: I'd be happy to work with the Fiscal Office and update them. [LB682]

SENATOR HADLEY: And the second question I have is, you know, I guess we all come with personal experiences and being mayor of a town that put in a new well system for their water because Kearney's well system was down on the Platte River and we were worried about eventually the EPA coming in and telling us we couldn't have it on the Platte River because of potential spills and such as that, and we bonded it and we just basic passed the costs on to the users of the water. What keeps Omaha from doing that now? [LB682]

MARTY GRATE: That is essentially what we're doing. What we're here...and that's what we're planning on doing is we're going to bond the debt to spread the cost forward, but it's going to be funded by rates, by the ratepayers. That's how we will fund it. We'll continue to pursue federal assistance. We don't have any significant federal funds available. We're not asking the state for any funding for the program. All we're asking for in LB682 is that the state take what otherwise would be a windfall in sales tax that isn't part of your revenue forecast, it isn't money that you're counting on coming in, and instead turn that back to help minimize or mitigate some of these rate increases, not that we're going to avoid them entirely. [LB682]

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SENATOR HADLEY: I will do my best Senator Lavon Heidemann impersonation, but he had...last year as I remember, he had the same kind of argument that other cities have done this, have either federally mandated or had to make infrastructure changes, and they have done it without coming to the state. They just basically passed it on to their users of it in the form of higher, you know, it's a better system so you pay a little bit of money for it. So that's I guess what I'm getting at, that this has been done in the past without this. And now we have to change the turnback. [LB682]

MARTY GRATE: Yes, sir. Well, there's I guess two things there. One, just to put kind of a context to it, we are raising our rates substantially. A typical household this year will pay about \$16 a month for sewer fees. In 2014, that same household will pay \$37 a month. We have large industries in Omaha who will see increases over the next three or four years in the hundreds of thousands of dollars. These are new fees that they are incurring. It's a huge burden, and it's a burden due to an unfunded federal mandate. It's not something that we chose to do. It's something that we had to do. [LB682]

SENATOR CORNETT: Senator Adams. [LB682]

SENATOR ADAMS: My question has been pretty much answered. You do have rate increases planned. And following on the same line as Senator Hadley, I can name you in my own district communities that were staring down the barrel of nitrate problems and everything else and so they set about raising rates 10, 15 years in advance of...haven't even gotten the EPA mandate yet, but are preparing. The rate increases that you're talking about, how long have they been in the planning? [LB682]

MARTY GRATE: We have been negotiating with the state of Nebraska on what this CSO plan was going to be for a number of years--that started back, oh, in about 2003. [LB682]

SENATOR ADAMS: Did you start raising rates then and banking some money in anticipation? [LB682]

MARTY GRATE: We started raising rates in 2006. [LB682]

SENATOR ADAMS: In anticipation of something like this. [LB682]

MARTY GRATE: Yes, to help fund the designing and the planning and the studies for it. We have a rate ordinance in effect right now that defines those rates through 2014. So around about 2012 or 2013 we'll take a check on how our costs are coming in, and we know that we will have to have increases in '15, '16, '17, throughout the life of this project. [LB682]

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SENATOR ADAMS: All right. Thank you. [LB682]

MARTY GRATE: Yes, ma'am. [LB682]

SENATOR CORNETT: Again, this would have been before your time or the mayor's time, the city has been facing this for a long time though. Explain to me the logic of putting it off or how we got to the point where we're at a point where it's going to cost a tremendous amount of money for the ratepayers in fees, even if the state does help them out more so than the other municipalities that have proactively done some of these. [LB682]

MARTY GRATE: Well, and Senator Hadley asked about it earlier to others. [LB682]

SENATOR CORNETT: I was listening. But did their...their rate increases were not nearly the same. [LB682]

MARTY GRATE: Yeah. My view or my understanding of the history of CSOs is that the origin of the concern over CSO really sprouted on the Coast and in the Great Lakes where there are a lot of beaches. And what really caused it to become a priority in those areas is every time it would rain, people would go out when the sun comes out and find all these sanitary products on their swimming beaches and it was disgusting and they didn't want that to happen. In the Midwest, whether it's Omaha or St. Joe or Kansas City or St. Louis, all those other communities like us are kind of peers that have CSO systems, we discharge to a rapid-moving, not a very swimmer or beach-friendly receiving stream, the Missouri River, and that same local emphasis wasn't there. It was really in the last ten years or so the federal government had said, okay, all of these other places have come forward and improved their water quality. The Midwest has to do it too. So it was a regulatory impetus that pushed us past the point where we're at. Our emphasis historically has been keeping sewage out of people's basements. If we had a little overflow, you know, that was something that the community accepted. But the federal government will no longer allow us to take that perspective. [LB682]

SENATOR CORNETT: Senator Mello commented that there were 700 cities facing this. [LB682]

MARTY GRATE: 772, yes. [LB682]

SENATOR CORNETT: 772. So I'm assuming from your testimony that the majority of those cities are in the Midwest. [LB682]

MARTY GRATE: No. The majority of them are in the Northeast, around the Great Lakes, and in the Northwest. You don't see many in the desert areas because there's just not the bigger drainage area. In the southern states, those communities tended to

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rely upon septic tanks and outhouses longer. And by the time they installed sewers, CSO was no longer state of the art. But most common thing about cities that have CSO systems is that they sit on a large receiving stream because they rely upon dilution essentially to handle the waste treatment. [LB682]

SENATOR CORNETT: Senator Pankonin. [LB682]

SENATOR PANKONIN: Thank you, Senator Cornett. Mr. Grate, this is kind of a similar, well, maybe question and comment. I'm familiar with Plattsmouth since it's in my legislative district. And I think it's important to note that your entire system isn't combined. It's the older part of Omaha. Is that a fair statement? [LB682]

MARTY GRATE: Yeah. We have a service area of about 275 square miles, all the communities that we serve. But it's really that eastern, oh, about 43 acres of it that...excuse me, 43 square miles, east of 72nd Street if you're familiar with Omaha, is predominantly combined sewers. West of 72nd Street that area developed in a time where combined sewers were no longer the technological standard. [LB682]

SENATOR PANKONIN: And I know that's a similar story in Plattsmouth. The other thing I think might be a question that illustrates some of the issue here is that I think...you mentioned that it became more of an impetus of the federal government in the last ten years to eliminate this problem. But would it also be fair to say that for many years the federal government was a participant in some of these systems and with aid and help? [LB682]

MARTY GRATE: In the early years when there was the concern about the beaches, there was some federal money. But I would say it was more the exception than the rule that the federal government funded these. By and large, most of the 772 communities are facing the same kind of unfunded federal mandates. There was a lot more federal money in waste water assistance in general back in the '70s and the early '80s, and that federal assistance has dwindled down to where it's virtually nonexistent today. [LB682]

SENATOR PANKONIN: Is there any, in modeling this or looking at this legislation, I know it's obviously modeled on the Qwest Center turnback, but is there any other states that you're aware of that have done this...whether it's this type of legislation or something, to help municipalities with this issue? [LB682]

MARTY GRATE: Certainly there have been state assistance to CSO communities. I don't think it's common in most states that sales taxes are applied to wastewater fees. So, I mean, that might make us a little bit unusual and provide a different opportunity than many states have. [LB682]

SENATOR PANKONIN: Okay, thank you. [LB682]

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SENATOR CORNETT: Senator Hadley. [LB682]

SENATOR HADLEY: Senator Cornett. And I don't mean to ask too many questions but we seem to have spent most of the time in the testimony in CSO. As I look at the Department of Revenue estimates, that's only about one-fifth of the sales tax we're talking about. The rest of it is gas and water infrastructure. Does that have anything to do with federal mandate? [LB682]

MARTY GRATE: Again, I'm a wastewater guy. I don't do the big gas... [LB682]

SENATOR HADLEY: Okay, or maybe somebody else can... [LB682]

MARTY GRATE: I know the representatives from MUD will be testifying,... [LB682]

SENATOR HADLEY: Okay. Okay. I was just curious. [LB682]

MARTY GRATE: ...and I'd prefer if you ask them. [LB682]

SENATOR HADLEY: We spent most of our time talking about CSO, but almost five times the CSO amount is going to be sales tax turnback. [LB682]

MARTY GRATE: My general understanding is the reason that that's so much higher on that side is because they thought the applicability was more statewide, there would be more communities taking advantage of that than rather just Plattsmouth and Omaha and the CSO. So it's just a matter of how widely it's applied. [LB682]

SENATOR HADLEY: Okay. Thank you. [LB682]

MARTY GRATE: Okay. [LB682]

SENATOR CORNETT: Senator Utter. [LB682]

SENATOR UTTER: Mr. Grate, I...I guess I can...I see where you're coming from when you're saying, you know, we'd like to have the state return to us the sales tax they collect on the actual pipe we're putting in the ground and the other things that are a part of this construction project that you are envisioning in terms of the sewer overflow. And I see that from the standpoint that this is a big project. I also am looking at it from the standpoint of what we have done in cities like Hastings and Kearney and other cities across the state for years when we have updated similar type municipal projects and paid the sales taxes and did those kind of things. I'm having a great amount of difficulty, though, going beyond that. That after, and I'm not even telling you at this stage of the game that I would be supportive of turning back the sales tax on the pipe, just from a

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fairness doctrine as far as what the rest of the state has done down through the years. But I am having great difficulty on the continuation part of this project, that we continue to turn sales tax back long after the pipe is in the ground and has been paid for and those type of things. It seems like this becomes a project with no end. And I'm wondering how you justify that portion of the turnback, particularly as I'm looking at the Qwest Center turnback. The Qwest Center has continuing revenues that we are turning back from. And I suppose you're going to tell me, well, the increase in the sewer fees are going to be continuing revenues that they're turned back from. But it seems to me that there's little disregard for what the continuation of state expenses are going to be. That it seems to me like projects like this have to have some kind of a reasonable termination date. [LB682]

MARTY GRATE: Well, the current financial model, the financial plan for this program is, again, by consent order we're required to complete getting pipes and construction done by 2024 so that's one milestone. We plan on financing this program with a series of 30-year revenue bonds issued almost every year throughout the life of that project. So if we're still issuing revenue bonds in 2023, for example, we'll be paying that off in a kind of declining sort of way until 2053. So I mean there are some hard numbers. They're long dates. I mean, what I like to tell our public in trying to have them...it's not like going out and taking out a mortgage to pay off a big cost. It's like buying a house every year. It's a series of mortgages. And so you've got a cascading payoff on that. So we can define what those time lines are. And what really we're trying to get back here is simply our debt...the sales tax that's being assessed on our debt payments for those bonds over time. The one other thing that I would point out again is if you look at column 7, at the same time that we're getting some turnback under column 6, the state will continue to see increasing sales tax revenues from the greater aspect of our revenue funds. So it's not like it's going to decline or even stay flat. [LB682]

SENATOR UTTER: Thank you. [LB682]

SENATOR CORNETT: Further questions? Senator Louden. [LB682]

SENATOR LOUDEN: Yes. Thank you, Senator Cornett. Well, as I read this bill, I mean we've been talking about sewer and what needs to be done for Omaha's sewer system. As I read this bill, we're talking about gas and water and the whole bit. Why should there be a turnback or whatever on a gas line or a, for that matter, water line? Because, of course, I understand Omaha is metropolitan, who owns the gas lines in Omaha? [LB682]

MARTY GRATE: Gas and water is Metropolitan Utilities District, and they will be here to testify today. [LB682]

SENATOR LOUDEN: And will they be building the lines down the same ditch as the

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sewer line? [LB682]

MARTY GRATE: There are two drivers and, again, MUD I'm sure will put a finer point on this, there are two drivers for them. One is their pipes are just getting old. You know, they're 100 years old. The other is that for safety concerns they need to replace those old cast iron systems that they've got. And because the city of Omaha is going to be doing a lot of this sewer work and getting into the street...taking the streets off, it would behoove them just from an efficiency and a financial prudence to go ahead and put their pipes in at the same time we've got the street open so we don't end up coming back five years later and replacing the street again so that they can do their work. So they're kind of being pulled along by the mandate that we're under. [LB682]

SENATOR LOUDEN: Yeah. But that isn't a federal mandate you had to replace the sewer or your gas or your water or your gas lines, just the sewer line. [LB682]

MARTY GRATE: Again, I will defer to MUD for the absolute say. I don't think that it's a mandate today, but it's on the horizon. I mean you can see that it's headed that way by the industry standards and the trade. It's just we know that these systems have to be replaced in order to provide a sustainable service. [LB682]

SENATOR LOUDEN: Well, I mean it's no difference in any other business. In my business when parts get old and replace, I have to replace them, but I was supposed to have made enough money in the meantime to afford to replace them. And that's what I was wondering why...if it should be just for the sewer system that you've been federally mandated for. [LB682]

MARTY GRATE: Well, the idea is that they're being driven by the federal mandate, but I believe that the bill also was drafted with the idea in mind that a lot of communities across the state are going to face these old cast iron pipe problems so this was a statewide sort of benefit that communities can look to enjoy. [LB682]

SENATOR LOUDEN: Okay. Thank you. [LB682]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB682]

MARTY GRATE: You're welcome. [LB682]

SENATOR CORNETT: Next proponent. [LB682]

DOUG CLARK: (Exhibit 3) Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Doug Clark, C-l-a-r-k. I am president of the Metropolitan Utilities District, and I'm here today to testify on behalf of LB682. The conversation...I'm not going to belabor a lot of points. You've already covered a great



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many of them. And the mayor and Marty have done a great job responding. So I'm going to talk a little directly about what we've done as a utility in the metropolitan area of Omaha. Over the last five years, we have spent or will spend \$548 million on improvement and upgrading projects and new treatment facilities for our customers. That...every penny of that \$548 million will have sales tax placed upon it. So we are not avoiding the payment of sales tax on a large...the vast majority of work we do. We're going to overhaul the water treatment facility at Florence and that will be a \$150 million project. And we've just begun that project and there will be all of the sales tax on that project will be paid. So when we're talking about the remittance of state sales tax back to assist with these projects, this is a very thin slice of what the district is going to be doing over the next hundred years. We have a system that is right at 100 years old today. And it is time that we go back and start replacing all those pipes that have been in the ground and provided service. It's roughly 1,500 to 1,700 miles of cast iron pipe for water and natural gas. We set aside a separate charge on our bill. We call it a GIR--gas infrastructure replacement charge and a WIR--a water replacement infrastructure charge. It is absolutely identified on the bill, and that's the portion of our bill that we're talking about. I think the committee needs to understand that if you were kind enough to allow us to get some of this money back that our rates are still going to continue to go up. The vast majority of our bill is going to be sales tax eligible. In the next five years, we will raise our gas rates at a rate of 5 percent a year, increasing them by 25 percent over the next 5 years, meaning that the state sales tax revenue will increase. Our water rates will increase by 9 percent a year over the next five years to a 45 percent rate increase. Sales tax will be collected and remitted to the state on those two issues. We are currently at a level of funding for our GIR and WIR. Our gas infrastructure charge is currently...the charge we're charging our customers is currently at the 60 percent rate of where we would be--no, that's the water. The water, we are at 60 percent of the rate we would be charging at the final top end. The gas rate that we're billing our customers is 75 percent of the way to the top rate that we would be charging. So basically, we're asking you for a remittance on the final 40 percent of the water charge and the final 25 percent of the gas charge. I just didn't want the committee to think that your ability to raise revenue was ending if this bill would pass. And I'm happy to answer any questions you might have. [LB682]

SENATOR CORNETT: Questions from the committee? Mr. Clark, one question. [LB682]

DOUG CLARK: Sure. [LB682]

SENATOR CORNETT: If we did this, would you be looking at less rate increases? And if so, how much? [LB682]

DOUG CLARK: Rhonda Chantry is behind me. Our rate increases would be smaller, but not significantly smaller. Our rates are going to continue to rise because of the age of

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our system and the fact that we do have to replace Florence and other main components, pumps and other things. But it's roughly about \$1 million a year if I'm not mistaken. [LB682]

SENATOR CORNETT: Let me just ask you a question. [LB682]

DOUG CLARK: Yes. [LB682]

SENATOR CORNETT: If...why should the Legislature do this for MUD if the ratepayers are not going to see a significant benefit from us forgoing our sales tax revenue? [LB682]

DOUG CLARK: It would allow us to more rapidly...we could put a million dollars or more a year back into the ground and it would allow us to move quicker and at least reduce the pain at some level. This...the combined sewer overflow and our project is roughly about a \$2.5 billion project so anything is... [LB682]

SENATOR CORNETT: So when you say quicker, what would it shorten your time frame to? [LB682]

DOUG CLARK: Well, Senator Hadley asked a great question. Our project will never end. [LB682]

SENATOR CORNETT: True. [LB682]

DOUG CLARK: We will be replacing pipe now for the district from now until the district doesn't exist anymore. When this project is over, so... []

SENATOR CORNETT: I was going to say, but that brings up what Senator Utter said: Where does it stop? [LB682]

DOUG CLARK: It doesn't. [LB682]

SENATOR CORNETT: In regards to the turnback. [LB682]

DOUG CLARK: And I don't want to imply that there is an end to what we will be doing as a company. We will be replacing pipe from now on because as this 100-year-old pipe gets replaced, there will be other sections of 100-year-old pipe that will need to be replaced. [LB682]

SENATOR CORNETT: So we're looking at two different issues really. One is a decision to turn sales tax back is a federally mandated issue. And the other one would be turning sales tax back is a policy issue. [LB682]

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DOUG CLARK: I would say they're both policy issues, but the committee will have that tough decision to make, absolutely. [LB682]

SENATOR CORNETT: Senator Pankonin and then Senator Hadley. [LB682]

SENATOR PANKONIN: Thank you, Senator Cornett. Mr. Clark, thanks for being with us today. Congratulations on your new position. [LB682]

DOUG CLARK: Thank you. [LB682]

SENATOR PANKONIN: Senator Cornett was kind of leading to one of my questions in that this bill...I think maybe part of the unintended consequences is the fact that the turnback could be...it's not only the CSO project that is important, but obviously the other is, as Senator Louden has mentioned too, Senator Hadley, they all mentioned that there's two, really kind of another component. But if we didn't...if we just had the CSO project without the pipe improvement thing, would you still be for this bill if we separated it out or? [LB682]

DOUG CLARK: Yes, and I'll tell you why: because I'm going to be billing for the sewer side of the project and that project is going to hurt my customers, and my customers are going to have a harder time paying their bill, and then I have to go collect that money. [LB682]

SENATOR PANKONIN: Okay. My follow-up question is going to be you mentioned...I want to be sure I heard this correctly, of the miles of pipe. Did you mention the cast iron... [LB682]

DOUG CLARK: Cast iron, yes, sir. [LB682]

SENATOR PANKONIN: ...component of it and how many miles of cast iron? [LB682]

DOUG CLARK: Roughly 1,700 miles. I might be off a little bit, but not by a lot. [LB682]

SENATOR PANKONIN: The recent gas explosions on the East Coast, I think one was in the Philadelphia area and another one, I can't remember exact, but I know both were in the Northeast, is this indicative of what happens when cast iron pipe gets old enough? [LB682]

DOUG CLARK: Absolutely. And when you live in a state like Nebraska where you get these frigid cold winters and the ground moves, most of us grew up in a rural setting, and we understand that frost will snap those pipes, and that's what happens with aging cast iron. It snaps very easy. [LB682]

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SENATOR PANKONIN: Mr. Grate made the statement that he thought this could be a mandate coming. Is that your opinion as well? [LB682]

DOUG CLARK: Oh, I absolutely believe that the federal government will step in and start having us replace cast iron, require it. And from a perspective, we wanted to get in front of anything that we're expecting to come down the pipe, so to speak. And so we've been planning this for a number of years and actually increased our rates over the last few years so we could start building up the resources and revenues to go ahead and move forward. [LB682]

SENATOR PANKONIN: My last question: I would assume then that especially in the eastern part of the state that a vast number of communities, large and small, have cast iron, this cast iron pipe issue. [LB682]

DOUG CLARK: A lot of companies have removed it but, yes, it's there. And there has been a progression nationwide to start removing it from their systems, absolutely. [LB682]

SENATOR PANKONIN: Thank you. [LB682]

SENATOR CORNETT: Senator Hadley. [LB682]

SENATOR HADLEY: Thank you, Senator Cornett. Mr. Clark, I again echo what Senator Pankonin said. Congratulations on your new position. [LB682]

DOUG CLARK: Thank you. [LB682]

SENATOR HADLEY: Now you get to come down here and be on the hot seat, huh? [LB682]

DOUG CLARK: I'm only making the drive occasionally now. [LB682]

SENATOR HADLEY: Are you using your natural gas car yet? [LB682]

DOUG CLARK: I have turned...since I don't drive 120 miles a day like I used to, I have turned it back in, and our marketing department is using it to make promotions around the city of Omaha. [LB682]

SENATOR HADLEY: Good. The question I have is in the gas area, we have very private organizations that are involved in the sale of natural gas--Northwestern Public Service, right? [LB682]

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DOUG CLARK: Correct. [LB682]

SENATOR HADLEY: Black Hills. [LB682]

DOUG CLARK: Black Hills. [LB682]

SENATOR HADLEY: Would this bill then apply to them? The way I read it, it would if they're in the gas business. [LB682]

DOUG CLARK: I can't tell you whether it applies to them directly or not, Senator. [LB682]

SENATOR HADLEY: That would be a question I would ask is that, you know, if it does, are we in the business to subsidize a private, for-profit... [LB682]

DOUG CLARK: Corporations. [LB682]

SENATOR HADLEY: ...corporation by giving a sales tax rebate? [LB682]

DOUG CLARK: And that's a great question. I believe there are 14 public-owned natural gas systems in the state of Nebraska that I am sure would fall under this bill and be available to them. [LB682]

SENATOR HADLEY: Am I right, MUD is a quasi...it's really a quasi-public agency, isn't it? (Inaudible). [LB682]

DOUG CLARK: Absolutely. We're a political subdivision of the state. [LB682]

SENATOR HADLEY: Okay. I was just curious as to how that. [LB682]

SENATOR UTTER: Senator Adams. [LB682]

SENATOR ADAMS: Thank you. I think this question got answered last year on a similar bill, but I'm wrestling with the answer. For cities that purchase pipe for gas, isn't that pipe already sales tax exempt? [LB682]

DOUG CLARK: If I remember the answer to that question correctly, the pipe purchased for the sewer system is tax exempt. But the pipe purchased for natural gas and water systems is not. And if you look over my shoulder, there's probably somebody doing this (laugh). [LB682]

SENATOR ADAMS: There's a lot of heads nodding that you are right. Okay. I'll take that. [LB682]

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SENATOR UTTER: Mr. Clark, let me just...the local...we haven't talked very much about the local option sales tax. And obviously, if we're going to have a big spike up in the state sales tax and that's the justification for turning this back, what about the local option sales tax? Should it not also be applied in the same manner or what's your feelings about that? [LB682]

DOUG CLARK: I have some very close friends sitting behind me that probably don't like this answer, but, of course, I'd like to have that back. I mean I've got to put 1,700 miles of pipe in the ground and any resources that I can get to, to assist with that I would love to have. Now that's not what's in the bill and that's not what I came here to support. But all resources are welcome. [LB682]

SENATOR UTTER: Further questions for Mr. Clark? If not, thank you very much for your testimony. [LB682]

DOUG CLARK: Thank you. [LB682]

SENATOR UTTER: Welcome to Revenue. [LB682]

RHONDA CHANTRY: Do I go ahead and start or do I wait for Senator Cornett? [LB682]

SENATOR UTTER: No, you go right ahead. Yes, ma'am. [LB682]

RHONDA CHANTRY: (Exhibit 4) She's distributing a fact sheet. [LB682]

SENATOR UTTER: We'll fill her in when she gets back. [LB682]

RHONDA CHANTRY: She's distributing a fact sheet that just has a lot of the numbers on it that I'm going to talk about. My name is Rhonda Chantry, R-h-o-n-d-a C-h-a-n-t-r-y, I'm vice president of rates and regulatory affairs for Metropolitan Utilities District of Omaha. And as you're aware, MUD provides natural gas and water service to over 200,000 customers in Omaha and surrounding communities in Douglas, Sarpy, Saunders, and Washington Counties. As it has already been stated, it is necessary for MUD to replace aging gas and water infrastructure, which is primarily cast iron mains. It's anticipated that in the next 20 years these expenditures will approach about three-quarters of a billion dollars to fund this undertaking. Since MUD is a political subdivision, i.e., customer owned, this is truly funded by MUD customer owners. Over the next ten years, we estimate investing \$316 million for infrastructure replacements. This intensive capital undertaking is being funded through an infrastructure surcharge as a rider to our gas and water rates. These charges will generate an estimated \$344 million over the next ten years, and this year alone will bring in about \$26 million. And these funds are and projects are separately and distinctly accounted for in our

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organization. Customers pay a separately itemized charge on their bill, as Doug Clark described, for infrastructure replacement. On an annual basis, MUD remits over \$20 million in sales tax for gas, water, and sewer that is billed by MUD. Our customers are clearly contributing to state revenues through sales tax on their utility bills. Now speaking just a moment about the infrastructure charge and the related sales tax, we will pay \$1.2 million in state sales tax on just the revenue charges this year. At current rates and modest customer growth, approximately \$13 million will be realized in state sales tax on infrastructure charges over the next ten years, which is our planning period. LB682 proposes to return just the incremental portion of sales tax on this infrastructure surcharge back to the project cost. And in our case, based on my previously presented figures, this is estimated at \$3.2 million through 2020, or approximately a half million dollars per year. This is over and above the \$13 million that will be generated in sales tax over that same planning period for just the infrastructure charges sales tax. From my perspective, this is clearly a win-win proposal. It's a win for the state since it does not reduce sales tax revenue from MUD customers and, in fact, customer growth and gas and water rate increases will still result in a growth in tax revenue. And it's clearly a win for our customers, given that our customers are funding this enormous infrastructure replacement project and that they are already contributing substantially to state revenues via sales tax on their MUD bills, along with supporting the CSO sewer replacement project. If this turnback does occur, it will provide some relief and mitigate future increases on our infrastructure charge. I thank you for your time today, and I appreciate your patience quoting a lot of numbers. I'll be happy to entertain any questions. [LB682]

SENATOR CORNETT: Questions from the committee? Senator Hadley. [LB682]

SENATOR HADLEY: Senator Cornett, thank you. I'll go back to the question I asked Mr. Clark. The way I...just looking at the bill, this applies to investor-owned and public utilities. Are there investor-owned gas companies close to Omaha now geographically? Are any of the sub...cities around there serviced... [LB682]

RHONDA CHANTRY: Yes. Black Hills Energy serves some of the communities in Sarpy County and I think some still in Douglas County. But Black Hills Energy is an investor-owned utility that serves some of the surrounding community. As I read this bill, I don't believe that it implies to investor-owned utilities, but I wouldn't be the expert that could say that. [LB682]

SENATOR HADLEY: Okay. Well, that's something we can certainly look at. Thank you. [LB682]

SENATOR CORNETT: Further questions? Seeing none, thank you. Next proponent. May I see a show of hands for the number of opponents remaining--proponents, pardon me. [LB682]

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ERVIN PORTIS: Good afternoon, Senator Cornett. Thank you, Senators, for allowing me to come forward in support of this bill. My name is Ervin, E-r-v-i-n, Portis, P-o-r-t-i-s, the city administrator in Plattsmouth. Also present with me in the room is Mayor Paul Lambert, mayor of Plattsmouth. I'd like to make a couple of points, I guess, in response to some of the questions that I've heard and then get into my prepared comments, and they will not take very long at all. As you think about the combined sewer separation project, the impact in each community is different. The impact is different and the solution in each community is different. In engineering that solution in each community, it's very, very difficult early in the engineering to understand what their fees might be until you come up with a solution. So setting fees sometime in the years past is problematic--you set them too high, too low--you really need to set your fees consistent with what the solution will be. The other thing, and I do appreciate this question, Senator Cornett, earlier, your concern for the smaller rural communities. We are one. You know, we are one of those. Plattsmouth, we're under the federal mandate of the combined sewer separation project of the Clean Water Act in the late '70s. It took the EPA a number of years to determine all the regulations consistent with compliance. Plattsmouth is now permitted by EPA and the Nebraska Department of Environmental Quality for compliance by 2015. Our construction began in 2010. We will be constructing in two phases. One of those is underway. If you want to understand how all these pipes come together and influence and why is this cost of water or this question of water and sewer and storm sewer and gas and sanitary sewer, come look at the holes in the ground. You'll see that these pipes always cross each other. When we move a sanitary sewer pipe, everybody else has to move their pipes, and there is a cost. And that begins with this mandate and the need to move the sanitary sewer pipe. Phase one of our project, \$3.5 million. The average ratepayer in Plattsmouth is residential and 98 percent of our ratepayers are residential or very small business. Their average monthly bill is \$12 to \$15. But for 20 years, just for phase one, we will impose a \$4 per month per user debt service fee. For phase two, we don't yet know what that's going to be, but it's somewhere in the range of \$4 to \$6 additional to phase one for an additional 20 years. At the end of phase two, our debt service for both projects is going to be \$280,000 to \$310,000 for 20 years. The sales tax, we will pay off that right in a range of \$20,000 to \$22,000. I can't give an exact yet because we don't know what our phase two debt service fee. But there was a question, would we use that to reduce that debt service fee, the answer is, yes, we would. Absolutely we would. When you think about somewhere between \$8 to \$10, \$12 on top of a \$12 to \$15 per month sewer use fee, absolutely we want to do everything we can to reduce that, and this would help us do so. Are there any questions? [LB682]

SENATOR CORNETT: Thank you very much. Questions from the committee? Seeing none, oh, wait. Senator Louden. [LB682]

SENATOR LOUDEN: Thank you, Senator Cornett. Well, over the years I presume you



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had fees for this service. And did you....were you making a profit or were you breaking even or how were you handling those fees that you've been charging for the last years? [LB682]

ERVIN PORTIS: Well, we did not begin imposing fees for our sewer separation project until December 2010. So, yes, we charge sewer use fees to manage, maintain, improve our entire sewer system, which includes a very expensive plant. And just as the folks from MUD in Omaha have testified, part of maintaining it is there's always a constant need to maintain, improve variable pipe. We're one of the oldest communities in the state of Nebraska. We have very old infrastructure. There is always a maintenance cost. There is no profit to that. [LB682]

SENATOR LOUDEN: Then at the end of the year when you got ready to do your budget for that then, was there money left over or did you have to take money from your general fund to finish out paying for your sewer fee? [LB682]

ERVIN PORTIS: No. [LB682]

SENATOR LOUDEN: How did you handle that? [LB682]

ERVIN PORTIS: Sewers, in our city, sewer is set up as an enterprise fund, a business fund. And, yes, there is a reserve to that. The reserve is good business management. [LB682]

SENATOR LOUDEN: You do have a reserve. [LB682]

ERVIN PORTIS: We do have a reserve. Now our annual... [LB682]

SENATOR LOUDEN: How much is that reserve? [LB682]

ERVIN PORTIS: Right at \$600,000. [LB682]

SENATOR LOUDEN: I see. And that's mostly just in case there's some quick maintenance or something like that? [LB682]

ERVIN PORTIS: Quick maintenance plus you have to have a reserve in order to have decent interest rates when you bond for major infrastructure projects. [LB682]

SENATOR LOUDEN: But anything above that went into the reserve. You didn't use that money for any other issue for the city or anything. [LB682]

ERVIN PORTIS: Not for general fund. That would be illegal. [LB682]

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SENATOR LOUDEN: Okay, thank you. [LB682]

SENATOR CORNETT: Further questions? Seeing none, thank you very much. [LB682]

ERVIN PORTIS: Thank you, Senator. [LB682]

SENATOR CORNETT: Next proponent. [LB682]

GREG MacLEAN: Madam Chair, members of the committee, my name is Greg MacLean. I'm the director of public works for the city of Lincoln, here to speak in favor, as a proponent of LB682. There's been a lot been said today and going late in the order kind of steals some of the thunder and some of those kind of things. So I want to preserve a little bit of time for discussion at the end. But I did want to talk a little bit from the perspective of communities that don't have a large federally mandated program that we're looking specifically at right now. Certainly Lincoln in its past has had a large number of large infrastructure projects, some of them federally mandated and unfunded that we have faced over the years and we've dealt with those. But each time that becomes more difficult on the ratepayers. We do continue to have rate increases over the years. If this LB682 were to move through, certainly we would receive some benefit. But I'd like to also emphasize it is a very, very thin slice of what our overall commitment is on the long term. We, too, have infrastructure in this city that is well over 100 years old. Some of it is approaching 130, 135 years in age. Certainly a lot of cast iron, I think we've still got some wood in the system somewhere. But we're going to try and get that removed as well. But we do support this and I'd like to also emphasize, too, that even the CSO as an unfunded federal mandate, it is like all other federally unfunded mandates. There's always another one. There's more that are coming. And so to have this as an additional tool in our quiver to use would be a great advantage. And these projects, again, will never end. We have a continuing deterioration of our infrastructure nationwide, and this is just one more tool for us. And so with that, I'd like to answer any questions you may have. Yes, Senator. [LB682]

SENATOR CORNETT: You just brought up a very valid point that's something that concerns me when you talk about that federal mandates never end. Is this a good policy decision for the state moving forward to start giving away sales tax or future sales tax base for federally mandated projects? [LB682]

GREG MacLEAN: I guess my response to that would be that our rates will always increase, and they will always increase for the operation and maintenance of our utilities. And that portion of it is not what we're talking about here today. We're talking about being able to get a turnback tax on that portion of a rate increase after the date that is specifically earmarked for a specific project like a CSO or something like that. So I think that it's fairly targeted, and I don't think, again, that it is the panacea that will be the cure-all of our ills. It doesn't come close. But it is one more additional tool that we

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have. [LB682]

SENATOR CORNETT: Senator Louden. [LB682]

SENATOR LOUDEN: You're with the public works from Lincoln. [LB682]

GREG MacLEAN: Yes. [LB682]

SENATOR LOUDEN: And that includes the water system? [LB682]

GREG MacLEAN: Includes Lincoln water system, Lincoln wastewater as well. [LB682]

SENATOR LOUDEN: And you've just put in that new water line from Ashland to Lincoln. [LB682]

GREG MacLEAN: Yes, um-hum. [LB682]

SENATOR LOUDEN: And then this doesn't have anything to do with CSOs, but what's that little blue lint that I keep getting out of my filters in my...coming through my sink? [LB682]

GREG MacLEAN: You have blue lint in your sink? [LB682]

SENATOR LOUDEN: Comes through my...I have to take it out of my filters. It's coming through that water in Lincoln someplace. [LB682]

GREG MacLEAN: I don't know what that is. I can't tell you, but we can certainly send a service tech out to take a look at it for you. (Laughter) [LB682]

SENATOR LOUDEN: I'm saving it and I'll bring it to you so you can tell me what it is. [LB682]

GREG MacLEAN: Okay. I'm going to make a note of that, Senator. [LB682]

SENATOR LOUDEN: Because these folks that are drinking Lincoln water are drinking that little blue lint. [LB682]

GREG MacLEAN: Now, this is my opportunity to let you know that Lincoln water was voted as the best tasting water in the state and third best in the nation. [LB682]

SENATOR LOUDEN: Oh, no, no, no. I come from the Sandhills. (Laughter) You don't even hold a candle. [LB682]

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GREG MacLEAN: (Laugh) Okay. Blue lint, got it. [LB682]

SENATOR CORNETT: Further questions? Seeing none, next proponent. How many further proponents? [LB682]

DAN HOINS: Thank you, Chairwoman Cornett. My name is Dan Hoins, D-a-n H-o-i-n-s. I'm the city administrator in the city of Papillion. I'm speaking today on behalf of the city of Papillion and the United Cities of Sarpy County, the five municipalities that are located within the city of or the county of Sarpy. Specific to Papillion, we're a bit of a hybrid. We have our own water system. We have Black Hills Energy for natural gas and we have...we are part of the Omaha regional sewer system, so just to give you an idea of the issues we're dealing with. Prior to the 1970s, the city of Papillion had our own sewer treatment plant and under some...with some federal dollars we went into the Omaha regional system and still maintain that today. The reason we're supporting this bill today is that there's a potential to reduce the rates within the city of Papillion and the other Sarpy County communities that drain into the Omaha regional system if those costs were lowered in any manner. In Papillion specifically, we just raised our sewer rates 23 percent on December 1 to help pay our share, if you will, of the additional CSO cost to the city of Omaha and will have to continue with those types of rates for the next few years, many years. So that really brief, hopefully, one of the more brief ones you have today on this topic, but I'm certainly ready to answer any questions that you may have. [LB682]

SENATOR CORNETT: Senator Hadley. [LB682]

SENATOR HADLEY: Just more of a statement. I'm just thinking here and I think it's ironic because we spent quite a bit of time on the floor talking about state aid to cities and counties and the fact that they may have to raise their tax rates. But theoretically, we could give aid to cities and counties in this bill and have to raise our tax rates because we're going to be losing \$28 million a year in potential revenue. So it's interesting that it's the reverse that we've been hearing. You don't have to comment on that. I didn't mean that...(laughter). [LB682]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB682]

DAN HOINS: Thank you. [LB682]

SENATOR CORNETT: Next proponent. [LB682]

JULIA PLUCKER: Good afternoon. My name is Julia Plucker, spelled J-u-l-i-a, last name P-l-u-c-k-e-r. I am here today representing the Omaha Association for a More Competitive Business Environment. It's a ridiculous name, and I hate to admit that I made it up late one night. We are here because, as the mayor of the city of Omaha

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testified, rates are going up. There's a burden on ratepayers. Well, I'm here representing the largest water users which is the group that the city, through their rate consultant and other research they've done, have decided that the rate structure they're using is to charge the 29 largest water users to basically pay 5 percent or \$85 million of this \$1.7 billion project. My industry, my clients, have gotten together and said this is an untenable rate increase for these companies. And these companies, because of this increase in rates, are facing challenges and whether they should keep their businesses in Omaha or move out of state. I'm just going to use average numbers and then I'm going to get to a specific number in just a minute. This rate structure, as I said, is 5 percent or \$85 million of the cost. It costs the average industrial user \$2.9 million in an increase over 15 years as opposed to what has been described as commercial accounts, which there are 12,667 of those, their increase over 15 years goes up and, here, let me get the right number, \$43,000. So our 29 companies are about \$3 million increase over 15 years; theirs is \$43,000 increase over 15 years. For example, Kellogg's, the largest water user in the city of Omaha, over six years their charges are an 87.2 percent increase, which constitutes about \$100,000 a month. Skinner Baking Company and the 10th largest water user, over six years goes up about \$6,000 a month or their rates are increased 50 percent. They're looking to expand their business to do twice the revenues that they do now, and they have to think about that when they're thinking of expanding in Omaha, that they'll just use more water and their rates will increase. We're here today to testify in support of this bill because I guess \$46 million in reducing \$1.7 billion is something. It's a drop in the bucket. It probably won't help my clients significantly, and we're more interested in getting the rate structure changed and working through the city for that process. But we feel like any amount of money that comes back to the city to help pay for this project is something that we would be supportive of. That's all I have. Any questions? [LB682]

SENATOR CORNETT: Senator Utter. [LB682]

SENATOR UTTER: Welcome to Hastings. [LB682]

JULIA PLUCKER: (Laugh) Wonderful. [LB682]

SENATOR CORNETT: Any further comments, questions? Senator Fischer. [LB682]

SENATOR FISCHER: Thank you, Senator Cornett. Thank you, Ms. Plucker, for being here. I heard it from you and I heard it from Mr. Clark that this is a drop in the bucket. The rates will be smaller but not by much. It's really not going to have an effect at all. You're representing 29 big water users, but, you know, seriously, this isn't really going to help them, is it? [LB682]

JULIA PLUCKER: This certainly will not, no. To be honest, I don't think it will help their rates, the rates that they're looking at, the rates that I testified to. [LB682]

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SENATOR FISCHER: You know, so we're looking at a bill that really isn't going to do anything to solve this problem. But yet it will cause significant loss in revenue to the state. Would you agree with that? [LB682]

JULIA PLUCKER: I would agree with that. I mean we see...if this could be one part of a bigger solution, I can see it making a difference for us. But this standing alone I can't say that on behalf of my clients it will make a big difference. But if it's a part of a bigger package, perhaps it would. [LB682]

SENATOR FISCHER: But standing alone it... [LB682]

JULIA PLUCKER: Right. [LB682]

SENATOR FISCHER: I mean that's kind of a feel... [LB682]

JULIA PLUCKER: Unfortunately, it won't. [LB682]

SENATOR FISCHER: Right. And I agree with you, unfortunately. But...yeah, on its own I don't see it helping the situation, but I see it decreasing state revenue in the future. So thank you. [LB682]

SENATOR CORNETT: Further questions? [LB682]

JULIA PLUCKER: Thank you. [LB682]

SENATOR CORNETT: Seeing none, are there any further proponents? Opponents? Neutral testimony. [LB682]

JILL BECKER: Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Jill Becker, last name is spelled B-e-c-k-e-r, and I'm here today in a representative capacity for Black Hills Energy. And I really just wanted to answer the question that Senator Hadley had regarding the language of the bill. As we read this bill, this bill does not apply to the investor-owned natural gas utilities. There is language in the bill, I believe on page 4, that defines the natural gas utilities. And per that definition, I believe it says publicly owned natural gas utilities. So with that language as the definition, it would not apply to us. And I guess I'd also just mention one of the things that wasn't mentioned I don't think by many of the testifiers is the language in the green copy of the bill that focuses on one of the purposes of the bill being economic development. And I'd just like to mention to the committee that by excluding those investor-owned natural gas companies you are excluding a very large number of your constituents' projects. Black Hills Energy serves approximately 110 communities, SourceGas serves about 180; and then Northwestern Energy serves four communities

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in Nebraska. So those communities that might be facing some type of projects, they may not be driven necessarily by a federal mandate, but maybe there's something going on in that community, would not have this type of legislation apply to them. With that, I would be happy to answer any questions that you may have. [LB682]

SENATOR CORNETT: Senator Hadley. [LB682]

SENATOR HADLEY: Senator Cornett. Ms. Becker, thank you. I missed that part, the one sentence. But I guess I'm getting back to a policy issue. If we have a lot of investor-owned utilities where part of the rate that you charge has to be a return to the investor,... I would guess that rate would be greater than the...the expected rate would be hopefully greater than the sales tax that might be charged. [LB682]

JILL BECKER: Yes. [LB682]

SENATOR HADLEY: I would guess that rate would be greater than the...the expected rate would be hopefully greater than the sales tax that might be charged. [LB682]

JILL BECKER: Yeah. Our investors would hope so. And I'm not here today advocating that we become part of this type of model. [LB682]

SENATOR HADLEY: No. No, no, I...but I'm just saying that you have an additional part of your rate base that municipal-owned utilities do not have--a return to the investors who put up the money. [LB682]

JILL BECKER: Yeah, we do. And I would also say that we also have a current structure in place to fund our capital expenditures. You're exactly right. Our investors recoup their returns based on our capital investments. And our states have a procedure for us to go through that process in setting our rate. [LB682]

SENATOR HADLEY: So I guess my point is that investor-owned have a cost that municipal-owned do not have right now. [LB682]

JILL BECKER: Perhaps. [LB682]

SENATOR HADLEY: Hopefully, that there's profit. Okay. [LB682]

JILL BECKER: That's what we would hope, but I guess I would also say that the infrastructure concerns that have been talked about today aren't driven by that. They're driven by the needs of the system, and that valuation of the system isn't going to change from our perspective whether or not the state gets involved. [LB682]

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

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[LB682]

JILL BECKER: Thank you. [LB682]

SENATOR CORNETT: Are there any further...is there anyone else in the neutral capacity? Senator Mello, you are recognized to close. [LB682]

SENATOR MELLO: I'll be very brief. Trying to go through...I apologize to the committee for not being able to stay for the entire hearing. I had another bill after Senator Fischer in Natural Resources that just finished so I will try to address, I think, a few of the questions and comments that I think arose throughout the hearing. The question of why we should even consider this policy: because to some extent with the largest public infrastructure project probably in the state of Nebraska's history, this might not provide for just the city of Omaha the silver bullet to finance this federally unfunded mandate. To that question I would say this extends a hand of cooperation and I think a partnership between the state of Nebraska and its local governmental entities--the government that is closest to the people who deals with day in and day out concerns and needs regarding infrastructure. This is an opportunity for us to become partners of ensuring that, one, as a state we want to continue to see population grow outside of our metropolitan areas across the state. And to do that, we need to be able to ensure we have competitive local tax climates. Just yesterday the Tax Foundation released a study showing that Nebraska ranks 15th in the United States in regards to the highest state and local tax burden. Add on top of that aging infrastructure in numerous municipalities, not just with the Omaha CSO or Plattsmouth CSO, and you can see why this would be helpful in regards to paying off that infrastructure only faster. The question, and I know that Senator Utter asked it and I believe Senator Pirsch asked it as well, and I wanted to just make sure I clarified it in my closing was, yes, the bill as drafted now pays or essentially continues or municipalities or utilities can apply for the funding until the project is finished or a project is financed and financed completely, which to some extent could last 5 years, could last 25 years, could last longer than that, depending upon the size of the project and the financing of the project. I just wanted to make sure for clarification purposes, Senator Utter, you asked that and I thought that was the correct answer but I wanted to double-check. As I always state with any closing I have in front of any committee, I'm more than willing to work with the Chair and the committee itself to look to address any concerns or challenges that may lie in LB682. But I think that the important issue is where do we want to go as a state in regards to tax policy, in regards to assisting our local governments in dealing with what will be probably one of the most significant issues we face in the twenty-first century is how do you replace twentieth century infrastructure? And I think LB682, while it may not be a silver bullet to assist municipalities or public utilities, it does provide a mechanism, a mechanism that's currently not available for local governments to be able to recoup some of the state sales tax that their customers pay to pay for the local infrastructure project, with the understanding that when the project is finished the state does receive the benefit again



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of that additional sales tax. And in my mind in conversations we've had with other individuals, it's almost a delay. The state ultimately delays receiving windfalls of sales tax from new public infrastructure projects that normally would not take place. So with that, thank you, Madam Chairwoman. I'd be happy to answer any further questions the committee may have. [LB682]

SENATOR CORNETT: Questions from the committee? Seeing none, you are recognized to open on your next bill. [LB682]

SENATOR MELLO: Good afternoon, Chairwoman Cornett and members of the Revenue Committee. My name is Senator Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District, which includes south Omaha and Bellevue. Currently, the state of Nebraska operates three separate cash funds whose statutory purposes include the promotion of recycling. LB627, which would adopt the Remanufacturing and Job Creation Act would utilize 10 percent of two of these funds--the Nebraska Litter Reduction and Recycling Fund and the Waste Reduction and Recycling Incentive Fund--to provide tax credits for increased recycling or composting. The committee should have received a copy of AM511 which makes a number of changes to the green copy of the bill. Under LB627, a taxpayer, nonprofit organization, or governmental unit could apply for tax credits that are refundable and transferable if they can demonstrate a reduction in their waste through recycling or composting. The green copy of the bill would require the applicant to demonstrate waste reduction by showing an increase in their recycling or composting, while AM483 would also allow the applicant to demonstrate waste reduction based on the amount of waste disposed during the year prior to applying for the tax credit. The amount of the credit would be based on the statewide average tipping fee which means that the tax credit is tied to the cost of disposing of that same waste in the landfill. Unlike other tax credits the state of Nebraska provides taxpayers, LB627 contains built-in mechanisms to ensure whether the tax credits are accomplishing the intended goals. Under the bill, an applicant would first apply to the Department of Environmental Quality for tax credits providing base year tonnage information, after which the department would certify a tentative tax credit amount. If the applicant failed to meet the amount of waste reduction certified in the application, then no tax credit would be received. Applications received by the department can only be approved up to the total dollar amount available that tax year and would be approved in order of received. LB627 also calls for the Remanufacturing and Job Creation Act to sunset in 2021, although the amendment delays the implementation to provide more flexibility to the department and sunset of the act by an additional year. As noted by the fiscal note, the green copy of the bill did not include language allowing the Department of Environmental Quality's administrative expenses to be paid through cash funds, which is the current practice with both the Litter Reduction and Recycling Act and the Waste Reduction and Recycling Act. The amendment corrects this oversight which should eliminate any fiscal impact, and also provides language allowing the Department of Environmental Quality to accept grants,

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contributions, or other funds to support the program. For an example, this would allow the Department of Environmental Quality to apply for a grant through the Nebraska Environmental Trust if this incentive program were successful. The amendment also allows the Department of Revenue to withhold additional cash funds to pay for the necessary one-time expenditures to update their income tax tracking systems. As amended, I believe LB627 is an innovative, market-based approach to incentivizing recycling in our state, representing more efficient use of cash funds than our current grant application process, and has the significant potential to create private-sector jobs. Thank you for your time and I'd be happy to answer any questions you may have.  
[LB627]

SENATOR CORNETT: Seeing none, thank you. [LB627]

SENATOR MELLO: Thank you. [LB627]

SENATOR MELLO: May I see a show of hands for the number of proponents? Three minutes on your testimony. [LB627]

DALE GUBBELS: (Exhibit 5) Good afternoon, Senators. My name is Dale Gubbels, D-a-l-e G-u-b-b-e-l-s. I am the CEO of Firstar Fiber. We're an Omaha-based recycling company. And I'm also the president of the Nebraska League of Conservation Voters. The handout that you're receiving summarizes some of the things that Senator Mello also just described. But I'd like to direct you to the last page of that packet, because it really speaks to something that's been discussed at length here this afternoon, and that is the need to find more money in the state. The chart that I put together here talks about the two million tons of trash that Nebraska is continuing to bury annually in this state and what that means to us in terms of lost revenue and also costs that we're incurring in the state, and those costs are the \$26 or thereabouts, that it costs per ton for every community, on average, to dispose of. Although there are some communities in our state whose tipping fees, and that's what we call these things, are closer to \$50 and \$60 a ton. And, in fact, the further you get away from a landfill, the more that costs. The purpose behind LB627 would allow for a private and public sector collaboration to incentivize both the public sector as well as the private sector to work hand in hand to develop the infrastructure that we so desperately need in order to get this material out of the landfill and recover the value of that we're seeing with this. And as I point out in this chart, I've just listed the more traditional recyclables that most of us are familiar with. When you start adding some of the nontraditional recyclables, that figure of \$250 million a year that we're burying actually goes up significantly. And if you add compost, which is the organic material, it goes up even more. There's about 400,000 tons of organics that we're burying in this state annually, and if that was composted and put on farmland, it would have a major impact not just on the municipalities that have to pay for it, but actually on the farmers who could access more fertilizer and organics to build up their soils again. With that, I'd be happy to answer any questions. And I...not to take too

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much credit for this, but the idea behind the bill was one that I came up with that, Senator Mello, when he asked me what could be done to increase recycling in this state. And having been in recycling for 30-some years, it pains me that we're still quite a bit behind the rest of the nation in terms of what we do recycle in this state. Thank you, Senators. [LB627]

SENATOR CORNETT: Senator Adams. [LB627]

SENATOR ADAMS: Thank you for being here. Help me out: How can a governmental subdivision get a tax credit? So the city of York owns the landfill in York and they recycle. How do we give a tax credit to a governmental entity? [LB627]

DALE GUBBELS: That's a very good question, Senator, and obviously they can't. But the bill allows for the entity that applies for the tax credit to be able to transfer it and use it in a way that is going to bring about the reduction or the recycling that they're after. For example, a community could put out an RFQ or an RFP, a request for proposals, for let's say a new recycling center. And this is often done anyway, but having applied for this tax credit in advance with the expectation that if we had a recycling center in our community, we could reduce the amount of trash that we're landfilling; that money then could be transferred to whoever actually ends up winning the bid, which they would take into account as they're putting their bid in, thinking that if I can achieve what the city has set out, on top of what the revenue that I make off the recyclables, that can also earn a tax credit on it. [LB627]

SENATOR ADAMS: So in effect, if I understand what you're saying, the city--let's use city as the governmental subdivision--earns the tax credit. And then the city becomes the determiner of who gets the actual credit? [LB627]

DALE GUBBELS: That is correct, sir. [LB627]

SENATOR ADAMS: Okay. [LB627]

DALE GUBBELS: And I think, Senator, if I could just elaborate on that a little bit too. I think one of the things that Senator Mello pointed out, which deserves repeating, is the fact that unlike grant money--and don't get me wrong, I've been a recipient of grant money in years past. But unlike grant money, with a tax credit as this is set up in LB627, it actually, the state ends up winning on several levels, whereas the...with a grant, the money goes out before anything is done. In this instance, the situation is such that no money goes out until it's actually proven that the effort that was proposed actually achieves what it set out to do. The bill also says that if, let's say, a community says that...they come in and they say: We're going to do 10,000 tons and so we need, you know, \$26 times 10,000 tons. The applicant bids on it. He comes in and he can only do 5,000--they don't get the tax credit. But yet that city still comes out ahead because

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they've at least reduced their trash disposal costs by 5,000 tons. And if they're successful, the money flows back into the general fund when that tax credit goes back. And now, as grant money, it goes out. Maybe it will be successful, maybe it will be partially successful, or maybe it will fail. But either way, the state doesn't get that money back. [LB627]

SENATOR ADAMS: Okay. [LB627]

SENATOR CORNETT: Senator Hadley. [LB627]

SENATOR HADLEY: Senator Cornett. Thank you for coming in. On your chart, on the last one, the estimated percentage. Are you saying that 43 percent of these recyclables are being put into the landfill now? [LB627]

DALE GUBBELS: No, I'm saying, sir, that all these materials are being landfilled now. Of the two million tons that we're disposing of annually. And these percentages are based on a waste characterization study that the state did. All that material is being landfilled. Those different materials add up to 43 percent of what's going into the landfill. [LB627]

SENATOR HADLEY: I guess I have a...you know, when we're trying to change behavior, and I'm like Senator Adams, I have to use my hometown where we have a recycling program. It doesn't cost us anything. We get the blue container and we get the regular trash container. Why would we set up a system that if a person isn't willing to do that or a business isn't willing to do that, we charge them extra for their cost of trash so that, in essence the people who are actually filling the landfill with this pay for it? [LB627]

DALE GUBBELS: That's a very good point and that's actually called a pay-as-you-throw system. When you are the one putting material into the landfill, you should pay for it. Actually LB627 would help communities enact a pay-as-you-throw system as well, because one of the things they could do--and pay-as-you-throw systems have been around for a long time and they've been very successful. Some have reduced the amount of trash by 20, 30, 40 percent, because when you put it back on people... [LB627]

SENATOR HADLEY: Well, I could see that, that if you don't have the...if you say I don't want that other blue container or the person, the trash man picks it up three months in a row and there's nothing in it... [LB627]

DALE GUBBELS: Then you pay for it. You end up paying for it because you're the one contributing to the landfill. With LB627, the community could say we need to hire a consultant who's going to help us put into place a pay-as-you-throw system so that it's

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equitable. And that's one of the reasons why a lot of communities in Nebraska haven't done it. They're fearful that, well, this is just not fair or whatever. And I come from northeast Nebraska originally, and the little town next to us, Laurel, worked on trying to get a pay-as-you-throw system for a good ten years before they got it done. But when they finally put in place, they saw that their trash costs were lowered significantly because people started to recycle. [LB627]

SENATOR HADLEY: Sure. The last thing I would say, if you wanted that; it's called pay-as-you-throw or...? [LB627]

DALE GUBBELS: Yes, sir. [LB627]

SENATOR HADLEY: If you really wanted that to work, I'd put my wife Marilyn Hadley in charge of it for the state because she would make sure it worked. (Laughter) [LB627]

DALE GUBBELS: (Laugh) Maybe she could be the consultant that the other towns could use. [LB627]

SENATOR HADLEY: Yeah, she would be the czar. She would make sure that it worked. [LB627]

DALE GUBBELS: That would be great. [LB627]

SENATOR CORNETT: Further questions from the committee? Just for the people that are from Omaha, it's my understanding they've closed the interstates. [LB627]

DALE GUBBELS: Oh. Thank you. [LB627]

SENATOR CORNETT: So... [LB627]

SENATOR HADLEY: Why? [LB627]

SENATOR CORNETT: Look out the window. [LB627]

SENATOR FISCHER: Look outside. (Laughter) [LB627]

SENATOR PANKONIN: So does that mean we're going to end the hearing right now so we can get home? [LB627]

SENATOR CORNETT: No. (Laughter) [LB627]

DALE GUBBELS: Does that mean that there are volunteers here to put people from Omaha up for the night? (Laughter) [LB627]

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SENATOR CORNETT: No. Okay, anyway. No further questions. Next proponent. [LB627]

DALE GUBBELS: Thank you, thank you. [LB627]

GARY KRUMLAND: Senator Cornett, members of the committee, my name is Gary Krumland. The last name is K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LB627. Cities do have an interest in recycling, and part of that extends back to 1986 when the federal government adopted legislation to mandate that states take care of the solid waste within their jurisdictions. In 1992, the state adopted legislation to pass the mandate on to the cities and counties, and basically said the cities and counties are required to handle the solid waste within their jurisdictions. Because of that, cities and counties across the state either developed their own landfills, they joined together to create landfills, or they worked with private landfills to make sure that waste was disposed of in a responsible sort of way. A major part of that is recycling for environmental reasons, also because the Department of Environmental Quality has regulations which basically say certain things cannot go into the landfill and also because the more materials recycled, the fewer things go in the landfill and the longer they last, so you have fewer costs to build new ones or extend it. So anything that would encourage recycling would be very helpful. As was noted, cities would be available for these grants to do their own recycling programs. A lot of them are doing that, but one thing I think would be very helpful is if private companies and nonprofits develop recycling programs and facilities so that there is a market for the recycled materials that are collected. Right now, there is a real problem sometimes of getting rid of the materials after you've collected them, and the more markets that we have that you can take and use the recycled materials would be very helpful in this whole program. And for those reasons, we support LB627. [LB627]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. The next proponent. [LB627]

JOE KOHOUT: Chairwoman Cornett and members of the Revenue Committee, Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing today on behalf of the United Cities of Sarpy County, in particular at the direction of the mayor of the city of Bellevue in support of LB627. And I think Mr. Krumland covered the reasons why we support this, in particular, the last component of his testimony, and that is encouraging the development of businesses to handle these kinds of products are of particular interest to the city of Bellevue at the current time. So with that, for that reason I appear in support. [LB627]

SENATOR CORNETT: Thank you. Questions from the committee? Seeing none, thank you. Next proponent? Opponents? Neutral? Senator Mello. [LB627]

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SENATOR MELLO: Thank you, Chairwoman Cornett. I'll be very brief. As I said, the amended version that was passed out, I believe it is AM483, I mentioned two separate amendment numbers. It was a previous one from...we had to make some changes today. If the committee would like to see further changes, by all means, as I say with all my bills, I'm more than willing to work with the committee Chair and the committee. But this is a unique, innovative market-based approach to create a tax credit utilizing existing cash funds. It does not cost General Funds the way the bill is drafted and will ultimately, at the end of the day, provide an opportunity for job creation as well as enhanced recycling efforts in our multiple municipalities. [LB627]

SENATOR CORNETT: Thank you very much, Senator Mello. Good luck getting home. [LB627]

SENATOR MELLO: Thank you. [LB627]

SENATOR UTTER: Senator Cornett, you're free to open on LB642. [LB642]

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, and I represent the 45th Legislative District. LB642 is a very important bill to help us address one of the worst fiscal crises in Nebraska's recent history. We essentially have two options when faced with a budget gap--cut spending or increase revenues. We have considered many painful spending cuts already in this session and will be considering many more in the future. Through increasing tax...though increasing taxes will only be used as a last resort, LB642 presents an interesting and innovative third option--increasing revenues by more effectively enforcing our existing tax laws. None of us likes to pay taxes but all of us do it voluntarily and pay our fair share. But none of us who pays our fair share like it when we find someone else who is not paying their fair share or avoids paying their taxes altogether. That doesn't happen often in Nebraska but it does happen. The Nebraska Department of Revenue needs the most sophisticated technology available to help them identify people who are not filing, underreporting, or are not paying their taxes. Cutting-edge technology is available but it is expensive. So how does the state of Nebraska afford investing in this new tax policy when we have such a budget gap? We must be innovative. There are private vendors willing to make the investment of providing the new technology to the Department of Revenue with a contract that only pays them for their investment after their product or service actually results in a promised increase in tax revenue. LB642 provides the Department of Revenue another contracting option. I believe the department will take advantage of this option and will do so quickly so that the increased revenue can be gained for the state of Nebraska as soon as possible. That is why I have included the E clause in this bill. The increased revenue potential of this bill is significant at this time when we need it most. If you'll look at the fiscal note, it does not show at the top an increase in revenues because it is permissive language. It says they may contract. But if you read in the text of the fiscal

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note, we have numbers that are very promising in regards to revenue generation. I also handed out an amendment to the committee this morning, and I hope you've had time to review it. Since introducing LB642, it has come to my attention that it may be in the state's best interest to clarify the definition of what can be done by the Department of Revenue and thereby expand the potential for increased tax revenues for the state. Because of this, I'm proposing AM493, which I did provide you with, which would allow the department to enter into contracts with parties that can help the state generate new tax proceeds. These contracts would require the Governor's approval. And I would like to advise the committee that if you look favorably upon this bill, because of the potential for increased revenues to the state, I will make this my priority. Thank you for your time and consideration of LB642. [LB642]

SENATOR UTTER: Questions for Senator Cornett? Seeing none, we're ready for the first proponent. Welcome to the Revenue Committee. [LB642]

BOB TISONE: (Exhibit 6) Thank you. Thank you, Chairwoman Cornett and members of the Revenue Committee. My name is Bob Tisone. I'm with Teradata. I thank you for the opportunity to provide testimony... [LB642]

SENATOR UTTER: Bob, would you spell your name for the record, please? [LB642]

BOB TISONE: Oh, I'm sorry, spelled T-i-s-o-n-e. Want to thank you for the opportunity to provide testimony regarding LB642 and how it can assist the state to increase voluntary tax compliance and, thus, increase revenue for the state of Nebraska. Department of Revenue faces the same dilemma as many other revenue agencies across the United States continually to seek ways to improve compliance, organizational efficiencies, and customer service without an increase in taxes. These efforts have become even more important as many states, including Nebraska, are currently facing significant budget shortfalls. Department of Revenue collects all the state's taxes, approximately \$4 billion last year, accounting for approximately 70 percent of the state's total revenue. The vast majority of those revenues come from taxpayers who voluntarily report and pay their fair share of taxes. But despite the voluntary compliance rate and the vigorous enforcement by the Department of Revenue, a significant amount of revenue remains unreported and unpaid, and that's in-state and out-of-state taxes. This is commonly referred to as the tax gap. This tax gap represents millions of dollars that could support vital public services and reduce or alleviate any budget deficit without increasing taxes. At all levels of government, the tax gap puts an extra burden on citizens in the form of higher taxes and fees, fewer government services, and budget deficits, or all three. In the case of Nebraska, employee layoffs, across-the-board budget cuts, reduced local aid, and the transfer of Cash Reserve Funds have been utilized to stabilize the budget. The Nebraska Department of Revenue does recognize the need to address the tax gap and has taken several steps to address the tax gap while maintaining its mission. LB642 will give the department an additional



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tool to utilize to address the tax gap. LB642 would authorize the department to enter into a benefits-funded or performance-based contract with the private sector. And during these difficult times, many states are opting to self-fund these projects by the benefits the projects generate. In these benefits-funded arrangements, the vendor assumes the cost of the software, hardware, and services to implement the system. They accept the payment risk of the project and only get paid when revenue is actually discovered and collected through an agreed upon measurement methodology. Once the contract price for the software, hardware, and services have been paid to the vendor from the benefits attained, the Department of Revenue owns the system and continues to operate it into the future to continue to grow the revenue benefits to the state. So truly, a benefits-funded arrangement creates a true partnership between the department and the vendor. And simply stated, a benefits-funded approach means the Nebraska Department of Revenue and the vendor share in the risk-reward contract where the vendor is only compensated based on the performance, or the revenue collected, of the programs implemented. There is no capital outlay from the state budget, and staff impact during implementation is minimized by the vendor supplying the majority of services and resources necessary to implement the solution. Over 20 states in recent history have used benefits-funding mechanisms to finance their critical needs by either generating additional revenues or saving money through dramatically reduced costs. Teradata, who I represent, has successfully deployed tax compliance projects in eight states, similar to what is being considered here. These states include Iowa, Arizona, Texas, Missouri, Oklahoma, New Jersey, Maryland, and Ohio. And based on that experience gained on these projects and the success achieved in identifying revenue not recovered by the states due to nonregistration, nonfiling, and underreporting, Teradata has developed a structured approach to identify recoverable revenue for those states. In summary, the difficult fiscal situation in Nebraska has required policymakers to take a long look at opportunities to mitigate the budget deficit. As in many other states, the combination of advanced technology delivered by proven vendor partners in a risk-free contract arrangement will lead to increased efficiencies for Department of Revenue employees and significant revenue for the state without raising or adding new taxes. And I think I'm done, right? [LB642]

SENATOR UTTER: No, go ahead and finish your testimony. [LB642]

BOB TISONE: Okay. (Laugh) [LB642]

SENATOR UTTER: We're going to grant you an extra minute or two. [LB642]

BOB TISONE: I thought I was speaking too fast already. So... [LB642]

SENATOR UTTER: And that won't blow up on you so... (Laughter) [LB642]

BOB TISONE: Thank you, Senator Utter. So as you can see on the testimony for the

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folks out here, our tax compliance solution, we've done some studies and some research and we certainly believe that in three years of full implementation of the project we would generate at least, and I say at least, \$34 million in new hard dollars for the state. The long-term revenue would be, once it's fully implemented and up and running, the state would realize at least \$1.5 to \$2 million a month in revenue. So extrapolating that out, you can see the graph at the bottom that within ten years we would generate at least \$160 million for the state of Nebraska. So thank you for the opportunity to testify today and I'd be happy to answer any questions you may have. [LB642]

SENATOR UTTER: Thank you for coming. [LB642]

BOB TISONE: Thank you. [LB642]

SENATOR UTTER: Senator Hadley. [LB642]

SENATOR HADLEY: Thank you. I think this is a great idea. I have a couple two or three quick questions. Collected through an agreed to measurement methodology, can you just kind of quickly talk about what kind of methodologies you've used in the other states to determine that you're really bringing incremental income to the state? [LB642]

BOB TISONE: Sure. Sure. We, you know, many of our projects are about three and a half, four years, and most of these benefit-funded arrangements are based on a percentage of the collections, not a contingency, so...and it's always agreed upon by and negotiated with the state. So if the contract...what we like to do is since we make that risk-free, assume the risk up-front, we like to recoup our costs as quickly as possible. So normally we eat 50, 60, 80 percent of the proceeds for the first, let's say, \$10 million collected by the state, we would ask that that comes to us, the rest go to the state. Then the next trigger, and I'm using a previous state as an example, the \$10 million to \$15 million that would come in, we would drop down to 50 percent of the revenue come in. Normally, we're paid off by then but we're still there providing those services and those analytical services as well. By year three, if there's still money to be paid out to us as a vendor, usually toggles down to about 25 percent of the revenue that's coming in off that contract. [LB642]

SENATOR HADLEY: Okay. [LB642]

BOB TISONE: Does that help? [LB642]

SENATOR HADLEY: Yes. Another question I have, do you work exclusively in the revenue generation area? [LB642]

BOB TISONE: Do I personally or Teradata? [LB642]

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SENATOR HADLEY: I mean, no, I mean your company. [LB642]

BOB TISONE: No, Teradata, we're a publicly traded company. We are a data warehouse and business analytics company and we're a Global 3000, so everybody from Walmart to eBay to Amazon to Intel uses us in their data warehousing analytics. [LB642]

SENATOR HADLEY: Okay, I guess... [LB642]

BOB TISONE: You know, we're in the private and public sector, if that answers your question. [LB642]

SENATOR HADLEY: Okay. The reason I asked this, that I'm also intrigued in this later on to look at the Medicaid area, because I know there are companies out there that do this that, in essence, come in and work with our Health and Human Services in determining fraud, potential fraud in the Medicaid area. So I'm interested in this. [LB642]

BOB TISONE: Oh definitely, and I should have clarified. You know, we're in 28 federal and state agencies today; 14 of those are in state agencies. Of the 14, 8 are in tax, the other ones are in Medicaid, and that's exactly what we do is fraud detection with the warehousing capabilities... [LB642]

SENATOR HADLEY: With the warehousing, okay. [LB642]

BOB TISONE: ...for Utah, California, Illinois, and Michigan. [LB642]

SENATOR HADLEY: Okay. Thank you. [LB642]

BOB TISONE: Me personally, I'm just tax. [LB642]

SENATOR HADLEY: Okay. I pay my taxes. You can scratch...you can get by cheap, you can just scratch mine off because I just pay a lot quickly. (Laughter) [LB642]

SENATOR UTTER: Any further questions for Bob? If not, thank you very much for your testimony. [LB642]

BOB TISONE: Thank you. Thank you, all. [LB642]

KORBY GILBERTSON: Vice Chairman Utter, members of the committee, for the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Ryan in support of LB642 as amended by the proposed amendment that Senator Cornett handed out to you during her opening. This issue is relatively new to me too. I've done some quick (laugh) study on it in the last few

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days, and the real issue is LB642 as introduced looks at the generation of this revenue from one standpoint. Ryan, the company that I represent, works with states and corporations and other groups to help generate the tax revenue from actual purchases and sales of goods in the state. So one example would be if there's a corporation that's looking to locate in Nebraska, Ryan would help them set up shop and work with the state through the Department of Revenue to ensure tax compliance for anything that they're purchasing or using in developing that business in the state. So it's just a different...it's coming at it from another angle. Instead of trying to get the taxes after they're already due, these would help do the tax compliance as the project is progressing. Obviously, it's a very simple amendment. I had a chance to talk to most of you this morning so, hopefully, I answered questions, but if you have any more I'd be happy to try to answer them. [LB642]

SENATOR UTTER: Senator Adams. [LB642]

SENATOR ADAMS: So would that also involve helping a company with Advantage Act? [LB642]

KORBY GILBERTSON: It could. [LB642]

SENATOR ADAMS: So it could not only be making sure they're paying but also finding ways not to? [LB642]

KORBY GILBERTSON: I would assume (inaudible). In the area that we're talking about right now, I don't think it's this one. This...they could already do that is what I'm saying. (Laugh) [LB642]

SENATOR ADAMS: I got you. Yeah. [LB642]

KORBY GILBERTSON: This bill would not affect that at all. [LB642]

SENATOR ADAMS: Okay. Look it, she's got a calculator. [LB642]

KORBY GILBERTSON: No, I'm sorry, I didn't make it back to the office today and so the only copy of the amendment I had was on my iPad, so... [LB642]

SENATOR ADAMS: Thank you. [LB642]

KORBY GILBERTSON: ...so I thought in case somebody asked me a question I better have it with me. [LB642]

SENATOR ADAMS: Thank you, Korby. [LB642]

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KORBY GILBERTSON: Thank you. [LB642]

SENATOR UTTER: Other questions? Korby, thank you for your testimony. [LB642]

KORBY GILBERTSON: Thank you very much. [LB642]

JOE KOHOUT: Vice Chairman Utter, members of the Revenue Committee, my name is Joe Kohout, K-o-h-o-u-t. I appear today as registered lobbyist for West Corporation and in support of LB642. I think the last time we appeared before your committee we were talking about a different piece of legislation last year where you could help us. Now I think what LB642 has represented, it represents legislation that West could help you. Those...the West Corporation is an Omaha-based company that provides services that we could offer to the department. Those services include collections and data management. We provide those services to other corporations, federal government, state government, and others. And we are in support of LB642 and the amendments thereto and appreciate Ms. Gilbertson providing a copy of those amendments. I would be happy to try to answer any questions. Whereas Ms. Gilbertson had a couple of days, I had a couple hours, so be gentle with me. [LB642]

SENATOR UTTER: Questions for Mr. Kohout? [LB642]

JOE KOHOUT: Thank you. [LB642]

SENATOR UTTER: Seeing none, Joe, I thank you. Further proponents? Are there any opponents of this legislation? Anyone testifying in a neutral capacity? Senator Cornett, you're free to close. [LB642]

SENATOR CORNETT: I'll just let the rest of the committee know I'm a little less stressed. It was my kids have their school play tonight; they cancelled it. (Laugh) I was beginning to get seriously stressed. (Laughter) There are some things moms just can't be forgiven for. To answer Senator Adams' question in regards to finding or making sure companies are compliant with the Advantage Act, Ryan does do that and they can already do that in the state of Nebraska. [LB642]

SENATOR ADAMS: Okay. [LB642]

SENATOR CORNETT: This bill does not allow them anything in that regard that they don't already have, and they do that in other states for other companies. That's part of their business model. What this would do is allow them to collect revenues...or to set up and collect revenues as the company is in the process to help our Department of Revenue. This is all about bringing new revenue and revenue we should be collecting into the state because of this fiscal situation. And you and I briefly spoke about the company the other day when we were in Education. With that, I'm just going to close on

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this bill. And if you have any questions, I'd be happy to answer them. Yes, Senator Louden. [LB642]

SENATOR UTTER: LeRoy. [LB642]

SENATOR LOUDEN: How come the Department of Revenue didn't come over and testify one way or the other on this bill? [LB642]

SENATOR CORNETT: Well, I don't actually know on that. We had meetings with the Department of Revenue in regards to it this summer. If you remember, we had the meetings with Revenue Solutions at the Department of Revenue discussing this idea and they have been very helpful with the drafting of the language. But this is my bill, after having had those discussions over the course of the summer with Revenue Solutions, West, and Teradata this fall. [LB642]

SENATOR LOUDEN: Okay. Thank you. [LB642]

SENATOR UTTER: Other questions for Senator Cornett? If not, Senator Cornett, you're free to open on LB489. [LB642]

SENATOR CORNETT: (Exhibit 7) I do have an amendment that I would like to pass out to everyone on this, and this came to our attention last week, at the end of the last week or the beginning of this week when we were going over the bill with the Department of Revenue, that the language wasn't quite correct to achieve our goal. So I've offered an amendment on this. This has been something I've been working on in some form since I got elected to the Legislature and it has to do with sales tax reporting. Good afternoon, Vice Chair Utter and members of the Revenue Committee. I am Senator Abbie Cornett, C-o-r-n-e-t-t. I represent the 45th Legislative District. I appear before you today to present to you LB489. It is the purpose of LB489 to provide a mechanism for municipalities across the state, which have local option sales tax in place, to obtain information from the Department of Revenue regarding the amount remitted by holders of sales tax permits within the boundaries of the municipality. The records of payments by holders must be viewed on the premises of the Department of Revenue. Municipalities must certify one individual to the department who can review the documents, and disclosure of the amounts to anyone would result in a Class I misdemeanor. That's to maintain the privacy aspect of sales tax. The legislation would make planning by municipalities easier throughout the state by knowing which businesses and municipalities are in compliance with Nebraska state sales tax laws and what the potential impact to the city would be for the departure of a large remitter of sales tax. This legislation was brought to me by the United Cities of Sarpy County, and a representative of the United Cities will follow me this afternoon with testimony in regards to why this bill was brought to me. I appreciate your consideration of LB489 and would be happy to try and answer any questions. [LB489]

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SENATOR UTTER: Questions for Senator Cornett? Seeing none, first proponent.  
Welcome back. [LB489]

DAN HOINS: (Exhibit 8) Thank you, Vice Chair Utter. My name is Dan Hoins, city administrator--D-a-n H-o-i-n-s--city administrator for the city of Papillion, here today representing not only the city of Papillion but the United Cities of Sarpy County. I'd first like to thank Senator Cornett for, once again, trying to help us with this issue. This isn't our first time at the plate on this particular problem that we have as municipalities, and I dare say that it's not restricted just to the five municipalities in Sarpy County. In my ten years I've had this discussion with many, many other city administrators or managers that share the same thing. I'm not sure how to...I'll explain the spreadsheet as it makes its way around, because I'm trying to sum up about three years' worth of work in three minutes and do it in a manner that would make some sense. But, in essence, the current system requires cities, municipalities, to make multimillion-dollar decisions on a hope. That's not a good way to do business at any level, and certainly not in government. When I made that statement, when a new development comes in like a Walmart which came into Papillion, we had to make million-dollar decisions on the infrastructure, to improve that, with a guess of what type of revenue that we would generate. Over the next 18 months, on October 1, 2006, Walmart opened in the city of Papillion. Over the next 18 months we opened--and were very blessed--95 new businesses and 1.5 million square feet of new retail. Shortly after Walmart opened up in October, in January our revenues were flatlined. They really had no substantial increase whatsoever, and we knew that just couldn't be. So we started the process of creating this spreadsheet. And I assigned a staff member to contact all 90-plus businesses and asked them for the information that the Tax Commissioner is restricted in giving us. And another comment: My comment is in context; anything I say is not critical of the Tax Commissioner. In fact, Commissioner Ewald came to Sarpy County and met with us and tried to resolve the issues. We came to Lincoln and met with his staff and they still said: We don't think we can give you this information. But the interesting thing on that spreadsheet is that of the 90-plus businesses that we contacted, we found over a quarter million dollars' worth of errors that had taken place. The Walmart sales tax was going to the city of La Vista. And as much as we work with them, we wanted our money. And so they had to pay that money; it was taken out of their next sales tax receipt. Kohl's didn't pay the sales tax properly; I believe Lowe's is in there; Arby's didn't pay it in there. And four may seem like a small number there, but a quarter of a million dollars is a whole lot of money. But the other interesting thing: Of the 90-plus businesses that we contacted...and you can see it on the far right, and it's small print, I apologize...we had over an 80 percent compliance rate of those businesses giving, directly to a city employee, the information that we can't get from the state Tax Commissioner, giving us the schedule TANs (phonetic) and doing those things. So it...we would like to request today the ability, as Senator Cornett mentioned in her opening, to just give one city employee the ability of that with the same power and privileges that many others in the

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state office have already. And when I say powers and privileges, if somebody violates that, then it's a Class I misdemeanor and they should be charged. But we really do need your assistance in making those multimillion-dollar decisions because I believe today that there is still probably money out there that's being not either collected or appropriated to the proper entity, even though after we contacted the 95 businesses, I had to assign that person to some other duties and we tried the legislative route, so. That concludes my comments. I'd be happy to answer any questions you may have. [LB489]

SENATOR UTTER: Senator Adams. [LB489]

SENATOR ADAMS: Thank you, Senator. So I'm very empathetic to the issue. I mean it seems clear to me, but there is one point that doesn't. So what you're talking about is the ability to make sure the sales tax that you're entitled to, you're getting; not, well, Walmart didn't pay as much sales tax as we anticipated, therefore the sewer line is going to be a problem. Am I right? [LB489]

DAN HOINS: You're correct, Senator. There was an effort, I believe it was two years ago, where the Tax Commissioner was given the authority to provide cities, one time a year, those that were paying sales tax within the city, and that was certainly a step in the right direction. The first time and each subsequent time we've requested the report, it's 400 pages in Papillion, and there are people paying sales tax in there that don't have business. For example, the Lincoln Electric System paid sales tax to the city of Papillion in that 400-plus-page report that we have. And so the validity of that data, if there is...and one of the complications, Senator Adams, is that if they make an on-line sale to somebody in Papillion, it's going to show as they paid sales tax in the city of Papillion. So you're not going to know the scope or the magnitude of what they're paying. So to answer your question: Yes, we'd like to know how much they're paying because I think that's critical to our decision-making process. [LB489]

SENATOR UTTER: Senator Hadley. [LB489]

SENATOR HADLEY: Senator Utter, thank you. The question I have deals with the fact that there would be one city employee that would have access, but the minute that employee talks to somebody else about we have a problem with Walmart, how do they back it? I mean do they say: We have a problem with Walmart, but I can't tell you what it is...I can't tell you how I arrived at it? [LB489]

DAN HOINS: Well, I can tell you I've thought this through, Senator Hadley. How would we legitimately do that in Papillion? And we talked--one people, three people, the mayor? In the city of Papillion, we'd assign our finance director to that particular role, and then while I'm working with a new development I would ask her to go find out how much Walmart developed within another area, if they were able to get that information,



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and how much can I spend? There's a \$2 million road, Centennial Road, I need to build. What are my revenues going to be like from Walmart? And then she would tell me: The revenues are going to be X; I've confirmed it through the state. [LB489]

SENATOR HADLEY: Okay. So she would be sharing the information that she got through the state, under this bill? [LB489]

DAN HOINS: She would have to share it. Yes, she would. [LB489]

SENATOR HADLEY: But then that...doesn't that cause a problem with the fact that they can't share it with any...or that it's only one person? I...maybe I'm not understanding it, but I can understand why you want to limit the number of people. But eventually, if there's a problem, you've got to share it with people and get somebody else who may, potentially, to try and solve the problem. [LB489]

DAN HOINS: She wouldn't share the amount with me but she will tell me I could afford a \$2 million Centennial Road based off of the projected revenues. [LB489]

SENATOR HADLEY: Okay. [LB489]

SENATOR UTTER: Mr. Hoins, the...how do these errors occur? Do these errors occur in the area of the company applying for the sales tax permit situated in the wrong city, or do they occur from the standpoint that the Department of Revenue didn't enter them properly? Could you tell me how they occur? [LB489]

DAN HOINS: I think there's multiple ways, Senator Utter, that they occur. And I don't think...very few of them are intentional that we could find. In our particular instance, the Walmart example that we're talking about, for almost 20 years their corporate tax office in Bentonville, Arkansas, had been sending money from Bentonville to La Vista, Nebraska. When the Walmart moved across the street to Papillion, a different entity, that corporate office never made that change. And so nobody knew for the worse until three months later when we started seeing the anticipated increase in revenues was not there and we started making phone calls, and then it got corrected. There is also...and if I...may I hand something else out, Senator? [LB489]

SENATOR UTTER: Yes, certainly. [LB489]

DAN HOINS: (Exhibit 9) The Tax Commissioner has a Web site where theoretically you can go on the Web site and see who's paying what. The example that I'm handing out to you happened in 2008, and this was some 18 months after we began our development. We went on the commissioner's Web site, typed in this particular store, Ulta--on page 2 is the Department of Revenue Web site--the address of the Ulta store, and it shows that it is paying 1.5 to Papillion and 5.5 to the state of Nebraska for a total rate. The very

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same day we went to the store and made a purchase--and that's the front page there. You can see the very same address, 7701 Towne Center Parkway, Papillion, Nebraska. The next portion is in highlight: Local Tax 5.5 percent. So the commissioner's Web site said they were paying 7, but when we went and purchased something, they weren't paying 7 percent; they were paying 5.5 percent, they came in. And so there are multiple ways to answer your question, Senator, that...and we just happened, because of this rush of business that we had, to really pay a lot of attention for a short period of time to that information. So...and I don't think it's intentional to answer your question. But we believe...at least the United Cities, the city of Papillion and, I believe, the League of Municipalities don't believe it should be contentious with the Tax Commissioner. Again he's, several meetings, very professional man and his staff. But it should be more of a partnership with the municipalities instead of we've got this information and we can't give it to you so you can make your decision. We need to find some way to create a partnership so that we can share that. And this bill at least is a step in the proper direction. [LB489]

SENATOR UTTER: I guess not knowing how this happens from a purely accounting standpoint, but the Walmart store then sends the city of Papillion or, in the case of the previous example, the city of La Vista, their share of the sales tax? [LB489]

DAN HOINS: What happens, Senator Utter--and my friends from La Vista would be frowning if they were here. With the assistance of the Tax Commissioner, they said: Oh, they're not doing it right in Bentonville. And so they notified Bentonville: It's in Papillion. And I think we cooperatively worked on that. The next tax distribution, the city of La Vista was reduced by \$122,000, and change; and Papillion received an additional \$122,000 to balance the books if you will. [LB489]

SENATOR UTTER: But that money actually came through the Tax Commissioner; not from the... [LB489]

DAN HOINS: Yes, it...yeah, and I'm sure you're...we get one check. We get one check and we really don't know what that represents. And I would be remiss if I didn't say on behalf of the other members of the United Cities, specifically La Vista, that not having this information is very complicating for them in terms of LB775 refunds. And I think you probably all know that's out there, and Papillion personally hasn't had that hit us yet but I know La Vista and several other communities have. And that goes to the heart of the issue of creating the partnership with the state agency versus we versus them, because if you read the statute, it says anybody in the Department of Revenue, I think the Department of Administrative Services, etcetera, can have that information. Yet we have government certified accountants and city managers and mayors that can't get it. It just...and I really don't know why, Senator Utter. I really don't know why it is. And I'm sure there's some logic but I don't know the answer to that question. [LB489]

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SENATOR UTTER: So you're saying it really wouldn't be much fun then to have a tax refund coming up one of these days and not collecting the tax at all, would it? [LB489]

DAN HOINS: Not much fun at all. We haven't experienced that, but I know many others that have and it's a real issue for them. [LB489]

SENATOR UTTER: Senator Hadley. [LB489]

SENATOR HADLEY: Just a quick comment. I do know...I have heard of instances where this has happened in the way of cities annexing, extending their boundaries, and then finding out that the businesses that were annexed in didn't realize that they were to collect city sales taxes. And there's been some pretty significant billings back to the companies, especially the retail companies that were annexed in that didn't pay any attention to the fact that they were something within the city boundaries. [LB489]

DAN HOINS: That goes back to, I think, my comment initially, is we're making multimillion-dollar decisions on a hope, when the information is there. We should be able to get that information. [LB489]

SENATOR UTTER: Senator Louden. [LB489]

SENATOR LOUDEN: Yes, thank you, Senator Utter. Well, I understand what you're trying to do here. And like you say, we've talked about this LB775, and I thought there was a big bookkeeping problem. I guess what I have the problem with this is this \$30,000 fiscal note and \$33,000 fiscal note, because I was over in the Appropriations Committee this morning trying to...or this afternoon, trying to get \$15,000, and here we're going to put a fiscal note of \$33,000 on this. Now if you're able to recoup money and that sort of thing, should these cities then be paying this fee to do this so that we don't have a fiscal note on this? [LB489]

DAN HOINS: I can't speak for all the cities but I can speak for the five United Cities and Papillion. The answer would be yes. And Senator Louden, I just saw that last night myself, and I thought, yeah, it's probably a fair fiscal note. How do you overcome that with a state issue? The solution I thought of last night is one of two things. Either set a computer up with an access log-in that we can drive in and log on and get it ourselves, and all you have to do is put a computer there. Or you can, in today's technology, you can log in remotely and get that information. So I think it was clerical staff, if I'm correct, support that said the \$30,000 would be for. So in answer to your questions first, I'm sure the United Cities would be willing to fund some of that and I think there may be some technological ways around that \$30,000. [LB489]

SENATOR LOUDEN: Well, yeah, because they're looking for a full-time employee. Whenever you do something, they always got to have a full-time employee. But that's

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my concern with this bill is the fiscal note that goes with it. [LB489]

DAN HOINS: And I, in fairness, I'm sure that there is...it's logical, but I think there are certainly solutions that we would be willing to sit down. If you will let us in the door, we will do whatever we can to be fair and work with you and get the right answer. But there's a lot of money at stake here. [LB489]

SENATOR UTTER: Senator Pankonin. [LB489]

SENATOR PANKONIN: Dan, glad you came. And I know from Louisville's side of things, we always wondered about that too. And we did...it seems like we did something to do some checking, I mean kind of maybe like what you guys did, kind of...I mean. But there's no way, even if you come up with a list and give it to them and say: Are these people in? You can't get that? [LB489]

DAN HOINS: The list doesn't tell you, Senator Pankonin, whether or not there is a physical location or whether it's an on-line retailer, and it doesn't tell you the scope and magnitude of what they are putting in. So again, whether it's the Lincoln Electric System or Walmart, you just get a box checked "yes." That's what we changed a couple years ago, which again was a step in the proper direction, but it certainly is not even close to us being able to advise our mayors and councils that this is a good business decision for you to put in. In the Shadow Lake Towne Center development alone, we put \$18 million worth of public infrastructure in to get that 900,000 square-foot shopping mall, came in. Now we did due diligence by hiring a consultant and looking at average sales for similar stores, but it still was not the best information. And then once it was built, we didn't know if we were getting it--and that's the spreadsheet that you see in front of you that we worked on. [LB489]

SENATOR UTTER: Senator Hadley. [LB489]

SENATOR HADLEY: Sorry to ask another question, but let's go back to LB775 and the concerns we've heard from cities about not knowing when they're not going to get a refund or get a refund. By this, if you had an inclination that a firm might have received some LB775 benefits and you tracked their sales tax, you might have some idea. Or I guess would you have some potential idea of what a potential payback someday might be? [LB489]

DAN HOINS: I don't know enough, Senator Hadley, about it. As I mentioned, Papillion has never had a reduction of LB775. [LB489]

SENATOR HADLEY: Well, I'm just wondering. We talked a lot about information to the cities. And if they...and I'll use Sidney as an example. If they have a Cabela's come in and expand a Cabela's, if they look at Cabela's sales tax revenue, month by month,

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they might get some idea of what...so all I'm saying is this might solve that problem also or potentially get some... [LB489]

DAN HOINS: And I think Ms. Rex is going to testify on this bill too. Maybe she can speak to the LB775 issues. But I'm comfortable, not having ever dealt with it and having that reduction. [LB489]

SENATOR HADLEY: Okay. And maybe you're lucky that way, so you don't have any taken away later. [LB489]

DAN HOINS: Well, in some ways, yes. Yes. [LB489]

SENATOR UTTER: Further questions? If not, thank you very much, Mr. Hoins, for your testimony. [LB489]

LYNN REX: Senator Utter, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. First of all, we thank Senator Cornett for introducing this measure. Our board strongly supports this bill. We think this is a step in the right direction, and I think Dan Hoins has outlined for you the reasons why this bill is so critically important. We do think that this would have a play in a number of ways for municipalities to have better information. Certainly they can keep that information confidential because the one person who would have access would be able to just give some yes-and-no answers to someone in terms of whether or not a major infrastructure is something that would be cost-effective to introduce. I think this is very important for taxpayers. It's very important for municipalities. I'd be happy to respond to any questions that you might have. [LB489]

SENATOR UTTER: Senator Adams. [LB489]

SENATOR ADAMS: Lynn, I've been anticipating your getting here because I know you can probably answer this: Does..if we did something like this, does it help the Ravennas of this state in anticipation of LB775 reductions? [LB489]

LYNN REX: Yes. It does, because municipalities would be in a position then, or at least a municipal official would be in a position to say, okay, we could at least track what the amount of sales tax being paid, knowing how close that company may be getting to a threshold. [LB489]

SENATOR ADAMS: Do you see...and I don't mean to say that... [LB489]

LYNN REX: Is it going to be the end-all for the...is it going to solve everything? [LB489]

SENATOR ADAMS: Right. [LB489]

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LYNN REX: No, but...and, of course, for the Ravensas of the world there...as we discussed I think earlier this week, you know, they're not like Kearney; they're not like Norfolk; they're not like York. They don't have financial advisors, financial directors, and the sophistication that the cities of the first class would have. But they would be able to at least have access to some of this information that could help them. I just think the more information you have, the more likely you are to be able to make an informed decision. [LB489]

SENATOR ADAMS: And I don't mean to imply for a moment that a small community like Ravenna is more likely to divulge confidential information than a big city like Papillion. Who would you see, like, maybe the village clerk, village clerk treasurer? Who would...? [LB489]

LYNN REX: I would think it would be the municipal clerk. [LB489]

SENATOR ADAMS: Okay. [LB489]

LYNN REX: It might also be, in the event that...if you would have a council member, for an example, or a village board member that was a CPA, or an accountant, I could also see that that might be the person designated. [LB489]

SENATOR UTTER: Other questions? Lynn, if I was the appropriate official and went to the Department of Revenue and took a look at the records, I will know, number one, whether or not the city is getting--the city of Hastings, for example--is getting the sales tax receipts that it's supposed to be getting from it. But will those same records also reveal the liabilities that the city might have for LB775 sales tax refunds? [LB489]

LYNN REX: Well, I don't know how much information...I really don't know the answer to that. I think it would have a play in it. I think it would have...get us one step further to maybe understanding some of the LB775 and Nebraska Advantage Act impacts. Again I don't know that it would be the entire answer. I think it's a question worth pursuing. And in answer to a question I believe that you had, Senator Utter, about the \$30,000--I believe it was you. Or was it? I believe it was you that had the question, or maybe Senator Louden. One of you had the question about the \$30,000 in the fiscal note. With 189 of our 530 cities and villages across the state having local option sales tax, I have no doubt they'd be prepared to pay for the opportunity to come in and look at this--whatever would be reasonable for this. And I don't know if a full-time...I agree with what Dan Hoins said, which is I don't know that you need a full-time employee. I'm not trying to undercut what the Department of Revenue has already told you on the fiscal note. It would seem to me technologically there would be ways to access this information. But if not, certainly we're prepared to...our cities would be prepared to pay for it. I will tell you, in other states...and the last time I checked, it was...California was

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an example of this, their cities are allowed to come in and have an auditor audit the Department of Revenue and literally audit all of their sales tax numbers and everything else. We're not asking for anything like that. We're simply saying: Let us just have...I mean this bill doesn't do that; that's not where we want to go with it. We just simply would like to have the opportunity to come forward and get some information that would be helpful for us in making decisions. [LB489]

SENATOR UTTER: Senator Adams. [LB489]

SENATOR ADAMS: So potentially, just thinking out of the box here, so potentially, what cities might be willing to do is if they...if something like this were to pass and they had access, then the Revenue Department could charge them a fee or something like that... [LB489]

LYNN REX: Sure. [LB489]

SENATOR ADAMS: ...each time they came in or for X amount of information, something like that? [LB489]

LYNN REX: Sure. Yes. [LB489]

SENATOR ADAMS: Okay. [LB489]

SENATOR UTTER: Senator Hadley. [LB489]

SENATOR HADLEY: I was thinking about a half-million dollars. Would that cover that cost? [LB489]

LYNN REX: Well, I don't know that that would be an appropriate amount, Senator. [LB489]

SENATOR HADLEY: (Laugh) Okay. [LB489]

SENATOR UTTER: Other questions? Thank you very much, Lynn. [LB489]

LYNN REX: Thank you. And thanks to Senator Cornett again for introducing this. Thank you. [LB489]

SENATOR UTTER: Further proponents? Is there opponents? Is there neutral testimony? Senator Cornett. [LB489]

SENATOR CORNETT: First, let me say, Senator Hadley, I'm sure Commissioner Ewald would take a half-million dollars this year. But I'd first like to stress how the Department

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of Revenue has been very cooperative over the last seven years, and both Tax Commissioners. This first started in regards to a computer program, because they were having difficulty assigning where sales tax should be reported to, based on area codes, because particularly in Sarpy County...I'll give you an example. I lived at 25th and Alberta, which is in Bellevue. I had an Omaha address because the post office districts were drawn in the 1800s--and we may be able to change a lot of things around here; you can't change the post office. (Laughter) So... [LB489]

SENATOR HADLEY: Then why do we have to change the sewer system then? [LB489]

SENATOR CORNETT: Well, you know, the post office is an interesting...the postal service is an interesting group. But sales tax with those Omaha addresses was being reported for Omaha rather than by the actual physical address, but by the designation "Omaha" and that area code, because those area codes were drawn as an Omaha area code. So...pardon me--zip code. So we worked on that and we were able to take a step. I think it was my first year or second year. And then we worked on...I think this is my third or fourth reach at this. The latest has been the fact that...and, at least as was reported to me, no fault of the Department of Revenue's, but that the businesses were reporting the sales tax incorrectly. And I think Mr. Hoins pointed that out, because our cities touch one another and they are separated by a street, and the business moved from one to the other, a lot of sales tax was being reported to the wrong city. And as we've heard with the LB775 benefits, it's all great until people don't get the money when they expect it. And the city that didn't get it obviously had been...was planning on increasing sales tax revenue, and then the city that had to give it back then was faced with a hardship. In regards to the confidentiality and the reporting, LB775 and confidentiality agreements are very, very difficult to get around, and that's something else that we've been dealing with for years now. And we are not going to...we do not, as intent in this bill, want to damage any of those confidentiality agreements at all. What we're doing is saying...giving the municipality a designated person, one person to be able to look at these, and frankly, do a little bit of the work for the Department of Revenue. Because unless somebody brings it to their attention like the cities with the Walmart, the Department of Revenue is not going to be able to tell if people are reporting it correctly from one jurisdiction to the other. They just know that they're collecting the money. So I would be happy to work with the committee on this bill and I think the consensus is the cities are willing to pay a fee to be able to do this and whatever the Department of Revenue thinks is fair in that regard. I'll be happy to offer another amendment to the bill. With that, I'll be happy to answer any questions. [LB489]

SENATOR UTTER: Questions for Senator Cornett? If not, Senator, I think you're free now to open on LB426. [LB489]

SENATOR CORNETT: This one will be a very quick one. Good afternoon, Vice Chair Utter and members of the Revenue Committee. I'm Senator Abbie Cornett and I



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represent the 45th Legislative District in Bellevue. I appear before you today to present LB426. It is the purpose of LB426 to provide a clarification in state law as to when cities may utilize the Sports Arena Facility Financing Assistance Act that we passed last year. The changes presented in this bill would prohibit cities from utilizing both the Sports Arena Facility Financing Assistance Act and the Local Civic, Cultural, and Convention Center Financing Act for the same project but would allow cities who have received financing for a project under the Local Civic, Cultural, and Convention Center Financing Act to choose to utilize the Sports Arena Facility Financing Assistance Act. Last year, when we passed LB779, we included language that would have acted as a reverse, somewhat, poison pill to the cities that have already obtained funding under the Local Civic, Cultural, and Convention Center Financing Act, whereby they could never utilize LB779. This legislation would correct that. The legislation was brought to me by the United Cities of Sarpy County and representatives of the city of Papillion. And the United Cities will follow me in testimony this afternoon. Thank you. [LB426]

SENATOR UTTER: Questions for Senator Cornett? Hearing none, we're ready for the first proponent. Mr. Hoins, if you are getting paid by the bill, you had a great day. [LB426]

DAN HOINS: Yeah. [LB426]

SENATOR HADLEY: He drew the short stick, didn't he? (Laugh) [LB426]

DAN HOINS: Yeah. Amen, Senator Hadley. Dan Hoins, D-a-n H-o-i-n-s, city administrator, city of Papillion on this bill. Actually speaking on behalf of the United Cities, but specifically to the city of Papillion, because of the five cities, the poison pill impacted Papillion only out of the United Cities. In 2008, we obtained \$300,000 worth of convention center financing funds for an amphitheater project; we matched that with an additional \$300,000. This bill came out, and because we were previous recipients of that, it bars us from LB779. And so we do appreciate Senator Cornett bringing this to your attention. Would respectfully request that you pass this so that the city of Papillion, in the event there was ever an opportunity to obtain a sports arena, we would be able to utilize this mechanism. That concludes my remarks, Vice Chair Utter. [LB426]

SENATOR UTTER: Thank you. Are there questions for Mr. Hoins? Seeing none, thank you for your testimony. [LB426]

DAN HOINS: Thank you, sir. [LB426]

LYNN REX: Senator Utter, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We strongly support this measure. We think this is kind of a cleanup bill actually. We appreciate Senator Cornett putting this in because I do think that for the cities that already access those funds this

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is an opportunity that they would desperately miss if they are looking at doing some type of a sports arena, so we think it's out of fairness that they are able to do this. Thank you for your time. I'd be happy to answer any questions you might have. [LB426]

SENATOR UTTER: Senator Pirsch. [LB426]

SENATOR PIRSCH: Thank you for your testimony, Lynn. And I apologize: I can't remember the floor debate. This...I take it this was a facet that developed, was it in committee or on the floor, this concept of participating in one but not both from last year? Can you...do you remember... [LB426]

LYNN REX: I don't recall the specifics of that. I know that there was a significant amendment offered the day that the bill was introduced which...and my recollection is that--I was looking for the Research Analyst but that person is gone right now. My recollection was that the day that LB779 was introduced that there was a significant amendment that replaced the entire bill. And so people really didn't have a chance to look at that prior to the hearing, and that's simply because sometimes that happens. In other words, there was nothing malicious about it. It's just sometimes that happens. So as a consequence, folks really didn't have an opportunity to see what was in that as it advanced. But I really can't tell you whether it was the Select File amendment or if it was in the original amendment that was introduced the day of the hearing on LB779. But notwithstanding, we do think that this raises an issue that does need to be addressed because, clearly, municipalities...I'm sure Papillion would have never filed for those grant funds had they thought down the road there would be this other bill that would preclude them from ever having the opportunity to access it. [LB426]

SENATOR UTTER: Other questions? Seeing none, thanks, Lynn. [LB426]

LYNN REX: Thank you. [LB426]

SENATOR UTTER: Are there further proponents? Opponents? Anyone wishing to testify in a neutral capacity? That closes the hearing on LB426 unless you want to make a closing statement, Senator Cornett. [LB426]

SENATOR CORNETT: Nada. [LB426]

SENATOR UTTER: Okay. [LB426]