

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

[LB745 LB830]

The Committee on Revenue met at 1:30 p.m. on Wednesday, January 25, 2012, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB830 and LB745. Senators present: Abbie Cornett, Chairperson; LeRoy Loudon, Vice Chairperson; Greg Adams; Lydia Brasch; Deb Fischer; Galen Hadley; Pete Pirsch; and Paul Schumacher. Senators absent: None.

SENATOR CORNETT: Good afternoon and welcome to the Revenue Committee. My name is Senator Abbie Cornett from Bellevue. Senator Loudon, from Ellsworth, will be joining us, as will Senator Fischer from Valentine, and Senator Adams from York. On my far right is Senator Schumacher from Columbus; Senator Brasch from Bancroft; Senator Pirsch from Omaha; and Senator Hadley from Kearney. The research analyst today is Stephen Moore, committee clerk is Matt Rathje, and our pages are Michael Killingsworth and Matt McNally. Before we begin today, I'd please ask everyone to either turn your cell phones to off or vibrate while in the hearing room. The sign-in sheets for testifiers are on the table by both back doors and need to be completed prior to coming up to testify. When you come up to testify, please hand those sheets to the committee clerk. If you are testifying on more than one bill, a form needs to be filled out for each bill. There are clipboards by the back door to sign in if you do not wish to testify but wish to indicate either your support or opposition to a bill. Those will be included in the official record. We will follow the agenda posted on the door. The introducer or representative of the introducer will present the bill, followed by proponents, opponents and neutral testimony. Only the introducer will be allowed closing remarks. As you begin your name, please state and spell it for the record. And if you have handouts, please bring ten copies and hand them to the pages. They'll distribute them to the committee. If you did not bring ten copies, we will make copies for you. With that, we will begin today's hearings. Senator Hadley, there you are. I was like, where did he go? (Laugh) You are recognized to open on LB830.

SENATOR HADLEY: (Exhibit 1) Thank you, Chair Cornett and members of the committee. My name is Galen Hadley, that's H-a-d-l-e-y. I represent the 37th District which is basically the city of Kearney and about a third of Buffalo County. It's a pleasure to speak before this great committee, I can say that since I'm a member of it. I'm here on LB830. LB830 is a bill that updates and clarifies Nebraska's tax code to reflect new innovations in the animal production industry and is consistent with historic public policy exempting input supporting production agriculture. LB830 clarifies that biochips used for the genetic and/or protein analysis of production livestock, commercially produced plants, companion animals, and research animals are not subject to state or local sales and use tax. This bill not only updates Nebraska's tax code to reflect the changes in technology but more importantly it helps protect the \$41.2 million annual economic impact the company GeneSeek has in Nebraska. I am pleased to have with us today Mr. Lon Bohannon, president of Neogen, parent company to GeneSeek, who will share

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

more details about this bill. I also have a letter from Clayton Yeutter, former U.S. Ambassador and Nebraska native, who serves on Neogen's board of directors, and continues to be a great ambassador for Nebraska. Prior to turning over to Mr. Bohannon, let me make a couple more comments. There are a number of proposals in the Legislature this year asking for more money, whether it's for our university, K through 12 education, community colleges, child welfare reform, roads, the list goes on. It makes our work even more important. It is time we quit apologizing for protecting and growing our base by granting tax incentives and exemptions. Tax policies change often to help keep jobs and families in Nebraska and also bring in new opportunities to our state. Last year, we passed an economic gardening act. And for those of you, if you remember that, economic gardening is a great concept that deals with growing our own companies in Nebraska. The idea, you start small, you nurture the company, and it grows into a vibrant, large taxpaying entity. That's exactly what has happened with this company. This company started with two employees and it's a prime example of economic gardening. It's grown into what it is today. And what I hate to see happen is the company grows into what it is today and then we lose it because we change...potentially change tax policy. Companies such as Neogen and GeneSeek compete globally. Their competition is heavily subsidized by government. Tax policy must address technology and innovation. In this particular case there is no doubt this clarification will not only protect existing revenues and jobs, but it will increase investment and encourage more technology and innovation. GeneSeek is a Nebraska success story on many levels and you will hear about that. Mr. Bohannon, my thanks to you for investing in Nebraska, in our university and in our people. Neogen has taken agricultural research and food safety to new heights. This concludes my opening comments. If you have any questions, I would be happy to answer them or Mr. Bohannon can answer them if they're more specific on biochips and the tax policy. If I could have the pages hand out the letter from Mr. Yeutter. Any... [LB830]

SENATOR CORNETT: (Exhibit 2) Just...I forgot to when I introduced you, we have a letter of support from the city of Lincoln to be read into the record. [LB830]

SENATOR HADLEY: Okay, thank you, Senator Cornett. [LB830]

SENATOR CORNETT: First proponent. [LB830]

LON BOHANNON: (Exhibit 3) Madam Chair and members of the Revenue Committee, my name is Lon Bohannon, spelled L-o-n B-o-h-a-n-n-o-n. I am the president of Neogen Corporation testifying in support of LB830. Also, joining me today is Abraham Oommen, whom I think many of you have met, and who is the founder of GeneSeek, located here in Lincoln, Nebraska. I do want to thank you for allowing me this opportunity and also want to thank Senator Hadley for introducing what to us is critically important legislation. By way of background, Neogen is a leading international firm involved in the support of production agriculture and food processing from inside the farm gate to the food plate.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

We now have more than 750 employees in the U.S. and abroad, and we achieved sales of more than \$171 million in our most recently completed fiscal year. Neogen is also very active at the Food Allergen Center, right here in Lincoln, and we pay significant royalties to the University of Nebraska based on sales of our food allergen test kits. As president of Neogen, I have had the pleasure of working with Abe Oommen and his staff since April of 2010, when Neogen acquired GeneSeek. For those of you who were able to visit GeneSeek for a tour, we thank you for your time and allowing Abe to share our success story with you. GeneSeek began from very humble beginnings. In 1998, with the support of two business partners, a part-time intern and a shoestring budget, GeneSeek was launched in the business incubator at the University of Nebraska's Technology Park. With business plans to provide the best genetic testing for swine and dairy industries, GeneSeek's breakthrough came when the U.S. Department of Agriculture used Abe and his team to verify the origin of the first animal in the U.S. diagnosed with BSE, or Mad Cow Disease. Almost 15 years later, GeneSeek is the leading global provider of DNA testing for the animal agribusiness industry. GeneSeek empowers its customers to speed genetic improvement efforts, as well as identify economically important animal diseases back inside the farm gate. As a Nebraska-born company, GeneSeek has an annual economic impact of \$41.2 million and, of its almost 45 employees, 24 percent have a Ph.D. or master's level degrees, and 91 percent of our employees have at least a bachelor's degree. I think GeneSeek is truly one of Nebraska's success stories, which is why I am here before you today. Senator Hadley has introduced LB830, which clarifies and updates Nebraska's tax codes in two ways. First, it clarifies that the biochips GeneSeek uses in developing customer data mirrors other tax exemptions already given to ag-related business in Nebraska. These biochips contain species specific genetic and protein information and are used in the process of testing samples sent to GeneSeek for analysis. Now unlike Nebraska, many other states do not impose a tax on these biochips and the use tax represents a disproportionate negative impact on GeneSeek's profitability. Currently, we pay approximately \$500,000 annually in use taxes on these biochips, which accounts for 85 percent of our total state and local tax liability. Secondly, LB830 updates Nebraska's tax code to more adequately to more adequately reflect the highly competitive and next generation technology that is evolving within the agribusiness industry. Without LB830, Nebraska significantly increases the risk of losing GeneSeek to an alternative location within Neogen. On the upside, if LB830 is passed, Neogen has aggressive growth plans for GeneSeek which would benefit Nebraska's economy in addition to enhancing its international image as a leader in the important and highly visible areas of food safety and food security. In conclusion, I would like to thank again Senator Hadley for introducing LB830 and for those here today who are testifying in support of this bill. Neogen, like our board member Clayton Yeutter, often boasts about the success of GeneSeek and our excellent working relationship with Nebraska. Our goal is to stay here in Nebraska and to continue the wonderful collaboration we have with the people, the university and many producers all across the state who have benefited from the services provided by GeneSeek. LB830 will help us stay here and continue to make a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

positive contribution to the growth of Nebraska's economy. I'd like again to thank you for your time, your public service. And at this point, I'd be happy to answer any questions you may have. [LB830]

SENATOR CORNETT: Questions from the committee? Senator Schumacher. [LB830]

SENATOR SCHUMACHER: Thank you, thank you for your testimony. Thank you, Madam Chairman. The sales and use tax, according to the language of the bill, shall not be imposed on receipts from the sale of biochips which are consumed. And then it lists for the "analysis of gene expression, protein expression" various characteristics "of plants produced for commercial purposes, animals produced for commercial purposes, companion animals, or nonhuman" research organisms. Is that going to be difficult for you if there's still tax applicable on a cow I raise for not for commercial but to eat myself? And how are you going to distinguish between the two? Is that...is the cow I eat myself not in...not intended to be included? [LB830]

LON BOHANNON: Yeah, I don't know that that was intended to be covered by the definition, the revised definition of the tax code. What we're really interested in doing here, and I have a couple examples of the biochips that we're talking about here for anyone that hasn't had the opportunity to see them, we're really talking about the use in production agriculture in terms of growing animals for food supplies. And I think that we've tried to work with the Revenue Department coming up with a definition that will take that into consideration, be broad enough to allow for future application of this technology, but not so restrictive as to keep us from being able to continue to grow here within Nebraska and in Lincoln so that we can meet the demands of supplying the world really with this technology that's going to be needed going forward. [LB830]

SENATOR SCHUMACHER: So I send you some fur from a cow I'm going to eat myself, not commercial, I'm not going to sell it or anything. I raise the cow to eat myself. And you put some of the genetic material after you bleach it out of the fur in one of those chips. Is that intended to be taxed then under this law or is...how are you going to distinguish the cow I'm going to eat myself from the cow that's going to be sold and slaughtered? [LB830]

LON BOHANNON: Well, I'm not sure how many...Abe Oommen has been...is here with me. I'm not sure how many samples we get like that. But it's...I can tell you that the redefining of the tax code was not intended to cover those kinds of specific situations. I mean, we wouldn't have a problem paying for use tax. [LB830]

SENATOR SCHUMACHER: How are you going to tell the difference for sure? Are you going to have to keep a whole set of books because we didn't include the cow I'm going to eat here? [LB830]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

LON BOHANNON: That's a question that I would have to do some research and provide the answer for you. [LB830]

SENATOR SCHUMACHER: Would it be better if we said nonhuman life forms and just left it at that? [LB830]

LON BOHANNON: It could very well be a better definition for redefining the tax code. [LB830]

SENATOR SCHUMACHER: Thank you. [LB830]

SENATOR CORNETT: Just very quickly on a follow-up to that question, can this technology also be used as a diagnosis tool for diseases that could be applicable to humans? I don't want to limit us in the future. [LB830]

LON BOHANNON: Not the biochips that we use. Okay? We're not focused on that area. [LB830]

SENATOR CORNETT: Okay. But what about the allergy testing kits? [LB830]

LON BOHANNON: We haven't, frankly, thought about... [LB830]

SENATOR CORNETT: Because that's a component for human treatment. [LB830]

LON BOHANNON: Yeah, there are other technology platforms that Neogen employs for testing of food safety organisms and contaminants that would be more applicable than the use of this technology for those applications. [LB830]

SENATOR CORNETT: Senator Pirsch. [LB830]

SENATOR PIRSCH: Well, and I appreciate your testimony. And that's what I wanted to feed into. So by and large, what you use the chips for now and what you envision in the near future is within the context of commercial livestock, is that... [LB830]

LON BOHANNON: Production agriculture, commercial production agriculture. So, yes, we're talking about this technology has advanced so far since we've mapped the genomes of so many different animals, the use of this technology to improve animal performance and disease, help to eliminate disease is recognized around the world. And so it could be sheep, you know. It's clearly in the dairy markets already, it's clearly in the beef markets already. Swine has applications clearly. And there are some, you know, companion animal applications in horses and in dogs particularly where we know it has some direct application that makes sense. [LB830]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

SENATOR PIRSCH: Is it true to say because there is a certain cost that's associated with the chips that that, if it's used for, say, a private purpose, that typically there's not a need that would...you don't have a lot of those type of customers, do you? Just private individuals who... [LB830]

LON BOHANNON: Yeah, we really don't. With the exception on the companion animal side, if you want to know that your poodle is a poodle, you know, there's a means for you to be able to do that where we could process those samples. [LB830]

SENATOR PIRSCH: Okay. [LB830]

SENATOR CORNETT: Senator Brasch. [LB830]

SENATOR BRASCH: Thank you, Chairman. And thank you, Mr. Bohannon. I'm not completely clear. Is the chip data storage for...or is it a chip per consumer or is it a per transaction fee, does...say, someone in Cuming County is a client of yours. Is there a chip that's labeled like a file and that's their chip or how does... [LB830]

LON BOHANNON: Well, the samples that we receive are...we need to extract the DNA from those samples. That is what gets applied to the chip. And... [LB830]

SENATOR BRASCH: The sample goes to the chip directly for the sample data? [LB830]

LON BOHANNON: The sample...there's some processing that has to be done to the sample to extract the DNA material that then gets applied to the chip. And then that DNA is meshed up with all of these different points that are on here to identify specific traits and pieces of information that are important to the end user. Now most of our clients are larger organizations that are involved in trying to build databases of information on herds of animals or specific species of animals or customers like Muriel (phonetic) and Pfizer who are getting in samples from their farmers to supply to us for the analysis. [LB830]

SENATOR BRASCH: So the chip then is like a piece of glass that you'd put under a microscope, it's just new technology, but the chip has information, computer program or something, analysis capability, the pieces? Is that what's happening here? And then is it per transaction fee, per chip, how does that... [LB830]

LON BOHANNON: Yeah, it's on a per test or a per sample basis is what the charge is. [LB830]

SENATOR BRASCH: Okay. Okay. [LB830]

LON BOHANNON: This particular chip right here, and I guess I can hand this around if

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

you'd like to see it, has individual squares on it that are each...a sample would go on each one of those squares. Each square has 160,000 different information points, beads that are placed on that chip. And then the individual sample, and you can literally get 160,000 different pieces of information from that sample. And based on the number of samples you can put on this particular device, there's 3.2 million different pieces of information. But each individual sample would be placed on the chip. [LB830]

SENATOR BRASCH: Is it one sample per chip or is it like a thumb drive that you're putting multiple samples...I've seen it, but I thought it was a chip piece of hardware that was like a thumb drive but with...but were... [LB830]

LON BOHANNON: It kind of looks like a thumb drive. [LB830]

SENATOR BRASCH: It does look like a thumb drive. [LB830]

LON BOHANNON: But it's not really a thumb drive. [LB830]

SENATOR BRASCH: Oh, okay. [LB830]

LON BOHANNON: And they go into very expensive and sophisticated pieces of equipment. There's two main manufacturers that we use--Illumina and Sequenom that provide the chip analyzers. That once you have the sample on this, they're then loaded into the machines to read the data. [LB830]

SENATOR CORNETT: Senator Schumacher. [LB830]

SENATOR SCHUMACHER: Just one follow-up question now. The bottom line on this is you're sequencing the nuclear types of DNA. Is that the bottom line on the process? [LB830]

LON BOHANNON: They're called SNPs, single-nucleotide polymorphism. You're looking for specific traits that are either desirable or undesirable in the sample. [LB830]

SENATOR SCHUMACHER: Of the four little deals that make up each little DNA ladder. Okay. The...I mean, this could be used to sequence the DNA of a deer or a rabbit that might be infected with a disease or just about any kind of information. You're just giving the sequence of the DNA, is that correct? [LB830]

LON BOHANNON: To the extent that those have been mapped and there are chips out there for those species, that is correct. [LB830]

SENATOR SCHUMACHER: But the process described in two here about how this works, that's applicable to all DNA from all kinds of different critters, is it not? [LB830]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

LON BOHANNON: Generally speaking, I would say that is correct. [LB830]

SENATOR SCHUMACHER: Okay. So, and again what's bothering me is the limitation here in what critters this can be used tax free on. [LB830]

LON BOHANNON: Well, there has to be an economic value associated with running these samples. And so again, Abe might be in a better position to answer the question in terms of applications. I mean, those wouldn't be specific markets that Neogen Corporation would be interested in. [LB830]

SENATOR SCHUMACHER: But our constitution doesn't allow us to just look at one business only right along. [LB830]

LON BOHANNON: I'm not sure how to answer your question or comment. [LB830]

SENATOR SCHUMACHER: Thank you. Thank you. [LB830]

SENATOR CORNETT: Further questions from the committee. I have a couple to follow up to Senator Schumacher's. How much does one of the...if someone sends a sample in, how much does it cost to get it processed per...I know, because they usually send in a lot of them at a time. [LB830]

LON BOHANNON: Yeah, those samples...it really depends on how much information and data they're looking for and getting back. So they could be anywhere from, you know, \$75 a sample up to hundreds of dollars a sample, depending on the information that they're looking for. [LB830]

SENATOR CORNETT: The point I'm trying to get to is it would not...people are not going to be sending in samples randomly unless there is a medical reason or an animal husbandry issue, correct? [LB830]

LON BOHANNON: I would say that is correct. [LB830]

SENATOR CORNETT: Okay. Thank you very much. Further questions from the committee? Seeing none, thank you. [LB830]

LON BOHANNON: Thank you again for your time and for considering the bill. [LB830]

SENATOR CORNETT: Next proponent. [LB830]

JASON BALL: (Exhibits 4 and 5) Good afternoon, Madam Chair and members of the Revenue Committee. My name is Jason Ball, that's J-a-s-o-n B-a-l-l. I'm part of the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

economic development group for the Lincoln Chamber of Commerce. I appear before you today to testify in favor of LB830 on behalf of the Lincoln Chamber of Commerce. And I've also been asked to register support for LB830 on behalf of the city of Lincoln, the Greater Omaha Chamber of Commerce, the Nebraska Chamber of Commerce and Industry, and the Nebraska Economic Developers Association. In addition to testimony, I am submitting letters of support from the city of Lincoln, to which Senator Cornett has already referred, and the Nebraska Economic Developers Association. As you are aware, the majority of new investment and job growth comes about as a result of the retention and growth of our existing business base in Nebraska. GeneSeek, which is now part of Neogen Corporation, is a great example of the kind of entrepreneurial success story and sustainable development Nebraska needs to ensure its economic future. GeneSeek started 14 years ago as the result of the vision of a local entrepreneur and an enterprising UNL faculty member. They saw an opportunity to create a modern livestock industry by reducing costs for genetic analysis through the application of emerging high-throughput technologies. The firm began in the Technology Development Center incubator at the Nebraska Technology Park with one part-time student worker and the night and weekend contributions of its founders. Today, GeneSeek is the acknowledged international leader in its industry, setting the standard for gene discovery, genetic analysis, and development of diagnostics in support of animal production and animal health. They are beginning to apply this knowledge of how to use genetic information for commercial purposes to address food safety issues and more effective development of commercial plants. The acquisition of GeneSeek by Neogen Corporation in 2010 gave access to new capital and market channels allowing the company to increase its employment by approximately 20 percent in less than two years. We speak often about the need to retain the best and brightest graduates of Nebraska's higher education system. GeneSeek is a real life example of that. Their current employment of 7 Ph.D.s, 4 master's, and approximately 31 bachelor degree holders have been recruited almost exclusively from within the state of Nebraska. GeneSeek was an early adopter of this biochip technology, which provides GeneSeek the ability to process more samples, faster and at a lower cost, providing them competitive advantage. However, in recent years this competitive advantage has diminished somewhat as other firms have also implemented the use of biochip technology. In late 2010, the Nebraska Department of Revenue determined that biochips are subject to the use tax. Use taxes represent a competitive disadvantage which will only increase as GeneSeek's markets grow and one which is not sustainable over time. We believe that LB830 allows Nebraska to retain and grow a technology firm which has strong roots in the state. The existence of biochips was not anticipated at the time the tax code was written. And we believe that LB830 allows us to modernize that tax code while maintaining an historic policy of minimizing tax liabilities for inputs supporting production agriculture and the value-added food industry. I thank you for your time and would welcome any questions that you have for me today. [LB830]

SENATOR CORNETT: That brings up something that we...when GeneSeek first came

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

to me in regards to this, generally inputs into manufacturing or inputs into agriculture in this state have been exempt. And since I've been in Revenue and in the Legislature, a number of times we've had to go back and look at what an input is as technology evolves. [LB830]

JASON BALL: Um-hum. [LB830]

SENATOR CORNETT: You brought up the point that when that tax code was written this technology was not available. But logically, this exemption follows with what we are already doing in regards to manufacturing and agriculture as an input, correct? [LB830]

JASON BALL: I couldn't have made the argument better myself, thank you. [LB830]

SENATOR CORNETT: Thank you. Questions from the committee? Senator Brasch. [LB830]

SENATOR BRASCH: Thank you, Chairman. I'm curious, is GeneSeek unique to Nebraska? Is there only one GeneSeek, a business capable of, is it patented technology or is it abroad? Are you aware of other GeneSeek's that may be seeking Nebraska, should we be competitive in taxes? [LB830]

JASON BALL: If I could give a couple answers. Certainly, the story of GeneSeek specifically and the growth of the company is unique to Nebraska and is a success story that should be celebrated. However, certainly there are competitors in this industry, and other noncompeting businesses, which could also be recruited to Nebraska or start and grow in Nebraska as a result of updating this tax policy. [LB830]

SENATOR BRASCH: Very good. Thank you. [LB830]

SENATOR CORNETT: Senator Pirsch. [LB830]

SENATOR PIRSCH: Is there anything you can compare, liken this to, in terms of what this committee or the body has addressed in years past, where this technology didn't exist at the point in time where we're talking about inputs and an exemption has been...and this, you know, similarly granted? [LB830]

JASON BALL: That's an excellent question, which I have to admit I'm new enough to the Chamber of Commerce, I can't think of a specific example off the top of my head. My response would be that the product that they make is information rather than a tangible good. And so that would be consumed in the generation of this product. [LB830]

SENATOR PIRSCH: So maybe nothing...this might be a novel type of vision because of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

just the pace of development of technology in terms of its importance with that production so. [LB830]

JASON BALL: Yes, yes. [LB830]

SENATOR PIRSCH: Thank you. [LB830]

SENATOR CORNETT: Senator Adams. [LB830]

SENATOR ADAMS: Thank you, Senator Cornett. You are new to the position so maybe I should ask someone else, but I bet you could answer. In this particular case, we could make a tax policy argument that, as the Chair just did and you agreed to, that this could be part of the manufacturing process, the end. And that I can understand. My frustration comes, not with this specific bill or product or anybody else, but I just have to ask. Is there a sales or income tax exclusion that all of these organizations that you represent from a tax policy standpoint which they know we shouldn't do that? [LB830]

JASON BALL: That is a good question. And I respect and acknowledge the difficult situation this group of people is in and the current given economic situation we find ourselves in. [LB830]

SENATOR ADAMS: Well, thank you. I'm just venting my frustration, that's all. (Laugh) [LB830]

SENATOR CORNETT: Senator Fischer. [LB830]

SENATOR FISCHER: Thank you, Chairman Cornett. I'm going to vent frustration on you too. [LB830]

JASON BALL: (Laugh) Very well. [LB830]

SENATOR FISCHER: Thank you for coming. Senator Cornett asked you a question and I believe you agreed with her in your response that ag inputs are excluded from or do receive certain exemptions from sales tax. And you agreed that this could be viewed as an ag input. Is that correct? [LB830]

JASON BALL: That is my understanding, yes. [LB830]

SENATOR FISCHER: And again I'm looking at this from policy. I know that this company has a wonderful product. I like that they work with the university. I'm in agriculture, I'm a rancher, so all those things are absolutely wonderful, but I'm looking at it through policy. If this can be viewed as an ag input, every year we receive a bill from the implement dealers here in Nebraska asking that they can receive a sales tax

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

exemption. And every year we deny it. Couldn't that be viewed as an ag input too, implements used for agriculture? [LB830]

JASON BALL: I could see the distinction that we are attempting to make as compared to that bill. I'm not familiar with it. However, I would suggest that the competitive environment for ag implement dealers in other states may not, to my knowledge at least, represent a comparative disadvantage that we're experiencing with Nebraska as relates to this taxation issue and to other states. Ultimately, we are about trying to grow more jobs and the kind of jobs that GeneSeek and Neogen are providing in the state. And we think that passing this bill would further those efforts. [LB830]

SENATOR FISCHER: Right. I think the implement dealers would probably disagree with you on that. And it was mentioned earlier the number of employees that your company, or not your company, that this company employs, I believe it's 45. I would say when the implement dealers come in and I see their lobbyist is present, so he's probably getting all sorts of ideas, but when the implement dealers come in I would assume that they will present how many employees they have around the state, too, that are affected by our tax policy. So, yes, we're taking it out on you, Senator Adams and I are. So I apologize for that. But there is a lot of frustration with this. And hopefully I see representatives from ag groups in the audience and when they come forward I think they should be prepared to answer maybe some of those questions. So thank you. [LB830]

JASON BALL: Thank you, Senators. You both raise important issues. And I hope that they will be able to address some of those concerns better than I. [LB830]

SENATOR FISCHER: Okay. But thank you and congratulations on your new job. [LB830]

JASON BALL: Thank you very much. [LB830]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB830]

JASON BALL: Thank you very much. [LB830]

SENATOR CORNETT: Next proponent. [LB830]

RONNIE GREEN: (Exhibits 6 and 7) Good afternoon, Madam Chair and members of the Revenue Committee. My name is Ronnie Green, spelled R-o-n-n-i-e G-r-e-e-n. I have the privilege and pleasure of serving as vice president for Agriculture and Natural Resources at the University of Nebraska and as the Vice Chancellor for the Institute of Ag and Natural Resources at the University of Nebraska-Lincoln. I'm here today testifying in support of LB830, representing both the university and Bio Nebraska, which

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

I'm lodging a letter of support from that you're receiving currently, where I serve as the Vice Chair of that board. I appreciate the opportunity to comment. And the testimony I've given you has a lot of the same information that you've heard from previous testifiers, so I just want to highlight a few key, important areas. I have multiple perspectives on this particular topic. I'm an animal geneticist by my training. I've spent my lifetime and career in the field from which this technology has evolved. In a previous position, prior to coming to the University of Nebraska, I was leading a technology group for Pfizer Animal Genetics, which was one of the major clients of GeneSeek and Neogen in use of this technology. I also, earlier in my career, had the opportunity to lead the genome program for the U.S. Department of Agriculture's Ag Research Service, which was the time period when we were sequencing the bovine...the bovine, the swine, the chicken genomes from which this technology has developed. So when we talk about biochips and the exact platform of the technology, that developed from those scientific efforts that we funded beginning with the sequencing of the genomes in 2006. So to put it in context time wise for you, this is very new and evolving, rapidly evolving technology. I know that you understand the importance of the livestock industry certainly to our state, the \$46.2 billion industry that we represent, the \$8.4 billion beef industry in particular that we have in our state that is a user of this technology. One of the things that may not have been clear in the previous comments to you and to one of the previous questions, Senator Fischer, is that this technology allows the adding of value. So as compared to an input that produces the same as everyone else, this is a technology that allows the producer, the customer to find added value downstream generationally in the livestock. So when a customer submits a sample to Neogen or to GeneSeek in this case here in Lincoln, they are submitting an animal that they are characterizing as a parent for the next generations to produce a better crop downstream. So it's a genetic tool, if you will, that is being used an input into that system. When we look forward to what needs to happen globally to meet the agricultural needs that are ahead of us and the population that we have ahead of us, we have a very strong competitive advantage here in Nebraska. Many of you have heard me say that before. We seek to feed the world around us with animal protein products. This technology is important to that. It also goes without saying that the university's investment in this particular area historically, from Daniel Pomp as a scientist in animal sciences, one of the cofounders that founded GeneSeek here along with Abe Oommen, is an example of exactly what we hope to do with Innovation Campus, exactly what we hope to see happen where we create new technologies, those technologies are commercialized and developed, and add value to an industry, and plant those businesses here in Nebraska. So I hope that you will give this bill your strong consideration. Appreciate Senator Hadley's sponsorship of it so that the efforts of GeneSeek can continue to serve the livestock industries around the world and especially here in the state. Thank you for the opportunity to testify. [LB830]

SENATOR CORNETT: Questions? Senator Schumacher. [LB830]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

SENATOR SCHUMACHER: Thank you, Madam Chairman. Just a couple questions. One, I think, probably you can answer fairly easily. Is there any merit using this technology to develop profiles of lipids? [LB830]

RONNIE GREEN: There are extensions of this technology where you, for example, if I'm a beef producer that may want to change fatty acid profile content of beef genetically, there may be in the future the opportunity to do that. It does not exist today but there are entities working in that arena. [LB830]

SENATOR SCHUMACHER: To avoid going through this routine again, shall we add lipids in next to proteins? [LB830]

RONNIE GREEN: I think your suggestion of nonhuman context earlier was a very good one. [LB830]

SENATOR SCHUMACHER: And the second thing, the query as the statute provides is done through a chemical interaction? Isn't this done by absorption of light and it's really more of an electromagnetic interaction and the chemistry doesn't change? [LB830]

RONNIE GREEN: Well, you heard the speaker from GeneSeek earlier refer to the technology. Essentially, what these chips are, they are loaded with beads that represent locations in the genome. So, for example, there currently is available a 700,000-plus SNP or location in the genome chip for cattle. We were part of developing that at Pfizer, and it's now on the (inaudible) through GeneSeek. That each one of those nucleotides where that SNP is located, single-nucleotide polymorphism, is what you're reading. And it is read with that kind of technology. It's (inaudible) technology, Illumina is the particular platform that's used in that case. [LB830]

SENATOR SCHUMACHER: So should the statute then read "chemical or electromagnetic interaction"? [LB830]

RONNIE GREEN: I don't know that that specificity is needed because the biochip is defined by that, I think, by that...that is the platform for the technology. [LB830]

SENATOR SCHUMACHER: Thank you, Dr. Green. [LB830]

SENATOR CORNETT: Senator Pirsch. [LB830]

SENATOR PIRSCH: You're at a disadvantage because you don't have a copy of the bill in front of you. But there is mention, you may or may not, this may or may not have significance to you. But the language in the bill, Section 3, just for those who are following along on page...I'm sorry line, page 2, line 17, it mentions "companion animals." And what...are you familiar with an application of this chip that may be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

significant with respect to companion animals? Does that ring a bell with you or...
[LB830]

RONNIE GREEN: Yes, well, I think the reference to companion animals in the language there, of course, refers to dogs, cats, horses could be considered in that same category I think. Let's take the dog example, the canine example. GeneSeek does offer testing, I think you heard Mr. Bohannon say that, for animal identification purposes and for breed identity purposes that would fall under that companion animal category. Now what percentage of their business that is, I have no idea. [LB830]

SENATOR PIRSCH: Yeah. Largely, is it in the sense that say A.K.C. or some sort of assurances as to breeding, is that the importance as you understand it of the testing of the DNA? [LB830]

RONNIE GREEN: Yes. [LB830]

SENATOR PIRSCH: Okay. Thank you. [LB830]

SENATOR CORNETT: Senator Brasch. [LB830]

SENATOR BRASCH: Just a...the technology is fascinating and very valuable. I believe we're very, very fortunate for the presence. And my question...and its value to economic development, university expansion potential is...I met with Mr. Bohannon earlier. And I believe he's out of Lansing, Michigan. That's where the corporate office is. Is that where the chips are manufactured? Are they manufactured...is it the 30 employees are university employees that utilize the chips? Or is it his employees, that the chips come with personnel? [LB830]

RONNIE GREEN: So the chips themselves are manufactured by, say, I mentioned the company Illumina, the 700,000 chips I mentioned earlier, is a company in California. They manufacture the chip. And GeneSeek would purchase in bulk those chips that they then test here. So it's the testing that we're talking about, it's the sale of the chip with the testing. That is done here in Lincoln. So the employees I think that you were referencing earlier is GeneSeek at the tech park here north of the interstate, that is the GeneSeek company itself that is a part of Neogen now. Neogen purchased GeneSeek here just in the last couple of years. So Neogen is the parent company that you referred to in Michigan. [LB830]

SENATOR BRASCH: Okay. No other questions. Thank you. [LB830]

SENATOR CORNETT: Senator Fischer. [LB830]

SENATOR FISCHER: Thank you, Senator Cornett. And thank you, Dr. Green. I do

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

appreciate the work you do for the state, for the university, and for the livestock industry. So thank you for being here. Again, I would like to get to the policy issue here and not to the interesting product that's being produced by the company. When we look at the fiscal note we see a loss of revenue to the state of \$362,000 in 2012-13, and \$550,000 in 2013-14. There will also be losses to local political subdivisions if we would grant this exemption. One thing you said kind of threw up a red flag to me and I'd like you to clarify it. You made the comment about the technology adding value. I appreciate that. And then you said, this is exactly what we hope will take place at Innovation Campus. I agree with you that I hope this takes place at Innovation Campus, but does that mean that the university will then be supporting more tax exemptions for every product that is developed at Innovation Campus? [LB830]

RONNIE GREEN: Fair question and thank you for the question. No, what my comment there...is there is means of clarifying it. So when I say that we hope what will happen at Innovation Campus is that we will identify new technologies that leverage the expertise of our faculty at the university, so exactly what Innovation Campus' vision is, and that those will form new ventures like GeneSeek, that came out of the university long before the concept of Innovation Campus was in place, to commercialize those technologies, to add value in the appropriate industries here in Nebraska. I would hope that they would not all involve or many would involve tax exemptions. Thank you for the question. [LB830]

SENATOR FISCHER: Thank you. Did this business receive funding from the university or from the state when it was developing as in an incubator business? How did this happen? Was there public funding that helped this business begin? [LB830]

RONNIE GREEN: I can't speak to that specifically, Senator. It was long before my time here. It was a part of the university tech park, as I mentioned earlier. So it was in that incubator, so to speak, early days. I know Mr. Frazier (phonetic) is here from the tech park today. I don't believe that it received specific state funding, beyond the fact that Daniel Pomp, who I mentioned earlier, Dr. Pomp, who was a member of the Department of Animal Science faculty and the institute at the university, did his initial research work there. What he took to GeneSeek was the capability to begin doing some of these kinds of testing. So it was a transfer of technology directly through, well, as I mentioned earlier, what we would hope Innovation Campus would do. I know there was reference earlier in some of the earlier testimony to the allergen kits. And that is a source of revenue for GeneSeek that we're a customer of through our allergen center and there are royalties involved with that. But as far as...I can't answer your question as to whether there were dollars that were put into the development of GeneSeek beyond being a part of the initial tech park. [LB830]

SENATOR FISCHER: Okay. And do you know the dollar amount in royalties that the university receives from this business? [LB830]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

RONNIE GREEN: I don't. I would need to... [LB830]

SENATOR FISCHER: Can you get that for me, please? [LB830]

RONNIE GREEN: Yeah, I can get that for you. [LB830]

SENATOR FISCHER: Thank you very much. Appreciate you being here. [LB830]

SENATOR LOUDEN: Other questions for Dr. Green? Seeing none, thank you for your testimony. [LB830]

RONNIE GREEN: Thank you. [LB830]

SENATOR LOUDEN: Next proponent, please. [LB830]

JESSICA KOLTERMAN: (Exhibit 8) Good afternoon, Senators. My name is Jessica Kolterman, J-e-s-s-i-c-a K-o-l-t-e-r-m-a-n. I currently serve as the director of State Governmental Relations for Nebraska Farm Bureau Federation and I testify here today on their behalf. You've heard extensive testimony about the science behind the biochips we're talking about. In our industry, we place a premium on food safety. And products such as these are not only an incredible development in technology, but one that we feel is very important and needed. From our perspective, with consumers demanding more and more information about their food and where it comes from, technology such as this is vital to the future of our industry. Although I don't specialize in the area of animal genetics and all the fascinating things we can learn about them through technology such as this, I will tell you that as a person who works in agriculture I continue to be amazed at the growth in science that supports our industry. To have this science coming out of our state by a company that was started here in Nebraska, grew here and wants to continue in partnership with our university here makes us very excited about the future of other collaborations and the possibilities we have before us. I know we've been here before this committee on many occasions to talk about inputs in agriculture, and, Senator, you alluded to that. We value those tax exemptions, we see them as a fair tax policy. And in our mind this input is like other inputs because of the value it adds. We want you to keep that in mind when you look at this tax code and look at the clarification, because that's what we see it as, as a clarification. We'd like you to consider that and we'd be happy to work with the committee on any questions you have, any information we can provide. I also wanted to answer a couple of questions that have been asked previously. You mentioned the fiscal note specifically, and we're aware of that. One thing that we don't do when we look at fiscal notes in the Legislature, they aren't written to show the annual impact that is coming into the state. I will say that there was a study done by UNL Bureau of Business Research. And the annual impact is about \$41.2 million is what was studied...the study showed. So I'm sure that someone

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

would be able to get you more information about that, but I just wanted to share that. Additionally, Senator Brasch, you asked a question about other companies. While this is the only company in Nebraska currently, there are other companies that do this technology and would be impacted if they chose to locate here in the state. One of those is Muriel (phonetic), Merck, Pfizer Animal Health, those are just some examples. So I'd be happy to answer any other questions. [LB830]

SENATOR LOUDEN: Any questions for Ms. Kolterman? Senator Adams. [LB830]

SENATOR ADAMS: Thank you, Senator Louden. Jessica, and if you don't have an answer that's fine. Back to the issue of tax policy. I don't begin to understand the science of this deal. I am not really all that intrigued by the science, I'm sorry. But from a tax policy standpoint, if this chip were attached to the cow does it then fall within our revenue code as an exemption? [LB830]

JESSICA KOLTERMAN: My understanding is yes. [LB830]

SENATOR ADAMS: Okay, thank you. [LB830]

JESSICA KOLTERMAN: That is my...I asked the same question. [LB830]

SENATOR ADAMS: Thank you. [LB830]

SENATOR LOUDEN: Other questions for Ms. Kolterman? Thank you. Seeing none, thank you for your testimony. [LB830]

JESSICA KOLTERMAN: Thank you. [LB830]

SENATOR LOUDEN: And next proponent for LB830, please. [LB830]

MICHAEL KELSEY: Good afternoon, Chairwoman Cornett and members of the Revenue Committee. My name is Michael Kelsey, that's M-i-c-h-a-e-l K-e-l-s-e-y. I'm here representing Nebraska Cattlemen today in support of LB830. We extend our appreciation to Senator Hadley for introducing this bill. We appreciate the opportunity to provide brief comments. You've heard, I think, sound reasoning both from the science side as well as, perhaps debatable, the policy side. So I won't elaborate on that other than to say that genomics is an area within the beef production realm that has really benefited our ability, and when I say our, Nebraska's ability to really be the beef state. And we see this opportunity for this type of science to continue to allow us to be a leader not only in the United States but globally in beef production. Nebraska Cattlemen, our chief strategic goal is to be the beef epicenter of the United States. And GeneSeek is a very important component of that as we understand how to better produce beef that meets all consumers' needs because consumers have a very diverse

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

opinion of their likes in beef and we feel like we can fulfill all of those, those likes and demands. And so we appreciate the opportunity to be here today. We encourage you to consider this bill. We find it foundational and very important to have this type of technology housed in Nebraska. We think that is an advantage that we would have and can move forward in that fashion. So I would be happy to answer any questions that you might have. [LB830]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB830]

MICHAEL KELSEY: Thanks. [LB830]

SENATOR CORNETT: Next proponent. Is there anyone else that is here to testify as a proponent? Are there any opponents? Anyone in a neutral capacity? Seeing none, Senator Hadley, you are recognized to close. [LB830]

SENATOR HADLEY: Senator Cornett, members of the committee, I think you've raised a lot of good questions and I appreciate your input on this. I'm like Senator Adams, since my degree is in accounting I'm really interested in the scientific part of the chips. I won't tell you what I thought of when I thought of biochips and cattle. But that's a different (laughter) ball game. Let me try and answer just a couple of the questions that were put up. Actually, they paid \$328,000 last year to the university in royalties for the work that they were doing. And I think, Senator Pirsch, you asked, are there other examples of this? You remember, this committee last year passed out a bill on cloud computing where we changed the Advantage Act to take care of cloud computing. The reason we did that is when we wrote the Advantage Act, you got software on a 3x5 floppy disk, and that's how it was transmitted. And now you can file your tax return or work on your tax return with TurboTax and it's cloud computing. Work with Yahoo, it's cloud computing. You go to Gmail, it's cloud computing. So we had to change our Advantage Act to take care, to reflect the technology that is going on. It would be nice to have a crystal ball and be able to say, I can look at the technology down the line. A couple other things. I think Senator Fischer brought up a great question on the implement dealers, and I think we're going to get a chance to deal with that this session. Part of what we work with in this body is cost-benefit. I'm sure Senator Adams would love us to fund education at twice what we're funding it at, but we look at a cost-benefit and we try to make that decision, maybe not twice, 50 percent. So, you know, that's what we're looking at here is a cost-benefit of this decision. We know what it's going to cost the state in terms of revenue. And we have to make a decision whether that loss in revenue is offset by an appropriate amount of benefit to the state of having Neogen as a partner in the state of Nebraska. Senator Schumacher, I appreciate your comments. I think we will look at the way you were defining it to make sure we do it correctly. And the last thing, I think this is a real success story. You know, you talk about starting small, it's what we want to try and do in Nebraska. We want to have small companies

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

that grow, partner with the university, partner with agriculture. You know, when you go down the checklist of things that you want to happen, I think this company symbolizes that checklist and it's important to us. So I know that we...a lot of the bills we say are earthshaking and, you know, my bill is so important that we just got to do it. But I think this is--one last thing--I think this is an important bill because this sends a signal. You know, we have a new Innovation Campus coming in. We have a technology park. Every city likes to have a technology park. So the way we handle this can send a message to companies that are starting and growing and they're having new technology. And is the state willing to at least look at how their new technology is impacted by our tax policy? With that, I would answer any questions that you might have. [LB830]

SENATOR CORNETT: Senator Brasch. [LB830]

SENATOR BRASCH: Senator Schumacher left me with a question for you. If they would decide to leave the state because of taxes, more attractive taxes elsewhere, will the royalties to the university still be paid? [LB830]

SENATOR HADLEY: Senator Brasch, I don't know, but we will certainly find out. [LB830]

SENATOR BRASCH: Okay, thank you. [LB830]

SENATOR CORNETT: Senator Fischer. [LB830]

SENATOR FISCHER: Thank you, Senator Cornett. What were the royalties again, Senator Hadley? [LB830]

SENATOR HADLEY: \$328,000. [LB830]

SENATOR FISCHER: And do you know how long those royalties will be paid? [LB830]

SENATOR HADLEY: No, I do not. [LB830]

SENATOR FISCHER: If you could find that out, too. Thank you. [LB830]

SENATOR HADLEY: Yeah, we'll find out what that is. [LB830]

SENATOR CORNETT: Senator Brasch. [LB830]

SENATOR BRASCH: This question is for me. [LB830]

SENATOR HADLEY: Okay. [LB830]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

SENATOR BRASCH: I do see this...Senator Fischer brought up an excellent point about our implement dealers. But in farming we have what is seed money, money for seed so we can have a crop. And should this be attractive to one where Jessica Kolterman said there's many others out there, perhaps they will come. I do see that as a strength, that it is great that we have one solid-based growing customer. On the other hand, I'm hoping, is this enough or will they be back next year that this is not enough? Are there other benefits that we're not competitive with in growth? [LB830]

SENATOR HADLEY: You know, I do not know, Senator Brasch, but I will...I would suggest that this committee is going to be hearing in the next ten years significant challenges in the tax code as technology changes. I'll just give you a quick preview. I'm going to be bringing a bill that deals with intangible, our income tax laws in the sale of intangible products and the way we tax intangible products, because we didn't understand that there would be cloud computing someday in the way we tax intangible products. So I think this committee is going to be spending a lot of time looking at not only the tax code but the Advantage Act and those kinds of things as to what it takes to have good businesses. And again, ag, if I'm...I think I'm correct, one in three jobs is either directly or indirectly related to agriculture in the state of Nebraska. So, you know, the ag area is really important. [LB830]

SENATOR BRASCH: Thank you. [LB830]

SENATOR HADLEY: Thank you, I appreciate all the questions and will be certainly working with you. [LB830]

SENATOR CORNETT: That closes the hearing on LB830. I did not use the light system for LB830. I did not realize there was going to be that many people testifying. May I see a show of hands for the number of people testifying on Senator Fischer's bill, LB745. I'm going to ask everyone to keep their testimony to three minutes. And we will, I'll say somewhat loosely, use the light system. If you go to red, I won't necessarily cut you off right away. Please let's not have repetitive testimony. Senator Fischer, you, of course, are unlimited. [LB830]

SENATOR FISCHER: Thank you, Senator Cornett. That's a very dangerous statement. Good afternoon, Chairman Cornett and members of the Revenue Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the senator representing the 43rd District here in the Nebraska Unicameral. I appear before you today to introduce LB745. Last year, I introduced and the Legislature passed LB165, which placed restrictions on telecommunications occupation taxes. Since the passage of that bill, I have been contacted by Nebraskans across the state concerned with occupation taxes levied by municipalities for purposes beyond telecommunications. For this reason I introduced LB745. This bill would accomplish the following. It would require a city to put any proposed, new occupation tax to a vote of the people. The tax revenue must have a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

specific purpose and the tax must have a sunset date. Any changes to an existing occupation tax will need to be put to a vote of the people, and it must have a sunset date. Municipalities across the state levy occupation taxes on a variety of businesses, services and products for a variety of reasons. State statutes provide a very broad definition of occupation taxes and we require very little restrictions. I know representatives from city councils and mayor's offices are going to testify in opposition to this bill claiming that this proposal would limit their opportunity to raise revenue. I disagree. To be clear, the state provides cities the ability to level...to levy occupation taxes. Let me repeat that. The state provides cities the ability to levy occupation taxes. I believe it is within our purview to provide limitations on these taxes as we do sales taxes. In fact, I must point out that before a local sales tax can be increased a city must put that proposed increase before the voters. I do not see this bill as a tool to restrict cities from raising revenue, but rather as a policy to provide more transparency and purpose to the process. There are many examples across the state where cities have put their occupation tax implementations to a vote of the people with successful results. In Norfolk, the community decided it wanted a water park and voted to fund that water park with an occupation tax. The city of Lincoln wanted a new arena, similarly the people voted to impose an occupation tax on certain businesses to fund that project. I believe LB745 is necessary to control the use of these taxes and provide Nebraskans with a clear plan for the tax revenue. I would be happy to answer any questions you may have. [LB745]

SENATOR CORNETT: Senator Fischer, as you know, occupation tax is something that I've been looking at very closely for a couple of years. And frankly, occupation tax, the way it's structured, makes me uncomfortable because it is the only tax that we allow in the state that has no structure or any upper limit. And we both had bills regarding that last year. One of yours was for telecommunication. My question is, the cities that already have these occupation taxes in place, I get the feeling that this maybe creates winners and losers because they do not have to go back on those, occupation tax, for a vote of the people. Am I correct? [LB745]

SENATOR FISCHER: Correct. Under this bill, Senator Cornett, they would not have to take it to a vote of the people unless they were going to change the purpose of that occupation tax, the use of it. [LB745]

SENATOR CORNETT: The purpose of the occupation tax? [LB745]

SENATOR FISCHER: The use for the occupation, the revenue,... [LB745]

SENATOR CORNETT: The revenue. [LB745]

SENATOR FISCHER: ...the use for the revenue from the occupation tax. If that was going to be changed, then they would need to take it to a vote of the people. [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

SENATOR CORNETT: But if they didn't... [LB745]

SENATOR FISCHER: You and I have had a number of conversations... [LB745]

SENATOR CORNETT: Yes. [LB745]

SENATOR FISCHER: ...about this, because we both are uncomfortable with it. It's...and it's been proposed to me and I imagine it has to you, too, that we try and cap all occupation taxes. And there are challenges with trying to do that because as you know more about that than I do. But as we both know, people are concerned about taxes, the use of these occupation taxes, the similarities in many cases to a sales tax, but we call it an occupation tax, and the problems and the concerns that the population in this state has with that. [LB745]

SENATOR CORNETT: Thank you, Senator Fischer. Further questions? Senator Pirsch. [LB745]

SENATOR PIRSCH: Your bill would apply to only, only prospectively to new categories of occupation taxes or to any bump-up in existing occupation taxes? Would that also apply, say, one is currently being implemented at such a rate and then the idea of moving it from, say, 4 percent to 6 percent, would that require...would that kick in your requirement for a vote of the people and a specific purpose and sunset? Or can you build off what exists now without having to go back? [LB745]

SENATOR FISCHER: My intent is if there would be an increase in a current occupation tax, that that would have to go before a vote of the people. [LB745]

SENATOR PIRSCH: And you again have to define a specific purpose to the voters and... [LB745]

SENATOR FISCHER: Exactly, with a sunset date, because you are changing the original proposal that the voters in your city accepted, either through a ballot or through approval of a city council action. [LB745]

SENATOR PIRSCH: So any modifications of existing occupation taxes triggers, by your language, this...the three requirements? Is that fair to say? [LB745]

SENATOR FISCHER: That would be my intent, yes, yes. But this, as I said, the main purpose is for new occupation taxes. And there again, it does not limit a city from implementing an occupation tax, it only takes it to a vote of the people with a clear purpose and a sunset date, as cities are required to do with sales tax. [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

SENATOR CORNETT: Senator Fischer, one more question. Did you exclude telecommunications because you capped that last year? [LB745]

SENATOR FISCHER: Correct, telecommunications are excluded from this bill. And that is because this committee and the Legislature addressed that last year with capping telecommunication services and not allowing an occupation tax on telecommunications equipment, because my stated reason was that that...I viewed that as a sales tax. [LB745]

SENATOR CORNETT: Do you foresee...and because telecommunications is more your sandbox, so to speak, than mine, some type of occupation tax that could be imposed in the future on telecommunications that is not currently being imposed, because that is the one thing that has astounded me about occupation taxes, how you can find things to tax with it. [LB745]

SENATOR FISCHER: Well, you have me on Revenue now, so this is my sandbox, too, so. (Laugh) [LB745]

SENATOR CORNETT: Um-hum. [LB745]

SENATOR FISCHER: But I would think after we listened to testimony last year, and I certainly heard from a number of constituents and Nebraskans that they don't want to see an increase in telecommunication taxes. [LB745]

SENATOR CORNETT: That's not what I meant. Do you foresee something that is already not capped in telecommunications becoming an issue, like a new occupation tax on telecommunications that hasn't been capped? [LB745]

SENATOR FISCHER: I wouldn't think so, Senator. [LB745]

SENATOR CORNETT: Okay. Further questions? [LB745]

SENATOR PIRSCH: Just briefly. The manner in which the occupation taxes have been implemented by municipalities then, is it, I guess what I'm saying is has there been the cities authorized up to X percentage, so up to 6 percent, although they're at a lower basis than 6 percent, for instance, on something such that it may not be viewed...you may...is there a range allowed for or is it just set at a certain rate and thus if you change it from the rate it would be deemed to be a modification such that your intent is that these three new requirements kick in? [LB745]

SENATOR FISCHER: If I understand your question correctly, Senator Pirsch, as Senator Cornett and I said, the occupation taxes really are very broad in Nebraska statute, and we don't see a lot of definitions or regulations by the state on them. And

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

that's what concerns me. Last year, we did cap the telecommunications occupation tax on telecommunication services at the rate that was...had been implemented by the city of Omaha, because that was the highest in the state, at 6.25 percent. And we capped it there so that no city and specifically Omaha would see a negative effect from the legislation that we were passing at that time. And here again, I think that's true with this piece of legislation that I'm proposing. We are not going back and looking at current occupation taxes that cities have implemented on a variety of venues across their city. We're not penalizing them in any way for that, we're not taking away revenue for that. But we're saying going forward, you know, let's be open about it, let's bring it to a vote of the people, let's look at a specific purpose, identify that, and have a sunset date. I think that's reasonable. [LB745]

SENATOR PIRSCH: Thank you. [LB745]

SENATOR CORNETT: One final question. One of the things that has been continually brought to my office as a suggestion on occupation tax, and I have not done this and it's just feeling you out, I know you and I have discussed it, is one of the things that a number of people are uncomfortable about is the fact that occupation tax sits outside the spending lid for the municipalities, so it does not have to be included in what their maximum for spending is. Is that correct? [LB745]

SENATOR FISCHER: That's my understanding, yes, Senator. And, as you and I have talked about and a number of other people as well, that is an issue that's out there also that I think needs to be discussed. [LB745]

SENATOR CORNETT: Thank you. Further questions? Seeing none. [LB745]

SENATOR FISCHER: Thank you, Senator Cornett. [LB745]

SENATOR CORNETT: With that, we will open the testimony to proponents. [LB745]

RICHARD BAIER: Good afternoon, Chairwoman Cornett, members of the committee. For the record, my name is Richard Baier. That's spelled R-i-c-h-a-r-d, last name is B-a-i-e-r. I appear before you today as a registered lobbyist with the Nebraska Chamber of Commerce and Industry in support of LB745, and I've also been asked to lend our support for the Nebraska Federation of Independent Business on this particular issue. Over the past several years, our state has seen an increase in the number of municipalities that are imposing and utilizing these occupation taxes as a revenue generation source. We recognize this trend was driven by our challenging economic times and flat revenues. However, the chamber believes that the imposition of any new tax at the state or local level should require a public vote of subsequent approval before it is imposed. Nebraska has, as Senator Fischer pointed out, already has a policy precedent in this area. And all you have to do is look at the sales tax language in our

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

Nebraska statutes. More importantly, I would point you, for example, to the 43 communities that do a sales tax for economic development. Not only was that sales tax voted on, but so was the plan that goes with it that outlines specifically how those dollars are going to be spent and that language also included a sunset provision on the ballot. The chamber also has reservations about local occupation taxes as they can be applied only to certain industry or business sectors, sometimes without specific limitations. A more equitable and clear tax policy would apply a proposed tax uniformly to all impacted taxpayers. Finally, the chamber is committed to lowering the total tax burden in our communities and across our state of Nebraska. Whether we like it or not, Nebraska remains a high tax state, potential new businesses and residents taking this issue into their decision-making when determining where to locate for the future. Now is not the time to be raising taxes to support the ever-growing public expenses. We want to send an important message that Nebraska is open for new companies and new residents. I thank you for allowing me to appear before you today for my first time as a lobbyist with the chamber. And I would be happy to take any questions that you might have. [LB745]

SENATOR CORNETT: Questions from the committee? Seeing none, and welcome. [LB745]

RICHARD BAIER: Thank you. [LB745]

SENATOR CORNETT: Next proponent. [LB745]

JIM OTTO: Senator Cornett, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o. Please don't spell Otto backwards. I'm president of and registered lobbyist for the Nebraska Retail Federation. I'm also a registered lobbyist for the Nebraska Restaurant Association. I appear before you today in support of LB745 on behalf of both associations. We thank Senator Fischer for introducing LB745 as the collection of occupation taxes is a fairly new burden on restaurants and retailers and it is gaining popularity. Several cities have assessed occupation taxes on customers of restaurants. Last year, the city of Lincoln assessed a 6 percent occupation tax on purchasers of telecommunications equipment. Some of these were approved by a vote of the people, but others were done by the mayor and city council without a vote of the people. Since I am not an expert on taxation, I Googled occupation tax to find a definition and this is what I found. An occupation tax refers to a levy imposed for the privilege of carrying on a business, trade or profession. It is a fixed charge levied as a fee on the business, not on the customer. I also Googled sales tax and this is what I found. A sales tax is based on the cost of the item purchased and collected directly from the customer or buyer. As you all know, the amount of sales tax a city can assess is capped by the state. However, the same restriction does not exist for occupation taxes, thus the increase in popularity of occupation taxes. However, municipalities have adopted language basing occupation taxes on a percentage of the cost of the item sold and allowing the business

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

to pass on the tax directly to the customer and itemized on the sales receipt, just like occupation...or just like sales tax. It is assessed like sales tax, it is collected like sales tax, it is remitted like sales tax. To any logical person it is a sales tax and only labeled as an occupation tax to avoid the state tax cap. I suggest that municipalities would prefer to raise sales taxes slightly across the board rather than assess occupation taxes on a limited basis, such as to restaurant meals or telecommunications equipment, but state law will not allow them to do it. Retailers and restaurants are the primary collectors and remitters of sales tax for the state of Nebraska. They receive practically nothing for it. In fact, they remit millions more than they collect on a net basis after the credit card swipe fee is assessed to the sales tax. But that is an issue for another time. When a municipality assesses an occupation tax it is a separate and distinct bookkeeping and collection obligation on the retailer or restaurant. The occupation tax is not remitted to the state as part of the sales tax, and it is...but it is in a separate accounting and payment to the municipality. It would be much less bureaucratic and much less costly to the business if you just allowed the retailer or restaurant to submit it with sales tax as an increase in sales tax. Short of that, however, since occupation taxes are now actually sales taxes in disguise, we would submit that they should be subject to a vote of the people, just as an increase in local sales tax would be. We urge you to move LB745 out of committee. And I would be glad to answer any questions. [LB745]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. Next proponent. [LB745]

KATHY SIEFKEN: Senator Cornett and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I am the executive director and registered lobbyist for the Nebraska Grocery Industry Association, here in support of LB745. We would like to thank Senator Fischer for introducing this bill. As Mr. Otto said, occupation taxes are becoming more popular. And while we really don't want to stand in the way of progress, we do think that the communities probably should contain their spending a little bit more and be responsible to their citizens. And they would be if this came before a vote of the citizens. One of the problems that we have as retailers is that, while this is collected almost like a sales tax, it requires...it does cause a technological problem because we have some retailers that are very small and they don't have IT people, they don't even have e-mail in their stores. Fax machines are just wonderful because that's cutting-edge technology to them. And when you have an occupation tax that is implemented in a city, it requires some of our grocers to actually calculate it by hand. I have one grocer here in Lincoln that told me that in order for him to collect \$150 a month on the occupation tax that the city of Lincoln has implemented for the arena it costs him \$50 a month in labor. That's fairly burdensome. And so as a result, occupation taxes for some people may not be difficult. But if you don't have the technology and new front-end systems it is very difficult, especially for our smaller retailers. So as you move forward and you talk about what you're going to do with this bill I would hope that you would keep that in mind also. And as I said, we don't want to stand in the way of technology or advancement in the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

community, not technology. We don't want to stand in the way of progress, but occupation taxes do cause problems for some of our, especially smaller members. If you have any questions, I'd be happy to try to answer them. [LB745]

SENATOR CORNETT: Seeing none, thank you. [LB745]

KATHY SIEFKEN: Thank you. [LB745]

SENATOR CORNETT: Next proponent. If there are any further proponents, could you please move towards the front. [LB745]

COBY MACH: Good afternoon. My name is Coby Mach, C-o-b-y M-a-c-h. I am here today on behalf of the Lincoln Independent Business Association and we are supporting LB745. We think that requiring a vote of the people to enact an occupation tax is good policy. We believe that it promotes transparency in government and it allows the taxpayers of Nebraska to determine what projects they would like to fund. The commencement of Lincoln's west Haymarket arena project is a perfect example of how good policy works. The people of Lincoln voted for the arena occupation taxes, which by the way do sunset on January 1 in the year 2046. However, when this was originally being proposed there was no sunset and we had to make a case to city leaders that there should be a sunset. In fact, we were told at one point that it wouldn't be possible because of bond funding, but they were able to make a way for that to happen. So we have that sunset. Lincolnites have embraced the arena project as an opportunity for economic development, an opportunity for college internships, and an opportunity for community involvement as well. However, the Nebraska Legislature also has seen Lincoln's administration take matters into its own hands with the telecommunication occupation tax. That was increased and expanded without a vote of the people on October 1 of 2010. Fortunately, last year this Legislature passed and the Governor signed into law LB165, which stops the practice of taxing telecommunication equipment as well as the ability of municipalities to increase that occupation tax on telecommunication services without a vote of the people. We think LB745 ensures Nebraskans are going to...they're going to know what they're paying for, they're going to know how much they're paying, and they'll know how long they're going to be paying for it. LIBA, an organization of 1,150 members, respectfully requests that this committee pass LB745. Thank you. [LB745]

SENATOR CORNETT: Senator Hadley. [LB745]

SENATOR HADLEY: Senator Cornett. Thank you, Mr. Mach, for coming. From a tax policy standpoint, you were talking about transparency. Should that same concept work for the state of Nebraska? Should we have to go to a vote of the people every time this body looks at taxes? Should the federal government go to a vote of the people every time they want to change the taxes for the United States of America? [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

COBY MACH: I don't know that that's practical. But what I do know is that this body does have a say in what happens with occupation taxes, the state of Nebraska does. And we think that this is a good opportunity to provide more transparency. It is an easy opportunity for people to know what they're paying for, how much they're going to pay for it, and how long they'll pay for it. [LB745]

SENATOR HADLEY: I guess, you know, my thoughts have been that that's what we use at times the ballot box for, that if I don't...if I'm a city councilman or a mayor or a state senator or a U.S. Senator and you don't like what I'm doing in the area of taxation, you vote somebody else in who may go along your same line. So how does that differ, you know, at the city level versus the state level and the national level? [LB745]

COBY MACH: Well, we have an opportunity to set laws in place that are, and some even call them mandates, if you will. There is a mandate that you stop at a red light. And there are some that are good and some that I guess we might disagree with. But in this particular case we think that this is a good opportunity for the state to have a say in what's going on with occupation taxes because you are setting limits in other areas of taxation. You set a levy lid on the school districts and tell them how much they can levy. If we took your argument, for example, we would have removed the levy lid and just say that the school boards are going to determine what the tax rate is all across the state and there would be no levy lid. [LB745]

SENATOR HADLEY: Okay, thank you. [LB745]

SENATOR CORNETT: That brings an interesting point up that...a conversation Senator Fischer and I have had and I'm sure you were in on before. Occupation taxes sit outside the spending lid, correct? [LB745]

COBY MACH: Correct. [LB745]

SENATOR CORNETT: How...and you just brought up the property tax lid, the lid levy for property tax. [LB745]

COBY MACH: Um-hum. [LB745]

SENATOR CORNETT: That can be overridden by a vote of the people. [LB745]

COBY MACH: Yes. [LB745]

SENATOR CORNETT: If you include occupation taxes that are currently in existence as part of the spending lid, but allow municipalities with a vote of the people to enact another occupation tax, like an override of the lid levy. [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

COBY MACH: I think a case could be made that it's very similar, yes. [LB745]

SENATOR CORNETT: Thank you. Further questions? Seeing none. [LB745]

COBY MACH: Thank you. [LB745]

SENATOR CORNETT: Next proponent. [LB745]

MARK WHITEHEAD: Good afternoon, Madam Chair, members of the committee. For the record, my name is Mark Whitehead, that's M-a-r-k W-h-i-t-e-h-e-a-d. I'm representing...I'm president of the board for the Nebraska Petroleum Marketers and Convenience Store Association. My comments will be fairly specific, as you might think, towards the retail of gasoline. We have dealt with an occupation tax in the city of Lincoln, not once, but twice. Our local industry got behind it and we were entirely ineffective in defeating it in some ways. And I'll get to that later. But the way that they were trying...I think as all of you are aware, it is not the purview of the communities to be able to levy an excise tax on motor fuels. However, the occupation tax was based on cents per gallon. I think one time it was a nickel, another maybe 3 cents per gallon. And, you know, if it looks like a duck, walks like a duck, and quacks like a duck, it must be a duck even if you call it an occupation tax. Our industry deals with profitability in gasoline specific in terms of fractions of a cent per gallon, in terms of our overall profitability. There isn't a more pure form of marketing in the retail business than gasoline. It's out there in big, bold numbers on every street corner. Every one of the members of this committee drives a car and they utilize the product each and every day. There are strong passions revolving around the subject of the retail of gasoline. In fact, Senator Fischer and I have had a couple of different conversations pertaining to that. But specifically, as we were dealing with the city of Lincoln on this particular issue, the key issue here, when you're talking about 3 cents per gallon it doesn't sound like much, or 5 cents per gallon doesn't sound like much. But I think you've heard the concept of border bleed. Typically, we refer to that on a statewide basis, but in this case obviously it would be on a city border basis. That makes a big difference. When we average, our total gross margin, less than 10 cents per gallon, when you're talking about taking half of that away, that is substantive when you're talking about major volumes of fuel that are associated with that. We worked with the city of Lincoln during the course of this process to figure out exactly how we would implement such a tax. And there wasn't a clear answer to do that because a whole, entirely new way of doing it would have to be invented, which creates all kinds of issues as it relates to auditing and a variety of other issues. As this thing was being proposed, we were opposed by the chamber of commerce, we were opposed by the mayor, we were opposed by a number of people. The reason this was accepted was not because of the efforts of the local industry, but rather because each one of the city council people heard from their constituents, they represented the fact that they've got options, they would not buy fuel in the city of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

Lincoln. The city council didn't believe us, but they did listen to their constituents when that came up. And that's why I like Senator Fischer's proposal here to take it to a vote of the people. I think that specifically in the case of the city of Lincoln and other municipalities if in fact an issue such as gasoline occupation tax were put before the city for a vote, I doubt very much that it would pass. It's...excise tax is the purview of the state government and the federal government. And I would encourage you to keep it that way. I'd like to answer any kind of questions you might have. [LB745]

SENATOR LOUDEN: Any questions? I would have a question. When you talk about like excise tax on gasoline, on something like that, you could actually raise property tax on a gas station, couldn't you, and increase the revenue, because they would have to pass it through on the amount they charge for that gasoline? [LB745]

MARK WHITEHEAD: I don't know if you could discriminate on a specific use for...on a property tax or not. [LB745]

SENATOR LOUDEN: Well, if you raise the property tax on everybody then it would still work the same way. It would still follow through, wouldn't it? [LB745]

MARK WHITEHEAD: Sure. [LB745]

SENATOR LOUDEN: What is your tax levy for the city of Lincoln, your property tax levy? [LB745]

MARK WHITEHEAD: I'm sorry, I plead ignorant on that. [LB745]

SENATOR LOUDEN: Okay. Other questions? Thank you for your testimony. [LB745]

MARK WHITEHEAD: Thank you very much. [LB745]

SENATOR LOUDEN: Any other proponents? Seeing no proponents, are there opponents? [LB745]

LYNN REX: (Exhibit 9) Senator Louden, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. And frankly, we were stunned by the number of cities across the state of Nebraska that called in, in opposition to this bill. And so as to not have 30 or 40 cities here today, we do have a couple that are here, but we worked out testimony with which they could agree, this includes Lincoln and Omaha. And so I'd like to read that into the record at this time and then answer any questions you might have. The League of Nebraska Municipalities strongly opposes LB745 because of the restrictions it would place on the expressed grant of authority to municipalities to raise needed revenue through the imposition of occupation taxes. Since the late 1800s, municipalities in Nebraska have had the constitutional and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

statutory authority to impose occupation taxes without a local vote of the people. The only exception was passage of LB165 last year, also introduced by Senator Fischer, requiring a local vote on occupation taxes relating to telecommunication services and equipment. In fact, LB165 only required a local vote if the municipality wished to exceed the maximum occupation tax rate of 6.25 percent. Section 1 of LB745 would require a local vote after the effective date of the bill for the imposition of a new occupation tax. A local vote would also be required to change the rate or termination date of an occupation tax imposed prior to, on or after the effective date of the bill. In addition, LB745 would require that the occupation taxes imposed after the effective date of the bill would have to be for a specific project set forth in the question submitted to the voters along with the termination date. Relatively few occupation taxes are imposed for a specific project. Consequently, such a requirement effectively would eliminate the purpose of which occupation taxes are imposed. Occupation taxes, as opposed to sales tax, are imposed on a business for the benefits of carrying on a business, trade or profession. Sales tax, on the other hand, is imposed on the consumer, it is a transactional tax. The requirement in LB745 to also state a termination date on the ballot question is problematic. Occupation taxes which offset administrative or regulatory costs need to continue because the ongoing revenue is needed to regulate the business. Occupation taxes have been a traditional and necessary source of revenue for cities and villages for well over 120 years. Elected municipal officials have responsibly exercised their authority to impose occupation taxes without a state law requiring a local vote. Some occupation taxes appear to raise significant dollars for the operation of municipal government. However, it has been reported to the League by one of our large municipalities that when viewed as a percentage of overall revenues, such occupation taxes represent less than 10 percent of the total general fund, less than 5 percent of overall revenues. In addition, revenue from the occupation tax simply offsets some or all of the administrative or regulatory costs related to the business on which the occupation tax is imposed. In many cases it is important to emphasize that the revenue raised by an occupation tax would be significantly less than the cost of the election itself required by LB745. This would frequently be the case when imposing a new occupation tax and clearly would be true if LB745 would pass requiring election to change the rate of an occupation tax currently imposed by municipalities. Essentially, passage of LB745 would result in many occupation taxes being frozen at their current rate. Municipal officials are not going to pay more for an election to change a rate actually in an occupation tax than the rate change would generate in new revenue. It is important to keep in mind that citizens have a variety of means of ensuring elected officials do not overly tax their jurisdictions that present an alternative to a local vote requirement. Citizens have the option of exercising their right to use the referendum process, outlined in state law, to repeal an ordinance imposing occupation tax. There was an unsuccessful referendum attempt to repeal the ordinance imposing an occupation tax on hotel accommodations to fund the Golden Spike Tower and Visitor Center in North Platte. And that was a 2011 case of the Nebraska Supreme Court. Representative government does work well, especially on the local level. Citizens and businesses have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

the opportunity to voice their opinion about imposition of an occupation tax or change in rate of an occupation tax by testifying before city councils and village boards when considering such an ordinance. Citizens can also exercise the right to remove their elected official at the ballot box when they're up for reelection. Citizens also have the right to recall the municipal officials for any reason if they do not want to wait until the official or officials are up for reelection. Furthermore, limits already exist on how municipalities can impose occupation taxes. The Nebraska Supreme Court made it clear that a city or village may impose an excise, license or occupation tax upon a given class of business when such tax is definite, reasonable and uniform. And there are a series of court cases relative to that. The Nebraska Supreme Court has also said that municipalities, by ordinance, must not make an arbitrary classification of business for the purpose of levying an occupation tax, and such tax must apply uniformly and not be so high as to be confiscatory. Respectfully, on behalf of municipal officials across the state I would ask that you indefinitely postpone LB745. I would hope that you would agree that many of the same voters that elected you also elected the municipal officials in your respective districts. These municipal officials are capable of continuing to exercise good judgment when considering the imposition or change in rate of an occupation tax. Thank you for your consideration. I look forward to answering any questions that you might have. [LB745]

SENATOR CORNETT: Senator Pirsch. [LB745]

SENATOR PIRSCH: Appreciate that. So you referenced a Supreme Court case where they limited the, I guess in theory, the high end of the occupation tax that can be imposed, it can't be, I think your language was can't be so high as to be confiscatory. Is that right? [LB745]

LYNN REX: Yes, that's the Speire's Laundry case, it's a 1936 case. But there are numbers of cases, I just picked that one, but that one has been cited repeatedly by the Nebraska Supreme Court. And again, we've had this authority since the late 1800s. [LB745]

SENATOR PIRSCH: Sure. Have they flushed out, the courts, what that means in terms of percentagewise, can't be so high as to be confiscatory. But what does that mean as a practical matter in terms of percentage? Has anybody gone there yet? [LB745]

LYNN REX: Senator, not to my knowledge. I think it's a case-by-case basis. In the same way that no city is the same, certain classifications of businesses are not necessarily the same. So what might be a percentage that might be confiscatory on one class of business may not be confiscatory on another class of business. What's important is that you have uniformity within the class. [LB745]

SENATOR PIRSCH: Yeah. And then here's the only other question I'll ask you at this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

time, with respect...and you mentioned that historically it's been around since the 1800s, has it not? [LB745]

LYNN REX: That's correct. [LB745]

SENATOR PIRSCH: Has there in recent years or decades been a growing trend towards implementing occupation taxes in areas or usage, I think you mentioned...you cited an example, I think Kearney utilized about 11 percent of all municipal tax revenues. And is that about where other cities are typically? And if so, has that always been about 11 percent or is that just kind of a recent trend that they've gone up? [LB745]

LYNN REX: I think that number does vary. I know it does vary across the state. And I didn't mention Kearney, although I did hand out a letter from Mike Morgan from the city of Kearney in opposition to this bill. And we've received many, many letters obviously in opposition to the measure. But that percentage does change. I will tell you that municipalities across the state have had occupation taxes obviously for decades, and almost all of them do. In terms of an increasing number of occupation taxes being imposed, I think it's become more visible in recent years. And I think that municipalities obviously are looking at issues based on the elimination of state aid. They're looking at issues based on the cost to regulate that government on the local level, and those all play into this. [LB745]

SENATOR PIRSCH: Does more visible mean in light of...in reacting to these other cutoffs they've been created in greater numbers or does more visible mean they've always existed in that percentages, but then more attention has been paid by the public for whatever reason. [LB745]

LYNN REX: I think a combination of both. I think for example, Senator, there have been some cities that have recently enacted occupation taxes on restaurants and bars that didn't have those before. Many of those though are for specific...I think they have all been for specific projects. But overwhelmingly the number of occupation taxes in this state are not for specific projects at all. And that's why taken as a whole it may look like a relatively big number, but in terms of the percent of their overall budget it typically is not. That doesn't mean that it's not important. It just means that it's a part of the mix. [LB745]

SENATOR CORNETT: Senator Hadley. [LB745]

SENATOR HADLEY: Thank you, Senator Cornett. Ms. Rex, thank you for coming. [LB745]

LYNN REX: Thank you. [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

SENATOR HADLEY: What was the cut last year to the cities that the state of Nebraska took away in aid, do you... [LB745]

LYNN REX: Roughly \$11 million. [LB745]

SENATOR HADLEY: Eleven million dollars? [LB745]

LYNN REX: However, that is a piece of the picture, Senator Hadley, because when, in 1978 when LB518 was put in place over a period of years and the taxation on livestock, farm equipment and business inventory, when those exemptions occurred we ended up, we did a study with the University of Nebraska. And municipal officials as well as school officials and others, local governments lost \$250 million, not in valuation, in actual dollars as that happened. And so when the state of Nebraska was going to make that up what occurred is that they didn't have the money. Jim Exon was then Governor. And they put a \$70 million cap on it. We were only fully funded at our maximum \$17.9 million for only a period of years. And then the Legislature started cutting that. As you faced your budget crises we tried to be a partner in that. But none of it was ever restored. And that just represents three exemptions. So we have been facing for decades exemptions that are granted that narrows our property tax base. Those are exemptions that...we don't set the base on the property tax, you set that base through exemptions. We set, you know, we were involved in the rate. And then, of course, in 1996 the Legislature capped the maximum levy limit which took effect in 1998. And what occurred at that point was that we had second-class cities and villages and virtually all of them in 1996 and 1998 were at the maximum levy limit of \$1.05 per \$100 of valuation. And they were required within two years to go down to 45 cents plus 5 in two years. First-class cities were required to go from 87 cents as a maximum down to 45 cents plus 5. But the reality is most of our first-class cities with local option sales tax were not at that maximum levy limit. So make a long story short, Senator, we're in a position where municipalities have been facing huge reductions over a period of years, where the base has been broad and now is a very, very narrow base. And on the property tax side, it fundamentally lands on the residential homeowner in a city. [LB745]

SENATOR HADLEY: Just a follow-up on what you said. Basically, the two primary sources of revenue for a city are sales taxes and property taxes, correct? [LB745]

LYNN REX: That's correct, yes. [LB745]

SENATOR HADLEY: And if...so what I consistently hear from people in my district is the property taxes are the ones that they're most concerned about. And I would be concerned if we somehow limit cities in one area and then we turn around and increase...if they have the levy limit ability to raise property taxes, that we force cities into a property tax increase. And I'm just concerned about that with our action. [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

LYNN REX: We are, too, Senator. I appreciate the comment. I mean, obviously after the state aid cut last year not every municipality but many municipalities were put in a position to raise property taxes but not all of them certainly. And, of course, of the 530 cities and villages in the state of Nebraska there are roughly 195, a little over 195 that have local option sales tax. Some of our smallest villages don't have sales tax. They're not fortunate enough to even have a store in their locality. [LB745]

SENATOR HADLEY: Okay, thank you. [LB745]

LYNN REX: Thank you, sir. [LB745]

SENATOR CORNETT: Senator Adams. [LB745]

SENATOR ADAMS: Thank you, Senator Cornett. Lynn, take me back historically as best that you can. I'm trying to differentiate, you started to do that, occupation tax from sales tax. What was the original, as you would understand it historically, the purpose of an occupation tax? [LB745]

LYNN REX: Well, the purpose of the occupation tax, it is based on...it's intended to raise revenue. [LB745]

SENATOR ADAMS: Aside from raising revenue, we know that. [LB745]

LYNN REX: Okay. [LB745]

SENATOR ADAMS: But when...at some point in time when the Legislature identified here's a place where we can raise revenue, I'd like to think that there was a rationale besides just raising revenue. [LB745]

LYNN REX: It's on the privilege of doing business within that municipality. In the same way, Senator, that when the state of Nebraska licenses folks to do business in the state. For example, if you're taking an exam and you're going to be licensed to do certain things in the state, you pay the state of Nebraska a fee. For example, the same with building permits, things like that. It's just an extension of it. It is a privilege of doing business within the municipality. [LB745]

SENATOR ADAMS: Okay. So when we talk about, and again clarify for me, when we say the privilege of doing business, do we mean literally that we're letting you be here, or did the cities have a cost that was inherent with the...the circus is coming to town and we're going to let them come to town. But we know that there's going to be an inherent cost for the five days that they're here or something in police or street cleaning or... [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

LYNN REX: Right. [LB745]

SENATOR ADAMS: ...you see what I'm getting at? [LB745]

LYNN REX: Yes, I do. [LB745]

SENATOR ADAMS: So is there a cost connection... [LB745]

LYNN REX: Yes. [LB745]

SENATOR ADAMS: ...that is based on this tax? [LB745]

LYNN REX: Yes. Yes, I mean, the...historically this is based on the privilege of doing business. Yes, we're letting you come into York, Nebraska, and do business here. Let's assume it's a type of occupation though that may...let's say it's liquor, let's say it's something of that nature where it may require more police protection, where you're dealing with a situation where it may have a shoplifting-type situation, so you're going to have more police action with that. Certainly being able to have access to city services, other sorts of things, so it's the privilege of doing it, and it's the cost, the administrative and regulatory cost as well. [LB745]

SENATOR ADAMS: Okay, thank you. [LB745]

LYNN REX: You're welcome. [LB745]

SENATOR CORNETT: Just a point on that though. When they were first enacted, the statute, and still does, reference peddlers and... [LB745]

LYNN REX: Yes. [LB745]

SENATOR CORNETT: ...if I'm not mistaken from the research that my committee has done on this, is it was originally, originally enacted for people that were passing through. [LB745]

LYNN REX: At the very beginning it was, yes. [LB745]

SENATOR CORNETT: I think that was his question, what was... [LB745]

LYNN REX: Oh, I'm sorry. [LB745]

SENATOR CORNETT: ...the original history of what brought occupation taxes... [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

LYNN REX: Okay. [LB745]

SENATOR CORNETT: ...into existence. And the statutes directly reference peddlers and carnivals and... [LB745]

LYNN REX: That's true. [LB745]

SENATOR CORNETT: And that's what it was originally for. But, you and I have had a number of conversations over the past two years in regards to occupation tax, correct? [LB745]

LYNN REX: Yes, we have. [LB745]

SENATOR CORNETT: (Laugh) And you know that the fact there is no upper limit, unlike other taxes on occupation tax that has made me uncomfortable. And we've talked many different times about how we could, because each municipality has done something different. And as... [LB745]

LYNN REX: That's right. [LB745]

SENATOR CORNETT: ...Bill Lock, my research analyst, says, it's a little bit like trying to get the horses back after they're in the pasture. They've all went a different direction. When you also talked about a tax being...a court case challenging the upper limits on that tax or whether it was too much and you said that there has...there is nothing established on what is too much as a percentage, correct? [LB745]

LYNN REX: Well, to my knowledge, I mean, basically the courts have taken it on a case-by-case basis. And there have not been a vast number of challenges over the years, but certainly the court cases, in preparing for this hearing, make it clear that obviously it's got to be uniform and within the classification and it cannot be confiscatory. [LB745]

SENATOR CORNETT: Do you feel that there is anything that is unreasonable in the way of a percentage? Last year Senator Fischer dealt with occupation tax on telecommunications where Nebraska was the highest in the country. And that had not received a court challenge. Am I correct? [LB745]

LYNN REX: Not to my knowledge, no. [LB745]

SENATOR CORNETT: And I believe it was at 17 percent. And overall, that seems to me to be a very high standard. [LB745]

LYNN REX: I do think though, Senator, that there are some other things that fall in that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

mix, and I'd have to get the information for you. But my understanding from folks that worked on that bill with us last year is that in other states there are different mixes of taxes that were on the telecommunications company. And so it's a...depending from state to state,... [LB745]

SENATOR CORNETT: We're just referring to the occupation tax though,... [LB745]

LYNN REX: Okay. [LB745]

SENATOR CORNETT: ...not the other mix of taxes and what... [LB745]

LYNN REX: Okay. [LB745]

SENATOR CORNETT: ...their overall tax burden was in other states. [LB745]

LYNN REX: Okay. [LB745]

SENATOR CORNETT: We're just referring to the occupation tax. What is your feeling about the occupation tax being rolled into the spending lid? [LB745]

LYNN REX: Absolutely opposed to that and for this reason. When that lid was put in place, in 1996 the levy limits went into place,... [LB745]

SENATOR CORNETT: Correct. [LB745]

LYNN REX: ...the lid itself, which was in 1996, which is LB299, that was supposed to be in effect for two years. And I realize that is then and this is now. But when this committee put in place LB299... [LB745]

SENATOR CORNETT: Well, I meant the budget lid. [LB745]

LYNN REX: That's what I'm talking about. [LB745]

SENATOR CORNETT: Yes. [LB745]

LYNN REX: Yes, yes, ma'am. So basically, with respect to LB299 that was supposed to be in effect for two years so that nobody would artificially raise their budgets. And then in 1998, that was supposed to go off and the levy limits were supposed to kick in. And by that time unfortunately, Senator Warner had passed away. And the committee decided, you know, Senator Coordsen then was involved, and he said, you know, we're just going to keep that...we're going to keep them both. So you have two...two... [LB745]

SENATOR CORNETT: The budget lid and the spending lid, yes, or the lid levy. [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

LYNN REX: Basically, the lid on restricted funds, the limit on restricted funds, as well as the levy limit itself. But every municipality is different. So, for example, some municipalities may not have even yet imposed some occupation taxes that they may look at down the road. Notwithstanding, we're in a situation where this has been outside of the lid and levy since its inception, just like bonded indebtedness has been outside the lid and the levy. I think it would be incredibly unfair to now put that under the lid and the levy, because it would have a disparate impact, it would be a different impact on every city and village in the state. [LB745]

SENATOR CORNETT: But a city can override its lid levy with a vote of the people, correct? [LB745]

LYNN REX: You can go for property tax,... [LB745]

SENATOR CORNETT: Property tax. [LB745]

LYNN REX: ...if you're going to exceed what that is. There is no city that has done that. And in fact municipalities in this state... [LB745]

SENATOR CORNETT: But they do have the right to do that. [LB745]

LYNN REX: They have the right to do that. By the same token, I would just respectfully suggest what Senator Hadley mentioned a little bit earlier, and that is in some states, I mean, the discussion has been with TABOR and the Taxpayer Bill of Rights that your taxes should be submitted to a vote of the people too. How popular do you think it would be for the state sales tax to be under a vote of the people or, in fact, your income tax rate, whatever those may be. I'm just suggesting to you it is for the basic, for the fundamental purposes of government. I think that's what representative government is for. You elect folks, just like we elect you to make those decisions. I think it would be terrible to have your state income tax or your state sales tax rate subjected to a vote of the people. Trying to explain that, having been involved in every initiative, opposing every initiative to place lids on the state, on you, because you lose flexibility. [LB745]

SENATOR CORNETT: So how opposed would you be to some type of structure like we've implemented with other taxes for occupation tax? Because I think that's what makes the majority of us uncomfortable is the fact occupation tax was crafted in the late 1800s and has not been revisited in regards to how it is structured. [LB745]

LYNN REX: Senator, we're more than happy to sit down with the committee and work with you in terms of gathering information that you might need, in terms of putting in place, you know, some considerations in terms of how this might work. Frankly, I can tell you from talking to our cities across the state and villages it is so different from city

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

to city, from village to village. The mix is different. So trying to come up with one solution that's going to fit everybody, this would make the telecommunications tax look like a walk in the park. [LB745]

SENATOR CORNETT: And I think that you and I have discussed this in the past. [LB745]

LYNN REX: Yes. [LB745]

SENATOR CORNETT: When I first started looking into occupation tax, trying to get the numbers from the cities because they do not report what they collect in occupation taxes to the state, we could not even get reliable numbers, because a lot of the municipalities basically said we don't have to report to the state what we collect in occupation tax, a requirement to disclose how much they are collecting? [LB745]

LYNN REX: Oh, I think that's just fundamental. I think, of course, that should be done. I think that there is...it's a public record. I would submit to you that... [LB745]

SENATOR CORNETT: But those occupation taxes a lot of times are scattered throughout that budget. [LB745]

LYNN REX: It is. [LB745]

SENATOR CORNETT: And they're very difficult to pull out. [LB745]

LYNN REX: It is. And that's why my guess is with the hundreds of villages, the reason why you probably weren't successful in getting as much information from them is because it would have required them, quite frankly, to go to their local CPA or whoever helps them put their budget together, to sit down and pull all of that out. In most of our... [LB745]

SENATOR CORNETT: But a lot of them don't have more than one occupation tax. [LB745]

LYNN REX: Well, but you're looking at city clerks, village clerks, Senator, that are volunteers. I think there's a perception that perhaps every city in the state of Nebraska or every village has got paid personnel sitting out there. No, that's not the case. I mean, we're lucky to have even some part-time people in some of our smallest villages. Even in our second-class cities, they're lucky if they have a full-time city clerk and one person who typically, by the way, is a guy who takes care of the roads, the streets, the swimming pool, and anything else. So in many cases I think, Senator Cornett, they may not have the personnel to do it. But frankly, there is...it's just to me fundamental. If the state of Nebraska wants to say that they need to have a reporting along with their

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

budget statement of what their total...what their occupation taxes are, what the rate is, and what the amount is, I mean, obviously, that's a public record and you should have it. But I don't think it's necessarily easy for some of our smaller communities to find that. I'm not saying that the first-class cities or the larger second-class cities have any excuse for not providing it. [LB745]

SENATOR CORNETT: One final question then I'll leave you alone. We have found that, and I know as soon as I say this someone is going to say I'm picking on them, but I'm not, in regards to an occupation tax that was imposed, that more money was collected than originally foreseen to be collected on that occupation tax. Should there be a requirement, or maybe not a requirement, that the municipality project how much money they believe the occupation tax is going to collect and if it's actually bringing in more than that to reduce the rate? [LB745]

LYNN REX: I think that that's a very good question. I think that when you're looking at some of the most recent occupation taxes, for example, the ones on restaurants and bars, for example, that people do their best job of trying to make a projection of what it can be. And I would think that the local governing officials would certainly want to look at that or at least indicate to the voters what else is going to happen in the taxpayers. I'm just suggesting to you that I really do think that there are certain things in terms... [LB745]

SENATOR CORNETT: If there's a surplus over what is intended, it either goes back to lowering the rate or goes to do such and such. [LB745]

LYNN REX: But I think that needs to be a decision on the local level, made by local, elected officials. I think it's extremely important that the occupation taxes, when you look at the whole scheme of what it takes to put a budget together and you have a couple of mayors, or former mayors sitting here, at the end of the day, we're in a position where, I mean, are you going to vote on certain contracts? Are you going to submit it to a vote of the people? I mean, some of the contracts that cities are involved in far exceed whatever they might get out of an occupation tax. Does everything go to a vote of the people? At which point does representative government really kick in? [LB745]

SENATOR CORNETT: I wasn't talking a vote of the people there, but that's... [LB745]

LYNN REX: Oh, I'm sorry. Okay. [LB745]

SENATOR CORNETT: No, that's quite all right. Any further questions? Seeing none, thank you. [LB745]

LYNN REX: Thank you very much for your time, really appreciate it. [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

DOUGLAS KINDIG: (Exhibit 10) Good afternoon, Chairman Cornett and members of the Revenue Committee. My name is Douglas Kindig, K-i-n-d-i-g, and I serve as the mayor of the city of La Vista. I'm here today representing the United Cities of Sarpy County, a coalition of the mayors of the municipalities of Springfield, Gretna, Papillion, and La Vista, testifying in opposition of LB745. I've provided a letter to the committee that serves as my basis for the testimony today. The United Cities of Sarpy County oppose LB745 as currently drafted, which would require voter approval to enact or raise occupation taxes. In addition, the specific purpose of the tax would have to be listed on the ballot as well as a sunset or termination date for the tax. We have serious concerns regarding the potential impacts of the proposed legislation and hope to provide you with an understanding of the significance of this revenue source in our respective jurisdictions. The purpose of the occupation tax is to generate revenue. Its use in our cities is not issue specific, rather it supports the cost of providing basic municipal services. Any class of city may collect an occupation tax within its boundaries and must supply it uniformly and fairly to the types of businesses on which it is imposed. The occupation tax rate is set by the city imposing it and the rate may vary from city to city and by type of occupation or business activity within the city. An occupation tax is considered a cost of doing business. And as a result, each municipality charging an occupation tax has likely based its types of businesses in their community and has established reasonable rates accordingly. Governing body members in our jurisdictions are elected to represent citizens and to make decisions to ensure the provision of necessary public services and efficient and effective operation of municipal government. We are subject to reelection if we do not make choices that are popular with our voters. We are elected to become educated and knowledgeable about the issues in order to make that determination about what is necessary and appropriate for our municipality. Our cities rely on the revenue generated through the imposition of occupation taxes to fund essential municipal services. In addition to experiencing the effects of the nationwide economic crisis, we continue to face increases in operational costs beyond our control. As we strive to provide municipal services in our rapidly growing communities, we become increasingly concerned that if local government officials are unable to make necessary determinations in a timely manner regarding revenues which are needed to fund essential municipal services, the losses will ultimately impact our citizens, our residents via reductions in municipal services, and/or increased property taxes. Over the past several years property tax relief has been a major focus at the state level. However, making the imposition of raising...the imposition or raising of occupation tax revenues more difficult will likely be in direct conflict with this initiative. Clearly, any reductions in this revenue stream would need to be compensated for elsewhere. We truly believe that our respecting governing bodies have been responsible in establishing the occupation tax rates in our cities and that the proposed changes will be detrimental to our ability to generate revenue necessary to support the cost of providing essential municipal services. May I also add, there was a quote in the paper the other day in regards to this bill that stated, citizens do not come to council meetings, but will pay attention at the ballot box. Last Tuesday I had 150 citizens in my

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

council chamber. Citizens will come out and will attend meetings if there is an issue that a decision is to be made or that will be discussed that will affect them. Citizens will be heard. Our citizens already have the ultimate power if they do not like what the elected officials have done. I urge you not to support this bill and allow the local jurisdictions to make the best and most knowledgeable and transparent decisions based on what is best for their community. In order to provide more clarity, we would welcome the opportunity to discuss this further. In the meantime, however, for the reasons I have mentioned, we must strongly oppose this legislation and request that you do not advance this measure. At this time, I'd love to take questions if you have any. [LB745]

SENATOR CORNETT: Senator Pirsch. [LB745]

SENATOR PIRSCH: Thank you. So it's pretty fair then to characterize your testimony is it really doesn't matter what the historical origination or the purpose for which occupation taxes were originally implemented in the 1800s. The only important thing to know is that now they're revenue raisers, right, for the cities that they depend on. Is that... [LB745]

DOUGLAS KINDIG: They're revenue raisers, Senator. But at the same time, they help offset the cost of the services that we provide to those businesses, and what those occupation taxes are intended to do. You know, I didn't know the history of the occupation tax. And I can tell you, Senator, I disagree with some of the occupation taxes La Vista has. And I...but I've been able to voice that. I don't think it should be the people though. It needs to be the knowledge of the local, elected official. [LB745]

SENATOR PIRSCH: So you say some of them might be in part conceptualized upon an offset of additional cost that the city would incur is what you... [LB745]

DOUGLAS KINDIG: Yeah. And I don't think every tax is fair, but...right. [LB745]

SENATOR PIRSCH: Okay. I just wanted to get your position on that. With respect to, and I understand Kearney is somewhere around 11 percent, this is just from the letter that I've received, 11 percent of total revenues for the city are derived through occupation tax. Do you have an understanding of where your city is? [LB745]

DOUGLAS KINDIG: Yeah, we're at roughly 7 percent, which would translate roughly to a 7 cent increase in the property levy. [LB745]

SENATOR PIRSCH: Okay. And do you have an understanding of the, either within your city or the United Cities of Sarpy County, has...you're at 7 percent. Do you know where the other cities, Papillion, Springfield, Gretna, are at? [LB745]

DOUGLAS KINDIG: You know, I know that Springfield, I believe what I saw in their

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

general fund it's actually close to 16 percent because of the smaller number. I do not have the information on the other cities. I can get that for you though. [LB745]

SENATOR PIRSCH: Yeah. Have occupation taxes, and I heard the testimony that other sources of funds that have existed in past years have been cut off, but as a result of that, have occupation taxes in particular the percentage of either the rate or the percentage of...as a percentage of city revenues as a whole, have those tended overall to go up in recent years or decades? [LB745]

DOUGLAS KINDIG: You know, speaking on the city of La Vista, Senator, I can tell you that it was a number of years ago, probably seven to eight, that we took an overall look at all of our occupation taxes and what we charge for them. And at that time we did revamp a lot of them. So I do think because of the lack of funding from some of the other sources that at least in the city of La Vista we did take a look at that. And we do have a pretty comprehensive list of occupation taxes in the city of La Vista. I think they are fair. I have said I don't agree with all of them. But I think that they're fair. And I think that they support the overall general budget. It's not, you know,... [LB745]

SENATOR PIRSCH: Sure. And I'm sorry. And not to weigh into the issue of fairness... [LB745]

DOUGLAS KINDIG: Right. I'm sorry. [LB745]

SENATOR PIRSCH: ...and whatnot, which I, of course, have no understanding in particular. But I'm just asking more of a general question that just goes, have rates gone up in recent years? Whether that's because of other state moves in cutting off funding to municipalities or... [LB745]

DOUGLAS KINDIG: The simple answer, Senator, would be... [LB745]

SENATOR PIRSCH: ...has it been stagnant since 1800, the late 1800s, right around, you said 7 percent, is that what you said? [LB745]

DOUGLAS KINDIG: Seven percent, Senator. But I think...I can get it for you. But I would think to our general fund that 7 percent has probably held pretty true. I don't want to say that we've done cost of living on occupation taxes, but maybe that would be a way that we've kept up with the costs. I don't think the overall percentage has gone up in our general fund. [LB745]

SENATOR PIRSCH: For what period of time? [LB745]

DOUGLAS KINDIG: I will provide you that information. [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

SENATOR PIRSCH: Thank you, I appreciate that. [LB745]

SENATOR CORNETT: Senator Hadley. [LB745]

SENATOR HADLEY: Senator Cornett. Mayor Kindig, thank you for coming. A couple of points. Actually, when I was on the city council, mayor or someone had told me that one of the reasons they called it occupation taxes were for the utilities that used to occupy part of the city property, and the telephones and such as that, that was a tax on them to occupy part of the city property. So that's another definition of occupation tax. I guess I have more of a philosophical question. One of the things that surprised me down here in the last three or four years is kind of the concept that cities and counties aren't doing a good job in managing their operations. Would you like to comment on that? I guess, maybe that is...it's at least a perception I picked up. [LB745]

DOUGLAS KINDIG: You must have saw the anger in my face when that comment was made during a previous testimony. It said that the cities weren't good keepers of the taxpayers' money. I can only speak on behalf of the city of La Vista, Senator, because that's what I know. I do this because I want to do something for my community and I take it very serious. We don't waste the taxpayer money. The decisions that we make are based off of good knowledge that our staff has been able to give us, on the time that I take to study those issues, and we don't have waste in our city. Now we all know that you can pick out something from an organization, it doesn't have to be government, it can be a business. And you can say, you know, I could save you money there. But if you look at the overall big picture, if you're going to spend \$1,000 to save a penny, I don't think that's a smart thing. So to be honest, Senator, I appreciate you giving me that opportunity. I'm offended when those comments are made because I don't do this for personal recognition. I don't do it for personal advancement. I do it because I want to do it for the best of the city. And I would think that 99 percent of the local politicians and maybe 100 percent across the state of Nebraska do it for that reason. [LB745]

SENATOR HADLEY: Thank you, Mayor. [LB745]

SENATOR CORNETT: Mayor, you and I have had a number of conversations about this also. And something as we've been sitting here talking about the percentage of the budget, you have your spending lid which the occupation tax sits outside of,... [LB745]

DOUGLAS KINDIG: Right. [LB745]

SENATOR CORNETT: ...but you include the occupation tax in part of your budget. Correct? [LB745]

DOUGLAS KINDIG: Right. [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

SENATOR CORNETT: Over the course of the last couple of years I know we've talked about the fact that there's such a wide variety of how occupation tax is implemented, I mean, just in Sarpy County, everything from the number of square feet in a building to just all different types. Instead of trying to say when a municipality can tax or can't tax or...and trying to set an amount that they can tax, an upper limit, if we were looking for structure, what about a percentage of the budget? You're at 7 percent and that's held fairly steady. And I'm not saying 7 percent for everyone. But as a percentage of a budget, X number of occupation tax...your occupation tax can't go over X number as a percentage of your budget. [LB745]

DOUGLAS KINDIG: You know, first of all, we'd always be willing to work with you, but I think I would oppose that for this simple reason. The costs that the city deals with, it's not cost of living, it's not 2 percent, it's not 3 percent a year, it's the healthcare, it's the fuel costs. If you were to cap us, if you want to remove the cap on our property tax and allow us to make that decision I can go along with that. I don't think that's probably going to happen. We can't be restricted in what we can raise, because to go back to Senator Hadley in allowing me to say that we're good keepers of our taxpayers' money, if you restrict what we can raise and we come up to that lid, our only other choice is to cut services because that's the industry that we are. If the citizens, and I've asked the citizens this in La Vista. And we have a higher property tax rate, probably one of the highest in Sarpy County. I'm not proud of that, but as a growing community that is where we're at. It's not because we've wasted the money, it's because we're growing. If you were to stop us from that growth with that cap, is that really the right thing to do? In the long term is that really going to generate more dollars for the state through property taxes, tax dollars, sales tax and everything else? So any lid, and I will say this, any lid that comes down that restricts the local official's decision to do what's best for their community, I would probably oppose. But we would be willing, obviously, to sit and talk to you. [LB745]

SENATOR CORNETT: One other thing that you said, this was the cost to the city of these businesses doing business... [LB745]

DOUGLAS KINDIG: Um-hum. [LB745]

SENATOR CORNETT: ...inside. Why are they not addressed in fees? [LB745]

DOUGLAS KINDIG: You can call it an occupation tax, you can call it a fee, you can...I mean, a lot of these... [LB745]

SENATOR CORNETT: But do you... [LB745]

DOUGLAS KINDIG: ...do fall under the occupation tax, and that's how we have it. But you know some of our businesses, and I think it was mentioned earlier, and I hate to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

pick on the liquor establishments, but... [LB745]

SENATOR CORNETT: You do have the cost of law enforcement... [LB745]

DOUGLAS KINDIG: ...law enforcement and that type of thing. And, you know, so it is a fee of doing business in our community. But I hate that comment because it sounds antibusiness. And I know that,... [LB745]

SENATOR CORNETT: An occupation tax. [LB745]

DOUGLAS KINDIG: ...you know, the chamber talked about that a little bit in earlier testimony about we don't want to chase people away because of these added fees and stuff. But at the same time, these fees are paying part of our general fund which is providing good road service, police and medical, park and rec programs, because your executives want to live in the community now. So my argument to them is these fees aren't going to chase businesses away. One reason we have such a strong business structure in the state of Nebraska is because of the services we provide. And I'm sorry, services are expensive. This is a way for the city to provide those services and to get those people to continue to come to the state. [LB745]

SENATOR CORNETT: Further questions from the committee? Thank you very much, Mayor. [LB745]

DOUGLAS KINDIG: Thank you very much. [LB745]

JAY VAVRICEK: (Exhibit 11) Hello. Nice to see everyone again. My name is Jay Vavricek, spelled V-a-v-r-i-c-e-k. I have the proud honor of being mayor of Grand Island, and great to be back here again under better circumstances maybe than last year. So once again, just appreciate everyone's leadership. And I know the work that you do is so important. And appreciate the spirit of LB745 and Senator Fischer's Nebraska spirit in bringing this forward because I think a lot of good things are going to come as a result of the discussions. So ultimately also here I have former finance director Mary Lou Brown. She's our city administrator. So any specific questions, I mean it's kind of an (inaudible) circumstance to go in and address this panel. But nonetheless, let me get to the heart of why I'm here. Obviously, as a League of Municipalities member, we echo the support of postponing action on this bill. But we think the discussion is wise and good. And I can say that Grand Island is probably in the same boat as Omaha three or four years ago, same financial stress, same circumstances. And I can go through a number of different steps that we've tried to accommodate and maximize a dollar. We tried to make up \$2 million last year in our budget shortfall and on and on and on. Had to reduce its work force. So indeed every resource is precious. And how you maximize that efficiently is what we're trying to do at the local level. As for occupation taxes, first, we celebrate the opportunity to vote. And that's a consideration that occurs at the local

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

level. And we definitely appreciate that. And I think when I look back at the history of occupation taxes that we have in Grand Island, we only have a couple, two or three. And they may or may not emulate what other cities have done over the years. But I would just tell you there was one on...impacted back about 1990 for a city lodging tax for a designated purpose, to go ahead and provide for the operational support of the Heartland Event Center. It was not voted upon. It was entrusted to local leadership. A similar occupation tax was levied also recently by virtue of the relocation of the State Fair. The reason I bring that up because, indeed, there has been some acrimony in our community as to what degree is that a specific purpose to relocate the State Fair, or is that a specific entity, a building, a this, a debt service reduction. So I think this discussion has been good. But also, too, let me just tell you this, the occupation tax that I've described, a majority of them are passed through. They don't provide any support in the general fund for police, for fire, for municipal services because the Heartland Event Center receives support for operational expense. It doesn't help the city at all in terms of general fund. The occupation tax on food and beverage, as a result of the relocation of the State Fair, also is largely dedicated to serve debt, and it will expire by virtue of an ordinance. So the short-term ramifications of this bill may or may not be all that dramatic. It may not help or hurt. But long-term we need to make a decision because in four years plus that occupation tax on food and beverage will be retired based on the revenue strength right now. And then a decision will be made at the council level to extend it, for what purpose, not extend it, take it a vote. So the relevance of this discussion we need to know. Also, in terms of the Heartland Event Center support, that lodging tax, that will uniquely, I think, expire before the debt service is actually paid for. So we're going to need to be in a position. A, if it's not needed, why tax it. If it's needed, we need to know because we really can't take on anymore bricks on the load at the local level. That's just the reality. And as a result of that, let me just share this, we share in commonsense solutions. Our city has made commonsense, practical decisions at the local level. So from that respect I soundly support local decisions. But I'm also a taxpayer and I also know there's only so many dollars in anyone's pocketbook. And so we're trying to accommodate eternally with business decisions to go forward rather than look at outside excess taxes. And there's no discussion in our community at this time to expand occupation taxes. So we're trying to make do. But nonetheless, we're in the same boat as every city. We are strapped. We're a service provider and obviously this is an important matter, and appreciate your leadership. [LB745]

SENATOR CORNETT: Senator Pirsch. [LB745]

SENATOR PIRSCH: Towards aiding me in just understanding the landscape of where things are at, and I know you're... [LB745]

JAY VAVRICEK: Good luck. (Laugh) [LB745]

SENATOR PIRSCH: Right, thanks. And I know that you're, you know, it's probably

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

unfair to ask you to generalize across, so just define to your experiences in your municipality. You say you have just a couple of occupation taxes, the food and beverage? [LB745]

JAY VAVRICEK: Well, let me, I can go on. I'm sorry, Senator. We have a cell phone occupation tax of 3 percent, that results in general fund support. So that indeed does provide essential services, enacted uniquely, wasn't the mayor at the time, but it goes back to 2006. At the time I was not in favor of it. I left office at that time. Unanimously passed at the local level, and there was not one peep of opposition. [LB745]

SENATOR PIRSCH: Yeah. [LB745]

JAY VAVRICEK: But that's the third occupation tax we have there. [LB745]

SENATOR PIRSCH: Oh, so there's only three then. So the one, the cell phone tax 2006, you said the Heartland Event Center that just obviously popped up the last couple... [LB745]

JAY VAVRICEK: It's dedicated by ordinance to that designated entity. [LB745]

SENATOR PIRSCH: So that hasn't existed very long. [LB745]

JAY VAVRICEK: I'm going to guess probably since 1990, somewhere in that ballpark. [LB745]

SENATOR PIRSCH: Oh, 1990, okay. [LB745]

JAY VAVRICEK: It was earmarked I think for 20 years, a definite time period. And let me just remark, there are...I hate to get into tax policy thoughts completely. But in terms of occupation taxes, there's good and bad. They can be enacted quickly and they can be revised quickly. But if you designate a purpose, like we have, then how do you serve those needs? And ultimately the caveat is it can potentially add more dependency on property tax revenue, of which we do have ample authority potentially to do. [LB745]

SENATOR PIRSCH: Sure. And the third, you mentioned food and beverage, right, occupation taxes. That's not dedicated, right, or is it dedicated? [LB745]

JAY VAVRICEK: I'll describe that. It's 1.5 percent and I think the rationale at the time was the fact that the community had expressed an interest in relocating the fair, the time line was very quick. Voting on it could have occurred. However, as we try to relive history, going back in time we didn't know if the bill would be passed, signed by the Governor, have an emergency clause. At the time there was significant court challenges. So we didn't know at the community even to what degree a vote could

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

occur. I wasn't there at the time, but that's my impression. But nonetheless, it was enacted, 1.5 percent. It's grossing about \$1.3 million a year. And that's about the only revenue, tax revenue that's growing. [LB745]

SENATOR PIRSCH: Okay. But is that dedicated, earmarked for a specific purpose? [LB745]

JAY VAVRICEK: It's relocation of the State Fair. [LB745]

SENATOR PIRSCH: Okay. [LB745]

JAY VAVRICEK: Initially by ordinance was earmarked for a community field house that also serves as a component of the State Fair. Then there was a legislative...not legislative, a determination from the State Fair to earmark a certain portion of our community's financial commitment to be served...to relocate softball and soccer fields. So the ordinance was amended. And then as a result of the budget challenges this past year, as a result of the State Fair relocation, there is the host city match of approximately \$350,000. And council voted to provide that ability to serve that debt. And then any balance of revenues is applied to debt reduction. So, yes, it is earmarked for a broad relocation of three different State Fair things, along with debt reduction. [LB745]

SENATOR PIRSCH: This has not then been in effect, this occupation tax, for beverage, for a long period of time then either? [LB745]

JAY VAVRICEK: Mary Lou, what? Two thousand eight, she's...2008. [LB745]

SENATOR PIRSCH: So and what I'm getting at is just kind of towards my general, and I'm trying to use just the specific, your municipality. But I'm trying to get a sense of have occupation taxes, which have historically been around since the late 1800s, but are they playing an increasingly larger share of the revenue cities depend on? Have they been going up in recent years or have they been since 1890 pretty set at the same rate and going across? Or are they increasingly more essential and important in the financial picture of cities? [LB745]

JAY VAVRICEK: Sure. [LB745]

SENATOR PIRSCH: And I don't know if you have...I mean, I hate to ask you the... [LB745]

JAY VAVRICEK: No, I can speak on Grand Island's case, of course. I wouldn't want to elaborate on the state of Nebraska. Haven't been used much in our community, except for the purposes I've described. But obviously under state law cell phone occupation tax, that was enacted at 3 percent roughly around \$500,000 a year, helps support the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

general fund. Could potentially, with a council vote, be increased, but uniquely last summer was rejected for that consideration. So there's been a reluctance. It's important because long-term if those revenue sources are...cannot be renewed, then we'll just have to figure out a way to cope. And that means the whole gamut--cut services, raise tax, see what the people want to adapt to. And let me also in full circle, when asked about the means to postpone this enactment, a resolution will be sought of the Grand Island City Council to weigh in on this. I can speak to you on behalf, as Mayor of Grand Island, and give history. But obviously, this is an important matter and long-term strategy needs to be determined and then by postponing this that allows any council resolution to occur. [LB745]

SENATOR PIRSCH: Thank you. [LB745]

SENATOR CORNETT: Senator Brasch. [LB745]

SENATOR BRASCH: Thank you, Chairman Cornett. And thank you, Mr. Vavricek, or close? [LB745]

JAY VAVRICEK: Works for me. Thank you, Senator. [LB745]

SENATOR BRASCH: Will you say it so I... [LB745]

JAY VAVRICEK: Well, I say it Vavricek, around Schuyler and Wilber they say "Vavrocek," so either way just "jak se mas," and it works for me. (Laughter) [LB745]

SENATOR BRASCH: Jak se mas. Have you put a pencil to this, the city, what will this do? What kind of an impact will it have negatively? Will you need to regulate lights on, lights off? You know, is it written in stone somewhere or do you know you have... [LB745]

JAY VAVRICEK: Well, as I mentioned earlier, on the basis of the discussion I really think I...let me back up. I would be hard-pressed to think that any taxation would increase because of discussion. So short-term I think there would be significant push back to even consider that. Number two would be how we go ahead and ultimately determine the need for a food and beverage tax that may expire in four years plus. To say there's not going to be needs, there are going to be needs. For me to speculate what the council or what the people would indicate is a desire remains to be seen. The Heartland Event Center, ultimately we'll see if that ordinance is potentially extended. But once again, that's really not a direct impact to our services now. Cell phone occupation taxes, once again, our general fund is strapped. Income is not rising. Property tax revenue is about the same. Sales tax hasn't gone down, it's not growing, and occupation tax as revenue is largely the only revenue that has been increasing. And I think because of the strength of Grand Island we have a tremendous agri-based

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

economy and we're a retail center. And the thought, I think, of the creation of the usage of occupation tax revenue was the fact that it spreads it to other consumers. They can elect on their own choice to use a product when they visit Grand Island--lodging, food and beverage and so forth for needs that are indicated to directly or indirectly help those same people. [LB745]

SENATOR BRASCH: So do you think if put to the voters they would not elect to support certain activities or needs or functions? Is that a concern that that will not occur? You mentioned, you know, revenues slowing down. What it sounds like, you know, my thoughts are is that the cities have perhaps, in light of the economy, revenues, as you mentioned, that they have a house that they're having trouble affording, that keeping that house maintained and what comes to my mind is this weekend I was watching I think "World News Tonight" or one of those shows, and they talked about in Massachusetts there are seven generations living in one household out of necessity. That we are in hard times, equivalent to the depression of the thirties. They were making a comparison to the Walton's. So I'm just wondering as we see cities, shouldn't we allow people to decide what they would like to put as a priority? But if you're thinking that will shut down operations, cause concerns in public safety, health, well-being, is it a problem to let the people decide in your opinion? [LB745]

JAY VAVRICEK: Welcome to my world as mayor. Indeed, it's a policymaking decision each and every year, knowing that certain decisions were made last year that we're going to live with for the next 8, 10, 20 years. And it's balancing that. And, as Senator Fischer and I have discussed from time to time, cities...it trickles down from policies all over the place. Obviously the state policies, regulations affect costs at the local level. We're investing, due to federal mandates, \$3 million to remove uranium from our drinking water, \$30 million to go ahead and address EPA standards from our coal-fired generation. And once in a while when we talk about stress, we've got taxpayers under stress. We have been fortunate, a strong economy, low unemployment, great destination and great people. But we're also under the gun on ratepayers. And I could go on and on. And if anyone is listening to this in Grand Island they know what I'm talking about. Water rates, sewer rates, sanitary sewer, we're going to have a major discussion of what's a long-term destination, to literally have our wastewater treatment plant officially operate, because all those components take dollars out of our economy that just impact what you're talking about. So the economy is strong. We are very fortunate. But once again, we just need to have some commonsense solutions and know the impact of decisions made here that we try to be a part of. [LB745]

SENATOR BRASCH: Thank you. Thank you, Mr. Vavricek. Thank you, Chairman. [LB745]

JAY VAVRICEK: Well, thank you, Senator. I appreciate that. [LB745]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

SENATOR CORNETT: I'm still trying to figure out the math of seven generations in one house, but that's okay. (Laughter) [LB745]

JAY VAVRICEK: You probably want a kolache or something, but I don't have those. I'll get Senator Karpisek to help. But thank you for your attention. I'll provide Mrs. Brown's testimony. I'm sorry, Senator. [LB745]

SENATOR HADLEY: I'm going to ask you the same question I asked the former mayor. Why do you believe there at times is a perception that cities and counties somewhat are not efficiently run? You know, Jay, you've been mayor twice. You've been around a long time. Why do you think that perception is? [LB745]

JAY VAVRICEK: Well, tongue in cheek, because we work hard all the time. We don't have to do much in PR. And I don't mean that necessarily in jest. But municipal government, I mean, we do have our nose to the grindstone. And we can't sometimes see the forest for the trees, and we're so focused. And we entrust elected leadership decisions and that perception probably to evolve because we haven't maybe done a great job to make sure that indeed you understand our story. I don't know, Senator. I mean, as a former mayor and Senator Adams, a former mayor, you uniquely know what I'm talking about. But also this, I uniquely know in the city and as a mayor you're on the frontline. So you don't have to worry about hearing what people think. I mean, when you make a decision you see them in the eye and you know where they're coming from. And the same thing is with, for example, our 500 employees of the city of Grand Island, I mean, to some degree they're on the frontline every day and probably also underappreciated because we're dealing with providing taxpayer services as a provider. And once again, the challenge is how you keep your streets clean, being prompt on police services, having that paramedic there to respond and take phone calls. So maybe we're our own worst enemy on that. But that's why we love working in city government because I think indeed you can make a difference with people. [LB745]

SENATOR HADLEY: Just one quick follow up on that, and I'll quote Chancellor Doug Kristensen, who is a former Speaker of this body. And his comment to me was, the toughest job is to be a city councilman or a mayor. And as you go up the chain it's a rare citizen who can call Senator Johanns and get Senator Johanns on the phone, because there's that 1.8 million, but there's no problem with calling your city councilman (laugh) or mayor and telling you that things aren't going well in the city. [LB745]

JAY VAVRICEK: Sure. [LB745]

SENATOR HADLEY: So I appreciate the job, and I know it's a tough job. [LB745]

JAY VAVRICEK: And with your indulgence, maybe 10, 15 more seconds, and I talk about Grand Island it's, of course, central Nebraska and it's tri-cities and it's a 90 mile

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

area, trade area. And we are so blessed because the support of all our neighbors helps provide services. In answer now, after thinking to your question, we're having a tough time in Grand Island figuring out how we communicate legislatively. And I think you can appreciate, here it is 4:00, we took off at 11:00 this morning. And the work that I had and the work of the city administrator, it's still going to be there when we get back. And we're not here in Lincoln as much as we could be because, indeed, it takes a lot of time. So that's the story I'm going to stick to is that we haven't done a good job of spending the time to make sure that we promote the challenges, but the opportunities we have before city government. [LB745]

SENATOR HADLEY: Thank you, Jay. [LB745]

SENATOR CORNETT: Senator Schumacher. [LB745]

SENATOR SCHUMACHER: Jak se mas. Thank you for coming and testifying. Do you read this the same as I do, that all this asks is that the city or the county that proposes this simply define the project, put an explanation point on it, and ask the voters yes or no? [LB745]

JAY VAVRICEK: I'm glad you asked about specific projects. It's a double-edged sword. And city administrator Brown and former finance director, she would be jumping up and down because here's the dilemma, if you earmark a designated purpose and you have a revenue stream that's dedicated to it and you make certain assumptions as to how much money you're going to get over a certain period of time, well, you run the risk is you have a lot of cash over here in this fund. Well, then what happens when you have the other fund over here that is dependent upon other revenue streams, but you can't provide for police or essential services. So you run the risk of imbalance. And the other part, cities right now need to be flexible and also have sustainable revenue. Just like your house, we need a steady paycheck and some reliability and also be able to adapt. Just like what we saw in Joplin, Missouri, just like the massive floods. When you think about the legislation here, when you strap a revenue stream to a designated purpose, you might want to have some consideration. I mean, we got issues right now that we can't maybe see, natural disasters and so forth. So that's a challenge. [LB745]

SENATOR SCHUMACHER: But the occupation tax is kind of a bonus tax above the normal kind of things. [LB745]

JAY VAVRICEK: I'm getting the impression, well, maybe in Grand Island's case it's largely a pass-through or it's designated to purposes. But still there is a good chunk, \$800,000 to \$1 million, that helps general fund support. But that also emulates what has been indicated previously. Each city council, each mayor over the period of time have made decisions that they thought were wise at that time. And they probably maybe don't relate to each other now, but they were made on the basis of good judgment in their

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

community. So I don't know if there is any commonality necessarily on that. But it would be a good question to review. [LB745]

SENATOR SCHUMACHER: But given that we have lesser local government instead of the national government, a disconnect between the people and the decision makers, at least at the local level, isn't it good to bring people (inaudible) city so that they suffer the consequences or get the benefit rather than saying, blaming that old mayor who screwed everything up? [LB745]

JAY VAVRICEK: Once again, I only can talk about Grant Island. And I would respectfully note that, boy, there is engagement in Grand Island. Every city council, of course, we put out an agenda four days before, it's on the Web site, all the different things are there for action. We've had more study sessions than ever before. It's live on TV. People see firsthand what you say, when you say it. It's reported the next day. We're accessible. Granted, not everybody is going to show up. But when you can sit in your easy chair and see what's going on with your remote control, I don't think you necessarily need to be there to be engaged. It's my sense in Grand Island there is engagement, you just may not see it firsthand. [LB745]

SENATOR SCHUMACHER: Thank you, nostrovia. [LB745]

JAY VAVRICEK: Well, thank you. [LB745]

SENATOR CORNETT: Further questions? Seeing none, thank you very much. [LB745]

JAY VAVRICEK: Just love being here. And thank you for your leadership in so many ways. Thank you. [LB745]

SENATOR CORNETT: Further opponents? Neutral? Senator Fischer, you are recognized to close. [LB745]

SENATOR FISCHER: Thank you, Senator Cornett and members of the Revenue Committee. And I'd like to thank everyone who came and testified today. I have a few comments if you would bear with me. I've been in this Legislature for eight years, and we discuss tax policy every year. We talk about state aid to schools every year, that's tax policy. In 2007, we passed the largest tax relief package in the history of this state. That's tax policy. We passed the Nebraska Advantage Act and Angel Investing, that's tax policy. So it shouldn't come as a surprise to anyone that we're still discussing tax policy. The occupation tax is a privilege of doing business. I thank Jim Otto for coming today because I think he gave really the best testimony when he described what an occupation tax is and what a sales tax is, because that's what I think is the basis of this discussion we're having. The current occupation taxes, in my opinion, are sales taxes. And for that reason alone I think we need a vote of the people. The statutes require a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

vote on any sales tax increase. And as Richard Baier told us, on the sales tax for economic development, the purpose, a sunset, and a vote of the people are required. And it's easy to explain to the people because you have stated what that specific purpose is. Senator Hadley, the perception that cities aren't responsive to taxpayers, I would disagree with you on that. I think cities, city councils are very receptive to their taxpayers. I think county commissioners, county supervisors are. I was a school board member, I think school board members are very receptive to their people. Anyone at the local level is receptive to their people. That's not the discussion we're having with this bill. With this bill we're talking about tax policy. And I present to you that an occupation tax has become a sales tax and should be treated as such. This bill does not cut any city's occupation tax that they have. They will still be receiving it. So the discussion that we heard from some of the opponents to the bill about the burdens that a city may be under because of this bill, I discount because they are not facing a cut. And this bill does not limit their ability to pass a new occupation tax. What it does is recognize that these occupation taxes have become sales taxes. That I think needs to be our discussion in this committee and it needs to be our discussion on the floor. We heard that municipalities are facing decreases. I would propose to you that taxpayers have been facing increases in taxes for decades. That's what I hear. And we even had one opponent say that taxpayers are under stress. That's what we need to be addressing. Again, this does not cause any reduction in a current revenue stream. When we look at occupation taxes, I was in Grand Island recently, and I thank Mayor Vavricek for his very pertinent comments during his testimony. But when I visited with people in Grand Island, and I would like to visit with him about this, I was told that, by businesspeople that collection of occupation taxes is a problem. And they questioned if all businesses even paid those taxes. And they told me that there's little accountability. As a matter of fact, the Department of Revenue does not, our Department of Revenue here in Nebraska, does not even have a list of occupation taxes. We don't have to have a special election in order to have a vote of the people. This can be submitted as a question at a primary or a general election. You will find that on page 2, line 4 of the bill. It was brought up by Mr. Mark Whitehead about the tax on motor fuels, that excise tax. That is not allowed under our current statutes. And I believe it should not be allowed. This is the kind of thing we're going to see in the future. This is the kind of thing that we're going to see defined as an occupation tax. That's why we're having this discussion. And with term limits, this discussion becomes even more important. So I hope you'll continue to take this seriously. As Senator Cornett said, I don't know maybe I'm misquoting you, Senator, but I'll say that, you know, we're trying to get the horses back in the barn. Yes, this tax has been in effect for over 100 years, but it's changed. And we need to take a long look at it and realize what it's become and realize that it is the duty of the state to regulate it. Thank you. [LB745]

SENATOR CORNETT: I'm going to kick myself for going here. [LB745]

SENATOR FISCHER: I know, you wrote me a note. Senator Cornett wrote me a note

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
January 25, 2012

saying, I hate you. (Laughter) [LB745]

SENATOR CORNETT: I did. That's not where I was going though. [LB745]

SENATOR HADLEY: It wasn't me. (Laughter) [LB745]

SENATOR FISCHER: And now she's going to continue this even longer. Yes. [LB745]

SENATOR CORNETT: I am. We have a bill on the floor of the Legislature and a bill in this committee dealing with sales tax. If occupation taxes essentially became a sales tax, do we allow municipalities the right, with a vote of the people, to increase their half cent sales tax, which is open, audible, easy to collect, and eliminate the occupation tax? [LB745]

SENATOR FISCHER: I think that's a discussion we need to have because right now I believe we have given cities unlimited use of a sales tax and they call it and we call it an occupation tax. This is not an attack on cities. [LB745]

SENATOR CORNETT: That is something that I agree with you. [LB745]

SENATOR FISCHER: This is truly a policy discussion that needs to be had. [LB745]

SENATOR CORNETT: Questions? [LB745]

SENATOR FISCHER: Everyone is afraid now, Senator. [LB745]

SENATOR CORNETT: Good reason. (Laugh) [LB745]

SENATOR FISCHER: Thank you very much, I appreciate it. [LB745]

SENATOR CORNETT: (Exhibits 12-15) Thank you. We do need to move and I again regret to do this, a quick Exec Session on the department bill. [LB745]