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Revenue Committee
February 01, 2012

[LB749 LB903 LB983 LB1033]

The Committee on Revenue met at 1:30 p.m. on Wednesday, February 1, 2012, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB749, LB903, LB983, and LB1033. Senators present: Abbie Cornett, Chairperson; LeRoy Louden, Vice Chairperson; Greg Adams; Lydia Brasch; Galen Hadley; Pete Pirsch; and Paul Schumacher. Senators absent: Deb Fischer.

SENATOR CORNETT: Good afternoon and welcome to the Revenue Committee. My name is Senator Abbie Cornett from Bellevue. To my left, Senator LeRoy Louden, our Vice Chair, will be joining us. He is from Ellsworth. To his left is Senator Deb Fischer from Valentine. To the far left is Senator Greg Adams from York, who will be chairing the hearing while I introduce bills until Senator Louden gets here. On my far right is Senator Schumacher from Columbus; Senator Lydia Brasch from Bancroft; Senator Pete Pirsch from Omaha; and then Senator Galen Hadley from Kearney. The research analyst today is Steve Moore, to my right; committee clerk is Matt Rathje, to my far left. Pages are Michael Killingsworth and Matt McNally. Before we begin the hearing I would please ask everyone to turn their cell phones to vibrate or silent before we begin the hearing. Sign-in sheets for testifiers are by both back doors and need to be completed by everyone wishing to testify. If you are testifying on more than one bill, a form needs to be filled out for each bill prior to coming up to testify. When you come up to testify, please hand the form to the committee clerk. There are also clipboards by the back doors of the room if you wish to indicate either your support or opposition to a bill. Those forms will be included in the official record. We will follow the agenda posted on the door. The introducer or representative will present the bill, followed by proponents, opponents, and neutral. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, please state and spell your name for the record. If you have handouts, please bring ten copies for committee and staff. If you do not have copies, we will provide them for you. When you come up, please hand the copies to the pages. With that, we will begin the hearings. Senator Adams.

SENATOR ADAMS: All right. We'll begin the hearing with LB749. Senator Cornett, you're the introducing Senator. The floor is yours.

SENATOR CORNETT: Good afternoon, members of the Revenue Committee. My name is Abbie Cornett, C-o-r-n-e-t-t, and I represent the 45th Legislative District. I have introduced LB749 to provide partial relief from the 10 percent federal excise tax on businesses in Nebraska that provide indoor tanning services. Due to the 10 percent federal excise tax on indoor tanning services imposed by Congress in 2010, the Affordable Health Care Act, Nebraska indoor tanning services now collect from their customers and pay over to federal and state authorities up 17 percent of total gross receipts from indoor tanning services sold to customers: the 10 percent federal excise tax, plus up to 7 percent state and local sales tax. The 10 percent excise tax, codified as

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Transcriber's Office

Revenue Committee
February 01, 2012

the Internal Revenue Code, Section 5000B, when coupled with longstanding state and local sales tax on admissions, is an excessive excise tax burden placed on businesses in Nebraska. LB749 would help relieve affected Nebraska businesses from the 10 percent federal excise tax imposed by exempting them from Nebraska's state and local sales tax on admission to indoor tanning services. The 10 percent federal excise tax is of special concern because it is arguably the first step towards an imposition of a nationwide sales tax. The loss of jobs in the indoor tanning industry due to the imposition of the 10 percent federal excise tax and the Nebraska state and local sales tax on indoor tanning services has had an undesirable consequence for job retention in the state. More than 30 percent of the indoor tanning services located in Nebraska have gone out of business since the 10 percent federal excise tax was first imposed, beginning July 1, 2010. The loss of those businesses and jobs they provide has also reduced taxable income attributable to the individuals who used to work those jobs and those indoor tanning businesses since they have gone out of business. Going forward, LB749 would help restore the jobs and taxable income lost due to such excessive taxation, and it would help save jobs and preserve taxable income attributable to Nebraska's indoor tanning business. Thank you. [LB749]

SENATOR ADAMS: Thank you, Senator Cornett. And we'll open it up to questions from members of the committee. Anyone? We're going to let you off the hook for now. We'll begin proponent testimony. Senator, did you want to use the light system today? [LB749]

SENATOR CORNETT: Yes, please. [LB749]

SENATOR ADAMS: All right. Three minutes? Five? What would be your preference? [LB749]

SENATOR CORNETT: How many people are here to testify for the bill? Five minutes. [LB749]

SENATOR ADAMS: Five minutes? All right. We will use the light system at five minutes. Welcome. [LB749]

BARTON BONN: Hello, Senator. My name is Barton D. Bonn, that's B-a-r-t-o-n B-o-n-n, and I'm from the Nebraska Indoor Tanning Association. I'm the president and also owner and operator of Ashley Lynn's Tanning, and I operate facilities throughout Nebraska. I want to talk about the economic impact of the taxes on our industry. I find the taxes unfair on several fronts. The first one is, this body had nothing to do with it, but two years ago the federal government imposed a 10 percent excise tax. The combined tax, state and local, is now 17 percent. It's a huge hurdle for any business to try and get over that, and the effects in Nebraska have been particularly bad. There are 31 states that do not tax indoor tanning, so 19 do. And of those 19, Nebraska is one of the highest

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

Revenue Committee
February 01, 2012

taxed of those states. And throughout this recession, Nebraska has weathered it rather well. We're at 4.3 percent unemployment. Yet in my industry 44 percent of the tanning salons have closed in the last two years. That's roughly 500 jobs. Ninety-four businesses have closed. And it's a bad deal to lose a job; everybody knows that. It's a particularly bad deal if you're a business owner and you're forced to go out of business. Often that leads to bankruptcy. In that kind of situation, that may plague you for the rest of your life. It is a devastating event to go through. And what brings that on is the taxes itself. I want to point out further, too, that we are the only industry in the state, the only service industry in the state that is subject to a state sales tax. It's officially an admissions tax. And I think that that's an unfair classification. In the first place, no legislative body in the state has ever declared that we should be the taxed industry. That came as a determination from the Revenue Department somewhere along the line over the years. And when that first occurred I recall it coming up. But my industry and my own business was quite immature. We're still a rather small and immature business. Most of the people that own these businesses work at the front counter, and that's how they earn it and that's where they're at. And at the time I remember trying to make a little bit of a note of it, that I felt that it was unfair. And their response was an audit. So I've just shut up and paid my tax. Well, today it's a combination 17 percent. I think that in most any industry they can handle around that 7 percent tax and so forth. But the combination has led to these devastating results. And I want to kind of put it into some perspective, too, in that the indoor tanning industry, as small as it, employs about...or did employ about 1,100 people in the state. We've lost 500 of those jobs in the last two years. But that's larger than 13 of our county populations. You know, it's not an irrelevant amount. And I'd like to also add that if it were all concentrated in one community, it would be a significant impact to any given community. But it's main street; it's spread throughout the entire state. And so these businesses quietly close up and go away, and those jobs go away. And I think that I'd like to just end my testimony saying that I just find that it is fundamentally unfair that our service be the only industry that is singled out for a tax, and then have the same thing occur at the federal level, and for what cost? You know, the intent...the business of this country is business. Without business to go out and provide for our jobs and our families and stuff like that, we have nothing; we don't have roads, we don't have schools, we don't have anything. So the end result ought to be about business and jobs. And the tax results here have cost those jobs. And that would be the conclusion of my comments. If there are any questions, Senator. [LB749]

SENATOR ADAMS: Thank you, Mr. Bonn. Are there questions? Senator Schumacher. [LB749]

SENATOR SCHUMACHER: Thank you, Senator Adams. Thank you for testifying today. The federal 10 percent tax, does that apply toward all people who deliver tanning services? [LB749]

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

Revenue Committee
February 01, 2012

BARTON BONN: No, it does not. The federal law, the legislation that was within the Health Care bill, exempted dermatologists. And about 20 percent of my customers come for medical reasons; they're referred by doctors. Or, for instance, if you've got psoriasis, a lifelong skin ailment, you quickly realize that you can self-administer by coming to one of my tanning salons. So about 20 percent of our business is that. They were strong proponents about getting that tax into the bill to avoid what was always thought would be a cosmetic 5 percent tax, like on Botox injections and so forth. And at the last minute of the federal bill, on December 19, it was first noted, stated that there would be this federal excise tax on tanning. On December 25, the vote occurred. There was no input from my industry, no telephone, no hearing, no nothing. And so in it came. In addition to that, the revenue commissioner, the federal revenue commissioner determined to exempt gyms from the tax. So I have competitors that provide exactly the same business service and they are exempt from the 10 percent tax. And they promote it that way too: Come here and you can beat my price by 10 percent right off the bat. It's...I find the tax unfair on many levels, Senator. [LB749]

SENATOR SCHUMACHER: Would the distress then caused in your industry be from the fact that it's just jacked up the cost to make it too expensive, or that it's made you competitively unattractive, vis-a-vis your competitors, which is what's caused the loss in employment? [LB749]

BARTON BONN: I think it's a combination, but I would say primarily it is the total cost of the tax. You know, it affects the pricing mechanism. Ultimately, everyone makes a decision based on a price. If we didn't, then we'd all be driving luxury cars. But along the way everyone chooses what level that they can afford; and at some point someone says, I can't afford this anymore. So you add 17 percent tax on our business; and what it's done, it's reduced the number of customers. And essentially what that tax did is it took away the operating revenue of the business. So once I get done paying through all my expenses, I have four things left to do with my income: I have to pay my income tax; I have to live on that; I have to pay my bank principal; and any growth or expansion is where I come from. Why most of these businesses have gone out of business is because those business operators could no longer either pay their federal tax--like my brother-in-law, he's facing bankruptcy in Iowa over the same thing, and...or they can't make the principal payment to the bank. Therefore they're in the red, cash flow-wise, and that's why they're going out of business. [LB749]

SENATOR SCHUMACHER: Thank you. [LB749]

SENATOR ADAMS: Senator Hadley. [LB749]

SENATOR HADLEY: Thank you, Senator Adams. Thank you, Mr. Bonn, for coming. Just a couple quick questions. You mentioned gyms. Are they subject to the 7 percent sales tax on their dues and such as that? [LB749]

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

Revenue Committee
February 01, 2012

BARTON BONN: Well, it depends on how they sell it or provide the service. If you join a gym membership and you're in, you get free access to all of the equipment; then it would be...no, it would just be part of their membership. If they sell it separately as an add-on service, then they should be paying that, the state sales tax or the state admissions tax at that point. [LB749]

SENATOR HADLEY: That's what I was talking about. Okay. Another question, and maybe you can't answer this. In your opinion, did the federal government put the 10 percent on because they saw low-hanging fruit, or did they put it on...sometimes tax policy is used to correct behavior. Do you think this was aimed at the tanning industry at the federal level because of the perceived dangers of some tanning instances? [LB749]

BARTON BONN: Well, that's the way they'd like to rewrite the history, Senator. But what occurred was this is a case study in crony capitalism to the ultimate, in my opinion. The tax was originally aimed at the cosmetic industry tax--Botox. Allergan is one of the largest producers of Botox in sales. In fact, last year they paid a \$175 million fine to the federal government for misrepresentation, and that was their settlement. And this coalition of people that are aimed at us are multiple times larger than my industry. It's just simply the big guy on the block. Behind that is the cosmetic industry; the dermatologists' association as well. And why? Because they were facing a 5 percent cosmetic tax. That's what the Health Care bill originally called for; so anything cosmetically was going to be taxed 5 percent. The federal gross receipts would have been much, much larger than they could have ever done. So what occurred in the final days behind the scene was, hey, get us out of this tax and stick these guys over here. There was never a hearing. There was no public comment, no public testimony. It was simply a last minute deal that was part of the Health Care bill. And like I said, the first public mention of it occurred on December 19. They voted on it for the first time on December 25. There was absolutely no opportunity to respond at all to it, Senator. [LB749]

SENATOR HADLEY: Thank you, Mr. Bonn. Thank you, Senator Adams. [LB749]

SENATOR ADAMS: Any further questions? Mr. Bonn, may I ask. You said that your brother had faced bankruptcy in Iowa, is that correct? [LB749]

BARTON BONN: Yes. [LB749]

SENATOR ADAMS: Same industry? [LB749]

BARTON BONN: Yes. [LB749]

SENATOR ADAMS: What's the admission tax rate in Iowa? [LB749]

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

Revenue Committee
February 01, 2012

BARTON BONN: Heather, do you know what it is in Iowa? [LB749]

HEATHER ALMOND: It's 7 percent. [LB749]

BARTON BONN: It's 7 percent. Iowa is the only neighboring state that imposes a state tax also on indoor tanning. All of our other neighboring states do not impose that tax, Senator. [LB749]

SENATOR ADAMS: All right. Thank you. Any further questions? Seeing none, thank you, sir. [LB749]

BARTON BONN: Thank you. [LB749]

SENATOR ADAMS: Next proponent. [LB749]

MONICA PARRIS: Good afternoon. Some of you I recognize. Monica Parris, M-o-n-i-c-a P-a-r-r-i-s. I own Alternative Tan tanning salons here in Lincoln. I celebrated my 20 years of starting it up on my own in January; it was my 20 years. I thank you for taking the time to see us again. I'm a little bit more old school. I guess I'm here to ask for your help again on the unfairness issue. And to make it really simple, if two people in Lincoln, I being one of them, orders a tanning bed, and they load it up on that truck and they deliver it; one bed goes to Prairie Life, one bed goes to Alternative Tan; why is Alternative Tan punished for receiving the same piece of equipment that my dermatologist could have got, that the gym could have got? Since this has went into play, and I do realize that the Legislature, the 10 percent is not on your shoulders and we're doing all we can to back-peddle and have that voice. But I do believe that you have the ability to make it right, now. It's really hard coming from a small business to explain to your clients and your staff why we have to charge more. It's not a choice. It is: I was told I had to. To answer to a client when you have a gym up the street--we all kind of share the same clientele that look good, feel great--to try and go in depth with every client as to why I'm having to charge you differently than if you go to that gym, it's degrading, because I really don't know why. I don't know how getting your hair done or a massage or a manicure, how that is considered to be such a different service than coming to Alternative Tan; that how going...if you live in Lenox apartment complex, you get it free, it's in your rent. You asked about staying in business. Years ago, when I opened, I paid the tax because I was told I had to. And I didn't voice an opinion but I should have. I was just opening up; my grandma cosigned a loan. She was just thrilled I paid it off. And I continued to grow and she was very proud. I maybe didn't have that voice then, but I'm using it now. And I have to believe that at the end of the day it's never too late to say and do the right thing. I have unfortunately had to close a business in December: 20 years. And it is the most gut-wrenching thing to stand in front of your employees and to tell them, we fought a good fight, but you 15 girls no longer have a

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

Revenue Committee
February 01, 2012

job. Is it just because of this? No. It's a combination. It's a combination of, like Bart said, we have come together as competitors. I can handle competition. But in order to make this affordable and compete against free at an apartment or a gym that's giving it away in their membership, we've had to cut our prices to get them in our door, just to pay, basically, taxes. So therefore there's no money. There's no money to fight a fight, no matter what reason; my salon may have had damage due to water or lack of business. I'm running cheaper prices now than I did 20 years ago because we're trying to compete with a gym; we're trying to compete with a beauty salon that has a couple of beds. I mean, I ask your opinion, what do I tell these people when they say, why do we have to pay more here? They get to walk in their gym and they have a sign that says: Tan with us because you won't pay taxes. I don't know how to compete with that. So I'll end on that note. And then I'll answer any questions I possibly can. [LB749]

SENATOR ADAMS: All right. Thank you, Monica. Questions? Senator Schumacher. [LB749]

SENATOR SCHUMACHER: Thank you for testifying today. So basically as I'm hearing you, the evil of this particular tax is the different treatment between you and your competitors? [LB749]

MONICA PARRIS: I'm asking for fairness, that I...since I've been in business, from day one, I've paid the sales tax that was asked of me for that same piece of equipment that sits in another business, that same piece that they don't have to. [LB749]

SENATOR SCHUMACHER: So not only is the federal tax an issue with you,... [LB749]

MONICA PARRIS: The state. Yes. [LB749]

SENATOR SCHUMACHER: ...the state tax on some of your equipment is... [LB749]

MONICA PARRIS: Those tanning beds, that tanning bed. [LB749]

SENATOR SCHUMACHER: If, for example, on the federal side of it, we imposed a federal excise tax on all tanning and gave you credit for the 10 percent you pay the feds so that you have an equal playing field, would that solve some of the problem? [LB749]

MONICA PARRIS: I think that it would help. We've got a lot of damage to go back through. We have tried to muddle this...and, you know, we're spending our extra dollars to go to New York. I've never been to New York. But, you know what, the first time I went was so that I could get in front of some senators, that I could have a voice. So at the end of the day, I realize I should have maybe approached this uncertainty that I had being taxed on what you consider an admissions. I should have said something 20 years ago. I didn't. But I don't believe it's too late to give up. [LB749]

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

Revenue Committee
February 01, 2012

SENATOR SCHUMACHER: Thank you. [LB749]

SENATOR ADAMS: Are there other questions? Senator Hadley. [LB749]

SENATOR HADLEY: Thank you, Ms. Parris. Just so I understand it, you're paying a tax on the tanning bed when you buy it. [LB749]

MONICA PARRIS: Um-hum. [LB749]

SENATOR HADLEY: And then you're charging... [LB749]

MONICA PARRIS: Every time someone goes in it. [LB749]

SENATOR HADLEY: ...every time someone comes in and pay 10 or 20 or whatever the charge is. [LB749]

MONICA PARRIS: Right now, 17. [LB749]

SENATOR HADLEY: You charge 17 percent on top of that. [LB749]

MONICA PARRIS: I do, and unfortunately that's not mandatory for everybody to. But then we also have, just like every business, our employee taxes and our payroll taxes. But we also pay property tax on our tanning bed. So I hope that you can understand this list of taxes. When I was able to do it, I didn't...I zipped it and I did what I was asked to do. And now I'm asking to be treated that fairly across the board. [LB749]

SENATOR HADLEY: Okay, thank you. Thank you, Senator Adams. [LB749]

SENATOR ADAMS: Other questions? Seeing none, thank you, Monica. [LB749]

MONICA PARRIS: Thank you. [LB749]

SENATOR ADAMS: Next proponent. [LB749]

STEVE GRASZ: (Exhibit 1) Senator Adams and members of the committee, my name is Steve Grasz, S-t-e-v-e G-r-a-s-z. I'm an attorney with Husch Blackwell. And our firm serves as legal counsel to the Nebraska Indoor Tanning Association. The committee is well aware of the events which have precipitated a crisis in the indoor tanning industry, and I will not address those issues or the devastating fallout that scores of Nebraska businesses and their employees have faced. Rather, I would like to call the committee's attention to some very important findings which have come from our research as we have looked and working to find a way to mitigate this crisis. In the course of looking at

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

Revenue Committee
February 01, 2012

ways to address the problem legislatively, the question was recently asked, well, how is it that tanning was ever subject to an admissions tax in the first place? After all, tanning is a personal service, like going to a beauty shop or a barber shop. This, of course, is true. It's interesting I think if you know that customers of tanning businesses are provided controlled exposure to specific wavelengths of UV light produced by expensive equipment designed for that particular purpose. The customer pays for this service in order to receive skin tanning or in some cases for the self-treatment of certain skin conditions, seasonal affective disorder, and to increase levels of Vitamin D. As we looked further into this question, we discovered that there is no apparent legal basis for applying the admissions tax to tanning services. The legislative history of the present definition of admissions shows that the Legislature enacted this language through LB504 in 1969. The intent of the relevant portion of that bill was to broaden the coverage of the admissions tax. The legislative history gives as an example of the increased coverage of the admissions tax use of golf greens. The concern at the time was that entertainment and recreation which was provided through memberships was not being taxed like it was for individual sales. Much discussion occurred about whether and to what extent tickets to events for school children would be covered. Most notably though, there was no discussion or expressed intent to expand the tax to cover personal services. The committee statement for LB504 stated as follows: "The amendment to the bill in regard to admissions would expand the definition of admissions to include such current nontaxable events as a use or entry into golf courses, bowling alleys, pool tables, etcetera." That committee statement was later relied upon in an official Attorney General's Opinion which concluded that the purchase of a game of bowling was subject to the admissions tax. The Attorney General's Opinion discussed similar taxes in other states and application of the tax to admissions to places of amusement, entertainment, and recreation. The concepts discussed in the opinion were later enacted by the Department of Revenue into regulations. This regulation clarifies that the term "admission" as used herein, "means the right or privilege to have access to or to use a place or location where amusement, entertainment, or recreation is provided." The mystery of the inclusion of tanning services under the admissions tax is not fully known to us, but apparently stems from a decision by the Department of Revenue. Notwithstanding the definition in their own regulations as applying the tax only to admissions to places of amusement, entertainment, and recreation, the department has included tanning businesses in the same category as amusement parks, art exhibits, cabarets, dance halls, football stadiums, golf courses, movie theaters, racetracks, and zoos. Now it doesn't take a tax expert to notice that there's a clear distinction between admissions to those entertainment and recreation venues on the one hand and tanning services on the other. Again, tanning customers are being provided measured exposure to UV light waves by means of electronic equipment. They are paying for a personal service. They are not paying for admission to an entertainment event, a place of amusement, or a recreational activity. Interestingly, the department has expressly recognized that barber and beauty shops are exempt from the tax and the reason is because they are primarily rendering personal services. In conclusion, this committee

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

Revenue Committee
February 01, 2012

can address this situation by clarifying that tanning services are not subject to the admissions tax. There is no legal basis for application of this tax to personal services, and the Legislature can provide much needed relief to scores of Nebraska businesses without subjecting them to the very high cost of litigation should they take this matter to the courts. And I'd be happy to answer any questions from the committee. [LB749]

SENATOR LOUDEN: Questions for Mr. Grasz? Senator Pirsch. [LB749]

SENATOR PIRSCH: Yeah, can you tell me, you said, "The mystery of the inclusion of tanning services is not fully known to us, but apparently stems from a decision by the Department of Revenue." When did that...when was that issued? [LB749]

STEVE GRASZ: Well, the statute was enacted in 1969. At that time, there was no indoor tanning business. At some point, we believe perhaps in the 1990s or early 2000s, the department issued a regulation, which is referenced there in my written testimony, which has a laundry list of recreational and entertainment activities; there's like 20 or so of them. And we believe that's the time they started taxing tanning services. [LB749]

SENATOR PIRSCH: Some time in the 1990s or 2000s? [LB749]

STEVE GRASZ: Yeah, and I do not have a date. [LB749]

SENATOR PIRSCH: It's hard to trace that type of information back? Or do you think that... [LB749]

STEVE GRASZ: It's not...if you go to the Department of Revenue Web site or the Secretary of State's Web site, there is no date on it. And I've not obtained the original documents from the date of enactment of the regulation. It is discoverable. [LB749]

SENATOR PIRSCH: Okay. And then I guess that begs the question, that of, I guess, what's prohibiting you? You think you're on clear legal ground not to pay, but you don't want to incur the cost and expense of testing the case in court? [LB749]

STEVE GRASZ: Right. It's a very small industry. Most of them are mom-and-pop shops. You know, they don't have lawyers and accountants on staff to, first of all, to even to have looked into this issue until now. It was only because we were looking at the legislation that we even looked back at the legislative history to see where did this come from. And for them to take it into the courts, of course, could be done; but that would cost more money than they have to spend. [LB749]

SENATOR PIRSCH: Okay, thank you. [LB749]

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

Revenue Committee
February 01, 2012

SENATOR LOUDEN: Senator Hadley. [LB749]

SENATOR HADLEY: Thank you, Senator Louden. Mr. Grasz, thank you for being here. I was interested in your comment about barber and beauty shops are exempt because they're primarily rendering personal services. If they were to have a tanning bed as a part of their operation, how do you think that would... [LB749]

STEVE GRASZ: Yeah, I don't know how the department would do that. I suppose they would have to bifurcate their revenue and pay on some of it and not other revenue. [LB749]

SENATOR HADLEY: Okay, thank you. [LB749]

SENATOR LOUDEN: Senator Schumacher. [LB749]

SENATOR SCHUMACHER: Thank you, Senator Louden. Thank you, Mr. Grasz, for being here. Do you know how a business would be taxed if the nature of the business was to provide an area with high walls to create privacy and then sit under a tanning bulb 93 million miles in the air? (Laughter) Is there an admissions tax on that? [LB749]

STEVE GRASZ: Not that's ever been imposed by the state of Nebraska. [LB749]

SENATOR SCHUMACHER: Okay, so you could tan that way and charge to get into the high-walled area without a tax, is that as you understand it? [LB749]

STEVE GRASZ: Yeah, unless the department I guess issued a regulation that included it. It's not currently. [LB749]

SENATOR SCHUMACHER: Okay, but at least today you could. [LB749]

STEVE GRASZ: Yeah. [LB749]

SENATOR SCHUMACHER: Thank you. [LB749]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. [LB749]

STEVE GRASZ: Thank you. [LB749]

SENATOR LOUDEN: Next proponent. [LB749]

RON SEDLACEK: (Exhibits 2 and 3) Good afternoon, Senator Louden and members of the Revenue Committee. For the record, my name is Ron Sedlacek, that's spelled

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

Revenue Committee
February 01, 2012

S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce and Industry, as well as the Greater Omaha Chamber of Commerce. And we would also like to be on record in support of LB749 as we do believe it is going to bring much needed relief to a segment of small businesses across the state. We became aware of the issue last year. We supported the legislation last year. We had heard about the potential economic impact on the industry. And it appears that the predictions that were talked about last year have gone further than first stated. And I won't go into and repeat the testimony in regard to the economic impact. However, I do have those figures also in separate statements by the State Chamber of Commerce as well as the Greater Omaha Chamber of Commerce. We would ask you to further advance LB749. We'd also ask you to please take a look at this industry, the issue of a level playing field, the punitive nature of the taxes now. And would ask for your consideration to please support the bill. [LB749]

SENATOR LOUDEN: Questions for Ron? Senator Hadley. [LB749]

SENATOR HADLEY: Senator Louden. Mr. Sedlacek, just a quick question. There's going to be a Supreme Court case settled in June on the Affordable Care Act. Do you know perchance is there a possibility that the 10 percent tax would go away as a result of that case testing the Affordable Care Act? [LB749]

RON SEDLACEK: That's a good question. As to...the challenge is not...the challenge in the Supreme Court case...and I'm certainly not intimately familiar with it and probably know enough just to be dangerous to ask this, so I don't want to misrepresent that case. However, from what I understand, it deals with the...there are particular issues. This issue is not specifically addressed. And is it integral to the legislation? Probably not. It was a source of financing in order to make the scoring of that bill look better at that time, from what I understand. So I would assume this would continue. [LB749]

SENATOR HADLEY: Okay, thank you, Mr. Sedlacek. Thank you. [LB749]

SENATOR LOUDEN: Seeing no questions, thank you for your testimony, Ron. [LB749]

RON SEDLACEK: Thank you, Senator. [LB749]

SENATOR LOUDEN: Next testifier. Okay, any more proponents? We'll take opponent testimony now. First opponent to testify. [LB749]

BILL MUELLER: (Exhibit 4) Chairman Louden, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska Dermatology Society in opposition to LB749. The page is handing out a letter from the American Academy of Dermatology, the American Society for Dermatologic Surgery Association, and the Nebraska Dermatology Society. I will not read that letter to you, but let me do

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

Revenue Committee
February 01, 2012

read a paragraph of that. "We are writing to express our opposition to LB749. With an epidemic of melanoma and nonmelanoma skin cancer, dermatologists have made it a priority to advance public policies that promote prevention and education about skin cancer and the dangers of indoor tanning. Repealing Nebraska's sales and use tax on indoor tanning services ignores the serious public health risks associated with the use of these services. Countless scientific studies have shown clear and compelling evidence that indoor tanning bed use increases the risk of developing all forms of skin cancer. Recent studies show a disturbing trend. There's a steady rise in the number of young women diagnosed with melanoma, and at more advanced stages. It is not coincidental that this demographic is also significantly more likely to use tanning beds than their male counterparts." You have heard testimony about the Department of Revenue's regulations. And I did review those regulations in preparation for today's hearing. And as Mr. Grasz told you, there are several types of activities that are included under admissions, thus subject to the sales and use tax. Some of these included in this group, in addition to those identified by Mr. Grasz, are gymnasiums, health clubs, racketball courts, tanning salons, and toning salons. So there is a definition contained in law promulgated by the Department of Revenue as to what an admission is. So I don't think that the tanning salons are being singled out by our Department of Revenue. They may be singled out by Congress. And, Senator Hadley, you had the very same questions that I had and that is the Affordable Health Care Act is being challenged in the United States Supreme Court. If that law is struck down, will that affect this provision? Like Mr. Sedlacek, I know enough to be dangerous and I don't know. I've not heard that that was an issue in that litigation. Might that affect this? It certainly might. There is a fiscal note attached to this bill, as the committee knows. And the Department of Revenue has projected that approximately \$800,000 will be lost in revenue in 2013-14, and about \$881,000 in '14-15. I was thinking about the fact that we have a federal tax on a service, on an activity, and then we have a state sales tax. That is not unique. This committee has had hearings last year and this year on occupation taxes. And as an example, when an occupation tax is imposed on, say, a telecommunication service, that telecommunication service already has taxes imposed on those services at the federal level. Those of us who live here in Lincoln, those who live in Omaha, and probably other communities might have a local occupation tax to fund arenas and convention centers. That tax is imposed on restaurants, on bars. And that is in addition to the state sales tax. So this is not the only situation where we have a federal tax with a state tax imposed on it. I'd be happy to answer any questions the committee may have. We do believe that the reason the Congress did enact this federal tax is because of a concern about the cost. In the United States there are estimates that we currently spend \$1.86 billion on treating skin cancers each year, and \$300 million on melanoma alone. So there are healthcare costs associated with cancer. And that is why the dermatologists are here on this bill today. Be happy to answer any questions the committee may have. [LB749]

SENATOR LOUDEN: Okay. Thank you, Bill. Questions? Senator Adams. [LB749]

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Transcriber's Office

Revenue Committee
February 01, 2012

SENATOR ADAMS: Thank you, Senator Louden. Bill, your association and the various members of it--and literally, I don't know; I'm not setting you up on this question--do they have tanning beds, do dermatologists? [LB749]

BILL MUELLER: I asked that very question. And what I am told is that the devices that the dermatologists have in their office are not tanning beds. They are FDA-regulated medical devices and that they are a different combination of UV light. So they are not tanning beds. It is a medical procedure. Your insurance policy would be billed and there is a code for these services. [LB749]

SENATOR ADAMS: Well, I'm not about to dispute that. (Laugh) So if the dermatologist prescribes to a patient that they need to sit in an FDA-approved tanning bed, then they would do that without admission tax. If that same person said, no, I think I'm going to go down the street to the tanning spa instead, they would be charged the tax? [LB749]

BILL MUELLER: That's my understanding. [LB749]

SENATOR ADAMS: But what you're indicating to me, the tanning bed in one place is not the tanning bed in the other? [LB749]

BILL MUELLER: That's what I have been told. [LB749]

SENATOR ADAMS: Thank you. [LB749]

BILL MUELLER: I've not been in either type of tanning bed personally. (Laugh) [LB749]

SENATOR ADAMS: Me either. [LB749]

SENATOR LOUDEN: Senator Pirsch. [LB749]

SENATOR PIRSCH: Well, thank you. And that's on the federal level, all those dynamics (inaudible). [LB749]

BILL MUELLER: It is. Correct. That's federal law. [LB749]

SENATOR PIRSCH: Okay. So on the state level, I just wanted to get a flavor for you, if you happen to know this. Are admission taxes commonly employed throughout the states? I mean, is that a... [LB749]

BILL MUELLER: I don't know. I'm guessing that they are. I do not know. [LB749]

SENATOR PIRSCH: And the admission tax as a category. And Mr. Grasz testified I

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

Revenue Committee
February 01, 2012

think that it went into effect...was that the first time admission taxes went into effect was 1969, which was LB504 I think he said? Do you know? If you know. [LB749]

BILL MUELLER: I do not know. I'm guessing that it probably is, because I believe that that's when the state of Nebraska first adopted a sales and income tax. I think that was in 1967. [LB749]

SENATOR PIRSCH: Okay. So then admissions soon followed closely on the heels. [LB749]

BILL MUELLER: I'm guessing so. I've not researched that. [LB749]

SENATOR PIRSCH: And...well, so as it's been applied...well, I guess since that point in time are you very familiar with the historical evolution or origination of admissions? Maybe I can save this question for later if... [LB749]

BILL MUELLER: Hopefully, there's someone here who knows much about this than I do. No, I looked at the bill and saw that the change being proposed was to the definition of gross receipts on the sale of admissions. And that's when I went back and found the regulation defining the sale of admissions. [LB749]

SENATOR PIRSCH: And I think Mr. Grasz's testimony was that there was an application of this stemming from an Attorney General's Opinion that applied to places where amusement, entertainment, or recreation is provided. And then there was some testimony you gave here that said that it also, at least now, is applied to gyms, health clubs, tanning, tanning salons. Was that through a later...a recent or was that part of that...an earlier Department of Revenue regulation? [LB749]

BILL MUELLER: I don't know. Like Mr. Grasz, I went on-line and found Regulation 1-04 Admissions, and contained within that is a definition of admissions. And there are other things listed in addition to those that Mr. Grasz and I both testified about. [LB749]

SENATOR PIRSCH: Okay, so... [LB749]

BILL MUELLER: It's a long, long list of admissions. [LB749]

SENATOR PIRSCH: Yeah, no doubt about it now, if you look it up, it would say gyms, health clubs, tanning, tanning salons? [LB749]

BILL MUELLER: Yes, it does. [LB749]

SENATOR PIRSCH: And so on that basis then I thought that there was testimony by a previous testifier that she said, I thought, that referenced Prairie Life in particular that

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

Revenue Committee
February 01, 2012

did not pay. But under this revenue regulation it would seem to appear that Prairie Life would be paying for that? [LB749]

BILL MUELLER: As I read this, assuming that Prairie Life is a health club, I think they would be subject to the imposition of a sales tax; and as a member of a health club I believe that I pay sales tax on my membership amount. [LB749]

SENATOR PIRSCH: And that's on a state level. They're probably referencing then the federal tax may not apply then, right? [LB749]

BILL MUELLER: And I think that's what they testified to. [LB749]

SENATOR PIRSCH: Okay, thank you. [LB749]

SENATOR LOUDEN: Senator Hadley. [LB749]

SENATOR HADLEY: Thank you, Senator Louden. Mr. Mueller. I had not thought of the double taxation. And just sitting here thinking probably one of the prime examples of that is our gasoline tax, because, what do we pay, a 19.5-cent-a-gallon federal tax and a 23.5-cent-a-gallon or something like that state taxes. [LB749]

BILL MUELLER: Exactly. [LB749]

SENATOR HADLEY: So there are two taxes,... [LB749]

BILL MUELLER: Federal tax...yes, federal tax and state tax. [LB749]

SENATOR HADLEY: ...federal and state taxes on that. I just...I had not thought of that issue. So thank you. [LB749]

SENATOR LOUDEN: Senator Brasch. [LB749]

SENATOR BRASCH: Thank you, Chairman. And thank you, Bill, for your testimony. I'm just listening to the concept of where the fitness center versus the tanning center. And I don't know if fitness centers, besides sales tax, have a tax because they're a fitness center. But perhaps the tanning centers can provide exercise bands and a yoga class and then they're a tanning and fitness center. And so if they offset some pushups with, you know, the...I don't know. I'm just...this truly seems to be a dilemma because, yes, I have read and heard numerous concerns from the medical industry about tanning. It was on this morning's news on the radio as well. But then I'm thinking, you know, if people are going to and, you know, what constitutes the difference there, exercise only versus exercise plus tanning. [LB749]

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

Revenue Committee
February 01, 2012

BILL MUELLER: And, Senator, I agree with you. And I don't know why the federal government has decided to...and it is a federal issue as I understand it as to how this federal tax on tanning applies in some settings but not in others. But again, it's a federal issue; that's not a state revenue issue as I understand it. [LB749]

SENATOR BRASCH: Okay, I have no other questions. Thank you. [LB749]

BILL MUELLER: Thank you. [LB749]

SENATOR LOUDEN: Senator Schumacher. [LB749]

SENATOR SCHUMACHER: Thank you, Senator Louden. Thank you, Mr. Mueller, for being here. Considering that, as I understand the testimony, the wavelengths used by tanning salons are bad and they cause all kinds of health problems, and the wavelengths used by dermatologists are good and they fix all kinds of things. Would part of the problem be resolved by us putting a 10 percent excise tax on all tanning beds using the bad wavelengths and then rebating the 10 percent federal...or giving the ones who are charged the 10 percent tax a credit against that tax, so that we would level the playing field? And also tax all the bad wavelengths? [LB749]

BILL MUELLER: I think that that would level, I mean, us. And again, I don't know whether Prairie Life--and Prairie Life was mentioned--I don't know whether their tanning beds are subject to the federal tax or not. Assuming that they are not, what you propose it seems to me would level the playing field. It would treat the Prairie Lifes of the world the same as the Ashley Lynn stores. [LB749]

SENATOR SCHUMACHER: Thank you. [LB749]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. [LB749]

BILL MUELLER: Thank you. [LB749]

SENATOR LOUDEN: Next opponent. Are there any more opponents to the bill? Seeing none, then those testifying in the neutral. Anyone testifying in the neutral? [LB749]

BARTON BONN: I don't know if this is appropriate, Senator. But I testified as a proponent. However, we were talking about revenue and economic issues, and then the opponent came up and talked about the health consequences of it. We deliberately didn't speak on that point because we thought that was appropriate for the Health Committee. But after listening to these comments and misinformation, may I speak on it? [LB749]

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

Revenue Committee
February 01, 2012

SENATOR LOUDEN: You've got to spell your name. Did you sign-in on one of them little papers and spell your name? [LB749]

BARTON BONN: Yes, I did, Senator Louden. It's Barton Bonn, B-a-r-t-o-n B-o-n-n. And I do appreciate making the exception here to let me counteract some of that. One of the... [LB749]

SENATOR LOUDEN: Now you're in... [LB749]

BARTON BONN: The indoor...the Nebraska Indoor Tanning Association. [LB749]

SENATOR LOUDEN: You're testifying in the neutral? [LB749]

BARTON BONN: I had already gotten up here and spoke as a proponent, Senator. And I'm sorry, you weren't in here at that time. But after listening to the... [LB749]

SENATOR LOUDEN: Well, I don't think you can testify then if you already testified. Sorry, but that's the way it works. [LB749]

BARTON BONN: Well, okay. [LB749]

SENATOR LOUDEN: Anyone else testifying in the neutral? Seeing none, Senator Cornett, do you wish to close? [LB749]

SENATOR CORNETT: I just want to say a few words on this. I think that the industry is definitely facing some serious issues because of the federally imposed tax and that is why I brought this bill this year. And I'd be happy to work with the committee on it after that. With that, I'd be happy to answer any questions from the committee. [LB749]

SENATOR LOUDEN: Are there any questions for Senator Cornett? Seeing none, that will close the hearing then on LB749. And, Senator Cornett, do you wish to open on LB903? [LB749]

SENATOR CORNETT: Yes. Thank you, Vice Chair Louden. Again, my name is Abbie Cornett, it's C-o-r-n-e-t-t. I represent the 45th Legislative District. LB903 was introduced to clarify and change the definition of admissions used in sales tax laws of Nebraska. Under current law, admissions on which sales tax were to be paid included monies paid for participation in recreational sports activities. In this bill, fees paid for participation and recreational sports activities offered to youth under 18 will not be subject to sales tax. Other admissions currently taxable under Nebraska law will remain taxable. I felt that the additional burden of sales tax payment ought to be removed from recreational sports activities in order to make it more financially feasible for families to have their children participate in healthy sports activities. Our society will be better off if more

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

Revenue Committee
February 01, 2012

youth participate in sports. The loss of sales tax revenue is a small price to pay for a healthier state. If the committee will think back a couple of months now, there was a...not a ruling but a draft from the Department of Revenue looking back at the sales tax code, which was enacted in 1967, which determined that a number of organizations should have been paying sales tax and should have been subject to sales tax, but over the course of 40-plus years had not been. We looked at that and...we're looking at it from a different policy point of view than when it was enacted, that youth sports should be incentivized. With that, I'm going to turn...and it's a little bit different procedure, but I'm going to turn my testimony over to the Tax Commissioner who can explain how the law came about and how the ruling came about also. [LB903]

SENATOR LOUDEN: Okay, thank you, Senator Cornett. First proponent. [LB903]

DOUG EWALD: (Exhibit 5) Vice Chair Louden and members of the Revenue Committee, my name is Doug Ewald, E-w-a-l-d, Tax Commissioner of the Nebraska Department of Revenue. And I actually appear before you today in a neutral capacity to try to give a little bit of an explanation up-front with respect to LB903 and provide you some background on how sales and use taxes currently apply to admissions. When the sales tax was adopted in Nebraska in 1967, admissions were subject to sales tax. The statutory definition of admissions has not changed since that time. An admission is still defined broadly as "the right or privilege to have access or to use a place or location." In 1967, the Department of Revenue also adopted sales and use tax regulation 1-044, which defined an admission for purposes of the sales and use tax as "the right or privilege to have access or to use a place or location where amusement, entertainment or recreation is provided." The language adopted in the regulation was based largely on how other states administered admissions at that point in time. Again, the definition included regulation has not changed since 1967, and this also has been approved by the Nebraska Attorney General. Since 1967, sales taxes have been collected on most recreational activities such as bowling, swimming pool admissions, and golf green fees. Oftentimes, the tax on admissions may go unnoticed because the sales tax on admissions is allowed to be included in the sales price of a movie ticket, concert ticket, football ticket, so on and so forth. However, in recent years the department has seen an increase in the number of organized recreational sports leagues and recreational events in Nebraska, and a significant increase in the number of questions relating to admissions and how sales tax applies to these activities and participants. In addition, the way recreational leagues and events are organized has led to some confusion among event organizers, participants, and facility owners on who is responsible for collecting and remitting sales tax on those admissions. The department also discovered a number of instances where organizations that have been remitting sales tax on admissions did not have to, for example, because they were renting...a rental or lease of real property, as well as organizations that have not been remitting sales tax on admissions that were supposed to. The department, after much study, believes that under current law entry fees to recreational sports leagues and recreational events are

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

Revenue Committee
February 01, 2012

subject to sales tax as a taxable admission. There is no differentiation in the current law between leagues or events that are run by for-profit versus nonprofit entities. Nebraska law simply does not contain an exemption for recreational sports leagues or recreational events. In contrast, there's a certain section of law provides a specific exemption for fees and admissions charged by a public or private elementary or secondary school, and the fees and admissions charged by a school district, student organization, or a parent-teacher association. The specific exemption for other entities also exists in other states as well. For example, Iowa specifically exempts admissions to nonprofit youth sports leagues from sales tax. As a result of what we've seen in the last number of years, the department issued a draft Revenue Ruling on admissions in November of 2011 to try and clarify the scope on the admissions and answer some of the more commonly asked questions about admissions, but also to solicit public comment on how the department should look at the issues surrounding recreational sports leagues and the sales tax due on those admissions. The draft Revenue Ruling tried to describe the difference between activities that were subject to sales tax as a taxable admission and those activities that were not subject to sales tax, such as practices. The ruling also tried to differentiate between the party responsible for collecting sales tax and those who were not. As a result of this draft Revenue Ruling, the department received over 370 comments on the draft Revenue Ruling. And it's fair to say that most of the comments were negative, except some phone calls to me from owners of private recreational facilities. As a result of these comments and the pending legislation, the department will wait for the Legislature to act on the issue. In the meantime, the department has begun to rewrite the ruling in an effort to clarify things which could have been stated better in the original draft. That concludes my formal remarks, and I'd be happy to answer any questions you might have at this time. [LB903]

SENATOR LOUDEN: Questions for Commissioner Ewald? Senator Adams. [LB903]

SENATOR ADAMS: Thank you, Commissioner, for being here. Help me get something clear in my mind then, based on your interpretation and your draft so far. So if the sports team, let's call it the swim club, decides that they want to go to the city community center and use the swimming pool to practice, and they're going to be in there practicing, but the public is there too, we don't have an admissions issue, right? [LB903]

DOUG EWALD: That's correct. [LB903]

SENATOR ADAMS: But if that same club says we want to use the pool for a competition and the public will have to be kept out, so we're going to pay a rental fee of X number of dollars for the day for the swim meet, for that there would be an admissions tax? [LB903]

DOUG EWALD: That would be correct. [LB903]

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

Revenue Committee
February 01, 2012

SENATOR ADAMS: Okay. Thank you. [LB903]

SENATOR LOUDEN: Other questions? Senator Pirsch. [LB903]

SENATOR PIRSCH: With respect to...so it was just in recent years the department saw an increase in organized recreational sports leagues, and that's when things started...the issue started getting looked at and examined in terms of nonprofits or these youth leagues, what is the correct classification of their tax status with respect to...is that...? [LB903]

DOUG EWALD: That's a fair statement, Senator. I've been a Commissioner for a little over five years here, and we've been out doing some small reviews. And during the process of those reviews we see certain things where people were collecting sales tax where they shouldn't be, and some that were not collecting sales tax where they should have been based on the current statute and the regulation. And, obviously, we knew that this would be a hot button on a number of fronts, so that's why we put out a draft Revenue Ruling. I say that, a draft, and that is unprecedented with respect to the Department of Revenue. The Department of Revenue issues Revenue Rulings pretty much when they see something, almost at will. It's not like a regulation where you go through a formal hearing from that perspective. But we put the draft Revenue Ruling out there really to solicit comments to make sure that we had the facts correct, would we have appropriate examples out there, and those type of things, before we went to an all-out enforcement, really to heighten the awareness of this issue and maybe have the Legislature give us some guidance. [LB903]

SENATOR PIRSCH: Two more issues. What is the fiscal...if in excluding this tax, which we apparently have not been collecting thus far, I mean anyway, right? But the estimated future "forgoance" of this tax, what is that estimated, do you know? [LB903]

DOUG EWALD: Well, at this point in time, what we've determined as well as the Legislative Fiscal Office, if you look at the fiscal note, it's basically, it's very difficult to determine that amount of loss because we know we have people that haven't been paying it that should be. We have people that have been paying it that shouldn't be. There's a mixed bag going both directions with respect to that from that perspective. [LB903]

SENATOR PIRSCH: If this exemption is put in place, prospectively going on, will the Department of Revenue attempt to collect back years? [LB903]

DOUG EWALD: No. [LB903]

SENATOR PIRSCH: And then the only...so there's no...you don't have even a ballpark kind of flimsy number as far...per year? [LB903]

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

Revenue Committee
February 01, 2012

DOUG EWALD: It's very difficult, based on what we've seen out there. And that's why we thought it was important to bring the issue and put the draft ruling out there because we've seen stuff that was really all over the board. [LB903]

SENATOR PIRSCH: Okay. Then the other issue that...could you describe those type of activities...now obviously, so, you know, these Little League teams and Pop Warner teams would be affected, right? I mean, those are...is this bill only dealing with nonprofit, right? [LB903]

DOUG EWALD: The way this bill reads right now, it exempts nonprofits from this tax, and for those for youth sports under the age of 19. [LB903]

SENATOR PIRSCH: For youth sports. Okay. [LB903]

DOUG EWALD: So it would not affect...I play in a men's softball league, for example, and there is an admission or a fee to play in that league. That would not be exempt in this situation. [LB903]

SENATOR PIRSCH: You mean just because it's 19 years. [LB903]

DOUG EWALD: Because it's not a youth. Yeah, exactly. It's not... [LB903]

SENATOR PIRSCH: Okay. So and that's, I'm sure, you know, in this age and era we're always looking for ways to, you know, decrease obesity, get kids time, energized in a healthy way. But would there be...and so the idea that they're Nebraska youth playing Nebraska sports, that's a very appealing concept in terms of those goals; but is there any type of activities that are going on, almost on a...might have...you know, I think when people look at the bill that might be the...I mean, is the focus. Are there any...would there be any unintended type of consequences; in other words, things that technically involved youth perhaps that you...you know, some sort of national groups coming to Omaha, in which case it doesn't really involve Nebraska youth at all? It's more of a... [LB903]

DOUG EWALD: Well, I think it's going to depend on the organization, that national organization, if they're a tax-exempt organization or not based on how this bill is currently written. [LB903]

SENATOR PIRSCH: Right. But, I mean, in terms of, you've looked at those affected, right, and obviously the Pop Warner and the Nebraska kids playing Nebraska, you know, sport leagues and that. Does it affect any other type of category which is just, you know, 19, or 18-year-olds and below who maybe come here on a semiprofessional type of...how...you know, some of these college...I'm trying to think of...some kids go to

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

Revenue Committee
February 01, 2012

college at 18, is that right? So there would be, I mean, any type of activities... [LB903]

DOUG EWALD: Well, I mean, that would be...that's probably rather unique with respect to they're either playing for their college team or something along those lines which gets you into playing for a governmental entity from that standpoint. But if you're playing in that situation...and, for example, Nebraska, Creighton, they host baseball, you know, a series, whatever, and that's...you know, part of that ticket is subject to...is an admission subject to sales tax. Today that would not change. [LB903]

SENATOR PIRSCH: Okay. So thank you. [LB903]

SENATOR LOUDEN: Senator Schumacher. [LB903]

SENATOR SCHUMACHER: Thank you, Senator Louden. Thank you for your testimony today, Commissioner Ewald. As you read this, is this bill at all intended to include in the definition of sports event and sports league, competition where admission is paid for kids to design robots, computer circuits, software, play chess, speed read? [LB903]

DOUG EWALD: Well, I guess if it's a youth sports, so under age 19, and it's a...it could be a competition from that standpoint, those examples you gave there would fall under this category as long as it was part of a 501(c)(3) nonprofit status umbrella. [LB903]

SENATOR SCHUMACHER: So you feel, and to build a little legislative history here, that those type of activities are included under the broad general term of sports. [LB903]

DOUG EWALD: Well, I mean, I don't know if it's necessarily sports as much as it is what's an admission from that perspective, I believe. [LB903]

SENATOR SCHUMACHER: Well, the exemption it says, "Sales tax shall not be imposed on the gross receipts from the sale, use, or consumption...charged to participants in youth sports or youth sports league by political subdivisions," etcetera. So if...I mean, we commonly know what sports is, but do we need to add language in there to make it clear that sports also includes those kind of things that make us competitive with the Chinese? [LB903]

DOUG EWALD: Well, I guess from the standpoint...you may want to from the standpoint, Senator, that our regulation talks about, you know, a place of amusement, entertainment, or recreation include...and there was in the prior bill they talked about bowling alleys, tanning salons, and those; so that was specifically enumerated in that prior bill with respect to what a place of amusement or entertainment or recreation includes. So based on that, that would be something that you could do to clarify, yes. [LB903]

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

Revenue Committee
February 01, 2012

SENATOR SCHUMACHER: Thank you. [LB903]

SENATOR LOUDEN: Senator Brasch. [LB903]

SENATOR BRASCH: Thank you, Chairman, and thank you, Commissioner Ewald. As both senators have raised the questions, is it youth activities? Is there, you know, they're...say they pay a membership at a dance studio and they have dance competitions and things like that. It's, I don't think it's considered a sport, but is the admission or the membership to the studio, you know, is it...is it just sports that we have singled out back in the '60s that we're trying to...? You know, naturally I believe we do need to encourage youth activities, be it sports, dance, you know, anything to keep physically active, and not necessarily compete, but... [LB903]

DOUG EWALD: Well, I...yes, and I would think that the example you gave there would be...if it's a dance studio, that would...and even though if it's not nonprofit, it would be subject to tax today, not any different than the monthly fee you pay to the health club that's subject to sales tax today. So whether it's going to work out at a health facility or it is an admission of, you know, right to dance and become active in that nature, that would be...under the current statute it would be subject to tax. [LB903]

SENATOR BRASCH: Thank you. [LB903]

SENATOR LOUDEN: Senator Hadley. [LB903]

SENATOR HADLEY: Senator Louden, thank you. Mr. Ewald, thank you for coming. Just so I clearly understand this, the organization must be a 501(c)(3), is that correct? [LB903]

DOUG EWALD: That's correct. [LB903]

SENATOR HADLEY: Okay. So an event such as a...in Kearney with a Mr. Basketball or Miss Basketball, where it's a private entrepreneur putting on the event for 18-and-under youth, and charging admission, there could be...there would be a sales tax in that kind of situation where it is not a 501(c)(3) putting on the event. [LB903]

DOUG EWALD: Right. I mean, if the teams that join, they have to pay a fee to enter the competition, and it's not a 501(c)(3) that is running that, that would create a situation where that would be subject to sales tax. You're correct. [LB903]

SENATOR HADLEY: Sales tax. Okay. That answers my question. Thank you, Senator Louden. Thank you, sir. [LB903]

SENATOR LOUDEN: Other questions? Thank you, Commissioner Ewald. And for the

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Transcriber's Office

Revenue Committee
February 01, 2012

record, I show that Commissioner Ewald's testimony was a summation of how the sales taxes are currently applies and that his testimony would be in the neutral. With that we will take first proponents now. [LB903]

STEVE VOIGT: (Exhibits 6-8) Vice Chair Louden and members of the committee, my name is Steve Voigt, and I'm a volunteer for the Nebraska Alliance of YMCAs. I'm also a board member of the Kearney YMCA and have been a volunteer for more than 20 years. [LB903]

SENATOR LOUDEN: Did you spell your name? [LB903]

STEVE VOIGT: I did not, Senator Louden. Voigt is V-o-i-g-t. We are speaking today in support of Chairman Cornett's bill, LB903. We believe that the Department of Revenue's proposed ruling from this past December which talks about sales tax on admissions, needs to be clarified by a statute change such as LB903. First, the proposed ruling presents a dramatic departure from the past practice of the Department of Revenue and is directly opposite of a specific determination letter to the Y's of Nebraska dating back to 1988. Second, the department's proposed ruling is inconsistent with the longstanding treatment of nonprofit 501(c)(3) organizations. That's been demonstrated at the federal, state, and county levels of government. The exemptions that 501(c)(3)'s get have been earned in recognition that their nonprofit organizations exist for the public good. The charitable nature of our activities and services and programs benefit the communities in which we serve, and quite often, relieve the burden of government. Third, without legislative clarification, the proposed ruling would result in financial barriers and burdens on families, and critically diminish the ability of the Y's to provide programs to the underserved low-income individuals and families that need services most and have come to count on the Y. There are YMCAs in 16 towns. There are 34 facilities managed by these 16 Y's, and these Y's serve over 300 communities in Nebraska. There have been Y's in Nebraska for the last 140 years. This past year, collectively, these 16 Y's have contributed over \$4 million in scholarship fees, membership assistance, and financial assistance to those who cannot afford it. We have never turned anyone away because of financial need. Lastly, we believe Nebraska cannot afford to create additional financial barriers to our children and families to becoming more physically active, at a time when obesity and chronic disease are on the rise and the statistics have proven that the low-income, hardworking families are in the greatest need to be engaged in health and well-being activities. On behalf of the alliance of the 16 Y's, we thank and applaud Senator Cornett and Senator Adams in support of this bill, and all of the other coauthors who signed onto this bill. However, there is a problem that's much larger due to the department's broad and far-reaching interpretation of what constitutes admissions and how recreation is defined. Other proponents will speak on these two issues later this afternoon. Are there any questions that I can answer? [LB903]

SENATOR LOUDEN: Questions? Senator Hadley. [LB903]

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Transcriber's Office

Revenue Committee
February 01, 2012

SENATOR HADLEY: Thank you, Senator Louden. Steve, thank you for coming in. Two things. I really want to applaud the YMCA in Kearney. When I moved there 20 years ago there was not one, and now it is just an outstanding success in Kearney and is a valuable asset to the community, so I thank you and your group for what they do. Secondly, would you know across the country, is it common that Y's would not be paying this kind of fee or do you have any knowledge of kind of the broader picture? [LB903]

STEVE VOIGT: I think from a nationwide perspective there are only two or three states that would charge this type of admissions tax. [LB903]

SENATOR HADLEY: Okay. Thank you, Steve. Thank you, Senator Louden. [LB903]

SENATOR LOUDEN: Other questions? Senator Adams. [LB903]

SENATOR ADAMS: Thank you, Senator Louden. Just to be ornery, should we also say then to the for-profit recreation centers, you shouldn't pay the admission tax too? I mean, if youth recreation and adult recreation and all of that's the goal, then should we also say then to, I don't know who they are, Prairie Life, whatever, you know what, you guys, we're not going to charge you an admission tax either? [LB903]

STEVE VOIGT: My personal opinion is, is that the Y's provide a lot more than a competitive league. They provide instructions, youth leadership and development, a lot of things. How to be good community members are taught in our recreational leagues. They are not competitive. They are not the traveling teams that go to the Midwest to play softball and basketball and volleyball. And I think that's the major distinction why we should be allowed the exemption and maybe not the for-profits. [LB903]

SENATOR ADAMS: Okay. Thank you. [LB903]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. [LB903]

STEVE VOIGT: Thank you. [LB903]

SENATOR LOUDEN: Other proponents? [LB903]

BARB BETTIN: (Exhibit 9) Good afternoon, members of the Revenue Committee. I'm Barb Bettin, president and CEO of the Lincoln YMCA. And I appreciate this opportunity to address you today on an issue that could have tremendous impact on the Y, those we serve, if LB903 is not passed. I also respectfully represent the 16 YMCAs that span our great state of Nebraska. You've already heard several reasons why this bill is

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Transcriber's Office

Revenue Committee
February 01, 2012

important, and I would like to specifically address the health and wellness aspects. I think Steve touched on the fact that from a healthy living standpoint we can't afford to present any more barriers to the physical health of our families. In 1990, the overweight obesity rate I believe in Nebraska was 46 percent, and today it's 64 percent, earning Nebraska the ranking of 24th most obese state in the nation. The epidemic is mirrored with our youth also, and about 15.8 percent of the children are obese, with Nebraska ranking 20th. And unfortunately, we fear that the 2011 data may be even more daunting. It's not only chronic disease that's on the rise, but also the associated costs as well that come along with this trend, and we certainly want to reverse that trend as a YMCA. The cost of ill health doesn't stop here. It's tragic to learn the fact that this is the first generation in America that will have a life expectancy shorter than their parents; and the cost for that is immeasurable. In addition to physical activity as an important link to overall good health, there is also a correlation between being physically active and academic success. There was an article in the Journal Star this past November that did a study indicating that children do better in school when they're more physically active by 20 percentage points, and a similar...that was in their math testing, and there were similar results in their reading testing, so. And it's not surprising also that the study found that higher rates of obesity and inactivity in the schools with higher rates of poverty was also more prevalent. The Lincoln Y has been in existence for 140 years, and part of our mission is to make sure no one is turned away for inability to pay. Last year alone, the Lincoln Y provided over \$1 million in financial assistance to help keep kids and families involved in our activities, and statewide over \$4 million in financial assistance throughout our 16 Y's. And just an interesting fact: that need for financial assistance has grown 50 percent in the last three years. That's a tracking that we do locally. The Lincoln Y has served children and families in an inner school program, a community learning center for the past 15 years. The focus of that program is really to get children, as well as their families, involved in physical activity, education, and enrichment. We've provided the program free due to the enormous financial barriers to the families in these schools, and I'm sure that's mirrored in every one of our communities in Nebraska. A new added sales tax would only translate into fewer being served: fewer children or adults in sports; fewer seniors trying to become healthy and live independently; fewer people served who are physically disabled and dealing with cancer or some other life-threatening disease. And this is truly not about recreation but rather fighting the challenge of a lifetime. Taxing programs, such as the Y, will impact communities we serve; quite honestly, impact those who need us the most. We recently have experienced a tax audit at the Lincoln Y, and through this experience we were questioned on several programs, in addition to youth sports, that have not been taxed based on our 1987 Revenue Ruling clarification and really prior to that clarification. I believe the tax code came into existence in '67. To date, activities and programs associated with the Y's have not been taxed, and the Revenue Department's stance certainly initiated a change in that interpretation. I respectfully request your support of LB903 but with broader parameters to include an exemption from sales tax for the kinds of activities that take place in organizations, 501(c)(3) organizations, such as the Y and

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Transcriber's Office

Revenue Committee
February 01, 2012

others serving our state. I thank you very much for your time and your thoughtful consideration of our request, and thank you to Senator Cornett for her drafting of the bill. And if you have any questions, I'd be pleased to answer...try to answer. [LB903]

SENATOR LOUDEN: Questions? Senator Hadley [LB903]

SENATOR HADLEY: Thank you so much, Ms. Bettin. Did I pronounce that right? [LB903]

BARB BETTIN: It's Bettin. [LB903]

SENATOR HADLEY: Bettin. Thank you. A couple of points. One, who...as one who learned to swim at 13th and P Street in Lincoln at the YMCA, I understand that. The tax ruling or the audit you had, did this have to do with for-profit areas that you were involved in, or...? [LB903]

BARB BETTIN: No, it did not. It was new areas, new...programs that we've offered for some time, but new questioning by the Revenue Department. [LB903]

SENATOR HADLEY: Okay. Because a lot of times with nonprofit organizations, if they get involved in for-profit activities that's a different animal altogether. And what you're saying is basically the YMCA does not have basic for-profit activities at your... [LB903]

BARB BETTIN: Correct. Correct. And I'm aware of what...we're aware of that, yes. [LB903]

SENATOR HADLEY: Okay. Thank you. [LB903]

SENATOR LOUDEN: Senator Pirsch. [LB903]

SENATOR PIRSCH: And you said that...I just want some clarification with respect to individuals who have an inability to pay for memberships there. You say, we try to accommodate as many as we can, or are you able to...I mean is that an across-the-board accommodation that you do achieve? [LB903]

BARB BETTIN: We do achieve that. We've not had to turn anyone away. The only reason that would happen is if your building didn't have an extra inch of space in it or a youth sports league didn't have an extra team in that. If I said "try," I was inaccurate in saying that. [LB903]

SENATOR PIRSCH: Oh, no, I don't think you did. Is that true with the other YMCAs too? [LB903]

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Transcriber's Office

Revenue Committee
February 01, 2012

BARB BETTIN: That would be correct. Yeah, with the other Y's across the state. [LB903]

SENATOR PIRSCH: Thank you. [LB903]

SENATOR LOUDEN: Questions? Other questions? I have one. Currently, you're not paying any sales tax on your admissions, or whatever you do, is that correct? [LB903]

BARB BETTIN: Correct. Now we do have day fees, which a person may come into our facility that is not a member and we do pay sales tax on day fees. [LB903]

SENATOR LOUDEN: On day fees? [LB903]

BARB BETTIN: Yes. [LB903]

SENATOR LOUDEN: Do you have any idea what kind of an impact that would be if you had to start paying sales tax? I mean, you're supposed to get it from the person coming in. So theoretically it shouldn't cost you anything. But, no doubt, it will cost you something. It will either be harder to sell memberships or something. Do you have any idea how much money we're talking about there? [LB903]

BARB BETTIN: You know, I don't have an exact figure, but I do know based on our 501(c)(3) status...one of our parts of our mission that we believe in is keeping our rates affordable. And you're right, we'd either have to pass that on, absorb those dollars somehow through operations, and/or discontinue programs, or lessen the amount of financial assistance that we give, so. But I do not have a dollar figure to offer, but it... [LB903]

SENATOR LOUDEN: What does it cost someone to come in there? Well, if they're a member then do they pay a membership fee and that's good for the year, or the family is good for the year? How is that? [LB903]

BARB BETTIN: For a membership to a facility, that's true. But then you can also have a membership as you participate in some of the other programs, like youth sports and swimming lessons or camping and those types of things. [LB903]

SENATOR LOUDEN: And what do you charge to do that: for swimming lessons, for instance? [LB903]

BARB BETTIN: Probably...I know the rate is different in all the Y's, but it's somewhere in the range between \$30 and \$50 I would guess, depending on which Y. Maybe less than that. [LB903]

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

Revenue Committee
February 01, 2012

SENATOR LOUDEN: I see. Then it would be somewhere around...this \$50 would be \$3.50 is what it would cost them extra in order to do that. [LB903]

BARB BETTIN: Right. And families many times enroll in many programs throughout the year, so that is a cumulative effect, obviously, with each activity. [LB903]

SENATOR LOUDEN: Now, do you sell a membership fee? [LB903]

BARB BETTIN: Yes, we do. [LB903]

SENATOR LOUDEN: And what does that membership fee cost? [LB903]

BARB BETTIN: Well, once again, I can't speak for all the Y's across Nebraska, but generally speaking in the \$40s, probably to \$70, is a membership rate depending on whether it's a family rate. [LB903]

SENATOR LOUDEN: That's for one person or for a family? [LB903]

BARB BETTIN: A family. [LB903]

SENATOR LOUDEN: For a family, \$40 to \$70. [LB903]

BARB BETTIN: In that range. And again we could get you those exact numbers. [LB903]

SENATOR LOUDEN: Yeah, but I mean, now we're talking...we're still talking less than \$5 extra on a family membership. [LB903]

BARB BETTIN: Yes. The interesting thing is we haven't raised...and again I can't speak for all the Y's in this particular instance. We haven't raised our rates in Lincoln for five years based on the hardships and the economic factors that we've seen as of late. So I think this tax would be a hardship. [LB903]

SENATOR LOUDEN: Now what...the lady I talked to with this from out there in Alliance, they were able to get the old roller rink or they rent it and they do roller hockey. And, of course, when they have people come in, I guess they would have to charge a sales tax for those people coming in to watch these kids do roller hockey. And that's through their Y that's doing that. That's what this bill would do if it isn't passed, I mean? [LB903]

BARB BETTIN: It depends on what the event was like. A lot of times those events, games, situations are about participation where the parents are taking the kids to the game and it's about much more than a competition. It's about youth development. I mean, the Y believes were in the youth development. That's what we do on a day-in,

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Transcriber's Office

Revenue Committee
February 01, 2012

day-out basis: youth development work. So I understand your question. But if it was an event where you charged the spectators to come in, then, yes, we would pay tax on that. [LB903]

SENATOR LOUDEN: Okay. Thank you. Other questions? Senator Hadley. [LB903]

SENATOR HADLEY: I just have one more quick question just so I fully understand this. Your fee for membership, right now you do not pay tax on that, is that...or there's not a sales tax charged on that? [LB903]

BARB BETTIN: Correct. [LB903]

SENATOR HADLEY: And under the potential ruling of the Revenue Department, you feel you would have to charge tax on that or not? [LB903]

BARB BETTIN: I don't believe I interpreted it that way. I believe based on our 501(c)(3) status, our membership has voting rights; therefore, that's not an admission type of... [LB903]

SENATOR HADLEY: Not an admission. Have you ever gotten any feedback from for-profit health clubs and such as that, that they charge...they have to charge tax and you don't? Has that ever been an issue? [LB903]

BARB BETTIN: I think there's been some conversation about that, if not here in Nebraska, in other states. But once again, I think we go back to our charitable purpose for the public good and the charitable nature of what we do, and the membership and the voting rights, and that characterizes a Y and why we do not pay sales tax on membership. [LB903]

SENATOR HADLEY: And Mr. Voigt tries to get me out to run, and I tell him I have to lay down until the urge goes away. (Laughter) Thank you. [LB903]

SENATOR LOUDEN: Senator Brasch. [LB903]

SENATOR BRASCH: Thank you, Chairman Louden, and thank you, Ms. Bettin, for your testimony here today. Before the hearing I went to various YMCA Web sites, and as you look, you know, membership is only the beginning. And there's many classes, activities that are offered by the various Y's. And is it that without this legislation anything a parent or person would do a la carte would be subject to sales tax, you know, those events? So basically, we're trying to charge tax on doing something within the Y that's other than the exercise equipment or the pool. Is that what we're looking at today, is trying to take some of the additional burden away above and beyond the membership fee? [LB903]

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

Revenue Committee
February 01, 2012

BARB BETTIN: Correct. But you have to realize we've been operating in that vein...sales tax has not been a part of anything that we do, camping, or those type of things. At the same time the Revenue Ruling came out we were subjected to an audit, which was fine. But during that audit, new interpretations were made that involved things like camping, Easter egg hunts, birthday parties, some of those things. And so, yes, you're correct. I think part of what we're looking at is that all activities that are good for kids, families, and are good, healthy living, youth development-type activities, would be exempt just as they have since the beginning of the tax code in '67. [LB903]

SENATOR BRASCH: I'm also curious, most of our rural communities, you know, western part of our state has experienced a 5 percent or more population decline. Have the YMCAs also noticed a decline in membership? Is membership declining or do you see it growing? [LB903]

BARB BETTIN: I think, generally speaking, the Y is one of the few places that is affordable to the hardworking middle-class family and is there for the child who is underprivileged as well as those that come from families with large incomes. And so I feel like...again, I can get you the exact, but I feel like, generally speaking, we've been very viable through these hard economic times. [LB903]

SENATOR BRASCH: That's wonderful to hear. Thank you. I have no other questions. [LB903]

BARB BETTIN: Thank you. [LB903]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. [LB903]

BARB BETTIN: Thank you. [LB903]

DAVE MLNARIK: Hello, Senator Louden. Thank you members of the committee. My name is Dave Mlnarik, that's M-I-n-a-r-i-k. I'm the executive director of the Nebraska Sports Council. We're a 501(c)(3) nonprofit organization that conducts the Cornhusker State Games every summer. We conduct the Live Healthy Wellness Challenges, two of those a year. We have a couple of other events that we conduct, sports and recreation. I think Barb and Steve both made my number one point very clearly and eloquently in that people participate in our events to keep themselves healthy. It's a motivator. And I really think it's important to not impose barriers to that. But I want to speak, since it hasn't been addressed really yet about the economics and the potential enforcement issues with a ruling like was drafted earlier. And I do want to give Commissioner Ewald a lot of credit for bringing it to the forefront so we can get a direction on this, and Senator Cornett for drafting a bill that could exempt nonprofits from the sales and use tax on admissions for this purpose. Our organization has about a \$750,000 annual

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

Revenue Committee
February 01, 2012

budget, and of that, about \$400,000 is in entry fee income, which the ruling says would have sales tax imposed upon it. And that's a significant portion, somewhere I think around \$30,000 to \$40,000. Our past four years, with the economic conditions of our time, we've operated two years at loss and two years at very modest surplus. So our reserves have been tapped significantly. And to pass along an additional \$35,000 in fees to our participants is going to squeeze the participant. It's going to eliminate some events across our state. And the reason I say that is I also know from the user side. Our family...I participate in events. I have three kids, they're active in sports and recreational programs. And when this ruling came out, I went back and looked at our 2011 expenditures in this area; and to my astonishment and shock, our family spent in the neighborhood of \$3,000 last year for our kids to participate, for myself. And, you know, it's a significant additional expenditure...and this was just in the nonprofit things that we did. So it's going to...it would cause us to do less, and so there are events that participation goes down in. Where this has additional impact on the Nebraska Sports Council budget is that the other major area where we get our income, our operating income, to be able to provide these programs, is sponsorships. When the sponsor makes an investment in our programs and events, they do it because of the numbers. Well, if there's any reason for people not to participate and the numbers dwindle and go down, that area of our business is impacted as well. Another thing that's on the forefront is, our organization is bidding to host a national event, the State Games of America in 2015. The bid document hasn't come out yet, but the rest of this year we'll be working on a bid for Nebraska to play host to an event that would be a souped-up version of the Cornhusker State Games, with our, roughly average, 12,000 participants that play in the state games, and an additional 4,000 to 6,000 athletes from around the country; and they would come in and participate. The thing that we have on the states with beaches and mountains is we have a more cost-effective program here. And any hindrance to that, I don't care if it's 7 percent, if it's a couple dollars extra, is going to make our bid not look quite as good. So those are a couple of the things. If I could, just one more thing. It's tied to admission, to the facilities. The part of our budget or the part of the entry fees that covers rental into the facilities we use is less than \$35,000 annually. So what's to preclude me from adding a facility admission line-item in the entry process, I guess it is, and then collecting and paying the sales tax on, rather than an average entry fee of \$30, the \$7 that applies to the actual admission to the facility. And then it's extra work for everybody, enforcement issues. I think I'm done, so. [LB903]

SENATOR LOUDEN: Any questions? Senator Pirsch. [LB903]

SENATOR PIRSCH: Well, if he can just finish up. I know we kind of cut you off, so feel free to finish your thought there with respect to...you're saying... [LB903]

DAVE MLNARIK: Thank you. And in that point, we've already paid sales tax on things that we...entry fees. If it's an average of \$30, five bucks of that goes to a souvenir shirt for every participant. When we buy the shirts and give them away, we pay sales tax on

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

Revenue Committee
February 01, 2012

it. Three bucks goes to a medal. We buy those medals, pay sales tax on it, and give it away to the participants; you know, the yearbook that we do; the umpire fees that they pay income taxes on. Now that, you know, isn't direct. And I understand the collection of sales tax on the gross transaction, but I think that's an issue. And then the other final thing, I hope, is that it's important that it include adults because it's just as important for adults to stay active and healthy for the same reasons we gave on that. But also an event like ours that has all ages eligible, now we're going to collect sales tax on the adult fees and not the youth fees to participate in the same event. Moreover, we're going to figure out how to have those facilities charge us nothing for the adults to play and ramp up their...so, I mean, I think there's ways that it's going to make it difficult to impose the ruling where it concerns events and organizations like ours. [LB903]

SENATOR LOUDEN: Other questions? [LB903]

DAVE MLNARIK: Sorry to go over time. [LB903]

SENATOR LOUDEN: Seeing none, thank you for your testimony. Next proponent. [LB903]

STEVE HILLER: (Exhibit 10) Good afternoon, Senator Louden and members of the Revenue Committee. My name is Steve Hiller, H-i-l-l-e-r, and I'm the assistant director of the city of Lincoln Parks and Recreation Department, responsible for overseeing recreational team sports programs and the municipal golf program. I'm here this afternoon on behalf of the city of Lincoln to testify in support of LB903 regarding sales tax for recreation programs and facilities. I want to thank Senator Cornett for introducing the bill and also thank the committee for allowing us the opportunity to comment. We support the proposed language that would exempt youth sports activities from sales and use tax. We also support the language that would exempt the lease or rental of public recreation facilities, such as sports fields, picnic shelters, and recreation center meeting rooms from sales and use tax. Most everyone would agree that there are both economic and social benefits that result from encouraging youth and adults to engage in being physically active, recreating outdoors, and participating in the social recreation activities. Exempting these types of activities from sales and use tax helps keep them affordable and accessible to citizens in Lincoln and across the state. In addition to offering youth sports team programs, we offer team sports programs for adult participants. We respectfully request that consideration be given to also exempting recreational adult sports from sales and use tax. Thank you for the opportunity to speak on behalf of the city of Lincoln in support of LB903. I would be happy to answer any questions that you may have. [LB903]

SENATOR LOUDEN: Okay. Questions? Senator Hadley. [LB903]

SENATOR HADLEY: Thank you, Senator Louden. Mr. Hiller, just a quick question. I

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Transcriber's Office

Revenue Committee
February 01, 2012

notice you're involved with the municipal golf program. [LB903]

STEVE HILLER: Yes, sir. [LB903]

SENATOR HADLEY: If I go out to Pioneers and buy a ticket to play 18 holes, I would pay sales tax on that admission? [LB903]

STEVE HILLER: That sales tax is included in that green fee or that admission. [LB903]

SENATOR HADLEY: And that would not change at all under this? [LB903]

STEVE HILLER: No, sir, it wouldn't. [LB903]

SENATOR HADLEY: Okay. Thank you. [LB903]

STEVE HILLER: Those are truly admissions. We pay...our swimming pools, people that go to our swimming pools or to go swim, pay sales tax on those admissions. [LB903]

SENATOR HADLEY: One other follow-up question. It seems like we have more and more of these types of traveling teams, club-type of things. [LB903]

STEVE HILLER: Yes, sir. [LB903]

SENATOR HADLEY: Do you see that impacting these teams also? [LB903]

STEVE HILLER: Most certainly. I haven't looked around the room to see who all is here today, but we work with several organizations as a facilitator that use our various parks, ball fields, soccer fields, that have a grave concern for and support this bill in terms of not charging sales tax on those youth league participants. And yes, there will be a huge impact on those groups that provide those activities. [LB903]

SENATOR HADLEY: Okay. Thank you, Mr. Hiller. [LB903]

SENATOR LOUDEN: Other questions? Seeing none, thank you, Mr. Hiller, for your testimony. [LB903]

STEVE HILLER: Thank you. [LB903]

SENATOR LOUDEN: Next proponent. [LB903]

BILL LINDSAY: (Exhibit 11) Good afternoon, Senator Louden, other members of the Revenue Committee. My name is Bill Lindsay. I'm here on behalf of the Nebraska Alliance of YMCAs. I've been an attorney practicing in Omaha for over 33 years. I've

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

Revenue Committee
February 01, 2012

also received a master's of law degree in taxation. There were a couple of items that have come up on questions, and I wanted to clarify a couple of those, first. What we're talking about is participants in the various activities. We're not talking about spectators. So if I am charged a fee to go watch my daughter play basketball, I'm still going to pay sales tax on that under this bill. That is unaffected by the bill. LB903 really has two main purposes. The first is to change the statutory definition of the word "admission." That definition, as Commissioner Ewald pointed out, has differed for over 40 years from the definition that the Department of Revenue has been operating under. That, obviously, has led to some confusion over the years and part of the reason we're here. So what this bill first does is change the definition to what we've been actually operating under for the last 40 years. And then the second major purpose of the bill is to deal with issues relating to admissions for participants in the various activities by 501(c)(3) organizations and also governmental organizations, like the city of Lincoln you just heard from. The 501(c)(3) organizations are those that receive an income tax charitable contribution deduction. There's actually 29 different types of tax-exempt organizations under Section 501(c). Only one of these sections is affected by this bill. There's also some other tax-exempt organizations under other sections of the Internal Revenue Code. We support this bill. We believe it's a good bill. We appreciate the efforts of Senator Cornett and all of the other sponsors of the bill. The Department of Revenue issued their proposed Revenue Ruling last fall. Obviously, they went through quite a bit of work to come up with some definitions for the word "admissions." The work was apparent to anybody who read the bill and we appreciate that. The bill, as it stands, is based upon the proposed Revenue Ruling. It does make needed changes, and other witnesses have explained the reasons for the changes. One of the questions that came up is whether, for example, dance would be considered to be a sport. Well, that would be a question for the Department of Revenue to determine at some date, and it may change its mind. So I think it's something that should be dealt with. There are sports that are not competitive against other people and they are sports that the activity itself is the reward. The bill's language could require participants in these sports to pay sales tax. Would a chess tournament qualify as a sport? I doubt it. And what happens if one participant over age 19 is involved? Under the definition, the way I read it, sales tax will be charged on the entire event. So I do stress that adding "adult" in, is important. These are just some of the questions that are raised by the current bill. We believe in some amendments--they've been passed out to you--they would avoid tax-exempt charitable organizations and the Department of Revenue having to spend valuable staff time on determining answers to the questions that would arise. We believe that the proposed amendments will clarify the bill and provide that both youth sports and adult sports should be exempt from sales tax on the admissions for the participants only. In addition, the bill would provide that participants in all activities, programs, or classes conducted by these organizations would be exempt. I thank you for your time. [LB903]

SENATOR LOUDEN: Questions? Senator Hadley. [LB903]

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Transcriber's Office

Revenue Committee
February 01, 2012

SENATOR HADLEY: Senator Louden. Mr. Lindsay, thank you so much. Since you're an expert on tax, do you believe this is good tax policy for the state of Nebraska to make this change? [LB903]

BILL LINDSAY: Well, if your asking my professional opinion, I don't know that I have an opinion. If you're asking my personal opinion, yes. [LB903]

SENATOR HADLEY: Okay. Thank you. [LB903]

SENATOR LOUDEN: Senator Pirsch. [LB903]

SENATOR PIRSCH: So as I see the underlining rationale for the bill, and the bill's aim--correct?--is at children; minors right now, 18 and below, correct? [LB903]

BILL LINDSAY: Yes. [LB903]

SENATOR PIRSCH: And I guess the immediate kind of goals, health-related, obesity, maybe some goals with respect to keeping kids busy in kind of a good fashion as opposed to letting them...you know, having them unsupervised in nonproductive ways. But some have suggested here today that it should also apply to adults. I guess the same rationale, right? And you're among those, right, to keep health...? [LB903]

BILL LINDSAY: Yes, I am. [LB903]

SENATOR PIRSCH: And some have...one of the things that I was wondering is that under the bill as written, and you're a proponent of the bill, it would apply to events that would not necessarily get Nebraska kids in shape or keep them out of trouble, because these could be children from other states who just happened to be playing in a tournament here and perhaps on a high level. I'm trying to think of that occupying one of the...are there any of those type of events? Or are these, by and large, this bill geared only to affect Nebraska kids and not tournaments that draw from national pools and kids from other states? [LB903]

BILL LINDSAY: Well, it depends on who is sponsoring the particular one that you're talking about. If it's a for-profit organization or any tax-exempt organization that's not 501(c)(3), it's still subject to sales tax. It's fairly common in Omaha for people in Council Bluffs, for example, to play on an Omaha team. They're not Nebraska residents but they would still be excluded if it's a 501(c)(3) organization. As far as would other...you know, these big tournaments coming in? Yes. Now, I don't know if there's an entry fee charged to participants in the 2012 Olympic swim trials, but even under this bill, since there would be participants over 19, if one participant is over 19, sales tax will be charged on the entry fees for all of those persons. I don't know if there's an entry fee there or not; but if there is one, there would be sales tax charged under it, under the proposed ruling.

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

Revenue Committee
February 01, 2012

[LB903]

SENATOR PIRSCH: And similarly with that, the prior testifier talked about the State Games of America. It sounded like at least some of those participants are over the age of 19, which I think (inaudible) advocate. So I guess that, if you're limiting it to just kids, there isn't that concern as...well, I appreciate your comments here today. Thanks.

[LB903]

BILL LINDSAY: Thank you. [LB903]

SENATOR LOUDEN: Senator Brasch. [LB903]

SENATOR BRASCH: Thank you, Chairman Louden, and thank you, Mr. Lindsay. Some excellent food for thought here on this subject. But as I look at youth and add "adult"...well, if you're not a youth or an adult...you're one or the other. Why isn't it just individual perhaps, or then...or are we trying to build a healthy lifestyle? Perhaps it should be PK for prekindergarten to 16 or 21, so it includes all dependents, you know, if we're looking at that. Or are we just striking "admissions"; subadmissions to "admissions"? [LB903]

BILL LINDSAY: Well, I think part of the reason we're putting the "and adult" in, was the bill already was using the word "youth." And yes, it might have been another way to do it would be to strike that word and just cover all participants. And I wouldn't have a problem with that. [LB903]

SENATOR BRASCH: Okay. That's what I was wondering, because there one...there's no "other" in there, I don't think. Maybe there is. I don't know. [LB903]

BILL LINDSAY: Well, I think you're right. I've never found any others, Senators. [LB903]

SENATOR BRASCH: Okay, an other. (Laugh) Okay, all right. Thank you for your testimony. [LB903]

SENATOR LOUDEN: Other questions? Senator Schumacher. [LB903]

SENATOR SCHUMACHER: Thank you, Senator Louden. Thank you, Mr. Lindsay, for your testimony today. From a tax policy point of view, we heard earlier today about the unfairness of giving one provider of an equal service a tax preference over another provider and how that creates distortions in the marketplace and unfairness. In doing...if the goal of this legislation is to make young people able to afford the benefits that come from sports or intellectual activity on a competitive basis, then kind of go over with me a little bit the pros and cons of saying, look, what we really should be doing here is just allowing a tax credit to a child, or perhaps on an income tax return of a productive adult,

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

Revenue Committee
February 01, 2012

that they can then take and spend on the sales tax, either a nonprofit organization or a public organization or a for-profit organization, so long as it provides youth competition, rather than saying this kind of provider, you get the exemption, and that kind of provider you don't. [LB903]

BILL LINDSAY: Well, I see from a tax policy point of view the idea of putting a credit when somebody then goes to spend it and you put this on a tax return. We've done that in the past with a food sales tax credit. You then have the problem that you start having to do the administration of all of the credit and spend the money on that, where it would have just been easier to do what was done with food and exempt food. So groceries are now exempt. They did start out years ago with a food sales tax credit. And to me that sounds like an additional mechanism that doesn't need to be there. [LB903]

SENATOR SCHUMACHER: But it does solve the problem of the unfairness of selecting one type of provider over another type of provider. [LB903]

BILL LINDSAY: Well, you have to decide what is unfair and are they providing the same service. You're talking about a charitable organization trying to encourage the youth sports versus a for-profit organization that is designed, you know, on a more capitalistic basis. And are they going to provide the same types of instructions? I don't know. That is a policy decision for the committee and, ultimately, the Legislature to make. [LB903]

SENATOR SCHUMACHER: But ultimately the consumer, if armed with that credit, would be the one to make the decision. [LB903]

BILL LINDSAY: Well, they would be armed with that credit, but they get a...I don't know if you're talking about they get a credit only if they establish this. [LB903]

SENATOR SCHUMACHER: You just give...anybody with a child deduction gets so much to cover the sales tax on stuff like this. [LB903]

BILL LINDSAY: Okay. But I don't understand if they're having to prove they paid the sales tax or anybody just gets the credit. [LB903]

SENATOR SCHUMACHER: Even if they're a couch potato, they get the sales tax deduction. [LB903]

BILL LINDSAY: So they don't actually have to use it for that purpose. [LB903]

SENATOR SCHUMACHER: They might not have to. [LB903]

BILL LINDSAY: Well, again, then you're going to be spending money on people who aren't doing this. [LB903]

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

Revenue Committee
February 01, 2012

SENATOR SCHUMACHER: Thank you. [LB903]

BILL LINDSAY: Thank you. [LB903]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. Are there any more proponents? How many proponents are left? This is the last one. [LB903]

TONY VELAND: Good afternoon, members of the committee. My name is Tony Veland, that's V-e-l-a-n-d, and I'm pleased to be here today to speak in support of the bill. Youth sports has been characterized by the Department of Revenue in their taxation proposal as being merely recreation. Yes, youth sports is about learning the rules of the game, and yes, it's about learning how to play the sport better by building new skills; and, of course, kids are going to have fun in the process. But the volunteer coaches at these nonprofit organizations, like the Y and others like it, know that this is really youth development work. It's about learning to be part of a team, learning to play fairly, learning the right way to win and the right way to take a loss; how to learn from a leader and also how to become a leader. For some, it's about feeling a sense of accomplishment, self-esteem, and confidence. Perhaps, for the first time ever, it's about being called out by name--but for this time, for doing something right. Sometimes that volunteer coach is the first role model or mentor in that child's life; and consequently, that child is able to break the cycle of delinquency in their family, the cycle of gang affiliation, the cycle of a life in and out of incarceration, because there was more than just sports going on, on that field, that court, or that baseball diamond. It was the exposure to a set of expectations, a set of values, and a safety net that most of us take for granted; support through a sense of community, a sense of belonging, and a sense of pride. I want to focus on those last two: a sense of belonging and a sense of pride. There is a place that kids can go to get these things, and I'm not talking about within the confines of your home. I'm talking about on the streets with gangs, unfortunately. Gangs can welcome in kids, take them in as their own, and they become a part of that family. And regardless of the gang's intentions or their actions, the kids feel like it's a part of something big and that feeling becomes addictive. Now I grew up in north Omaha, roughly four blocks away from extreme gang activity. And one of biggest reasons I didn't stray to the wrong side of the tracks was because I was involved in these type of programs. I was exposed to individuals who were going to help me and who were making sure that I was steered in a positive direction as opposed to being run down a dead-end road. I was able to learn the importance of discipline, integrity, respect for self and others, and character. My mere involvement instilled values and traits that would allow me to start making good decisions as a child that would carry forward into my adulthood, and allowed me to become the person that I am today, as well as accomplish the things I have in my career. Now there are a number of kids who have yet to experience these type of programs. They are left to fend for themselves without

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

Revenue Committee
February 01, 2012

proper guidance or good models...good examples for model behavior. And, consequently, they start making bad decisions and developing bad habits that carry over into their teenage and adult years. Some of these kids are the same individuals who are responsible for the senseless acts of violence that are taking place in our community today. Not only have I been a victim of that violence but I've lost two family members to the violence over the last eight months. And how do we combat this? What the Good Book says that if you train a child in the way they should go, they should not depart from it. I think the key word there is "child." We have to reach these individuals early in their lives and show them the right way to live and the right way to strive. The YMCA and other programs are trying to do things like that. Because of this, I feel like it is morally irresponsible to do anything that will be a hindrance to our kids participating in these types of positive programs. We should be finding solutions to make it easier for our kids to achieve success in life as opposed to creating more of a burden for them to bear. With that being said, let's clarify that in Nebraska it's not appropriate to tax yet youth sports. Let's use this bill today as an opportunity to say that the return on investment for our state's youth is indeed substantial and well worth our collective efforts. Thank you for your time. And I urge your eye on this vote. [LB903]

SENATOR LOUDEN: Questions? Seeing none, thank you for your testimony. [LB903]

TONY VELAND: Thank you. [LB903]

SENATOR LOUDEN: Any more proponents? Seeing none, then we will take opponents. Seeing no opponents, neutral testimony? Seeing none, would you like to close, Senator Cornett? [LB903]

SENATOR CORNETT: Thank you, Vice Chair Louden. There are a couple of points that I want to clarify that we have heard over today's testimony, and I'm not saying that they are wrong, they are just not necessarily fully correct. What the Department of Revenue did with its draft ruling was not a new tax. We've heard this a number of times. I'm sure we've all received e-mails about the Department of Revenue trying to impose a new tax. This is a tax...it was enacted in 1967. Some groups have not been paying that. We are faced with a policy decision. And Senator Louden and some of the people that have been here a little longer will know, we always hear we need an exemption. At some point, we can't exempt everybody. We have to have tax revenue coming in. The policy decision we're making here, because these groups have not been paying taxes in the past, are: (1) do we leave it the way it is with the department ruling and we impose tax on youth sports; (2) do we carve out youth activities? Senator Schumacher, I'm more than happy to look at "youth activities" as a definition. But the other thing we have to look at very carefully and we will hear a number of people, or I have already, trying to amend the bill to include "for-profit," that this is a clear distinction, nonprofit and for-profit in this bill. The second clear distinction that we have tried to draw is youth activities over adult activities. I completely agree the Y serves a wonderful purpose in our communities

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

Revenue Committee
February 01, 2012

for both youth and adult. But what are we trying to do? And why do we justify an exemption? Are we justifying an exemption for the greater good of our youth, or are we justifying an exemption for all people for sports? Generally, I'm not for these...I'm very conservative in some of these things. This is why it is drafted this way. I will also be more than happy to look at if one person participates in a group then the whole group would be subject to sales tax, the way it is drafted. But those are the three points that I really wanted to make: (1) this is not a new tax; (2) this is focusing on nonprofit; and (3) it is focused on youth. With that, I will be happy to answer any questions. [LB903]

SENATOR LOUDEN: Questions for Senator Cornett? Seeing none, then that will close the hearing on LB903. And if you wish, Senator Cornett, you may open the hearing on LB983. [LB903]

SENATOR CORNETT: I was going to say, you guys are going to be seriously sick of me by the end of the day.

SENATOR LOUDEN: Pardon?

SENATOR CORNETT: I said you guys are going to be sick of me by the end of the day. (Laugh) LB983 is striking limitations on the number of years for the research and development tax credit that can be claimed. Vice Chairman Louden and members of the Revenue Committee, my name for the record again is Abbie Cornett, C-o-r-n-e-t-t, representing Legislative District 45. I am appearing here today as the introducer of LB983. LB983 would strike the limitation on the number of years that a taxpayer can claim the research and development or R&D tax credit authorized by Nebraska Revised Statute Section 77-5803, thereby recognizing and affirming Nebraska's commitment to providing R&D tax credits for projects that may take more than five years to successfully research and develop. One of those tax credits applies to the university-based R&D projects. The credit is equal to 35 percent of the federal R&D income tax credit, and the other applies to R&D projects that are not university-based projects. That credit is equal to 15 percent of the federal R&D tax credit. Current Nebraska law limits taxpayer ability to claim those R&D tax credits to a total of five years. LB983 would remove that limitation of five years. The Nebraska R&D tax credit then could be used to obtain refund of Nebraska state sales tax and use taxes paid, may be used against the Nebraska income tax liability of the taxpayer, or may be used as a refundable credit claimed on a taxpayer's Nebraska income tax return pursuant to Nebraska Revised Statute Section 77-5804. The changes proposed in LB983 would be operative for all tax years beginning or deemed to begin on or after January 1, 2012, under the Internal Revenue Code of 1986. This was brought to me by the Omaha Chamber. And I believe that there will be a representative to speak to the meat of that. [LB983]

SENATOR LOUDEN: Questions? Senator Hadley. [LB983]

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

Revenue Committee
February 01, 2012

SENATOR HADLEY: Thank you, Senator Cornett. Just a quick question. [LB983]

SENATOR CORNETT: Sure. [LB983]

SENATOR HADLEY: And you may want to defer it. Since this is tied to the federal, 35 percent of the federal R&D income tax credit, and the 15 percent, does the federal last longer than five years also, the federal tax credit? [LB983]

SENATOR CORNETT: I believe it does, but that is something that I would have to double-check on. [LB983]

SENATOR HADLEY: Okay, because I'm just curious, because if it doesn't, how...you know... [LB983]

SENATOR CORNETT: Well, I think it would have to if it's tied to, logically speaking. But I don't know how long the federal credit goes. [LB983]

SENATOR HADLEY: Okay. Okay, thank you. [LB983]

SENATOR LOUDEN: Other questions? Seeing none, I guess we're ready for the first proponent. [LB983]

JOSEPH YOUNG: (Exhibit 12) Good afternoon, Vice Chairman Louden and members of the Revenue Committee. For the record, my name is Joseph Young, that's spelled J-o-s-e-p-h Y-o-u-n-g. I am the director of public policy for the Greater Omaha Chamber of Commerce; also here testifying today on behalf of the Lincoln Chamber of Commerce and the State Chamber of Commerce and Industry in support of LB983. And I'd like to thank Senator Cornett for introducing this legislation. I think it's safe to say that there are a few things that are more important in business than innovation and technological advances that keep pace with the ever-changing world of commerce. Whether we're talking about new software that makes your phones or computers run faster and make them easier to use or if we're talking about a new pivot head on central pivot irrigation systems, new product and service development are the keys to creating more business investment and new jobs for Nebraska's citizens. Because of that, the Legislature I think has had an impressive focus on creating new programs and enhancing existing programs to further incentivize business growth in our state. The primary activity that businesses conduct to create new products and further innovation, of course, is research and development. And I won't go into the details of the bill. I think Senator Cornett did a nice job on that. But I do want to highlight some reasons why this bill is important today. In 2009, Senator Tom White, who sat on this committee, introduced LB555. That bill doubled the R&D tax credit to 30 percent of the federal credit. In addition to doubling the credit, LB555 allowed for a 35 percent credit if the company utilized a Nebraska college or university campus while conducting this research and

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

Revenue Committee
February 01, 2012

development activity. Last year, the Legislature passed LB387 and LB389 which were the Business Innovation Act and the Angel Investment Tax Credit Act, respectively. Both of those bills had a significant focus on encouraging businesses, both existing and start-up, to invest in the R&D activities that will help them achieve sustainable long-term job and investment growth. I think the most important point that I can make today is that R&D is one of the most important activities that you all as a state can incentivize. I'm sure you're all familiar with the Battelle study that was conducted in 2010. One of the main focuses of that study at the time was to concentrate on programs that would be most effective at getting businesses ramped up and ready to emerge from the nationwide recession in the best possible position to seize a greater share of their market, whatever that may be. We think it's good public policy to lift this limitation or sunset, if you will, especially after the Legislature and the Governor have invested so much in research and development programs over the last six years. And I should note, and this is very important, that there is a zero fiscal note on this bill; so it won't cost the state any new money. There are some numbers there for your reference on the pages that I handed out. But generally, I'd just like to thank the committee for their past work on this issue. And I'd be willing to answer any questions that you might have. [LB983]

SENATOR LOUDEN: Questions? Senator Hadley. [LB983]

SENATOR HADLEY: Thank you, Senator Louden. Mr. Young, just the same question I asked Senator Cornett. There obviously must be a federal tax, R&D tax credit, in order for the Nebraska to kick in, is that correct? [LB983]

JOSEPH YOUNG: That's correct. [LB983]

SENATOR HADLEY: And so the federal goes on obviously longer than five years? [LB983]

JOSEPH YOUNG: I believe it does. I'll have to confirm that for you. One of the issues with the federal R&D tax credit is that in general the entire policy is sunset every three to five years. And so Congress has to go back and reenact or reauthorize the R&D credit, which I think makes some people nervous. But obviously we can't control that. [LB983]

SENATOR HADLEY: So technically, if they were to do away with the R&D credit, this...ours would go away also, right? [LB983]

JOSEPH YOUNG: That's correct; yes. We wouldn't have one. [LB983]

SENATOR HADLEY: Yeah, okay. Thank you. [LB983]

SENATOR LOUDEN: Senator Schumacher. [LB983]

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

Revenue Committee
February 01, 2012

SENATOR SCHUMACHER: Thank you, Senator Louden. Thank you for your testimony today. I'm trying to get in my head the big picture under this. The first element that this particular statute we're tinkering with has is research and experimental activities defined in 174 of the Internal Revenue Code. Can you kind of give me a general idea of what those are? [LB983]

JOSEPH YOUNG: The activities? [LB983]

SENATOR SCHUMACHER: Yes. [LB983]

JOSEPH YOUNG: I can't speak specifically to the statute. I'd have to pull that. But I believe, and I'll have to get back to you on this mostly, but I believe that any scientific research and development that a company partakes in, if they're participating in the Nebraska Advantage Act within those statutes or receiving credits through that program, would qualify for this. But I... [LB983]

SENATOR SCHUMACHER: So in order to get your research and development, whatever that might mean, a credit for that, you have got to be involved in the Nebraska Advantage Act? [LB983]

JOSEPH YOUNG: I believe so, but I'll have to confirm that for you. [LB983]

SENATOR SCHUMACHER: Okay. And then this is a refundable credit, is that true? [LB983]

JOSEPH YOUNG: That's correct. [LB983]

SENATOR SCHUMACHER: And so basically either 35 percent of what the feds allow...what do the feds allow? What percentage of the research and development do the feds allow? How much is the public paying for this? [LB983]

JOSEPH YOUNG: I want to say it's 15 percent, but that's another number I'll have to get back to you on. [LB983]

SENATOR SCHUMACHER: So in other words, a third of...I mean, if that is 15 percent, then 5 percent of the cost of whatever research and development is defined as, will be...a check will be written to me before I can offset my taxes with it? [LB983]

JOSEPH YOUNG: Yeah. [LB983]

SENATOR SCHUMACHER: And the public benefit is the fact that these businesses then are more inclined to do this activity in Nebraska than a state which gives them less

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

Revenue Committee
February 01, 2012

of a credit? [LB983]

JOSEPH YOUNG: Yeah. I believe actually that the numbers work out from a Nebraska standpoint at...the 15 percent was 3.5. When they bumped it to 30 percent and 35 percent, it works out to 7 percent and 7.5 percent. [LB983]

SENATOR SCHUMACHER: Do we have any data as to the size of companies that are getting benefit from this? Who are these checks or these offsets on taxes going out to? Are they going out to, you know...the general size, you know, this much in sales or net income, this much, this much, this much, so that we know who's taking advantage of these programs? [LB983]

JOSEPH YOUNG: I don't have the names of the specific companies. I would venture to guess it varies widely. [LB983]

SENATOR SCHUMACHER: I wasn't asking for the names of specific companies. I was just kind of...bigness, littleness, in the "middleness." [LB983]

JOSEPH YOUNG: I'll have to get that. If I can, I'll get that from the Department of Revenue. [LB983]

SENATOR SCHUMACHER: I think in shaping tax policy this kind of a big picture thing is probably good to have so we have some idea of what's working, what isn't working, particularly if, and I think it's kind of my recollection, it's been awhile since I read that provision of the Internal Revenue Code, the definition of research and development is not so defined. [LB983]

JOSEPH YOUNG: That sounds right to me. [LB983]

SENATOR SCHUMACHER: It's kind of loose. Thank you. [LB983]

SENATOR LOUDEN: Seeing no more questions, thank you for your testimony. [LB983]

JOSEPH YOUNG: Thank you. [LB983]

SENATOR LOUDEN: Next proponent. Are there any more proponents? Then we will take opponents. Are there...I see no opponents. Neutral testimony? Seeing none, Senator Cornett, you may close. Senator Cornett waives closing. And we will start in on LB1033. And Senator Cornett will open on that one. [LB983]

SENATOR CORNETT: Last year we had a...well, pardon me. Thank you, Vice Chairman Louden and members of the committee. My name again for the record is Abbie Cornett, C-o-r-n-e-t-t. I represent the 45th Legislative District. All of you

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

Revenue Committee
February 01, 2012

remember, last year, we had a number of wind bills in front of us. Over the course of the interim we worked on the bills and consolidated the concept of those bills into the bill that you see in front of you. Because...even though we heard the three bills last year in committee in their individual form, myself and the Speaker felt that it was significant enough of a change that by combining them into one bill we needed a new hearing. As this committee knows, Nebraska is ranked as the third best wind resource state in the entire country. That is why over the last four years the Legislature has passed significant and landmark legislation that seeks to capitalize on this vast resource. Since the Legislature began these efforts, the amount of electricity generated by wind has tripled, and wind capital investment has surpassed half a billion dollars. LB1033 is the result of a combination of three bills, as I described before, introduced and heard by this committee in 2011. During this past summer, the group of Nebraska businesses, out-of-state wind developers, and groups representing local landowners met and drafted amendments to the original carryover legislation of LB362. The drafted amendment sought to put Nebraska in a competitive position with our surrounding states on sales tax issues and create an incentive for out-of-state investors to contract with local Nebraska businesses and to further encourage local stock offerings to those Nebraska employees directly involved in wind energy projects. As a result of these amendments, I decided that, as I described, a new bill should be introduced to afford this committee an opportunity, through a public hearing process, to examine and, hopefully, pursue the enactment of this proposal. Several of the participants in these discussions will follow me today and provide for you a background on this proposal. They will answer all of your technical questions. However, before those presentations I'd like to ask Ross Knott, the president of the Petersburg State Bank in Petersburg, Nebraska, to give you a look at what wind energy development means to our state and rural communities. I believe he is here to speak today. Questions from the committee? [LB1033]

SENATOR LOUDEN: Questions? One question I have, Senator Cornett. With this new amendment will the fiscal note still be similar? [LB1033]

SENATOR CORNETT: It is not an amendment. It is a new bill that amends...it's basically LB362 from last year with significant enough amendments that we felt that it needed a new hearing. So, yes, it will have a fiscal note in here that is representative of those changes. [LB1033]

SENATOR LOUDEN: About the same as this one? [LB1033]

SENATOR CORNETT: Yes. [LB1033]

SENATOR LOUDEN: Okay, thank you. Okay. Other questions? Seeing none, thank you. First proponent. [LB1033]

ROSS KNOTT: Thank you, Senator Cornett, Senator Louden, and members of the

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Revenue Committee
February 01, 2012

Revenue Committee. My name is Ross Knott, R-o-s-s K-n-o-t-t. I am president and CEO of the Petersburg State Bank. We're a community of a little over 300, located in northeastern Boone County. And we are currently the home of 120.5 megawatts of renewable energy through wind generation. Our community, through the construction phase of these windfarms, has seen a great spike in retail, some housing development. We were faced with our rural grocery store almost being closed. And as it turns out, the owner of the store owned some land east of town, he's got three wind towers on that land. He's getting royalty payments from the rent and has had an opportunity to buy another small store; and we're actually building a new grocery store on the corner of Highway 14 and Highway 32 in Petersburg, which is pretty unheard of for a rural community these days. We've seen numerous benefits. We've had at least four kids that I can think of that were residents of the county or our community that the wind development has given them the opportunity to come home. It's where they're going to make their home, make their living, raise their families, and help our school district as well through, hopefully, some increased enrollment, which is another thing all the rural communities seem to be confronted with. I'm the only one on the group I think testifying today that's not an expert in anything. All I do is live on main street of a small, rural community and have seen some tremendous economic impacts and an attitude in a community that has gone from how do we survive to how are we...from that attitude to the attitude that now we're going to thrive, that we have some real opportunities. And I think the passage of this LB1033, while it may seem like a short-term loss of sales tax revenues, it actually opens up the opportunity to some long-term gain of sales tax revenues. If we can find a way to help the developers and Nebraska Public Power and the other entities in electricity create more windfarms in our state, that will create more jobs, that will create more new homes, that creates more retail and all of those other items that will have sales tax be generated as a result. That's all I've got. If anybody has any questions, I'd be glad to try to answer them. [LB1033]

SENATOR LOUDEN: Questions for Mr. Knott? I guess if you're not an expert, they're not going to ask you questions, so I'm sorry. (Laughter) [LB1033]

ROSS KNOTT: I was hoping for that. (Laughter) [LB1033]

SENATOR LOUDEN: Sorry about that, but thanks for your testimony. [LB1033]

SENATOR HADLEY: I wished that happened to me all the time, too, that they don't ask me questions. (Laughter) [LB1033]

ROSS KNOTT: Okay. [LB1033]

SENATOR LOUDEN: Next proponent then. [LB1033]

ROSS KNOTT: Thank you. [LB1033]

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Transcriber's Office

Revenue Committee
February 01, 2012

SENATOR LOUDEN: Thank you for your testimony. [LB1033]

CHRIS DIBBERN: (Exhibits 13 and 14) Good afternoon, Vice Chairman Louden and members of the committee. My name is Chris Dibbern, and that's C-h-r-i-s D-i-b-b-e-r-n. And I'm the general counsel and registered lobbyist for the Nebraska Municipal Power Pool, and I am here today on behalf of the Nebraska Power Association. The NPA, made up of all public power providers in the state of Nebraska, supports LB1033. Our mission is low-cost reliable power. The Legislature has altered our mission to also include more renewable options for ratepayers and greater support for renewable projects in the past. LB1033 encourages renewable energy in a very important way by reducing the sales tax paid by private developers if they pass through certain hurdles under the Nebraska Advantage Act. The Nebraska Power Association supports LB1033 and commends Senator Cornett for introducing the bill for these three reasons. First, LB1033 sends a message that the state supports renewable energy. They're now called tier 7 projects under the bill. And we at the NPA believe that message should be reinforced, even if we do not directly benefit by LB1033. Secondly, public power can buy the output of private wind developers and thus we should indirectly reduce the cost of energy for ratepayers in the state. Lastly, public power encourages incentives as a way to support a new industry and the Nebraska economic development that is associated with these projects. By passing this bill, it creates a greater incentive to invest and operate renewable technologies. And I have passed out for you two handouts. The first handout is...yesterday, there was a webinar by the American Public Power Association, and this is their most current information: that in the country, in 2009, renewable projects constitute 3.6 percent of the portfolio in the country. So it tells you it is an emerging technology, it's a growing technology. I also looked at the database for...the second handout was the "Database of State Incentives for Renewable and Efficiency" projects. This database for the research analysts is really very helpful. It says what are the financial incentives for renewable energy in all 50 states. Twenty-eight states give a sales tax advantage for renewable energy. And if you go click on Nebraska, it would tell you that there is a certain sales tax exemption currently for fuel used in energy generation. So with that, we just want to thank Senator Cornett. And I would answer any questions, although I am not a tax expert and did not draft this bill. [LB1033]

SENATOR LOUDEN: Questions for Chris? Senator Hadley. [LB1033]

SENATOR HADLEY: Senator Louden. Chris, thank you for coming. Just for the record, it is not uncommon to have tax policy to incent people's behavior. Would that be a correct statement? [LB1033]

CHRIS DIBBERN: That's absolutely correct. [LB1033]

SENATOR HADLEY: It can be more than just raising revenue, it can make people do

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

Revenue Committee
February 01, 2012

what government would like them to do. [LB1033]

CHRIS DIBBERN: That's right. Good policy. Often the beginning, emerging technology is incentivized. In fact, MEAN, our organization got an incentive for the first five years of the Kimball windfarm. We got a REPI payment from the federal government to incentivize us to invest in wind. [LB1033]

SENATOR HADLEY: Thank you. [LB1033]

SENATOR LOUDEN: Other questions. Senator Schumacher. [LB1033]

SENATOR SCHUMACHER: Thank you, Senator Louden. Thank you for your testimony today. Just so I get...I look at this handout that you've handed out here today, and it's clear that the renewables are a tiny percentage of our use. What is the cost of generating a unit of power, say, a kilowatt-hour, or however you measure that, by wind versus nuclear or hydrocarbon? [LB1033]

CHRIS DIBBERN: Let me...so I won't guess for you, let me get that answer back to this committee, so I can go back to the industry. I would tell you the renewables are slightly higher than coal. I would tell you that hydropower is probably slightly lower than all of the usage. We benefit a great deal from hydropower in Nebraska too. So that, to me, is our lowest resource. Coal is certainly a low resource. But let me get you the exact data so I'm not just guessing for you. [LB1033]

SENATOR SCHUMACHER: Thank you. [LB1033]

SENATOR LOUDEN: Senator Pirsch. [LB1033]

SENATOR PIRSCH: Speaking of hydropower, where are the current hydropower projects in the state? And is there room for more hydropower? [LB1033]

CHRIS DIBBERN: Well, a couple of answers. We use WAPA power. Western Area Power Administration has some large hydro dams that we benefit from on the Missouri River and also on the Platte River; so not necessarily in the state but that the federal government owns. So many communities have a WAPA allocation, and that allocation is the hydropower that we get. And Senator Adrian Smith, in Congress, excuse me, Congressman Smith actually has some small hydro legislation that he is supporting. You don't see large dams anymore like the large federal dams, but you see run-of-the-river, you see some new technology in hydro dams. So we're looking forward to some of those items. [LB1033]

SENATOR PIRSCH: It doesn't have large promise for expanding from 7 percent, where it is now, way out to 20 percent? [LB1033]

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

Revenue Committee
February 01, 2012

CHRIS DIBBERN: No. [LB1033]

SENATOR PIRSCH: Okay. [LB1033]

CHRIS DIBBERN: I don't think we'll see large hydro projects. But we have certainly seen a lot of hydropower in the last year and a half because of snow melt. [LB1033]

SENATOR PIRSCH: Okay. And I've taken us off the trail a little bit. And now back on track. With these type of...the proposal here for this new tier, tier 7, would the...and maybe I'm jumping the gun here or remiss. But are there particular potential projects that may hinge on this type of activity or type of program? [LB1033]

CHRIS DIBBERN: Well, I think it would incentivize more wind projects in the state. Wind projects are...though the criteria is also there has to be transmission with it. So this kind of bill will incentivize more projects, existing projects in the state, and just wind in general. We have a lot of opportunities in the future. [LB1033]

SENATOR PIRSCH: And this is based on...there's two types of categories here: one over \$75 million and one smaller investment. So it would be applicable toward sales and use taxes and what else? Refund of an additional 25 percent of sales. [LB1033]

CHRIS DIBBERN: It's largely geared at sales and use tax. [LB1033]

SENATOR PIRSCH: Okay. And with this, would it be...would renewable sources then generated from Nebraska sources be competitive then or just starting to get a little bit lower towards other, you know, nuclear or hydrocarbon? Do you know? Would this bring us into a...do you see a... [LB1033]

CHRIS DIBBERN: It would be competitive with other states who give incentives for wind products. I still... [LB1033]

SENATOR PIRSCH: It would get us competitive? [LB1033]

CHRIS DIBBERN: Each one of these generation sources has its own cost, has its own benefits to it. So I wouldn't tell you that it would be completely competitive with coal or natural gas or hydro. But it would be competitive with other states that give incentives to wind. [LB1033]

SENATOR PIRSCH: Okay. So you see a modest bumping out maybe and not an explosion of... [LB1033]

CHRIS DIBBERN: That's correct. [LB1033]

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

Revenue Committee
February 01, 2012

SENATOR LOUDEN: Other questions? Seeing none, Chris, thank you for your testimony. [LB1033]

CHRIS DIBBERN: Thank you. [LB1033]

SENATOR LOUDEN: Next proponent. [LB1033]

DAVID BRACHT: (Exhibits 15 and 16) Mr. Chairman and members of the committee, thank you for allowing me to testify today. My name is David Bracht. And for the record that's spelled B-r-a-c-h-t. I'm an attorney testifying today in support of LB1033 in my capacity as legal counsel to Invenergy Wind Development LLC. Invenergy owns and operates large-scale renewable and other clean generation facilities throughout North America. Invenergy is the largest independent wind development company in North America, and I underscore the independent in that respect; and it currently has about 6,700 megawatts of wind, solar, and thermal projects under contract, in construction, or in operation. As the committee is well aware, Nebraska has a significant wind resource. According to the National Renewable Energy Laboratory, Nebraska has the fourth best wind potential in the United States. Like many of the resources we have in Nebraska, however, our high quality and abundant wind resource can produce more wind energy than the residents of Nebraska can use; in fact, more than 120 times the wind energy that we could use in the state. Therefore, much like the corn producers and cattle ranchers in our state, it's necessary to export this wind energy for Nebraska's citizens to reap the economic benefit of the state's wind resource. The Nebraska Unicameral recognized the potential benefit when it passed LB1048 in 2010. LB1048 represented a fundamental shift of Nebraska's power policy by allowing certified, renewable export facilities to be developed with the express goal of exporting the energy produced. I've heard LB1048 referred to as opening the door to Nebraska's energy future. Invenergy recognized both this opportunity and Nebraska's excellent wind resource when it became the first developer to apply under LB1048, a mere weeks after the law became effective in July of 2010. Invenergy's Prairie Breeze project, which was conditionally approved by the Nebraska Power Review Board in October of 2010, is located in Antelope County near Elgin, Nebraska. It is a 200 megawatt project in the advanced stages of development. Invenergy estimates that after construction the Prairie Breeze project will pay over \$2 million each year to Nebraska landowners, Nebraska employees, and Nebraska counties and school districts. And this is on top of the \$30 million to \$40 million and perhaps as much as \$60 million of expenditures that will be paid to Nebraska businesses during construction. So, obviously, these are very significant projects. In order to receive the final approval from the Nebraska Power Review Board, as well as being the principal step for it to begin construction, it will be necessary for Invenergy to show that it has an executed power purchase agreement with a buyer of renewable energy. Invenergy is actively marketing the power to be produced by Prairie Breeze, and in that process is competing with wind projects in

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

Revenue Committee
February 01, 2012

neighboring states, especially those that are in the Southwest Power Pool. Now how competitive a wind project is depends not only on the wind resource but also on the costs associated with constructing and operating the windfarm compared to other competing windfarms. What was handed out to you as an attachment, on the front page of it is a map. And that's a map that shows the Southwest Power Pool. And I'd draw your attention to the kind of arrows that are on it. And it generally shows that the flow of power, particularly power I would say that's produced by wind energy, flows to the south and east from what we might argue is the windier part of the Southwest Power Pool region, although all of that region has quite a little bit of wind resource, to the population centers that would be into the eastern Texas and into Louisiana, Arkansas, and then also points further into the eastern United States. In particular, I think you see that that power has to flow basically where it's also flowing over the states of Kansas and Oklahoma, that I would note also have a strong wind resource. One fact that I'd also point out, however, here that's somewhat different maybe in this industry that you might is that energy is really a transporter. The transmission cost is...what's applied is a postage stamp, basically, concept of transmission cost. In other words, to the same end user it doesn't matter which of the producers within the Southwest Power Pool is delivering it. It's the same cost, much like if I send a letter to the same location, it's that postage stamp. More to the point then, the transmission costs from a windfarm in Nebraska has the same transmission cost, all other things being equal and after all upgrades have been put in, as a windfarm in Kansas might have. With transportation costs essentially the same and all other things being equal, differences in tax policy between the competing states can have a very significant effect. Attached to my testimony is a graph comparing the taxes paid by wind projects in Nebraska. And I draw your attention to the colored graph there. As the graph illustrates, the combined taxes are higher in Nebraska than in the neighboring states, primarily due to Nebraska's sales tax. In fact, in the states surrounding Nebraska, including Kansas, Oklahoma, and Texas, you'll see that on the final page of the handout, all of those states exempt wind turbines from sales tax. This added cost makes Nebraska wind projects less competitive and will likely result in fewer wind projects being located in the state. Invenergy strongly supports LB1033. And it strongly supports and looks forward to the opportunity to working with Nebraska to export this resource to buyers outside of the state. That's really the opportunity that we're here to talk about today. Invenergy believes that the proposed revisions to the Nebraska Advantage Act to support wind development by reducing sales tax will reduce the burden on those wind projects and will result in more wind projects in Nebraska; and consequently, Nebraska and its citizens will reap that benefit. We also want to give a special note of thanks to Senator Cornett. She did a very strong and skillful job I think of bringing together a very diverse group to come up with a bill that met a number of different needs, and we appreciate that help as well. I would be happy to answer any questions from the committee. [LB1033]

SENATOR LOUDEN: Questions for Mr. Bracht? Senator Pirsch. [LB1033]

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

Revenue Committee
February 01, 2012

SENATOR PIRSCH: Can you talk about the long-term potential of the industry in terms of...for economic development for the state of Nebraska. [LB1033]

DAVID BRACHT: As I noted, Nebraska has...and if you'll see at the bottom of the colored graph that has the bars on it, Nebraska is, roughly speaking, in total megawatts it's ranked fourth by the National Renewable Energy Laboratory. Kansas and Oklahoma also have very strong wind. Iowa I think is something on the order of tenth. You'll note that what our installed capacity, that 294 megawatts, we're well behind that right now. Some of that was sort of structural and that's what LB1048 did an excellent job of changing. To answer your question specifically then, I'd say it could be said that Nebraska has, certainly compared to some of the other states like Iowa, most of its really good wind sites are still available to be developed. So there is an opportunity. But it is a competitive marketplace, and so it's one that unless we can be competitive on a price basis, our competing states are still going to be able to offer more. [LB1033]

SENATOR PIRSCH: Are there a finite number of good sites in a state? In other words, has...Texas at 10,000, is that pretty fully matured, the potential sites such that...in other words, if we have a healthy bump out in this chart here when we're talking about, other renewable is 3.6 percent. Is there some maximum capacity, you know, some level, you know, 12 percent, 15 percent, where you can pretty well expect that we're firing on all cylinders? [LB1033]

DAVID BRACHT: Each site is going to be somewhat different. And so there is a whole variety of factors that might weigh into how, you know, how good the wind is. And a lot of it has to do with the topography and other things that someone other than me would know much more about. I think how I would answer your question is, is that Nebraska, in part by kind of just circumstances, is well poised to be able to really participate in the future growth. And how far that goes is going to depend on the marketplace. But we really need to be in a position to compete to be able to do that. [LB1033]

SENATOR LOUDEN: Senator Hadley. [LB1033]

SENATOR HADLEY: Thank you, Senator Louden. Mr. Bracht, a question, and maybe you can't answer it. I had to go to Chicago, went to Chicago for the holidays and came back. And I was really surprised at the number of windfarms in western Iowa, you know, that significantly you can see them from I-80. You cross into Nebraska and there are none. And we seem to be talking about wind projects out, you know, in the western part of the state and the northern part of the state. And I just wondered what does Iowa have, when you cross the Missouri River, that we don't have close to the Missouri River? [LB1033]

DAVID BRACHT: Well, I think there's two things there. And one is I would address is we really did have kind of a structural situation that really limited the amount of...because

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

Revenue Committee
February 01, 2012

effectively, until LB1048, any of the energy generating capacity in the state was really directed towards meeting only the needs of our population. So then you start with Iowa, 5.5 million people, versus Nebraska at 1.7 million, we had a much smaller demand for that, for renewable energy in general. And then like in most things you start building where the very best of it is at and that's where the very best in Nebraska right now is still probably in our central part of the state. I'm certain...or I would expect that if Nebraska was fully developed, and there are at least a couple. Lincoln Electric System has had its two towers for I think almost ten years now. And so there is potential. And, for instance, a project that in fact was...it's not an Invenergy project, but I was involved in that, was actually started in Richardson County in far southeast Nebraska; went on-line about 12 or 15 months ago. And so there is some of that as well. [LB1033]

SENATOR HADLEY: Okay, thank you. [LB1033]

DAVID BRACHT: Most of what you see is the fact that Iowa has been in a position, because of the way its power structure is there, and its population, to take advantage of its wind resource. And they've spent ten years really doing a lot of it. [LB1033]

SENATOR HADLEY: Okay. Thank you, Senator Louden. [LB1033]

SENATOR LOUDEN: Senator Schumacher. [LB1033]

SENATOR SCHUMACHER: What might be other competing considerations that a company would have, beside sales tax, in deciding whether to locate or whether to deploy resources in the state? [LB1033]

DAVID BRACHT: Well, there would be a whole variety of things. I think that the...and not so much for Invenergy, so I'll be speaking a little bit more on my own experience now. When I have worked with landowner groups, what I've said in response to a question like that is the first and most important thing is, do I have a good wind resource? Is it windy or not, effectively? The second is, is there a way for me to transmit that resource from where that wind is to the potential market? And then, finally, where are the markets that are going to be most likely to want to buy that? And so transmission would be the second largest issue that would likely make a difference there. [LB1033]

SENATOR SCHUMACHER: And how do our transmission facilities stack up with respect to these four particular other states that we're looking at here? [LB1033]

DAVID BRACHT: Well, again it's always very situational because it's hard to say on a statewide basis because the wind is where the wind is. And is there a transmission line, and if I have a transmission line on the other side of the state it doesn't help much. What I can say to you is that there are a number of projects that both...for instance, Invenergy

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

Revenue Committee
February 01, 2012

has its Prairie Breeze project. I know that some others that will speaking after me have projects that they in fact have the transmission rights available to them right now to be able to do it. [LB1033]

SENATOR SCHUMACHER: So the sales tax in the matrix of things in making an economic decision whether to deploy wind or not, is now near the top of the list. [LB1033]

DAVID BRACHT: It certainly...well, to give you a factor, and these are going to be approximate figures, the sales tax impact...the price of wind, I can't speak to what the price of some of the other sources of energy would be at, but I can say that just in working with my client, the kinds of bids they've been giving out on the projects they're looking at are in the mid \$30 per megawatt; and that's typically in the energy industry how you're looking at that. My understanding is the tax load here in Nebraska makes up for about \$4 to \$5 of that. So, literally, the taxes end up being 10 percent. And if you think about it, the reason that is, is unlike other sources of energy...and not to draw...I'm just trying to draw some contrast, wind doesn't have any input cost. Once it's built and everything I...and much of what you...the money you have to spend to build that would be subject to sales tax, there is no further cost for the 20-, 25-, 30-year life of the project. Contrast that with an energy source, whether it was natural gas or coal or some other source where you're using heat, obviously a significant part of that cost is the cost of the input, buying the coal or natural gas or whatever you're burning. And under Nebraska law that's not subject to sales tax. [LB1033]

SENATOR SCHUMACHER: But you have still the recurring cost of the lease to plant the machine. You've got...these machines don't last forever, do they? [LB1033]

DAVID BRACHT: Well, they'll last 20 to 25 years. [LB1033]

SENATOR SCHUMACHER: I mean, there's no repair costs or maintenance (inaudible)? [LB1033]

DAVID BRACHT: Well, certainly there's repair costs. But the most significant is the initial capital expenditure. [LB1033]

SENATOR SCHUMACHER: Now if we were to knock out sales tax, I mean we'd have...on the property tax side of it, surprisingly enough, you know, we're really low compared to three out of the other states. I mean, probably even if we knocked out just half the sales tax, we'd be competitive with Iowa and Oklahoma and Texas. [LB1033]

DAVID BRACHT: And while I haven't worked those exact figures, I think that what...and this might go to a little bit of Senator Pirsch's question as well, is the structure of LB1033 is to really look at it's kind of a stairstep approach. First, dependent on the size of the

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

Revenue Committee
February 01, 2012

project, the \$75 million investment would largely be a break at about 40 megawatts. And if you see windfarms you typically see, you know, 40 or 50, and then 50 or 100, and then 200, and in other states where we've seen large projects, quite a little bit larger than that. So the first step would be 50 percent sales tax for that, just 50 percent exemption; a larger project, an 80 megawatt project, \$75 million or more, we'd be looking at a 75 percent exemption. And then beyond that, a company that meets some certain requirements for input costs, perhaps employee stock ownership plans, employee ownership can get to 100. What I'm trying to say to you, Senator, is that I think that in fact that's what this bill does is it gives a staircase for a project that wants to do all the things perhaps to get to 100, but then there's going to be others that may just not be able to accomplish that. [LB1033]

SENATOR SCHUMACHER: Thank you. [LB1033]

SENATOR LOUDEN: Senator Brasch. [LB1033]

SENATOR BRASCH: Thank you, Chairman Louden. And good to see you again. [LB1033]

DAVID BRACHT: Good seeing you, Senator. [LB1033]

SENATOR BRASCH: And this is very fascinating and impressive. I'm very excited to see that Nebraska is attractive in wind energy. I attended a daylong tour in Burt County on various forms of renewable energy. We did look at some wind turbines that were in Burt and Thurston County as well. But my understanding was the investment, the repairs started again at five years; that there are moving parts. That comparing solar energy to wind energy that it was...there was a significant cost. And the...and I know we're attracted to these to resell our energy. But they were just comparing dollar for kilowatt, that solar was the most, and then as far as the hardware that... [LB1033]

DAVID BRACHT: I can't really speak too much to solar. Just to be clear and to clarify, because perhaps I wasn't clear, is the maintenance really starts almost immediately. So it's like the adage of, you know, I start painting a bridge at one end, and when I get done I go back to the beginning. And a larger wind project, that's exactly how the maintenance would be. And a project like Prairie Breeze we'd expect probably 10 to 12 employees, and they'll continue to be working through those, it would be in the neighborhood of 70 to 80 turbines. When they finish, they'll go back to the beginning. So there is an ongoing maintenance from the very beginning. I guess the point I was saying though is the vast majority of the cost is the capital expenditure as opposed to the operating costs. [LB1033]

SENATOR BRASCH: And they take very little room actually. They kind of complement our agricultural communities and also our... [LB1033]

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

Revenue Committee
February 01, 2012

DAVID BRACHT: That's true. And certainly, you know, it's...obviously it's much easier depending on the type of land used. But the developers tend to try and take that into account as well to the extent they can. [LB1033]

SENATOR BRASCH: Thank you for your expert testimony. [LB1033]

SENATOR LOUDEN: Senator Pirsch. [LB1033]

SENATOR PIRSCH: And you're the one that handed out this? [LB1033]

DAVID BRACHT: I am. [LB1033]

SENATOR PIRSCH: If we were to implement this bill, LB1033 then, how far down would that red line indicating sales tax, the middle line for the state of Nebraska, how far would that drop either in terms of indicating that how far we'd push down the sales tax dollar per megawatt power or the total? In other words, does it bring us into a competitive...low or above or virtually the same? [LB1033]

DAVID BRACHT: Well, first, I would say that just because of the nature of the way the bill is structured it's going to vary between each project; because as I said, there is, you know, it depends on the size and also the amount of local use and the employee stock ownership, etcetera. The broader question I think I hear you asking is, okay, will this then make us competitive and make developers want to go here versus Kansas or someplace else? And all of those things are somewhat subject to market forces. I think that's...there's been a lot of things happening in wind and wind development since LB1048 even came about. So it's a little hard to say that. I think it would certainly put us very much more in the neighborhood of what Oklahoma and Kansas is. Kansas is particularly aggressive in their tax programs. And, you know, I can't say that we'd be in a position where we'd be less than that at that point, but. [LB1033]

SENATOR PIRSCH: Did they just become aggressive? I notice that their total developed, installed capacity, as of June of 2011, is actually less than, say, Oklahoma, it's southern neighbor, and Iowa a third of that, even though they are considerably lower in terms of their overall taxes. Is that just because they just got going on those recently or...? [LB1033]

DAVID BRACHT: I wouldn't necessarily say just got going. But I would agree that if you looked at a map today of projects that are in some stage of development, Kansas is very active from that standpoint. [LB1033]

SENATOR PIRSCH: Is the fact that...isn't our best potential of wind energy located out in the Sandhills region? Is that true? [LB1033]

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

Revenue Committee
February 01, 2012

DAVID BRACHT: Well, I think that we, and I don't have the map, maybe one of the other folks testifying will. There's a variety of areas, but that's certainly true is that through the Sandhills there are, kind of starting up, Cherry County, and you've already heard about in Boone County around Petersburg, their Prairie Breeze project is in Antelope County; I know that there's a variety of other projects. But as I said, there's a project that's already on-line in Richardson County and some other projects that are in the south and south-central part of the state. And the Panhandle has good wind, too, not to leave them out. [LB1033]

SENATOR PIRSCH: Yeah. And the issue with the Panhandle and Sandhills is one of maybe transmission lines, though, isn't it? [LB1033]

DAVID BRACHT: Somewhat, because we've got more cattle than people. And cattle haven't typically needed a lot of transmission, so. [LB1033]

SENATOR PIRSCH: Well, there you go. But even with the transmission lines we do have, we have a lot of potential? [LB1033]

DAVID BRACHT: Yes, I would say that's right. [LB1033]

SENATOR PIRSCH: Okay. Thank you. [LB1033]

SENATOR LOUDEN: Senator Schumacher. [LB1033]

SENATOR SCHUMACHER: Just one question came to mind. Now assuming that your company becomes profitable and starts making income, most of this electricity is being exported out of the state? [LB1033]

DAVID BRACHT: That's correct. [LB1033]

SENATOR SCHUMACHER: That's correct. Okay. So...and where are most of your facilities located at? [LB1033]

DAVID BRACHT: So Invenenergy's facilities are really spread all over the country, of the different types of projects that they have. [LB1033]

SENATOR SCHUMACHER: I guess what I'm trying to get at is we've heard testimony on how to tax intangibles. I guess is electricity considered an intangible? [LB1033]

DAVID BRACHT: Actually, I think it's considered personal property. So I'm not sure where it fits into that. The sales tax, the consumer...the end user of the sales tax (sic) is who pays the sales tax. [LB1033]

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Transcriber's Office

Revenue Committee
February 01, 2012

SENATOR SCHUMACHER: What I'm getting at is you get these federal subsidies or the sales tax break. And when you're rolling in the dough, down the road, who's going to get the income tax? [LB1033]

DAVID BRACHT: Well, and I think that certainly income tax would be one part of it. It's going to depend on each project because these projects are typically owned by different groups as the investment comes together. But I would say that's where in part to look at the local impact of it is certainly a portion of that is the Nebraska landowner is getting his landowner payments, those Nebraska school districts are getting that. That's where at least \$2 million of that each year out of the Prairie Breeze project. [LB1033]

SENATOR SCHUMACHER: But the company that owns this windmill and its...after it pays its help and it pays the landowner, whatever, if this is economically feasible at all to do wind without subsidies, it shows a profit and that income, profit, is that...is Nebraska going to be able to tax income on that? Are you expecting that or does that go to that income tax paid to...if you're a Florida-based company or I guess Delaware-based company that doesn't have an income tax, are we looking forward down the road, as a result of this investment, of getting an income tax return? [LB1033]

DAVID BRACHT: You know, Senator, I'm not a tax attorney so I'm not sure I could answer that question. Part of what you're getting to is these entities are typically...well, the entities here, it may be a Delaware LLC, but so I can't really speak to how the income that's produced by that entity, how it's taxed from an income standpoint. [LB1033]

SENATOR SCHUMACHER: I guess it's a fairly simple principle. The taxpayer is being asked to make an investment here by virtue of this credit. Are they going to get a return outside of the general economic business? [LB1033]

DAVID BRACHT: Perhaps. I'll see if I...I know I'm not the right person to ask that. So I might try and identify that. [LB1033]

SENATOR SCHUMACHER: Okay, thank you. [LB1033]

SENATOR LOUDEN: Yes, a question I have here is this \$1.15 a megawatt hour for Nebraska. Now is that because we had this bill here last year so that LB1048 or something like that? [LB1033]

DAVID BRACHT: That would be the property tax where that's...I think that reflects the nameplate capacity tax, yes. [LB1033]

SENATOR LOUDEN: Okay. And that's the reason our blue line is down where it is?

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

Revenue Committee
February 01, 2012

[LB1033]

DAVID BRACHT: I think that's correct. [LB1033]

SENATOR LOUDEN: Okay, but these other states then other than maybe...did Kansas pass something similar to that, the reason they're down at 88 cents? [LB1033]

DAVID BRACHT: I can't speak to how Kansas got there. But I do know that they have a very...a package that they are really approaching for renewable energy. [LB1033]

SENATOR LOUDEN: And then the reason Nebraska is at \$3.96, that's because you added the \$2.82 onto the \$1.15, and then we're talking about cutting out on the sales tax. So we could actually be down at the \$1.15 and be lower or nearly as low as what Kansas is. [LB1033]

DAVID BRACHT: And again it would depend on each project. So there might be a lot of...it would only be if a project is able to do all the things that it takes to get to the 100 percent sales tax exemption. They'd start out at, depending on size, either 50 or 75, and then be able to add, depending on how much local inputs they use and whether they're offering an employee stock ownership plan or some sort of local ownership. [LB1033]

SENATOR LOUDEN: Now you get a federal subsidy or federal tax or something like that to produce electric power, wind power? [LB1033]

DAVID BRACHT: So wind energy, in fact, like pretty much all of the sources of energy that we have in the United States, has different sort of tax codes that go with it. To go to the point you're talking about, yes, in fact there is a...it's referred to as the production tax credit. It's...however, I might note that that...those bid prices of 35 to in that midrange, mid-30s to approaching 40, even if you took that away, took away the production credit, it would be in the, you know, 50 to 60 range. And so...and I contrast that from where wind was maybe as recently as five and ten years ago when it was quite a little bit higher. [LB1033]

SENATOR LOUDEN: Now when you say 30 to 40, are you talking about 30 to 40... [LB1033]

DAVID BRACHT: Per megawatt, per megawatt. [LB1033]

SENATOR LOUDEN: ...dollars a megawatt. [LB1033]

DAVID BRACHT: Yeah, so cents per kilowatt if you were looking at it that way. [LB1033]

SENATOR LOUDEN: Yeah. Or you even have received as much as 50 cents a kilowatt,

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

Revenue Committee
February 01, 2012

is that what you're telling me, or 5 cents a kilowatt then, or \$50 a megawatt on your tax credit? [LB1033]

DAVID BRACHT: No, what I'm saying with you is that wind has become, because of the new technology growth, it's become increasingly, and that's part of what I think is the exciting opportunity, it's really becoming very efficient. It's still a very competitive marketplace, but it is one where it's very...the improvement, even in just the last several years because of technology, is really quite significant. [LB1033]

SENATOR LOUDEN: Well, I know. But when I first came down here we were doing this. And we were talking about these, what do you call them? C...? [LB1033]

DAVID BRACHT: C-BEDs. [LB1033]

SENATOR LOUDEN: C-BEDs or whatever. And the reason they were pushing them is because Nebraska was a public power district and they couldn't receive these tax credits. So we were finding a way for corporations to come in and receive those tax credits. My question is, how much is that tax credit a kilowatt? [LB1033]

DAVID BRACHT: That's where it's about 20...well, about 2.2 cents. [LB1033]

SENATOR LOUDEN: Still is? [LB1033]

DAVID BRACHT: Through the end of this year. It is due to expire, and we'll have to see if Congress renews it. [LB1033]

SENATOR LOUDEN: Okay. Then my last question is, there's nothing in here on Colorado. And I realize Colorado is on the west side tie there. Is that the reason you don't have Colorado, or do you know what the numbers are for Colorado? [LB1033]

DAVID BRACHT: You know, I don't know what the numbers are on Colorado. I can't speak to that. [LB1033]

SENATOR LOUDEN: Do you do any...are you planning on building any facilities in Colorado? [LB1033]

DAVID BRACHT: Well, I know that Invenergy, in fact, their western region office is in Denver, and they have projects that they're working on in Montana. I can't speak to Colorado specifically; but they do work in that area, yes. [LB1033]

SENATOR LOUDEN: Where is the head office then that you work out of? [LB1033]

DAVID BRACHT: Well, Chicago for...Invenergy is based in Chicago, but Denver is the

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

Revenue Committee
February 01, 2012

western region office. [LB1033]

SENATOR LOUDEN: Okay. Then to answer Senator Schumacher's question about the headquarters for the corporation, then you would actually be paying...paying any income taxes, so you'd be paying it in Chicago or Illinois? [LB1033]

DAVID BRACHT: Well, I can't speak to and don't know that that's what determines where your income tax is paid. [LB1033]

SENATOR LOUDEN: Okay. Well, thank you. Other questions for...? Senator Pirsch. [LB1033]

SENATOR PIRSCH: I'm just trying to make sure I have the proposition. Right now we don't have much in terms of renewable production or renewable energy, but we have at least one of the necessary elements, which is good wind, superior wind; maybe not as much transmission lines. But the proposition is we could have considerably more, right? [LB1033]

DAVID BRACHT: I think that's right. [LB1033]

SENATOR PIRSCH: And that but for this bill, we probably are not going to get there to considerably more. Is that... [LB1033]

DAVID BRACHT: I think that it would be accurate to say that, as I noted in my testimony, Invenergy was the first project that applied to be a certified renewable export facility. [LB1033]

SENATOR PIRSCH: Um-hum. [LB1033]

DAVID BRACHT: And it's had its approval now for over a year. And it's been actively trying to market those...it's power, as have some other projects that are, you know, also been trying to market their power. And certainly the marketplace is then...this is part of what they've been facing with that. [LB1033]

SENATOR PIRSCH: Sure. [LB1033]

DAVID BRACHT: So the answer to your question, you can draw your conclusion, but we haven't had any export facilities yet. [LB1033]

SENATOR PIRSCH: Yeah. [LB1033]

DAVID BRACHT: Our hope would be is that making us more competitive on the sales tax side and tax side overall would allow the state to enjoy the benefit of those projects

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

Revenue Committee
February 01, 2012

by getting that. [LB1033]

SENATOR PIRSCH: Yeah. Your concept is grow the pie bigger. [LB1033]

DAVID BRACHT: Yeah, that's exactly right. [LB1033]

SENATOR PIRSCH: And maybe take a smaller slice. [LB1033]

DAVID BRACHT: That's right. [LB1033]

SENATOR PIRSCH: But what I guess I'm asking is, with this measure does that give the potential to grow the pie considerably? [LB1033]

DAVID BRACHT: I think it certainly gets...that's what we believe. It's still a marketplace. You have to see how everything else works out. But, yes, I think that's what our hope would be. [LB1033]

SENATOR PIRSCH: Okay, thank you. [LB1033]

SENATOR LOUDEN: Okay. Well, seeing no other questions, thanks for your testimony and your lengthy conversation with us. [LB1033]

DAVID BRACHT: Thank you. [LB1033]

SENATOR LOUDEN: And we'll have the next proponent. [LB1033]

DEREK SUNDERMAN: Good afternoon, Senator Cornett and Senator Louden and the members of the Revenue Committee. Thank you for this opportunity to speak to you regarding LB1033. My name is Derek Sunderman, that's D-e-r-e-k, Sunderman is S-u-n-d-e-r-m-a-n. And I am director of business development at TradeWind Energy. TradeWind is a utility-scale wind development company based in the Kansas City metro area. We possess a significant portfolio of wind projects through 11 Midwest states, including Nebraska. Thus far, we've completed construction on five projects, totaling about 600 megawatts. We have a 230 megawatt project in construction right now. TradeWind has invested significant resources in the development of our 200 megawatt Rattlesnake Creek project, located in northeastern Nebraska, in Dixon County. Over the last four years, our company has invested significant funds and time in the project, preparing it for construction. This includes acquiring leasing rights, gathering and assessing the wind data, acquiring permits, performing environmental studies, acquiring access to the transmission grid, acquiring transmission rights for delivering power. We've also spent hundreds of man-hours marketing the project to utilities in and outside the state of Nebraska. From all that we can tell, including the feedback we've received from these potential customers that we've talked with, the Rattlesnake Creek project

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

Revenue Committee
February 01, 2012

possesses virtually every good quality sought in a great wind project, except price. In the very competitive wind development business, power purchase agreements are won and lost by a small difference in price. A 50-cent change in the PPA's energy charge is more than enough to move a project from deal to no deal. That's why the legislation that is before you now is so incredibly important to Nebraska's wind energy future.

TradeWind Energy does know a thing or two about exporting energy. In the past 18 months, TradeWind has successfully developed two utility-scale wind export projects within the Southwest Power Pool. One of those is located in Kansas, the other is located in Oklahoma. The energy generated by these two projects is being delivered to the Tennessee Valley Authority and to Alabama Power. In both cases, TradeWind, in conjunction with those utilities, was able to acquire the long-term firm transmission rights to put together a back to back to back transmission path--virtually unheard of in our industry. TradeWind is the only wind development company to pull off this achievement as far as we know. We understand how these pieces of the puzzle fit together for an export facility. Unfortunately, when we compare the Nebraska export puzzle with the Oklahoma and Kansas puzzles we find a very prominent piece of the Nebraska puzzle missing. That piece of the puzzle is a competitive sales and use tax policy. The tax legislation proposed here today in LB1033 is that missing piece of the puzzle. Earlier, I mentioned how TradeWind has successfully executed agreements on two export wind projects in SPP. What I didn't mention was that our Rattlesnake Creek project was one of the projects under consideration by Alabama Power. During the negotiation phase we offered one wind resource project from Oklahoma, one from Kansas, and the one from Nebraska. Each project possessed a comparable wind resource. These were very clean projects; environmentally, about as good as you can get. Interestingly enough, transmission service was not the biggest issue, for once. In fact, we were in a position to confirm long-term, firm transmission rights for each of the three projects, including the Nebraska project. So what was the biggest issue? The final and biggest issue was price. And the single largest differing component of the prices was related to the overall tax policy of each state; that was the difference. Oklahoma offers a \$5 state production tax credit and an abatement of sales and use tax. Kansas offers an abatement of the sales and use tax in an ability to negotiate pilot payments: payment in lieu of taxes for property taxes. Presently, Nebraska offers an attractive pilot policy, but no abatement of sales and use taxes. As I conclude, I want to leave you with a very sobering fact. Based upon existing state tax policies and based upon existing projects and recent announcements, it is expected that Oklahoma will possess over 3,100 megawatts of wind projects by the end of 2013; Kansas will possess over 2,600 megawatts. In fact, right now Kansas is more active than any other state in the United States in wind development. In fact, the Southwest Power Pool will possess over 7,000 megawatts of wind resources at the end of 2013. On the flip side, Nebraska is projected to possess about 450 megawatts of wind resources at that time. On behalf of TradeWind Energy and the Wind Coalition, we believe LB1033 will make the needed difference. Thank you. [LB1033]

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

Revenue Committee
February 01, 2012

SENATOR LOUDEN: Questions? Senator Hadley. [LB1033]

SENATOR HADLEY: Senator Louden, thank you. When we talk about the other states, and let's just take Kansas and Oklahoma, we talk about Nebraska's basically wind energy being for export. Is that true also in Oklahoma and Kansas, that they are primarily or 100 percent of their wind energy being developed for export? [LB1033]

DEREK SUNDERMAN: It is becoming that way. And the reason that is, if you go back a few years, most states were putting forward a renewable portfolio standard for their individual states. So those utilities that were in those states stepped up their game, essentially, and invested in wind projects throughout those states. Those utilities in those states have pretty much filled up the bucket. They've met their requirements. So as developers, we are now going out and doing our best to export these facilities to other regions that are hungry for wind power. And what we're finding is that the southeast, especially, is becoming more of a hotbed of interest. Because of recent EPA regulations coming out and impacting coal facilities, you see a huge impact on the states to the east. [LB1033]

SENATOR HADLEY: And secondly, to follow up on Senator Schumacher's comment about the income tax and, you know, what happens, you know, what is the benefit to the state of Nebraska once this windfarm is mature and going on. And I have talked with some people that talk about it's really a minimal amount of employees for a windfarm. Is that a fair statement when you compare it to a nuclear plant or a coal-powered plant? [LB1033]

DEREK SUNDERMAN: Yes, sir, that's fair. When a project is obviously in construction it's not uncommon to have a few hundred folks out there working and a significant impact on the local community for a year. After that, you tend to have 10 to 15 employees who are full-time. But you also have an impact on the local community through, you know, maybe you need concrete, maybe you need other items, motors rewound or something of that nature; so there's a continuing impact. But you are correct, it's nothing like a nuclear facility would produce on an ongoing basis. [LB1033]

SENATOR HADLEY: And I just did some looking at it and the Cooper Nuclear has like 700 employees for I think 700-and-some-odd megawatt output. And somebody else was saying a windfarm, even a much smaller windfarm, might have 20 employees. So if you're talking about down the line, you know, the impact is more up-front on the windfarms. Is that a fair statement? [LB1033]

DEREK SUNDERMAN: That is correct. But at the same time, when you look at the flip side, you have a project that is not based upon fuel. And, you know, at the same time you don't have the...you do have O&M, but it's not like a nuclear facility that has very expensive O&M. So, you know, when you compare apples to apples, what's the impact

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

Revenue Committee
February 01, 2012

it has on the ratepayer at the end who has to pay for that electric bill. And, you know, there's significant discussions (laugh) there. [LB1033]

SENATOR HADLEY: Well, I hope the committee can get into the idea, you know, because we have another bill in front of the committee that deals with intangibles and the income tax on intangibles and whether or not...I just don't know the answer, whether electric energy is considered an intangible. And we certainly tax that much different in Nebraska than we do tangibles. So we'll...I think as a committee we need to fully understand what's down the line. Thank you. [LB1033]

SENATOR LOUDEN: Senator Pirsch. [LB1033]

SENATOR PIRSCH: Thanks. And appreciate your testimony. It's the price is a major consideration in terms of making our potential renewable exports competitive. Are there though other factors that may cause a governor to be put on the potential, you know, if we were to go forward with this bill, proposition, LB1033. But are there other potential bottlenecks or restraint on (inaudible) even assuming we had a competitive product, it must go through the Southwest Power Pool, correct? [LB1033]

DEREK SUNDERMAN: Yes, sir. [LB1033]

SENATOR PIRSCH: And we must identify potential purchasers, they have specific rules with respect to transactional type of transactions. And so is there...is the hard part gaining approval through the Southwest Power Pool to find the customers, even if we have the potential growth or is the Southwest Power Pool not a bottle head or a limiter of potential output? [LB1033]

DEREK SUNDERMAN: In each project it's really an individual project basis. In some cases, you may have significant environmental impacts that you're trying to mitigate. In other cases it may be trying to get an interconnection to the transmission grid. Now, getting the interconnection is very important because that's a one- to two-year process typically to run through that. But then you also have to acquire the transmission rights to deliver the energy from point A to the load serving entity. And that has been a significant challenge in the past. SPP has done a lot of work in the past few years and has started to issue the notices to proceed on the development of several transmission lines. And as a result, we have seen available transmission capacity. Now, more than likely, SPP will need to move forward and do more projects because we have seen that ATC, that available transmission capacity get consumed with wind projects and other projects as well. So we're making use of the transmission that has been improved upon and the availability made, you know, as a result of those improvements. But we still have more work to do. [LB1033]

SENATOR PIRSCH: One other question. Now, the proposition had been put forward

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

Revenue Committee
February 01, 2012

that this is because it's a developing, young industry that this is kind of a, you know, at some point in time in the future then that might not be necessary for these tax breaks or incentives for the state? Is that... [LB1033]

DEREK SUNDERMAN: That is actually quite possible. If you look at where we're at right now, it's not uncommon. In fact, for the past year we've seen turbine prices come down dramatically from the turbine manufacturers. And as a result, the developers have been offering up power purchase agreements at some of the lowest prices we've heard of in a decade. And, in fact, in Oklahoma we've heard projects that were in the 20s, flat for 20, 25 years. So fixed price, no escalator; you know, it's extremely good pricing. In Kansas, we've seen 30s, mid-30s, low 30s. It just depends upon the size of the project and the economies of scale that you can achieve. Now granted, this pricing comes partly due to the production tax credit. And that production tax credit, and I'm talking the federal production tax credit,... [LB1033]

SENATOR PIRSCH: Um-hum. [LB1033]

DEREK SUNDERMAN: ...is due to expire at the end of 2012. So...but from a Nebraska perspective it's not really that PTC that makes a difference. It's your competitiveness with the other states, because as a developer we have a portfolio of projects. And whenever we respond to a utility who has a request for proposals on the street, we give them the very best project, the lowest-priced project we can at that time, because it's not uncommon for those utilities to receive 50 proposals. [LB1033]

SENATOR PIRSCH: Um-hum. [LB1033]

DEREK SUNDERMAN: So it's an extremely competitive business. If we're given a 50-cent benefit, we pass through that 50-cent benefit to...in the form of a lower price on that PPA, because it's really the only way to get to executing a power purchase agreement. So, in a nutshell, you're competing with the other states. If the production tax credit goes away from the federal level, you're still competing against the other states. [LB1033]

SENATOR PIRSCH: I understand. We're still...the federal...what the fed does, it does uniformly among the states. We're not at a competitive disadvantage. With respect to the, you know, kind of concept though of developing industry at some point in time, would it be a difficulty then if some sort of a sunset, and I don't know what would be appropriate, you know, a 20-year or whatever, you know. Or would that be some sort of idea of reassessing and having a sunset added to this bill? Would that be problematic because it introduces then--and these are long-term projects--and introduces an element of uncertainty into the equation? [LB1033]

DEREK SUNDERMAN: Well, obviously in my chair I'd say, oh, we'd love to never see a

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

Revenue Committee
February 01, 2012

sunset. But if I were in your chair I would make it incumbent that I come back and look at these things and see what kind of impact it does have. I truly believe that this abatement of the sales and use tax will have a significant impact, because we've seen the numbers, we've seen how our projects in Nebraska compete with the others. And literally, we weren't far off; it was close. [LB1033]

SENATOR PIRSCH: Given the long-term development of the projects, what would be an appropriate, if there were...are there sunsets in other states or not really? [LB1033]

DEREK SUNDERMAN: Not that I'm aware of. [LB1033]

SENATOR PIRSCH: Okay. Thank you. [LB1033]

SENATOR LOUDEN: Senator Schumacher. [LB1033]

SENATOR SCHUMACHER: Thank you, Senator Louden. Just a brief follow-up on the question that Senator Pirsch raised. Did I understand you to say that there are some companies or it's becoming a trend in your industry to offer 20-year contracts on price without any adjustments for inflation? [LB1033]

DEREK SUNDERMAN: That is correct. [LB1033]

SENATOR SCHUMACHER: How long do you plan on staying in business? (Laugh) [LB1033]

DEREK SUNDERMAN: We hope to have those numbers embedded in the contracts so that, you know, based upon everything that we've modeled it says that it will still make money in the end. [LB1033]

SENATOR SCHUMACHER: What are you modeling for inflation or currency devaluation? [LB1033]

DEREK SUNDERMAN: There's typically some sort of CPI in there, index that we do. You know, it's... [LB1033]

SENATOR SCHUMACHER: So they are indexed to inflation? [LB1033]

DEREK SUNDERMAN: The contract itself is not. What we model and then what we offer out, you know, we do our own models and we say, here's what inflation is expected to be. And then what we do as a developer is we sell that project typically to someone else who then owns the project and operates it for a long period, like a large utility. For instance, our largest investor is a company by the name of Enel. [LB1033]

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

Revenue Committee
February 01, 2012

SENATOR SCHUMACHER: So you get your money out up-front, basically? [LB1033]

DEREK SUNDERMAN: That's the way we operate. Different developers do not... [LB1033]

SENATOR SCHUMACHER: But what about these people that are locking themselves in for 20 years at a fixed rate? Do they get their...is the same mechanism working, so get in and get out? [LB1033]

DEREK SUNDERMAN: I can't tell you that. We, ourselves, have not done that. We have structured ours differently. But we have heard that that is being done. And there are some extremely aggressive developers over the past year that we think probably took some chances that we, ourselves, would not have taken. [LB1033]

SENATOR SCHUMACHER: But this particular piece of legislation is not limited to your business model and would also equally apply to the get in and get out model, wouldn't it? [LB1033]

DEREK SUNDERMAN: Well, the PPA is structured...keep in mind that really all that a windfarm has left is O&M, because once you've got the project there, the turbines are guaranteed for a certain amount of time; and they've been tested and proven to operate for at least 20 years. So based upon all the information that we have, we've developed the pricing structure to give us the rate of return that we need, and then we've contracted with the utility, and that utility is usually seen as a very good customer. And as a result, we know, based upon what the O&Ms should be for a facility like a windfarm, that we can keep those 10 to 12 employees employed and we can make those O&M upgrades as we need to do them and keep the project operating. [LB1033]

SENATOR SCHUMACHER: Even if ten years from now \$1 is worth 25 cents? [LB1033]

DEREK SUNDERMAN: Well, we're obligated in the contract. [LB1033]

SENATOR SCHUMACHER: And if that obligation doesn't occur, then it's a visit to the local bankruptcy court. [LB1033]

DEREK SUNDERMAN: Well, keep in mind, we already have the lenders who have lent us the money: the financiers, tax equity/debt equity partners who are involved in these projects. This is just a piece of their pie, you know, their hedge funds and things of that nature; larger corporations who are taking this as a piece of their pie. [LB1033]

SENATOR SCHUMACHER: Well, in that we're being asked to make an investment of public resources here, is there some place that we can go to look at the financial structure? And, I mean, we're now hearing hedge funds, we're hearing some companies

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

Revenue Committee
February 01, 2012

with a get in and get out strategy. Is there some way that we can look at this structure--and we're hearing the necessity of the continuation of a federal subsidy--that we can get a picture of the financial viability of this animal before we commit? [LB1033]

DEREK SUNDERMAN: Well, I think the structure, the financial viability of these is very vetted by a lot of individuals who pour over these contracts before anybody ever puts their money on the line. So we have investors who are extremely... [LB1033]

SENATOR SCHUMACHER: Yeah, but we heard very similar stuff back in 2006 and 2007 from the mortgage industry, and it didn't work out quite that way. So, I mean, is there a place that we can get the structure of this so we can make an intelligent decision rather than just trust the hedge fund manager who is investing in this, who's investing in this? I mean, we're...and little communities are being asked to make a...and stake their future on this. And power companies are being asked to put money into big, expensive transmission lines or use their unused capacity on their existing lines, which may better be used in the event of a breakthrough in such things as a thorium reactor. I mean, where do we...we've got to invest in something sound fiscally. And the last little conversation here, no calculation for inflation for all practical purposes, locking in of 20-year contracts, get in and get out situations, has now got me scratching my head. [LB1033]

DEREK SUNDERMAN: Well, keeping in mind that when these contracts are inked you're essentially saying that this unit is going to continue to perform. So regardless of where our economy goes, the generation unit still produces electricity and it still puts the electricity on the line; it still goes to the end user and it still goes at that same price so that the ratepayer is protected under that PPA. [LB1033]

SENATOR SCHUMACHER: But if you're fixing your income from that unit, bar none for inflation and your cost, whether it's the grease to make the thing spin or the...all the other costs involved are floating with inflation while you're fixed, there's going to be a squeeze there someplace. But really, from these other guys you described, they don't care because they're in and out early on. [LB1033]

DEREK SUNDERMAN: Who is in and out? [LB1033]

SENATOR SCHUMACHER: I thought you indicated that the folks that...and some of these guys down, I think in, what was it, Oklahoma or Texas, that are fixing themselves in this position, they then sell off the capacity to power companies and off to a middleman. [LB1033]

DEREK SUNDERMAN: No, I think maybe there's been a misunderstanding. What I was saying that TradeWind Energy's model is that we have a larger investor in our company. We are the developer. So we take that project, we develop it from a greenfield project to

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

Revenue Committee
February 01, 2012

the point of construction, and then we hand over the keys of that project to a larger company who usually operates it, somebody who has the wherewithal to withstand a significant amount of fluctuation in the economy. [LB1033]

SENATOR SCHUMACHER: Who might we talk to, to educate us as to the way these things are financially structured and what assumptions are being made with regard to their viability? [LB1033]

DEREK SUNDERMAN: You're more than welcome to contact us if you would like to talk to us about the structures that we use. [LB1033]

SENATOR SCHUMACHER: But is there any independent association or something like that that we can use? [LB1033]

DEREK SUNDERMAN: The Wind Coalition would probably be able to help you acquire the information that you're needing. [LB1033]

SENATOR SCHUMACHER: Are you a public company? [LB1033]

DEREK SUNDERMAN: No, we are not. [LB1033]

SENATOR SCHUMACHER: So your internal documents with regard to this are not public information. [LB1033]

DEREK SUNDERMAN: That is correct, but our largest investor is. [LB1033]

SENATOR SCHUMACHER: Thank you. [LB1033]

SENATOR LOUDEN: Okay. Seeing no other questions, thank you for your testimony. [LB1033]

DEREK SUNDERMAN: Thank you. [LB1033]

SENATOR LOUDEN: Next proponent. [LB1033]

ADAM HERINK: (Exhibit 17) Mr. Chairman, members of the Revenue Committee, my name is Adam Herink, H-e-r-i-n-k. I am here today representing Boyd Jones Construction, an 88-year-old Nebraska-based company, along with a subsidiary company we recently formed called Bluestem LLC, specifically created for renewable energy. We've most recently developed and own a wind project in Springview, Nebraska, which we did in a partnership with Nebraska Public Power. As a Nebraska company, we support LB1033, specifically the local input portion of this bill. Not only will this help Nebraska businesses grow as outside developers develop wind within our

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Transcriber's Office

Revenue Committee
February 01, 2012

state, but it will help us grow an industry, an industry that includes a supply chain, skilled people to help serve this business, this industry. We have a great resource here in Nebraska. And as a Nebraska company, again we believe that this is an opportunity to grow an industry, expand businesses within the state. I grew up in greater Nebraska. I listen to economic development issues there all the time. This is an opportunity to introduce businesses in greater Nebraska to this industry and allow them to grow and expand. And as an owner of a wind project and a contractor of a wind project in Nebraska, we feel we have a good understanding of this. And again we support this bill. [LB1033]

SENATOR LOUDEN: Questions? Senator Hadley. [LB1033]

SENATOR HADLEY: Thank you, Senator Louden. Just a quick question. Part of this does deal with ESOPs. Do you think that is an important part of this project? [LB1033]

ADAM HERINK: You know, we're going to have somebody talk about ESOPs directly after me, so. [LB1033]

SENATOR HADLEY: Okay, okay. I'll hold the question then. [LB1033]

ADAM HERINK: But, yeah, we do see that as an important portion of this and could benefit the residents of Nebraska. [LB1033]

SENATOR HADLEY: Okay, thank you. [LB1033]

SENATOR LOUDEN: Seeing no other questions, thank you for your testimony. [LB1033]

ANDY POLLOCK: Good afternoon, Vice Chairman Louden and members of the Revenue Committee. My name is Andy Pollock, A-n-d-y P-o-l-l-o-c-k. I'm here as a registered lobbyist on behalf of the Nebraska Energy Export Association. I promise I will keep my comments brief. I think Senator Hadley probably slept here last night after hearing testimony after testimony about cab service. And so I'm sure he's glad to have a little bit of a change in direction. I'd like to simply say that we support this. Our group represents landowners from across the state. We support this legislation for many of the reasons that Mr. Herink mentioned, the opportunities it creates for landowners in Nebraska, for businesses in Nebraska, and for that reason we very much thank Senator Cornett for introducing the legislation. I would also stress what Mr. Herink stressed, about the Nebraska inputs portion of that legislation. That portion of the legislation was critical for our association to jump on board with the legislation. But for that part of the legislation, we would not have agreed to support the legislation like we're doing here today. It requires that for a developer to obtain the 100 percent sales tax exemption, that they have to use 25 percent Nebraska inputs. And just to expound upon that a little

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Transcriber's Office

Revenue Committee
February 01, 2012

bit, and I think it goes not directly to Senator Schumacher's question about where are our income taxes going, but what is in this for the state of Nebraska. We're asking that you exempt these projects from sales taxes. So what's in it for us? Well, what's in it for us is opportunities for Nebraska, whether they are an accountant or some other professional, whether they're a construction company like Mr. Herink's, whether they're a cement maker/producer, you name it, any good, any service coming from Nebraska, counts towards that Nebraska input. And that is critical and essential for the 100 percent sales tax exemption. For that reason, we think it just expands on the opportunities that wind itself presents for Nebraska. And we would ask you to support the legislation. [LB1033]

SENATOR LOUDEN: Questions for Andy? Seeing none, thank you...oh, I guess Senator Pirsch. [LB1033]

SENATOR PIRSCH: (Laugh) Thanks. I'll be brief. [LB1033]

ANDY POLLOCK: I almost got out of here easy. [LB1033]

SENATOR PIRSCH: You almost. This close. But...so is your position right now...we don't have much, so to the extent you're not getting anything, the state's not deriving anything from the potential. So to the extent that the industry is growing larger in terms of conceptualizing it as a pie, the state will be better off for it, for developing the industry? [LB1033]

ANDY POLLOCK: I think Mr. Bracht put it very well. I think LB1048, which this body passed a couple years ago, was critical to tearing down some regulatory barriers that were impeding wind development. I see this as a way of matching some of our peer states in terms of the tax climate. LB1048 included a change in the way that property tax was assessed. It actually exempted things from a property tax and moved to a nameplate capacity tax. That was helpful. But you've seen what the data shows. And we're still not competitive with those other states. And I would add just another point that you mentioned earlier, Senator Pirsch, and that is transmission is a key component of it. And our public power districts are doing some great things, very progressive things in terms of recommending to the Southwest Power Pool plans that will build transmission in Nebraska, which will enhance reliability and also create some wind opportunities here. There was a bill before Natural Resources a few weeks ago on that topic. But it's one...it's another piece of the pie. You've got the regulatory burden, which was taken down a couple years ago, sales tax issues, and the transmission piece is being addressed too. [LB1033]

SENATOR PIRSCH: To the issue of risky investment for the state, is it only a risk in the sense that really there's nothing that will be forgone in terms of tax if the...there's nothing lost unless the industry grows or does well because we don't have it now

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

Revenue Committee
February 01, 2012

currently, right? Is that what you're saying? [LB1033]

ANDY POLLOCK: I think that's exactly right. [LB1033]

SENATOR PIRSCH: It's agreeing to...I mean, is the conceptual idea here that in order to grow what doesn't exist now, that the end result is if you were to lower the percentage of the pie, that the pie grows at a much greater clip and that the end-all effect is that you derive greater actual dollars from the revenue? I mean, is that...? And so is that but for then? I mean, but for this, and you call it now taking on the price structure, would we...do you expect us not to have great success then in terms of developing renewable energies? [LB1033]

ANDY POLLOCK: I'll put it this way, I think this will enhance the success that we'll see in the state in terms of development. Part of it is economy driven. I think everybody acknowledges that, Senator Pirsch. But certainly this is a disincentive for development in Nebraska compared to other states. And I think we will not see the level of development that we might see if this legislation is not passed. [LB1033]

SENATOR PIRSCH: Thank you. [LB1033]

SENATOR LOUDEN: Senator Hadley. [LB1033]

SENATOR HADLEY: Thank you, Senator Louden. Andy, our public power, you know Nebraska is a public power state, obviously we all know that. And basically there hasn't been an income tax issue with public power. Do you have any idea how these corporations now are springing up, will spring up for the sale of energy by privately held corporations...or not privately, but by nonpublic...public power, how that will be taxed? Is it as a tangible or intangible? [LB1033]

ANDY POLLOCK: I do not know the answer to that question. I'm sorry, Senator Hadley. I'd defer to others who have more expertise in that matter. [LB1033]

SENATOR HADLEY: Okay. I just...because we're talking about that in this committee. And that could be a crucial part, because if it's treated as a tangible it's going to be treated on what they call the market basis, which means that the income taxes will be paid in the state receiving the power,... [LB1033]

ANDY POLLOCK: Right. [LB1033]

SENATOR HADLEY: ...and not in Nebraska where it's being generated. [LB1033]

ANDY POLLOCK: I watched that hearing. And honestly, I'd be lying to you if I said I had an answer to that question. [LB1033]

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Transcriber's Office

Revenue Committee
February 01, 2012

SENATOR HADLEY: Okay. Well, I think we can certainly find out. And it will be breaking new ground, since we haven't had...since we've been a public power state, income taxes have not been something that we... [LB1033]

ANDY POLLOCK: Since we...you know, since we are a public power state it creates lots of new issues. The wind development itself presents lots of new issues, and taxes are certainly among those. [LB1033]

SENATOR LOUDEN: Senator Schumacher. [LB1033]

SENATOR SCHUMACHER: Thank you, Senator Louden. Just a quick question. I think this is about the third set of quick questions. (Laugh) The leases with the farmers, do they have escalator clauses for inflation or are they fixed for...and for what term? [LB1033]

ANDY POLLOCK: Without getting into details, they're all over the map. I don't know that they have escalators for inflation. But they do include...a lot of them, more and more, include royalty payments. I could check a few and get back to you. I hate to commit on that, Senator Schumacher, and give you bad information. [LB1033]

SENATOR SCHUMACHER: But a royalty paper is usually based on a percentage of revenue. [LB1033]

ANDY POLLOCK: Correct. [LB1033]

SENATOR SCHUMACHER: And if you've locked yourself in for 20 years at the same revenue stream, then the royalty payment isn't worth very much or the increase in royalty payments doesn't exist. [LB1033]

ANDY POLLOCK: Well, it would be a percentage payment. So if revenues go... [LB1033]

SENATOR SCHUMACHER: Right. But if you said we're going to sell everything from this windmill for X dollars for 20 years... [LB1033]

ANDY POLLOCK: I see what you're saying. [LB1033]

SENATOR SCHUMACHER: I mean, you're locked in. [LB1033]

ANDY POLLOCK: Theoretically, that's probably true. [LB1033]

SENATOR SCHUMACHER: Okay, thank you. [LB1033]

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

Revenue Committee
February 01, 2012

SENATOR LOUDEN: Senator Hadley. [LB1033]

SENATOR HADLEY: Senator Louden, just quickly. How far is that wind tower going to be from the end of the runway? (Laughter) [LB1033]

ANDY POLLOCK: Far enough. [LB1033]

SENATOR HADLEY: We heard a bill the other day about... [LB1033]

ANDY POLLOCK: I watched that too. [LB1033]

SENATOR HADLEY: ...where the wind tower should be in regard to airports (laugh), so I was just curious as to whether that was an issue yet. [LB1033]

SENATOR LOUDEN: Seeing no more questions, Andy, why, thank you for your testimony. [LB1033]

ANDY POLLOCK: Thank you. [LB1033]

CHUCK HASSEBROOK: Good afternoon. I'm Chuck Hassebrook, H-a-s-s-e-b-r-o-o-k. I'm representing the Center for Rural Affairs of Lyons, Nebraska. We support this bill because it's going to create jobs for rural Nebraska, it's going to create small business opportunities in Nebraska, and it's going to help ordinary working families in rural Nebraska build wealth, the kind of wealth that helps them put down roots and overcome some of the loss of jobs or other things that come in your way throughout a life that create economic problems for families. It's a small business bill for rural Nebraska. Adam talked about the incentives that you get, only the last 25 percent of the tax break you get only if you meet a certain threshold for buying inputs in Nebraska and from Nebraska companies. You know, oftentimes we think about those as being things that are going to benefit manufacturers, and they do, or large construction companies, and they do. But there's also a lot of small business opportunities associated with this that can benefit small towns like Lyons or any other myriad of small towns around Nebraska. For example, typically, when a windfarm is built they'll contract with somebody locally to...or someone, not necessarily locally, but they'll contract with someone to provide the timbers to set the cranes on for the wind tower construction. They'll contract with someone to come in and do the inspection of the blades and things like that. And so all of those create the kinds of opportunities that can enable small businesses to get started in small towns. The other thing that's important about this is it's a rural wealth creation bill and because it incorporates some of the provisions that were in Senator Hadley's bill last year. But to describe them simply, for a company that sets aside or a wind developer that sets aside stock or ownership interests in the development for the people that actually work on the windfarm that are the maintenance and operation staff,

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

Revenue Committee
February 01, 2012

the stock they set aside for that purpose counts as...every dollar set aside, every dollar's worth of stock or ownership interest counts as \$6 toward the Nebraska input requirement. What that means is that ordinary, working families in rural Nebraska, out there in the Sandhills or in northeast Nebraska or the Panhandle or southwest Nebraska, they get to share in the wealth that's created by wind development. And what that means they get to share in the profits that are created by wind development. And so they don't all go off to absentee investors, but a good share of that stays right here, close to home, in rural Nebraska, to enable ordinary, working families to build wealth, that enables them to gain a stronger foothold in the economy, to make their family more secure, to enable them to get through the hard times. And I think that's one of the critical benefits in this bill is that it's not just structured to provide incentives for developers to develop wind in Nebraska, though it is, but it's also structured to create incentive for them to develop wind in a way that benefits our families, our communities, our small businesses, our working families in rural Nebraska. And that's why I support this bill, that's why the Center for Rural Affairs supports it. I would add, on the question of competitiveness of the...or the cost of wind energy and how competitive it is, about a year and a half ago I called Ron Asche, who then of course was CEO of NPPD. And he had the folks at Nebraska Public Power put some estimates together for me. And what he said was that new wind energy was costing about 5 cents a kilowatt-hour. And new coal, if you actually looked at a new plant, new coal was costing on the order of 8 cents a kilowatt-hour, new nuclear would cost 10 to 11 cents a kilowatt-hour. So it's one thing when you compare existing plants to new wind facilities. But when you actually compare the fact that we have an aging fleet of power plants in this country, most of the power plants were built 30 years ago. When you compare the cost of replacing them with new coal or new nuclear, wind is very competitive. And it's less even if you take the production tax credit out of it. Now you still have to deal with the, you know, the fact that the wind doesn't blow all the time, you've got to build transmission to move it around and things like that. But when you look at the cost of building new capacity, which we will have to do because power plants wear out, wind is quite competitive. [LB1033]

SENATOR LOUDEN: Questions? Senator Pirsch. [LB1033]

SENATOR PIRSCH: Did you say that new wind is down to 5 cents per... [LB1033]

CHUCK HASSEBROOK: Well, this is what NPPD was setting up on their contracts, when I talked to, you know, a year and a half ago they were in the range of 5 cents a kilowatt-hour on some of their new contracts that they were signing for buying wind. [LB1033]

SENATOR PIRSCH: That's a lot lower than I thought then. Thank you. [LB1033]

SENATOR LOUDEN: Other questions? [LB1033]

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

Revenue Committee
February 01, 2012

CHUCK HASSEBROOK: Rich, is that about right? [LB1033]

_____ : It's actually lower now. [LB1033]

CHUCK HASSEBROOK: It's lower now. Okay. [LB1033]

SENATOR LOUDEN: Other questions? I've got one. Chuck, when you talk about your telling how much that guy that's probably smoothing out the concrete for that, how much he's going to participate in the revenue from that windfarm and stuff. And you know, it's late in the day and I can philosophize late in the day, it's dangerous, but here goes. (Laughter) When we put up a windfarm we're selling a product we have out there, this wind that's blowing through all the time. But that's what we're selling. When we go out there and plant a field of wheat, a section of wheat or something like that, we're building a product, pulling it up out of the dirt and we're growing this and we'll selling this product. Now when we load that wheat up and ship it to Lord only knows where, there's a bunch of other people who make a whole lot more money off of that wheat than what the guy did that planted it. [LB1033]

CHUCK HASSEBROOK: Yeah. [LB1033]

SENATOR LOUDEN: Now when we crank that wind charger up there with our wind, and that power goes way off someplace, there's somebody that's making a whole lot more money off of that power than what we are (laugh) right there. Who's making that money off that power? And is there any way that we can bring some of that money back because we're giving a tax discount in order to have that there. Now we're not giving a tax discount to the guy that's planting that wheat, but we are to these guys. (Laugh) I mean, we're not giving him an exemption on his machinery repairs or sales tax, but yet we're giving you a sales tax. Now why should we be doing it with you instead of the farmer that plants the wheat? [LB1033]

CHUCK HASSEBROOK: Let me say two things about that. First, the farmer doesn't pay sales tax when he buys new equipment. [LB1033]

SENATOR LOUDEN: Yeah, he does. [LB1033]

CHUCK HASSEBROOK: On new equipment? [LB1033]

SENATOR LOUDEN: Yeah, you either pay sales tax or property tax on it, one or the other. [LB1033]

CHUCK HASSEBROOK: Okay. But the wind...what you don't do is pay both, because right now the turbines are...well, they pay a nameplate capacity tax in lieu of property tax and they also pay sales tax now. So this would essentially make wind equipment

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

Revenue Committee
February 01, 2012

comparable to... [LB1033]

SENATOR LOUDEN: Yeah, it's all even, both sides do the same. [LB1033]

CHUCK HASSEBROOK: This change would actually make wind comparable to farm equipment. But part of...you're right that, of course, a big chunk of the profit, the biggest chunk of the profit is going to go to the people who own it. And, you know, a single wind turbine costing on the order of \$2 million, there's a... [LB1033]

SENATOR LOUDEN: Well, it doesn't matter what it costs. I mean, they're trying to get enough revenue out of it to pay for the thing. [LB1033]

CHUCK HASSEBROOK: Correct. [LB1033]

SENATOR LOUDEN: I mean, it doesn't matter what the costs are. It's the end product, is how can we bring any of that end product back to the guys that are producing it, I guess. [LB1033]

CHUCK HASSEBROOK: And so what we try to do with this bill was say that at least let's keep some ownership in the hands of the folks right out there in the community, by saying in order to get...one of the ways you can get to 100 percent of the sales tax break is by setting aside some of the ownership, some of the stock or ownership interest for the employees that live in Nebraska that are out there working on the windfarm. So we're trying...part of what that does is bring some of it back. And that's one of the reasons I support this bill and the Center for Rural Affairs supports it is because it gets some of it back into the hands of people who live out there and work out there. [LB1033]

SENATOR LOUDEN: Yeah, then you're telling me this farmer could go out there and sell stock in his farm and give it back to his employees and he could get his sales tax exemption? (Laugh) [LB1033]

CHUCK HASSEBROOK: Well, no. (Laughter) You got me on that one. [LB1033]

SENATOR LOUDEN: Good enough. Okay, we'll let it go at that. (Laughter) [LB1033]

CHUCK HASSEBROOK: Okay. [LB1033]

SENATOR LOUDEN: Thank you for your testimony. Any other proponents? [LB1033]

BEN GOTSCHALL: Hello, and thank you for allowing me to present my testimony. My name is Ben Gotschall, that's B-e-n G-o-t-s-c-h-a-l-l. I'm the energy director for BOLD Nebraska and I am in support of this bill. I won't repeat a lot of the things that Mr.

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

Revenue Committee
February 01, 2012

Hassebrook said, although I do agree with quite a bit of it. The main thing being that, you know, this does more than just incentivize wind infrastructure. You know, it keeps jobs and keeps economic growth in the state. And maybe it's my...I support this bill, but I also have a...I want to clarify that with as I understand it or as I have read it, the 25 percent contributions to Nebraska businesses or Nebraska employees, as I read it that only applies to one class of the new tier 7 projects that are identified by this bill. You've got the class 1, which is the projects greater than 75...is it \$75 million, I believe? And then you've got the class 2, which is below \$75 million. As I understand it, the 25 percent, to get to the 100 percent tax relief only applies to the second class, the class 2, the below. Maybe I'm reading...maybe I'm looking at a different version of this, because as I understand it, so they're both equal, is that what you're saying? Okay, because the version that I read maybe was an earlier version and had the class 1 at 75 and 25, and there was nothing in there about the Nebraska incentive. So I'm just...I'm hoping that that has been resolved, because I would...I don't know that it has to be equal to the 50-25-25 that the class 2 was identified as, but at least some percentage to incentivize Nebraska participation. So I guess if that's been resolved already then I was just ignorant of that fact before I came in here. (Laugh) So with that again, I just ask that you...or I just give my support of this bill. Thank you. [LB1033]

SENATOR LOUDEN: Questions? Seeing none, thank you for your testimony. Any more proponents? [LB1033]

STEVE BOYER: Good afternoon, Senators. My name is Steve Boyer, B-o-y-e-r, and I'm a project developer with Third Planet Windpower, and I live in Kearney. Third Planet has been operating in Nebraska since late 2006, and last year successfully commissioned its first windfarm in the state, near Petersburg, a 40.5 megawatt facility with 27 turbines. We have two other proposed project sites in the state, and hope to develop these and others in the future. We believe LB1033 provides an additional incentive to develop within the state. While LB1048 helped open up development through the possibility of export projects, LB1033 will help send a signal the state is going to compete with its neighbors for future projects. During the construction of our Petersburg windfarm last year, Third Planet spent several million dollars in local inputs. This included lodging, fuel, meals, as well as several large contracts with businesses in the state for aggregates, concrete, associated hauling, surveying services, building contractors, and large equipment rentals. This construction activity contributed to a large spike in local sales taxes in Boone County, as Ross Knott reported earlier during his testimony. This effect was also felt in the prior year, in 2010, with the construction of another windfarm in Boone County, the Laredo Ridge project. These figures only represent the immediate impact during construction. The ongoing nameplate generation tax will mean over \$140,000 in annual income to the state and county as long as the farm is in production. This, combined with the other windfarm in Boone County, will provide much needed revenue for the local school district and help stabilize their budget. From a rural economic development standpoint these projects are critical for the areas in which they

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

Revenue Committee
February 01, 2012

reside. The landowner royalties, construction budget impacts, local sales tax, and nameplate generation tax are meaningful and provide a stimulus for growth. I would encourage more of this type of development, as the benefits are clear. Without LB1033, wind development will still occur but at a much slower rate, and Nebraska will continue to be outpaced by neighboring states. This additional incentive will help keep Nebraska moving forward with wind development. Another point I'd like to make is that as Third Planet prepares proposals to public power for future wind projects, the reduction or elimination of the state sales tax component will help reduce the bid price to public power. This in turn will help keep rates low for ratepayers throughout the state. This is very important as developer vie for the all-important power purchase agreements with not only public power but out-of-state utilities as well. As our company evaluates our portfolio of projects across several Midwestern and western states, this legislation will help make our Nebraska projects more competitive. In summary, LB1033 will provide...help promote rural economic development, assist public power in keeping rates low, and keep the wind development momentum we've created in the last several years within the state moving forward. Thank you. [LB1033]

SENATOR LOUDEN: Questions for Steve? Senator Schumacher. [LB1033]

SENATOR SCHUMACHER: One quick question. Nameplate generation tax. Is that a Nebraska tax only? [LB1033]

STEVE BOYER: Yes, it is. [LB1033]

SENATOR SCHUMACHER: Does that make us noncompetitive? And do the other states have something comparable? [LB1033]

STEVE BOYER: Other states have something that's comparable, yes, depending on the state. And ours is very reasonable at \$3,518 a megawatt. [LB1033]

SENATOR SCHUMACHER: And so that generates how much for the state? [LB1033]

STEVE BOYER: Well, in our particular farm at 40.5 megawatts, it's approximately \$142,000 a year. [LB1033]

SENATOR SCHUMACHER: And that's what percentage of revenue? [LB1033]

STEVE BOYER: Oh, I couldn't tell you off the top of my head. [LB1033]

SENATOR SCHUMACHER: Thank you. [LB1033]

STEVE BOYER: Yep. [LB1033]

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

Revenue Committee
February 01, 2012

SENATOR LOUDEN: Other questions? Yeah, the question I have then, what other taxes then do you pay to the local governments, besides that \$140,000? Do you pay that to the state? [LB1033]

STEVE BOYER: Correct. [LB1033]

SENATOR LOUDEN: And what do you pay to the local school districts and counties? [LB1033]

STEVE BOYER: Well, that comes out of that generation tax. [LB1033]

SENATOR LOUDEN: Okay. Then... [LB1033]

STEVE BOYER: And that's in lieu of a property tax. [LB1033]

SENATOR LOUDEN: Okay. And that instead of paying a property tax or...well, then yeah, and that would even include your sales tax you don't pay? [LB1033]

STEVE BOYER: Well, we did pay sales tax. [LB1033]

SENATOR LOUDEN: Yeah, it would just be your property tax on that. [LB1033]

STEVE BOYER: Correct. [LB1033]

SENATOR LOUDEN: And you pay \$140,000? [LB1033]

STEVE BOYER: Yes, on our...the size of our project, yes, sir. [LB1033]

SENATOR LOUDEN: Hell, you're getting by pretty cheap. I got a lot of ranchers out there pay more than that in property taxes, so. Okay, thank you. [LB1033]

STEVE BOYER: You bet. [LB1033]

SENATOR LOUDEN: Any other questions? Seeing none, thank you for your testimony. Any other proponents? [LB1033]

DUANE HOVORKA: Good afternoon, Senators. I'm Duane, D-u-a-n-e, Hovorka, H-o-v-o-r-k-a. I'm executive director of the Nebraska Wildlife Federation and pleased to be here to testify in favor of the support to back up and take a little bigger picture of you philosophically why we think incentives for wind energy like this are very warranted. There are four reasons, four that I'll explain. One is to keep more of our energy dollars in the state. I think my numbers are a little dated, but Nebraskans pay over \$6 billion a year in their energy bills, and about \$2 billion of that are paid for electricity. We do

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

Revenue Committee
February 01, 2012

produce a lot of ethanol in this state, but the vast majority of the coal, oil, and natural gas that we burn to create electricity comes from outside the state. And so that's hundreds of millions of dollars that are flowing outside of our state for our electricity. Second, as you've heard already, you can help develop local jobs and boost a local wind industry. And we think that's pretty important. Third, these kinds of incentives recognize that there are health and environmental impacts of the alternative, that is that burning fossil fuels--coal and natural gas--do create emissions that contribute to asthma and heart disease that are very substantial; mercury in our waters; and, of course, implications for the water use at those fossil fuel power plants. So those are pretty substantial costs that we have built into the alternative to using renewable energy. And, fourth, it helps level the playing field. And as you've heard in terms of the sales tax, if you look at the vast majority of the delivered cost of wind is in that initial construction and installation, if you compare that to a natural gas plant where the large majority of the costs, historically long-term, has been those fuel costs. And so equalizing the sales tax there will help level the playing field. So philosophically, providing some public incentives for wind energy development, as this bill does, makes good, sound public policy. And the return on this investment that you're going to get is not just income and property taxes in the future, but it's also going to be dollars kept inside our state, energy dollars kept in our state. It's going to be local jobs and local development, and it's going to be health and environmental benefits. So thank you for your time. [LB1033]

SENATOR LOUDEN: Questions? I have one. When you're talking about there in the first part of your testimony about, what do you call it, your footprint or whatever, ecological footprint with your coal-fired plants and everything, what they put out in the atmosphere and so forth. In 30 years from now what are we going to do with all these towers that are setting around made out of cement and iron and probably some copper and some everything else that's all mixed up in there? We've got to dispose of them. What's it going to...(laugh) how we going to do that without messing up the environment? [LB1033]

DUANE HOVORKA: Well, that's, yeah, that's a problem with any energy technology, that whether you're decommissioning a nuclear power plant or a coal plant or a wind tower, you've got materials and you've got installation in cement and everything else you're going to have to figure out what to do with. Frankly, I'd rather take apart a wind tower than Cooper Nuclear Station in 30 years. But that's just me I guess. [LB1033]

SENATOR LOUDEN: Well, yeah. Of course, Cooper Nuclear, you cover them up with dirt. (Laughter) But I was wondering when you talk about your coal-fired plants and some of those like that, you know, I mean, there's going to be something that has to be done with these windfarms. As many as we're building all over the countryside, and in a few years and then we don't know just how far, they're going to wear out. And here we're going to have all this junk laying around I guess. (Laugh) And that's been my concern all the time is how do we dispose of that in the future, because we're not setting

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Transcriber's Office

Revenue Committee
February 01, 2012

aside any kind of trust fund or anything to take care of that. [LB1033]

DUANE HOVORKA: My guess, and it's only a guess, is that 30 years from now the value of the metal in those towers will be high enough that the recycling industry will be all over those and there will be money to be made taking them apart, just as there has been putting them up. [LB1033]

SENATOR LOUDEN: Well said, as Senator Preister would have said. (Laughter) Senator Pirsch. [LB1033]

SENATOR PIRSCH: Just...and this might be a little off track. But right now in, I think China, they said, is adding the equivalent of one coal-fired power station every day. So in the, you know, in the greater scope of things is this going to make a dent in the overall global environment? [LB1033]

DUANE HOVORKA: Well, you know, I don't think I really talked about climate change. And I'd save that for another hearing. But... [LB1033]

SENATOR PIRSCH: Right, and I'm sorry, not necessarily climate, but just the output I guess. You had said footprint in terms of... [LB1033]

DUANE HOVORKA: And what I'm talking about is sulfur dioxide, nitrous oxides, mercury, heavy metals, the other particulates, the kinds of things that come out of the smokestack now, many of those are localized impacts. Some of them blow into Iowa and across the country. But it's certainly a global problem, but... [LB1033]

SENATOR PIRSCH: So it's localized some of these output done? [LB1033]

DUANE HOVORKA: Right. [LB1033]

SENATOR PIRSCH: Okay. So it wouldn't... [LB1033]

DUANE HOVORKA: It's both. [LB1033]

SENATOR PIRSCH: Okay, thanks, appreciate it. [LB1033]

SENATOR ADAMS: Any other questions from the committee? Thank you, sir. [LB1033]

DUANE HOVORKA: Thanks. [LB1033]

SENATOR ADAMS: Any other proponent testimony? [LB1033]

DAVID LEVY: Good afternoon or maybe good evening, Senators. David Levy, L-e-v-y, a

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Transcriber's Office

Revenue Committee
February 01, 2012

partner with Baird Holm law firm and here as a registered lobbyist on behalf of Edison Mission Energy. Edison Mission has developed about three-quarters of the megawatts of commercially or privately developed utility-scale wind currently in Nebraska. I had a number of prepared remarks and I think you've heard a lot of excellent testimony today; and I know the hour is late, so I'm going to be very brief and then try and address some of the questions that have come up during the prior testimony. I do, though, want to thank Senator Cornett for her leadership on this and also for her patience. This bill is really the result of collaboration between members of the wind development industry and other interested stakeholders. And Senator Cornett was very patient with us as we worked through it, and so we appreciate that. And I think we have a much better bill for that. The one thing I do want to focus on before I get to trying to respond to some of the questions is the local inputs part of this. And that may sound odd coming from a wind developer. The wind developer wants the tax break and doesn't want to have to jump over hurdles to get it. For example, Kansas and many other states, you show up, you build the project, you get the tax break. Edison has felt all along in this process that the local input piece of this is very important because it means that these projects are giving something back to Nebraska. It's a partnership with the state. They're asking for help from the state to help them be competitive with other states, energy generated in other states, but they also recognize that they need to help give something back. And that local input portion of this bill provides that balance to where there's a requirement that they give something back, that this results in the development of a manufacturing industry where not only are we exporting our electricity perhaps or our wind, but we're exporting ball bearings or blades or towers or turbines or whatever it is that's manufactured in Nebraska. So I just again want to point out on behalf of Edison that that portion of this bill is very important. I also want to point out that that portion of this bill I believe helps offset the fiscal note that this bill has. This bill has a fiscal note, of course; it's not small. I've certainly seen larger. But as you develop the industry in the state and have those spin-off economic development benefits, that helps offset the fiscal impact of this tax break, specifically adding that sort of dynamic component to that static fiscal modeling. As you've heard, you removed significant barriers for wind energy, especially with LB1048 two years ago, but previous bills as well, and continue to do so. But this is an increasingly competitive and increasingly national landscape. And so to keep Nebraska moving forward as a player in this industry we need to continue removing those barriers and continue helping Nebraska projects be competitive. And that's what LB1033 is all about. To try and respond to some of the questions, and if others come up, of course, I'm happy to address those: Senator Pirsch, you asked a question about the long-term capacity of this industry. According to the National Renewable Energy Laboratory, this is potentially a \$1 billion to \$2 billion industry in Nebraska just in terms of investment and projects. And, in theory, a state or a place could generate up to 20 percent of its electricity by wind. So, hopefully, that addresses those things. There was a question. I think, Senator Schumacher, perhaps you asked why this sales tax break or credit or refund is key to a project, key to making a project competitive. Certainly, there are other factors that go in. But when I'm Atlanta's electric utility and I want to buy

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

Revenue Committee
February 01, 2012

electricity generated by wind, I don't really care about much else except for the price. And so if all the other factors are equal, and in fact Nebraska has better wind than other states, but we're still not competitive because we have this price adder. So this, it's not the only factor certainly, but in many cases it can be the linchpin or the straw that breaks the camel's back and makes the Nebraska project not competitive. During the hearing I checked in with my client, Edison Mission, who has a number of projects operating in Nebraska. And they do pay Nebraska income tax. I also checked in with one of the tax lawyers in my office who said that, yes, if you are, let's say you're a Delaware LLC but you're deriving income from assets located in Nebraska, you pay income in that state where those assets are from which you derive that income. So they do pay income tax in Nebraska, even though the project company may be a Delaware LLC. And Edison Mission is actually headquartered in Santa Anna, California. This bill does have a sunset provision. It sunsets in 2019. Senator Schumacher, you asked about the inflation risk also. The big inflation risk for a wind project is up-front. The fuel is free. And so other than the principal on the bank loan and things like that, if there's inflation later and the contract, the PPA, I've never seen one without a significant inflation adjustment. But if it did, as long as the inflation happens later on and doesn't happen while you're building the project, your inflation risk really should be fairly limited. I see the orange light is on. I have a couple of other points I can make in response to questions or I can stop there. [LB1033]

SENATOR ADAMS: Maybe we'll have the questions. Senator Pirsch. [LB1033]

SENATOR PIRSCH: If you could just quickly go over whatever points you wanted to make and then we'll...I just wanted to give you a brief ability to hit your major points quickly there. [LB1033]

DAVID LEVY: Okay. I've just got three more real quickly. One question was about the nameplate capacity tax. I want to clarify that. That is a replacement for the personal property tax. Windfarms also pay real property tax. So the Elkhorn Ridge project, for example, in Knox County, over the first 20 years of the project will pay about \$9 million in property taxes, between the real property tax and the nameplate capacity tax. So the nameplate capacity tax only replaces part of the property tax. They also, as I said, pay income tax as well. And in that case, that project did not pay sales tax because it's a C-BED. I just wanted to note this is the only form of energy generation that is taxed. The fuel is free, but other forms of energy generation do not pay sales tax on their fuel. And then the last point I wanted to make is about the decommissioning. I think, Senator Loudon, you asked about the decommissioning and what happens with these towers down the road. Two points on that. One, state law and most county zoning ordinances require the wind developer to post some kind of financial security for decommissioning. So if the project ever were to stop operating or the developer went away and abandoned the project, there is financial assurance. There's a letter of credit or a bond to make sure that there's money to take those things down and dispose of them. Also,

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Transcriber's Office

Revenue Committee
February 01, 2012

though again, the fuel for these is free. The up-front cost of building the thing is the big thing. So the likely economic outcome of this is in 20 years when the turbines aren't very efficient anymore, whoever owns the project at that time is going to put up new turbines, because at that point you've paid a significant amount of money up-front to build the project, to assemble the land and do all that. Now over time is when you're making money from that free fuel. So the likelihood is these projects will go on for a long time. Many power purchase agreements actually go out to 40 years. So you can see that just there contractually that expectation is that these projects have a very long life. So that's all I have. I'm happy to answer any questions. [LB1033]

SENATOR ADAMS: Senator Schumacher, you've got a question. [LB1033]

SENATOR SCHUMACHER: Thank you, Senator Adams. A couple quick questions. When you talk to your folks at your law firm, were they able to tell you whether electricity would be considered as a tangible or intangible? [LB1033]

DAVID LEVY: Right now it's taxed as a tangible item. It's the assets that are taxed. It's the income derived from the assets which are the tangible assets, meaning the wind turbine and the towers. [LB1033]

SENATOR SCHUMACHER: But if we were to convert to what they call a market state, then that property, the assets by which it is generated, at least as I understand it, it becomes a different ball game. And it's where the product is sold at. [LB1033]

DAVID LEVY: Yeah, and that, you know, I can't answer that because that's not the state now. But they do pay income tax now under the current law. [LB1033]

SENATOR SCHUMACHER: It seems to me as a matter of tax policy, we're looking at one of these maps, at least the four Midwestern states are the big area where the free wind is, and in enough quantity and transmission facilities to be of use. And we seem to be caught in this game of who can give the most tax breaks. Would a smart thing, if you were in our shoes, be to go sit down with the folks in those four states, enter into an interstate compact for the uniform taxation of these things? [LB1033]

DAVID LEVY: I hesitate to tell the committee what would be smart to do and what wouldn't, because that implies that other things might not be smart to do. That is certainly an option. And you raise a fair point. I mean, that happens in any industry when you get different jurisdictions competing with one another, it does start to get that way. But Nebraska has a once in a lifetime natural resource opportunity here that we can take advantage of that results in great rural economic development. And we're not competitive right now. You know, again we talked about the nameplate capacity tax. Kansas, for example, charges very little in property tax. So, you know, if you could do that, that would be one way to solve the problem. But otherwise, right now, Nebraska is

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Transcriber's Office

Revenue Committee
February 01, 2012

just not competitive, even though we have better wind than most other states, really other than North Dakota and South Dakota. [LB1033]

SENATOR SCHUMACHER: Thank you. [LB1033]

SENATOR LOUDEN: Other questions? Senator Brasch. [LB1033]

SENATOR BRASCH: I just have a quick one. I did not take a class in electricity. (Laugh) But I don't think it's an intangible. It requires a wire or something, it's not like software or something that is Wi-Fi or wireless or satellite. Electricity is...still has to travel in a conduit or something, I don't know if that's even the right word. But electricity has to go somewhere by a physical piece of something. It's not intangible. It's...it needs a housing unit of...correct? Or not. [LB1033]

DAVID LEVY: Correct. [LB1033]

SENATOR BRASCH: Or is electricity being beamed over to India as we speak, electronically, you know? (Laugh) [LB1033]

DAVID LEVY: Not to my knowledge. [LB1033]

SENATOR BRASCH: Okay. [LB1033]

DAVID LEVY: No. And like I said, currently, as I understand it the way it's looked at is that it's the tangible asset that's generating the electricity. I also know that there's case law, it applies to public power. So I don't know off the top of my head whether it would apply the same way to private developers, but it considers the generation and distribution of electricity as a service. So out of the three, there are at least two where it's taxable. And like I said, Edison Mission does pay income tax to the state of Nebraska on their wind projects that are generating electricity in the state. [LB1033]

SENATOR BRASCH: There might have been a science class, so I'll retract that. (Laughter) So thank you for your testimony. [LB1033]

DAVID LEVY: Sure. [LB1033]

SENATOR LOUDEN: Any other questions? Seeing none, thank you for your testimony. [LB1033]

DAVID LEVY: Okay, thank you. [LB1033]

SENATOR LOUDEN: Any more proponents? Any opponents? Any in the neutral? Senator Cornett has waived closing. So that closes the hearing on LB1033. [LB1033]

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Revenue Committee
February 01, 2012
