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Revenue Committee
February 14, 2013

[LB104 LB501 LB572 LB627]

The Committee on Revenue met at 1:30 p.m. on Thursday, February 14, 2013, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB572, LB501, LB104, and LB627. Senators present: Galen Hadley, Chairperson; Paul Schumacher, Vice Chairperson; Burke Harr; Charlie Janssen; Pete Pirsch; and Kate Sullivan. Senators absent: Tom Hansen and Beau McCoy.

SENATOR HADLEY: My name is Galen Hadley from Kearney. I represent the 37th District. I appreciate your coming out on a Thursday afternoon. We were here until about 7:30 last night. We will not be here that late tonight. I just thought I'd let you know that. To my left will be Senator Schumacher from Columbus; Senator Pirsch from Omaha. Just so you know, sometimes senators aren't here because they're introducing bills in other committees. It's not that we don't like you, but sometimes we have to go introduce momentous bills in other committees. Senator Sullivan from Cedar Rapids; Senator Harr is getting ready to introduce from Omaha; Senator Janssen from Fremont; next is Senator McCoy who's introducing bills. Senator Hansen will not be able to be here today. Our committee counsel is Mary Jane Egr Edson. Bill Lock is our research analyst and Matt Rathje to my left is our committee clerk. Our pages are Evan Schmeits and Nate Funk over here, and they're good people. They will help you in any way they can. I'd appreciate it if you turn off cell phones or put on vibrate while in the hearing room. The sign-in sheets for testifiers are on the table by both doors, and they kind of look something like this. Please make sure you fill one out before you come up and hand it to the clerk. This helps us with the transcript in the record which is very important. If you're testifying on more than one bill, you need to submit a form for each bill. Please print and complete the form prior to coming up to testify. When you come up to testify, hand your testifier sheet to the committee clerk. There are also clipboards in the back of the room to sign if you do not wish to testify but would like to indicate your support or opposition to a bill. These sheets will be included in the official record. We will follow the agenda posted on the door. The introducer or representative will present the bill, followed by proponents, opponents, and neutral. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, state your name and spell it for the record. If you have handouts, please bring ten copies for the committee and staff. If you only have the original, we will make copies. Give the handouts to the page to circulate to the committee. We will be using the light system today. Basically the light system is handled by the committee clerk. And in front of you, you will see a green light, amber light, red light. We will be using five minutes. You have a green light for four minutes, an amber light for one minute, and then a red light. And on the red light, that doesn't mean you have to stop in midsentence. You can finish the thought you have. That is absolutely fine, but we'd appreciate it if you didn't get to another completely different train of testimony. Okay. We are hearing a number of bills today and I think they all...three of them at least I think deal with pretty much the same...or two and two, right. Two on wind energy and two and then Senator Harr's is on the dividends, and

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then tax exclusions from Senator Conrad. Just so you know, you don't have to repeat what other testifiers have said. You know, about the fourth testifier that tells us how important wind energy is we'll understand that it's important, but what we really like to hear is why you think the bill you're testifying on is an important way to handle the situation we're dealing with. With that, Senator Harr, I will turn the hearing over. If you want to put the amber light on right now (laughter), we'll get started. Senator Harr. [LB572]

SENATOR HARR: Chairman Hadley, thank you. My name is Burke Harr, H-a-r-r. I represent Legislative District 8, which is midtown Omaha. I am here before you on LB572. And for background and a little description, LB572 is very similar to LB34 which Senator Hadley introduced earlier and which we heard earlier. So I want to describe the history and then tell you how mine is different, and not necessarily better but different. And we can then decide as a committee which way is better. So LB775 and the Nebraska Advantage Act have been very successful for the state of Nebraska. They have helped create many jobs. I know some are going to come up and say maybe not as much as they'd like, but I think it's been a very successful program. But we can always do things better. So last summer, we got together. We convened a group and it consisted of a couple of senators; a couple of state and local tax accountants; a couple of attorneys, one who does a lot of mergers and acquisitions and works in this area of Nebraska Advantage Act. We had some business leaders from the community come in from both greater Nebraska and from Omaha to really talk about...it's been about ten years since we passed the Nebraska Advantage Act, to look at what works and what doesn't work and what can we do better. And the main goal we found was that there is a problem with...the main problem really is it takes too long once you file your application. So we looked at what are the problems and what causes that. And it came down to really a couple of issues. And I'll be honest. LB34 did a very good job of addressing those issues. And so...and the main problem was interdependency, which I have to be honest, I think LB34 handles that issues better than my bill. And it's a...mine is a...Senator Hadley's LB34 is a burden of proof issue and I think it's a...it creates more flexibility and I think it's quite frankly a better way of going at it. So I'm not going to waste the time of how ours are similar, rather what I'd like to do is talk about how they're different. LB34 does not address some of the main issues holding up the approval process. It doesn't address...the two problems we found was, what is a qualified business. That seems to be...hold up applications and this interdependency. We take care of interdependency, we still have a problem with qualified businesses. So we came up with what I think is a good definition of trying to figure out what is a qualified business. It's still not perfect. I think it's a work in progress. I think both of us, we should come together as a committee and try to figure out a better definition of qualified business, because still think mine is a work in progress. But it's better than the current law and it could still use some work though. LB34 does not address the issue of a short year employee wage issue. And I talked to...when Commissioner Ewald was here, we talked about that and I asked him some questions about it. And to his credit, he's still

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willing to do some work on that. I don't know, he hasn't spoken specifically to my bill whether he likes the way it's addressed in my bill or not. We will...I will reach out to him again and hopefully we can work on that and try to find a solution on that. LB34 does not address the E-Verify employee issue. Now since today again is Festivus day and we're airing our grievances, I have somewhat of a problem with the way the fiscal note is done in that we don't know what the cost...and there isn't an individual breakdown of, okay, what is the cost of E-Verify if there is any. So what the E-Verify issue is, just to go...to speak to it shortly, and I talked to Commissioner Ewald, and that day he said he didn't really have a problem with it. But what it is is, if you hire an employee in January and you don't E-Verify them, and there's no real reason to if they present the proper paperwork, meaning a Social Security card, birth certificate, that shows, hey, they are legally employable in the United States. They are a U.S. citizen. They're employable. And there isn't a requirement otherwise to go forward with it because you're not...it's not a state contract or whatever. So you have...you know this person is legal to work. Now all of a sudden you get to December, you've had a really good year and you realize, hey, we might qualify for some advantages. And you go back and you say, okay, I want to...that employee that I just hired, you E-Verify them in December. Well, when you go to apply, you only get credit for that employee from December even though that employee has been working for you and contributing to the society since January. If what we're trying to do is to encourage people to use E-Verify, that makes sense. But what we're trying to do is create an E-Verify law that doesn't exist through the back door instead of the front door. The purpose is...of LB34, of the Nebraska Advantage Act, and LB775 is to hire people to make sure an increased economic development and to hire employees. It's not meant to be a back door for everyone to use E-Verify. So there's nothing wrong with E-Verify and there's nothing that stops the employee from using it. But if the purpose were supporting the purpose of the Nebraska Advantage Act if we say we want you to hire people but only after you E-Verify, that is bureaucratic trouble that we add on. And I am for fair, simpler, and equal. And fair is going from the time you hire that employee because that's when their economic impact starts and that's when you start making Nebraska a better place to be. And we want to encourage new and young people to come here, and that's what that does. So my bill has that. What I'd say is this bill I honestly do not expect to pass the committee, LB572, but what I would like is for parts of it to be analyzed by the committee and to add it onto LB34. And with that, I would entertain any questions. [LB572]

SENATOR HADLEY: Questions for Senator Harr? Senator Harr, I just have one quick question. [LB572]

SENATOR HARR: Yes, sir. [LB572]

SENATOR HADLEY: Why do you think it did come up with such a large fiscal note? [LB572]

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SENATOR HARR: Well, we treat LLCs a little differently. I think that's part of it. I don't know. I think the way we handled interdependency is part of it, a large portion of it. You know, I think we kind of, in a way, create a legal fiction that I don't want to go too far into with LB34. But I think those are the two issues that really create the large fiscal note. Other than that, I mean that, again, I...I don't know. So...because it's not broken down individually by each section. [LB572]

SENATOR HADLEY: Okay. Well, thank you, Senator. Yeah. I appreciate your bringing the bill and I will volunteer to certainly work with you and your staff, and the committee will work with you and your staff to see where we have commonality between the two bills and what we can do to make the act better. And I think that's our goal. [LB572]

SENATOR HARR: And I appreciate that. And you have been very gracious by holding up LB34 until this was heard so that this part could be heard, and I want to thank you for doing that. [LB572]

SENATOR HADLEY: Okay. Thank you, Senator Harr. [LB572]

SENATOR HARR: Thank you. [LB572]

SENATOR HADLEY: First proponent. [LB572]

RICHARD BAIER: You got started early on the green light. [LB572]

SENATOR HADLEY: You're our first one, sir. [LB572]

RICHARD BAIER: (Exhibit 1) Good afternoon, Chairman Hadley, members of the committee. For the record, my name is Richard Baier, the last name is spelled B-a-i-e-r. I appear before you today as a registered lobbyist for the Nebraska Chamber of Commerce and Industry in support of LB572, and I'm also testifying in support of the Greater Omaha Chamber of Commerce. And this fall I had the chance to participate in Senator Harr's working group to talk about how do we make Nebraska Advantage better. And it was kind of ironic because I was involved originally in 2006 in that conversation, so it was deja vu all over again. But we do recognize that technology and business practices change, the use of LLCs, for example, and ESOPs and the prevalence of those kinds of things and probably change faster than public policy can keep up. And we also recognize that as these programs evolve, it's important to look and be concerned about the efficient or effective administration of those programs. And so that was part of the reason we chose to be involved in Senator Harr's efforts. We also want to thank Senator Hadley and the Department of Revenue for their introduction of LB34. We were supportive of that as well as an organization. And I think Senator Harr did a nice job identifying the things that we think are important to look at as we move forward in this process. One of those is what is a defined company or a qualified

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company in terms of definition. How do we define those average weekly wages for short-year employees where employees that get hired and maybe are there only a short time? Better synchronization of E-Verify with federal requirements. And then that issue of interdependency. So we believe, and again, thank you for your attention to this. We would encourage you to pick the best parts and pieces from both bills and look forward to working with you to get the legislation approved. With that, I'd be happy to take any questions before the yellow light comes on. [LB572]

SENATOR HADLEY: Questions for Mr. Baier? Mr. Baier, I have a quick question. If--and I capitalize the I and F--we were to do an interim study on tax policy in the state of Nebraska, would you say that incentives would be...should be a part of that discussion? [LB572]

RICHARD BAIER: Sure. Senator, we have been supportive for a long time, all the way back to LB775 as well as Nebraska Advantage in terms of talking about transparency. How does it fit with our competitive stance in Nebraska? How does it allow us to be successful? Because one of the things that I will tell you is, for example, since Nebraska Advantage was passed, we've had one of the lowest unemployment rates in the country; our per capital income is rising faster in the last four years than in the rest of the country; we also saw population increases faster...higher than the national average three of the last four years. That hasn't happened in our state in 50 years and we think there's something driving that. So we would be very open to that conversation. We do want to make sure if we do it, that we're all talking about the same sets of numbers so that we can agree to the conversation and to make sure everything is being counted appropriately. [LB572]

SENATOR HADLEY: Thank you, Mr. Baier. Seeing no other questions, thank you. [LB572]

RICHARD BAIER: Thank you. [LB572]

SENATOR HADLEY: We appreciate...I assume we're going to be hearing from you on the other bill. [LB572]

RICHARD BAIER: Several times today. [LB572]

SENATOR HADLEY: Okay. The next proponent. Opponents. Neutral. Senator Harr, would you like to close? [LB572]

SENATOR HARR: Just quickly. When I talked about the committees...the people on the committee that I helped, I forgot to mention the chambers and they were very helpful. So I probably owe it to them on the record to thank them for their help and support on this. Those are the four areas that we really found a problem that were...Mr. Baier said

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much more succinctly than I did. So thank you. [LB572]

SENATOR HADLEY: (See also Exhibit 13) Thank you, Senator Harr. With that, we will close LB572 and we will start with LB501. And I will turn the committee over to Senator Sullivan. [LB572]

SENATOR SULLIVAN: Thank you, Senator. [LB501]

SENATOR HADLEY: For the committee, my name is Galen Hadley; that's G-a-l-e-n H-a-d-l-e-y. I represent the 37th District which is Kearney and parts of Buffalo County. LB501 is a "keep it simple" approach to renewable energy. As we look at targeted growth industries for the state, I believe it is important we add renewable energy to the list. This addition to the Nebraska Advantage Act will help Nebraska attract significant new energy opportunities. It will send a powerful message to investors and developers who are key to our success. You will hear from some of them today. The language is simple in that it adds to the Nebraska Advantage Act the following qualifying language: The production of electricity by using one or more sources of renewable energy to produce electricity for sale. Sources of renewable energy means wind, solar, geothermal, hydroelectric, and biomass. It has been my experience that keeping it simple is the right approach. We learned that the hard way from the C-BED legislation for wind development. Although well-intentioned, it was too complex and had unintended consequences. Consequently, even though Nebraska ranked fourth in the nation in wind development, most of that development and the hundreds of millions of dollars it takes to invest in wind energy went elsewhere. What we have learned from talking to investors, developers, and to those who do site selection is that Nebraska has tremendous opportunity for growth in the energy sector. LB501 will help us be more competitive. From a rural economic development perspective, energy is an incredible opportunity. Not only does it involve millions of dollars of investment, but it also brings high-paying jobs to some of our most rural areas of the state, and in many cases, the project becomes the largest taxpayer in the county. So let us use wind as an example. Although LB501 is broader than wind, landowners enter into long-term leases that pay between \$13,000 to \$17,000 per tower per year. Let me emphasize, \$13,000 to \$17,000 per tower per year, over 20-25 years, with an option to renew. In Texas they call this an oil well. Where else can we incent this type of investment and job growth for rural Nebraska? In terms of the fiscal note, first of all, you can't lose something you don't have. We have not kept up with our neighbors on energy development. The fiscal note doesn't measure the value and development that now makes one project the single largest taxpayer in the county. It does measure what it means to create three to ten new high-paying jobs. It doesn't measure what it means to create three to ten high new paying...and new high paying jobs paying between \$65,000 to \$70,000 per year in a community of a thousand people. It doesn't calculate the value of 100 to 135 turbines at an annual cash flow lease rate of \$15,000 and the impact that those new dollars have in the local and state economy--new pickups, new farm machinery, new homes, etcetera.

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It doesn't begin to measure the value of attracting investments over \$100 million to \$300 million in our state. LB501 is drafted with input from our economic developers and advice from people who have the key investments to help make these types of projects a reality for Nebraska. We are behind the curve ball. But there are many exciting opportunities to come, and this legislation will make sure Nebraska is ready. I'd like to thank Senator Lathrop for bringing forth another good proposal that is targeted specifically at wind. It is timely and we need to get something done this year. Although I think this is a similar approach, I would like to work with him in this committee to send a strong message to developers here today. We welcome their investments in rural Nebraska. Finally, as we wrangle with the difficult tax issues that are currently before this committee, this is a good example of an answer to a question you posed last week. Senator Schumacher: What does a modernized tax policy look like? Over the years we have targeted industries through legislation that has helped Nebraska maintain and enhance a strong economy. It is this type of targeted approach that I believe has been critical to our success. I would be happy to answer any questions. [LB501]

SENATOR SULLIVAN: Thank you, Senator Hadley. Do you know...I mean, first of all, we've got some really great windfarms going on in my district. Do you have any idea on average how many, once they get up and running, how many people are employed? [LB501]

SENATOR HADLEY: You know, I can make a guess. I keep hearing the three to ten per windfarm is the number that I keep hearing. [LB501]

SENATOR SULLIVAN: Okay. And in your bill it expands beyond wind and talks about renewables. Have you talked to businesses or entities who kind of look out in the future in terms of what kinds of renewable energy projects with other kinds of inputs that we'd be looking at? [LB501]

SENATOR HADLEY: I think, Senator Sullivan, I think that's what makes this bill good is that we may not have specific ideas right now but we want to put them in so that we're not coming back in a couple of years and having to redo it again and go through the fiscal note process one more time. But as far as specific ones, no, I do not. [LB501]

SENATOR SULLIVAN: Okay. Any other questions? Senator Harr. [LB501]

SENATOR HARR: If you know, are they planning on putting any windmills in your office? [LB501]

SENATOR HADLEY: That would be a wonderful place because of a lot of the...the hot air that goes on in there would probably generate enough electricity to do...and we do need some electricity in the Capitol, because you walk down the steps and it's dark and I could fall...(laughter) again. [LB501]

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SENATOR SULLIVAN: Any other questions? Thank you. Proponent testimony. [LB501]

RICHARD BAIER: (Exhibits 2 and 3) Senator Sullivan, members of the committee, again for the record my name is Richard Baier, B-a-i-e-r. And last I checked, I'm still a registered lobbyist with the Nebraska Chamber and I'm here in support of LB501; also testifying in support of the Greater Omaha Chamber. And I'm also distributing a letter from the Nebraska Farm Bureau in support of this bill. Our organization supports the renewable energy sector as a way to generate jobs, new capital investment, and an enhanced tax base in our state. As you recognize from recent discussions about tax reform and modernization in our state, many of our competing states with lower tax burdens have abundant natural resources or unique amenities that allow these states to export their tax burden outside of their borders. Nebraska, for example, lacks the coal supply that exists in Wyoming or the year-round warm climate offered in Florida. We do, however, have unique renewable energy assets, including solar, biomass, geothermal, hydroelectric, and wind. And I'll share a couple of those with you, Senator, in a minute. We believe that if leveraged and developed correctly, these resources can help Nebraska export its tax burden outside of our state's borders and help lower the overall tax burden for Nebraska taxpayers. As the former DED director, I also believe that targeting and leveraging renewable energy projects represent the often-coveted rural development jackpot. These projects draw in large amounts of new capital investment, typically from outside of Nebraska, while also creating skilled jobs that pay well above positions in our other rural areas. They also provide revenue streams, as Senator Hadley mentioned, to those Nebraska landowners in the forms of land lease payments. Finally, a growing number of Nebraska's leading companies are placing an increased focus on environmental sustainability and green energy. When I first started at DED in 2003, the question about green energy and Nebraska's energy makeup was never asked. By the time I left the position in 2011, this question was common on every project. And I want to applaud our public power districts for recognizing this trend and for proactively working to address this issue. No matter when you sit on the global warming debate, it is safe to assume that business interests in this topic will not wane in the foreseeable future. The Nebraska Chamber remains committed to renewable energy and we look forward to adopting of Tier 7 within the Nebraska Advantage to support these projects. We also believe what's before you in LB501 offers a very simple and clear mechanism to do that. Finally, in relationship to your question, Senator Sullivan, about other kinds of projects, I'd just mention a couple now that we're starting to see where they really take off around the country; and one of them is an international perspective for me. Before I left the state, I had a chance to travel to Japan and oversee that office a few times, and what I saw happen over there was sort of this technological evolution in renewable energy. And so, for example, when I first started there back in the early 2000s, there was little hot water being generated with solar. If you go over there today, almost every apartment building and major commercial building is generating their hot water and some of their heat system with solar-produced steam. So

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I think those are the kinds of examples. We also have an example at the Hershey High School in Hershey, Nebraska, that's using geothermal as a primary heating and cooling technique. Again, that's not a private venture but I think that technology development is occurring rapidly in this arena and I think creates some real opportunities. So including those into this bill makes a lot of sense from my perspective so that I'm not back here before you next year looking at the yellow light saying, we like geothermal or biomass or whatever that next big technology jump might be. And I think it's reflective of my comment just a few minutes ago about the idea of public policy has a tough time keeping up with technology. This is one way to allow us to do that. So with that, I'd be happy to take any questions. [LB501]

SENATOR SULLIVAN: Thank you. In terms of job creation, is that fairly accurate that three to ten for windfarms? And what about some of these other areas? [LB501]

RICHARD BAIER: It really kind of...they're all over the place. Again it depends on what they look like. A large solar facility, for example, would tend to be a bit more maintenance; and we don't have any of those in Nebraska yet, but you're seeing them start to develop around the country. Most of the windfarms are in that three to five to ten kinds of positions, but they pay well and they're highly skilled positions. And in some of our rural districts, that really is the jackpot for a lot of areas, because, number one, they don't have the numbers of people to fill those positions if somebody came in and said we need 100 workers. So this really is a nice mix. The other thing, from my perspective, is that these projects tend to bring in lots of outside investment to the state. And again, it gets back to that whole concept of exporting either our tax burden or our economic base for the good of Nebraska taxpayers. [LB501]

SENATOR SULLIVAN: Okay. Thank you. Any other questions? Thank you. [LB501]

RICHARD BAIER: Thank you. [LB501]

SENATOR SULLIVAN: Welcome. [LB501]

JAMES WILLIAMS: Thank you. Mr. Chairman and members of the committee, my name is James Williams, and for the record that's W-i-l-l-i-a-m-s. I work for Invenergy as a wind energy developer and I'm here from Littleton, Colorado. That's where I office out of. First of all, thank you very much for the opportunity today to speak on LB501. Invenergy develops, owns, and operates large-scale renewable energy power plants across the United States. As America's largest wind power generation company, we have currently more than 6,000 megawatts of solar, wind, and thermal facilities operating in the United States; and we're very excited to be here working in Nebraska. As the committee is well aware, as has been said here already today, Nebraska has a significant resource in wind. And according to the National Renewable Energy Laboratory, that rank is fourth. We are interested in seeing Nebraska take full

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advantage of this great natural resource and the significant economic benefits that would come along to Nebraskans, and particularly the rural communities in the state, by realizing this development potential. Invenergy, we recognized Nebraska's resource in 2008; we began developing the Prairie Breeze project. We're excited to be moving towards construction in 2013 of the 200 megawatt first phase of Prairie Breeze in Antelope and Boone Counties. The renewable energy generated from the project will be sold to the Omaha Public Power District. And during operations, Prairie Breeze will pay more than \$2 million each year through on-site labor, local revenues, and supply chain impacts to Nebraska landowners, Nebraska employees, and Nebraska counties and the school districts there. And this on top of an estimated \$100 million of economic activity to the state during the construction of the project; and at the same time, the project is expected to create approximately 300 full-time equivalent jobs during construction. And then during operation, approximately 12 full-time jobs to operate and maintain the wind plant. This is significant dollars in jobs for, you know, rural communities in Nebraska. This is one example, but there's obviously the potential for many more. The differences in tax policy between competing states can have a very significant effect. In order for Nebraska to reach the full development potential of the state's resource, sales would need to be made from wind energy on the export market in addition to domestic purchases. It's been well-documented that tax policy in the surrounding states is more competitive from the sales tax exemption side of things than Nebraska. And for, you know, wind energy developers like Invenergy looking to attract out-of-state buyers, it becomes cost...it's very difficult to make the sale, basically. In addition, a sales tax exemption could encourage more domestic purchases due to the reduced power price that can be offered through a sales tax exemption. This added cost makes Nebraska wind projects more costly and less competitive and will likely result in, you know, fewer wind projects total in the state. Invenergy strongly supports LB501 and would like to thank Senator Hadley for introducing this bill and the Revenue Committee for holding this hearing today. Invenergy believes the proposed revisions to the Nebraska Advantage Act, you know, the simple solution that LB501 is providing, accomplishes the goal. Nebraska's citizens, particularly in the rural communities, as I mentioned, will benefit by the increased investment in tax base and the jobs that these projects would bring to Nebraska. I really appreciate the time and I'd be happy to answer any questions. [LB501]

SENATOR SULLIVAN: Thank you very much for your testimony. How many wind turbines at Prairie Breeze, when the project is finished, and how many landowners? [LB501]

JAMES WILLIAMS: Approximately 120 wind turbines would be at the site and, you know, overall probably approximately 100 landowners, different landowners, would be involved in the project. [LB501]

SENATOR SULLIVAN: And when do you anticipate completion of that? [LB501]

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JAMES WILLIAMS: We're targeting the end of 2013 for completion. [LB501]

SENATOR SULLIVAN: And you have...tell me again, your contract for the sale of that electricity is with whom? [LB501]

JAMES WILLIAMS: Omaha Public Power District. [LB501]

SENATOR SULLIVAN: Okay. All right. You also mentioned that Invenergy...well, first of all, do you have any additional plans for more presence in Nebraska? And then also, your company deals with renewables other than wind. What else are they? [LB501]

JAMES WILLIAMS: So to answer the first question, we do have plans for expansion of this site and we have other developments in Nebraska, and we're certainly excited to be here. And as I mentioned, we've been here since 2008. Invenergy, from a renewable perspective and how it would relate specifically to LB501, we also own and operate and develop solar power plants. And, you know, solar pricing has been coming down over the past few years and, you know, this sales tax exemption could certainly reduce that even further and potentially provide for the development and operating of that in Nebraska. The prices are still going to be higher because the solar resource here isn't quite as good as the wind resource. But yeah, we'd certainly appreciate the opportunity. [LB501]

SENATOR SULLIVAN: Thank you. Senator Harr. [LB501]

SENATOR HARR: Thank you, and thank you for coming to Nebraska. I have a couple of questions. We're going to be giving you tax dollars, so I just have...I want to get a better feel for the industry. How long is the average lease on a...land for the windmill? [LB501]

JAMES WILLIAMS: The average lease, 20-25 years would be kind of the average life of the project. [LB501]

SENATOR HARR: Okay. And how much do you generally...how much...is there an average price for how much you...how much do you lease us? A half-acre, an acre, how much? [LB501]

JAMES WILLIAMS: What we do is we lease the wind rights across somebody's whole property. [LB501]

SENATOR HARR: Okay. [LB501]

JAMES WILLIAMS: A wind turbine, for example, would maybe take, you know, less

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than a half-acre out of production, but we have the wind rights across their property. [LB501]

SENATOR HARR: Okay. And I don't want to get any proprietary secrets, so if you don't want to answer this I understand it. But if you know or if you can say, what is the...I'm trying to figure out the increase in property taxes is what I'm getting at. Do you know what the average lease price is? Is there an average out there? [LB501]

JAMES WILLIAMS: The increase in personal property tax to the landowner? [LB501]

SENATOR HARR: Or just...yeah, that's a better way of going at it. Yes. [LB501]

JAMES WILLIAMS: So, you know, in Nebraska, wind turbines are exempt from personal property tax. And so a nameplate capacity tax payment is made, which was enacted in LB1048, which was passed in 2010. And so that payment is \$3,518 per megawatt. [LB501]

SENATOR HARR: Okay. [LB501]

JAMES WILLIAMS: One wind turbine would be about one and a half times that, so. Does that give you a good sense? [LB501]

SENATOR HARR: Okay. That's gets me. I just want to make sure we're getting a good, you know...we are collecting some tax back in another way. [LB501]

JAMES WILLIAMS: Absolutely. As an approximation, the Prairie Breeze project that we're working on now would pay approximately \$700,000 annually over the life of the project. [LB501]

SENATOR HARR: Okay. That's a very good answer. I just want...if we're exporting our taxes, I just want to make sure we're exporting them and not just giving it away. So okay. Thank you very much. Appreciate it. [LB501]

JAMES WILLIAMS: You're welcome. [LB501]

SENATOR SULLIVAN: Any other questions? Thank you for your testimony. [LB501]

JAMES WILLIAMS: Thank you very much. Appreciate it. [LB501]

SENATOR SULLIVAN: Um-hum. Welcome. [LB501]

BRICE BARTON: (Exhibit 4) Thank you. Ready? Good afternoon, Senator Sullivan and members of the Revenue Committee. For the record, my name is Brice Barton; that's

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B-r-i-c-e B-a-r-t-o-n. I appear before you today as a developer of wind projects in Nebraska and in support of LB501. Thank you, Chairman Hadley, for bringing this legislation to the committee for consideration. It sends a powerful message that Nebraska supports renewable energy. I'm employed by TradeWind Energy out of Lenexa, Kansas, as a development manager. TradeWind is a greenfield developer of utility-scale projects in 11 states, including Nebraska. Our small company of 35 people will be starting construction on our sixth project this month, which will put us over the 1 gigawatt mark of installed capacity. Since our inception, in 2003, TradeWind has partnered with utilities, cooperatives, environmental groups, municipalities, landowners to develop mutually beneficial wind projects. We take great pride in our ability to deliver low-cost wind energy while maintaining an uncompromising commitment to long-term project quality. One of these projects is the Rattlesnake Creek wind project. The Rattlesnake Creek wind project is located in Dixon County near Allen, Nebraska. The development of this project started in early 2008. Having seen millions of investment for landowner payments, wind data collection and analysis, engineer, transmission studies and environmental studies, and permitting, this project is ripe on the vine. Unfortunately, due to Nebraska's legislative policy, this project continues to be too high on that vine. Covering 32,000 acres, this project cannot only support the renewable energy goals of in-state public power districts, it has excellent export potential. Export projects offer all the economic benefit of locally sold wind projects, but the revenue stream is being funded by an out-of-state entity. For the 110 landowners of Rattlesnake Creek to see annual revenues from turbines, substations, switchyards, transmission lines, buffer acres, and other project facilities, the sales tax barrier needs to be removed. Having grown up in a small community in northwest Kansas, I know and have seen firsthand how economic development can impact a community. I am blessed with the opportunity to raise my family in the house I grew up in, in a community I love, while traveling the heartland for my job. High-paying jobs, unfortunately, are not a dime a dozen in small communities. Wind projects not only contribute to a community's economic health through landowner payments, they hire turbine technicians, managers, and support staff. Ten-plus jobs with an average wage around \$65,000 will be a welcome addition to the rural job market. These jobs incentivize young families to stay in or come back to rural Nebraska. Concerning the fiscal note that was assigned to this legislation, I will be short. Nebraska cannot lose something it does not have. The fiscal note should be near zero. Without the removal of the sales tax barrier, investors will continue to gravitate to the supportive tax climates of Kansas and Oklahoma to export wind out of the High Plains region. Three hundred million to \$400 million projects do not usually seek rural areas. This is one industry that can prop up the economies and opportunities in rural Nebraska. The Nebraska Advantage Act has always been the vehicle that targeted industries and incentivized them to stay here and to come here. We operate in a global economy that's very competitive. Nebraska can significantly grow its rural economy through the development of renewable energy. The bill before you will increase revenue to your state. Thank you for allowing us an opportunity to come before you today and describe our project. My colleague, Derek Sunderman, will be sharing more information

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with you, as he will testify on Senator Lathrop's bill. Rattlesnake Creek is ready to go. The community is excited about it. This is a project with significant export potential. This means you can import someone else's money into Nebraska. I can guarantee you, with the passage of this legislation, many more communities will have an opportunity, if they choose, to develop renewal energy and benefit from the investment and jobs that come with it. Thank you for your time. And if you have any questions, I'll be more than happy to answer them. [LB501]

SENATOR SULLIVAN: Thank you for your testimony. So one of the stumbling blocks right now, in addition to what you identified, you don't currently have a contract identified for sale of electricity that would be generated from this proposed farm? [LB501]

BRICE BARTON: No, we do not. [LB501]

SENATOR SULLIVAN: If it were to go to fruition, what do you expect as a permanent number of jobs that would be created? [LB501]

BRICE BARTON: On a project of 200 megawatts, you'll see 10-12 jobs. The high number would be about 8 turbines per job, so. [LB501]

SENATOR SULLIVAN: Um-hum, okay. Senator Harr. [LB501]

SENATOR HARR: Thank you. And thank you for coming. And you heard my questions I asked before. I'm just trying to develop a record to show these businesses will be around for a long time. So how long are you land leases, generally? [LB501]

BRICE BARTON: Our land lease is actually structured for 40 years. We hope to either operate the windfarm past the turbine's useful life. You know, if the machine is running and it's paid for, keep running it. Or it gives us the opportunity to repower and take another hitch at it. [LB501]

SENATOR HARR: How long is a turbine's useful life, generally? [LB501]

BRICE BARTON: Twenty to 25 years, but these new turbine technologies, is we haven't had one around for 20 or 25 years yet. [LB501]

SENATOR HARR: Okay. And how much do you think you contribute, again taxwise? If we're trying to export our taxes, how much are brought into the state of Nebraska? [LB501]

BRICE BARTON: You know, we'll contribute the nameplate capacity tax, and then you'll see, you know, an increase in property tax for all the other facilities: roads, underground cable additions, substation (inaudible), those things. [LB501]

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SENATOR HARR: Thank you very much. I appreciate it. [LB501]

SENATOR SULLIVAN: Any other questions? Thank you for your testimony. [LB501]

BRICE BARTON: Thank you. [LB501]

SENATOR SULLIVAN: Welcome. [LB501]

GAYLEN FISCHER: (Exhibit 5) Thank you. Good afternoon, Mr. Chairman and members of the Revenue Committee. For the record, my name is Gaylen Fischer, spelled G-a-y-l-e-n, Fischer is F-i-s-c-h-e-r. I am here today in support of LB501, and thank you for allowing me the opportunity to speak. This is my first time testifying, so please forgive my nervousness. I am a third-generation farmer in Dixon County with fourth and fifth generations also involved in a 3,000-acre grain and custom farming business. Our son-in-law, who farms with us, is developing a stock cow enterprise, because farmland for beginning farmers is so difficult to obtain. These next-generation farmers need good jobs as supplemental income until they can get established. We need good young men to succeed. Our farm population is getting, on average, older every year. We operate land in Wayne County that's been in my wife's family for over 100 years. Some of our land in Dixon County has been in my family for over 80 years. We want our family farms to continue every farmer's dream. In July of 2008, we signed our first lease with TradeWind Energy on a project called Rattlesnake Creek. We were and still are very excited about what this means for our family farming operation, which owns 1,300 acres of land within its boundaries. The 40-year lease payments are only a part of its benefits. A project like this will bring tremendous economic development and skilled jobs to Dixon County, not only those employed by the project, but service people for those added families and increased housing demands. TradeWind Energy is a company with a lot of experience in this area of development and feels Nebraska offers excellent wind resources that are not being utilized. I am in agreement and also disappointed that someone wants to invest their money, at no cost to our state, and has to meet with roadblocking tax laws. The dollars not gained by sales taxes will come back to our state from other avenues as a result of jobs and electrical transmission. Plus, income taxes paid by landowners involved in Rattlesnake Creek on annual lease payments will continue until the end of the project. Also there are personal property taxes paid by Rattlesnake Creek. There are around 120 landowners involved in this project, many of them with kids in school and young adults that want good-paying jobs, which will allow them to stay in northeast Nebraska. This project will provide significant tax dollars to our schools, improve our roads, employ our young people with high-quality jobs, and provide other vital tax dollars to our county and state. LB501 will ensure that this project can move not only Rattlesnake Creek, but Nebraska, forward. LB501 is sending a message that Nebraska wants to attract more renewable energy projects, and we need to remove the barrier that gives other states around us advantages. If the

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sales tax treatment on equipment purchased for the development of this project applied to the equipment purchases I make in my farming operation, it could be that it would keep me from doing business in Nebraska. Governor Heineman spoke last week to the committee and said that we need a tax code that rewards productivity. He may not have been talking about LB501, but I think LB501 would do just that. I would like to thank the members of the Revenue Committee for your time on this matter, and thank also Senator Hadley for bringing this important legislation forward. It will help rural Nebraska survive and bring young people back to our communities. I'd be happy to answer any questions. [LB501]

SENATOR SULLIVAN: Thank you very much. You sounded like a veteran testifier. [LB501]

GAYLEN FISCHER: I don't feel that way, but thank you. [LB501]

SENATOR SULLIVAN: You said in your testimony that you'd already signed a lease agreement with the company. So have those payments started or do they not start until the company... [LB501]

GAYLEN FISCHER: Yes, ma'am. There's a period of time prior to the construction phase, called the development phase, that we're paid a per-acre basis on each one of the acres that we own in the project. [LB501]

SENATOR SULLIVAN: Okay. Thank you. Any other questions? Thank you. [LB501]

GAYLEN FISCHER: Thank you. [LB501]

SENATOR SULLIVAN: Hello. [LB501]

RICHARD LOMBARDI: Hello. Good afternoon. My name is Richard Lombardi. I'm appearing today as the registered lobbyist for The Wind Coalition, which is a regional advocacy and trade association for about 25 of the top wind companies, two of whom you've heard already today. And I'm supposed to kind of bat cleanup here a little bit. Let me just say that as many members of the committee know, that the Nebraska Legislature has been engaged over the last five years in a series of systematic steps to remove barriers for wind development. And this is really a good news story. In the last...in that period of time, we have doubled the amount of electricity generated by wind every year since the Legislature began on this, by removing barriers in the eminent domain area, the regulatory area, the personal property tax. There's been a lot of work done and it really has provided beneficial, and I need to...I made a promise to certainly thank Governor Heineman in his capacity as the head of the Nebraska...the National Governors Association and certainly congressional delegation in the continuance of the production tax credit. Because that decision alone in tax policy has huge, huge impacts

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in energy development. And if there's any question about that, that with the latest project with OPPD and with a couple of other pending projects, we may double down again in the amount of wind generated over the next two years. We got to celebrate this last fall, out in Broken Bow, where it marked \$600 million being invested over the last four years in wind development in the state. And like I said, we're about ready to approach that again in that I think it was...I think one of the real takeaway messages that we had in the hearing last week is that sales tax on inputs and manufacturing, which is what wind projects do, matter. They have a huge impact on it not only...and renewable energy finds itself in a unique situation. First and foremost, that this is the only manufacturing activity that actually has a sales tax input on it, is the generation of electricity. And also electricity produced by a private entity is relatively a new function in this state and it really happened with LB1048 where...well, it happened before that when public power realized and worked and developed contracts with power purchase agreements where they're able to take some of the private tax benefits and pass it through in agreements. And that has opened up a whole level of activity. But the fact of the matter is, is that Nebraska has so much energy. And during the Bush administration they put together a proposal, 20 percent wind energy for electricity by 2030. I've compiled a report of reports here, and I've...that has the Bush report and several other reports that basically give credence to an immense amount of research that's been done about the job impacts, the rural impacts, the amount of rural income, in particular, some very, very intriguing reports that the USDA has just recently come out with. There's a risk report in here that shows the risk levels of investments in energy, which obviously renewables play very well in. This is a long way to say that you have a number of different statutory changes in the Advantage Act that will be before the Legislature, two here, one in the Natural Resources Committee, that provide a way to deal with these issues. I did want to...I have a handout that will go around to everybody under the next bill. But with regard to the questions you were having with regard to jobs, we did a scenario that with regard to the 80-megawatt project at Broken Bow, for instance, and these are some of the numbers that you come up with. We actually have...we see 14 new jobs on a year basis; \$660,000 in earnings at a \$47,000-a-year average; \$1.7 million of local spending in a local community economy; a total of \$1.84 million in earnings due to the impacts of direct jobs created in those earnings; \$315,000 a year in nameplate capacity; \$240,000 in lease payments. And then there's certainly the construction jobs. I'll include this in, to look at. Clearly, we're in a situation. The other dynamic is that you found out when the Nebraska Power Association testified that fossil fuels, coal, oil, are exempt from sales tax as a fuel source. But one of the great advantages of wind is we don't have a fuel so we don't have that particular advantage. We're also being taxed on sales tax which is not making it for a competitive, since all the surrounding states don't have sales tax on their turbines. There's also a report in here that shows you, once we start getting up close to 1,000 megawatts, you are going to start seeing some increased manufacturing activity which is one of the real hopes in development. And, in fact, we're indeed very fortunate that we have some really significant manufacturing activity already occurring. He couldn't be here today, but

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Behlen Manufacturing was going to come down here and talk about what they're doing up at Distefano's, up in Omaha, where there's 8,000 parts in a wind turbine and they're making 133 of them for Vestas, which is one of the big turbine manufacturers. I've gone over my time. I apologize. I just leave this for an exhibit that has a series of studies that may be referred to by speakers so that the committee has copies of that. Thank you very much. [LB501]

SENATOR SULLIVAN: Okay. Thank you, Rich. Senator Harr. [LB501]

SENATOR HARR: Thank you. And thank you for coming here, Mr. Lombardi. I guess my first question is, these tax breaks that we're looking at, do you see this...well, background. We have ethanol. We give tax breaks to ethanol as that industry matures with the idea that at some point we cut off those tax breaks and the industry either stands or falls on its own weight. Do you see this as a permanent tax break or is it temporary to get the industry moving? [LB501]

RICHARD LOMBARDI: I would say...I would want to make a distinction that this is a...this is not an incentive. You will, on March 6, address a bill that Senator Nordquist introduced, which is an incentive bill, which actually is smartly drafted to be a production tax credit, which is similar to what we've done in ethanol to some degree, loosely; but a production tax credit that would phase in while the federal production tax credit phases out. That's an incentive. This particular situation is that this is a manufacturing activity that has sales tax on its inputs. So our particular situation is, is that both domestically and exportwise, this is a barrier that we're trying to remove in manufacturing--which you have removed for all other manufacturing except for private electrical production, so. And as an industry that has just gone through a heartrending production tax credit fight that was closing down businesses, I think that there is a real effort, and we've already seen it on our part, that in the last five years a third of all the new electricity in this country has come from wind, in that...and in looking at these studies, we're already competitive with almost all the other existing energy resources. So I suspect that the sales tax barrier, I don't know what we would do in the future; it's an existing barrier now to market Nebraska wind in the regional and national marketplace. And I think it has...it...for our Nebraska ratepayers, it's a double taxation situation that they have to pay through their rate bill. [LB501]

SENATOR HARR: Okay. And I consider you an expert in wind energy and I consider you... [LB501]

RICHARD LOMBARDI: I am not, but... [LB501]

SENATOR HARR: ...an expert on legislation. So if you could quickly compare and contrast LB501 and LB104... [LB501]

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RICHARD LOMBARDI: Okay. [LB501]

SENATOR HARR: ...and the advantages and disadvantages of each, if you would. [LB501]

RICHARD LOMBARDI: Okay. LB501 is exactly as the Chairman stated. It's...the beauty is of simplicity, and it recognizes that one of the target industries that the Department of Economic Development and, when Richard Baier was there, the Battelle study, basically targeted this is a cluster group. It just adds to our premier economic development program, a definition that it would be inclusive of there. We think, in looking at it, that because of the lower job generation on a permanent basis, that we would fall within the Tier 5, and that Tier 5 provides a sales tax and also a property tax. I think as was pointed out to you before, one of the real advancements we did with LB1048 is that we had kind of a win-win proposition, and we moved to a nameplate capacity tax that replaced personal property tax. Nameplate capacity tax has the advantage as the gift that keeps on giving, whereas the personal property tax was an accelerated depreciation that would stop giving to the local various communities. So one of the advantages from a wind company was that--this is more information, I'm sure, that you want--but one of the advantages from the wind company's standpoint is that if it's an ongoing cost, then we...then that is something that's operational and we don't have to go out and loan for that; but, if it is cash that we have to pay during the first five years, we have to include that. So it was kind of a win-win for both the companies and the local communities, in that it was a steady flow of guaranteed income over a period of time. LB104 is a bill which is pretty much identical to a bill that was introduced last year, and has the components actually of a previous Senator Hadley bill. But basically what it attempts to do is it creates a new Tier, Tier; and then contained within that Tier are projects that are \$75 million or more or \$75 million or less, and there is a local content. Basically it says that you would get three...if you made an investment of \$75 million. Now to give you an idea, 80-megawatt project is around \$120 million, \$130 million worth of investments. If you make an investment over that, you would get three-quarters of your sales tax rebated to you. You would be eligible for the full sales tax rebate if, in fact, you could show that 25 percent of your total costs between land lease payments, employee stock ownership, components, equipment, concrete and steel, engineering services from Nebraska companies. So that's a...it's a local content component within LB775 as one of the measures. That's primarily the difference between the two approaches. I will note that it was a Speaker's priority bill last year, but was not a priority bill of the Legislature in the final analysis. But we involved...tried to involve a lot of different people. There's huge folks that we call the local supply chain from local engineering firms. At that time, we also had Katana Summit, which was a tower manufacturer out of Columbus; unfortunately, has since closed. But if you were to buy any manufacturing products like the...the 133 projects that Distefano manufactures for Vestas, that would be a credit towards that. But because we are in the early stages of development, and one of the unique things about the wind industry is that there

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is...because of logistical challenges, there's a real incentive to try to build your products as close to the projects as possible; and because of the unique central location that Nebraska has, we're already a great advantage. And in the Bush...I mean, we're talking about just in the scenario that the Bush administration put together, we're talking about \$14 billion of investment and economic activity just beginning to touch the resource that we have in wind. Okay? [LB501]

SENATOR HARR: Thank you. [LB501]

SENATOR SULLIVAN: So based on that, I would think that your group thinks that there is vast opportunity for expansion of wind energy in this state? [LB501]

RICHARD LOMBARDI: We are...we are...(laugh) there's real excitement. In the wake of passage of LB1048, we had 22 companies with 34 proposals for wind projects in this state. There's real genuine interest and...but the nature of the wind corridor here is that there's also very favorable policies across the river in Iowa and in Kansas and in Oklahoma. We do have a great advantage in that we have...they have great wind too. We have great wind. But we're just beginning, I think, to see an incredible success story unfold in front of us, Senator. [LB501]

SENATOR SULLIVAN: And did I understand you that one-third of the electricity used in the state...or the country, is... [LB501]

RICHARD LOMBARDI: One-third of all the new electricity produced every year in this country over the last five years has come from wind. [LB501]

SENATOR SULLIVAN: Okay. Okay. Any other questions? Thank you, Mr. Lombardi. [LB501]

RICHARD LOMBARDI: Sure. [LB501]

SENATOR SULLIVAN: (See also Exhibits 12 and 14) Any other proponent testimony? Any opponent testimony? Anyone wishing to testify in a neutral capacity? Senator Hadley. [LB501]

SENATOR HADLEY: I certainly don't want to take a long closing, but I think it's good for us to look at both bills and see which one might be the best for the state of Nebraska. I think that last statistic was kind of amazing to me. One-third of the energy generated is wind energy, and I think that's significant and there must be ways that Nebraska can get on board and make that happen. With that, I thank you for your time and listening. Thank you. [LB501]

SENATOR SULLIVAN: Thank you very much. This closes the hearing on LB501.

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[LB501]

SENATOR HADLEY: We have been joined by Senator Schumacher. Senator Schumacher, we have gotten through bills very quickly, so I thought I would just tell you that. [LB501]

SENATOR SCHUMACHER: Well, maybe I should leave again so (inaudible). (Laughter)

SENATOR HADLEY: Oh, I didn't say that. I did not say that. (Laugh) Is Senator Lathrop here?

MATT RATHJE: They're calling him right now.

SENATOR HADLEY: They're calling him. Okay, we will stand at ease for just a minute until we get Senator Lathrop here. [LB104]

SENATOR LATHROP: Am I up, Mr. Chair? Have you been waiting for me? Forgive me. We've been over having a fascinating hearing on Senator Schumacher's bill in Judiciary. [LB104]

SENATOR HADLEY: Do we have any drones flying around in here? [LB104]

SENATOR SCHUMACHER: You can't tell. [LB104]

SENATOR LATHROP: I'm going to tell you something. That is...and I'm not going to take up the Revenue Committee's time, but that is an amazing subject matter and I had no idea--no idea. [LB104]

SENATOR HADLEY: Senator Lathrop, we...I think, if I remember right, this might be your first visit to the Revenue Committee? [LB104]

SENATOR LATHROP: Yes, it is. [LB104]

SENATOR HADLEY: In four years that I've been here? Or you've been here before. I can't remember [LB104]

SENATOR LATHROP: I think it might be. [LB104]

SENATOR HADLEY: Well, welcome. [LB104]

SENATOR LATHROP: It might be. [LB104]

SENATOR HADLEY: Welcome. [LB104]

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SENATOR LATHROP: Thank you and I appreciate that. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 and I'm here today to introduce LB104. As most Nebraskans know, our state has enormous wind energy potential. A recent study has ranked our state fourth in the country, with almost a million megawatts of wind energy potential. Over the last few years, Nebraska has finally begun to tap this potential as a result of legislative efforts that have encouraged investment in and removed barriers to the development of large windfarms. However, we know that we've only just begun to tap the potential that exists in Nebraska. LB104 seeks to remove a remaining barrier to development of wind energy in our state by reducing or eliminating the state sales tax for renewable energy projects. The reduction or elimination of the state sales tax would put developers on a level playing field with competitors in our surrounding states who already have a sales tax exemption for these projects. LB104 would amend the Nebraska Advantage Act by adding a Tier 7 which would apply to investments in renewable energy. It would provide for two types of refunds that are dependent upon the size of the project, the percentage of total capital investment that come from Nebraska-related inputs, and the percentage of Nebraska residents who own the project. There are others that will follow me that can provide additional information about how the act would actually be applied to these projects. LB104 can be looked at as a renewable energy bill, but it's actually much more. It is an economic development and jobs bill that will benefit rural parts of our state and our manufacturing sector. Windfarms help the rural areas of Nebraska by producing good-paying jobs and providing property owners with annual payments of several thousand dollars per turbine that are located on their land. I spoke with folks at the Broken Bow project while touring that windfarm this summer, and witnessed firsthand the benefits to their community. These same benefits should be spread across our state, and LB104 can help do that. Windfarms also provide additional property taxes for local governments in our rural areas. This influx of new property tax dollars can help reduce the reliance on property taxes of those who actually live in the areas. LB104 also helps the manufacturing sector of our state by providing a market for the goods they produce. A block away from my legislative district is Distefano's. It produces components for wind turbines. I toured their facility last year and learned they are ready to boost their production if more windfarms are developed. When this happens, new jobs will be created at Distefano's, and that's just an example of the benefit to manufacturing. It is vital that we continually look for ways to invest in our state, and LB104 is one way to do that. We may not have coal or oil or even beaches, but we do have the wind. And I believe we need to do all that we can to develop this resource, because it will grow our economy, enhance the rural areas of our state, and provide additional quality jobs across Nebraska. And finally, there will be several testifiers after me that will discuss the details of the bill, the need for the bill, and what will likely result from the passage of LB104. And with that, I'll ask for your support of LB104. [LB104]

SENATOR HADLEY: Thank you, Senator Lathrop. Are there questions for Senator

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Lathrop? Seeing none, thank you. Are you going to stick around for closing? [LB104]

SENATOR LATHROP: I think I will. [LB104]

SENATOR HADLEY: Okay, thank you, Senator Lathrop. [LB104]

SENATOR LATHROP: Okay. Thanks. [LB104]

SENATOR HADLEY: Would the first proponent come forward. [LB104]

RICHARD BAIER: Good afternoon, Senators. My name...for the record, my name is Richard Baier, B-a-i-e-r. I appear before you today as a registered lobbyist with the Nebraska Chamber of Commerce and Industry, and I'm also testifying in support...in a support position for the Omaha Chamber. As noted during my testimony on LB501, the Nebraska Chamber supports the growth of the renewable energy sector as a way to create new jobs, create new capital investment, and enhance our tax base in Nebraska. We support the concepts contained in LB104. We do continue to try and understand how the provisions in the bill might make some...it might impact the administration of the program, because we've been through this with C-BED and we want to make sure that what comes out the other end is something that's workable for our development community. So with that, I'd be happy to take any questions. [LB104]

SENATOR HADLEY: Senator Sullivan. [LB104]

SENATOR SULLIVAN: Thank you, Senator Hadley. Thank you, Richard. It occurs to me, and maybe you don't know this, but is there any anticipated more activity in terms of manufacturing? It's been mentioned...Senator Lathrop mentioned the company in Omaha. We had the one in...Behlen, that I think now is not going. [LB104]

RICHARD BAIER: Right. [LB104]

SENATOR SULLIVAN: And then you mentioned something else from Behlen. [LB104]

RICHARD BAIER: There are several companies in Nebraska that make electrical components and those kinds of things. We don't have anybody that makes, you know, the turbines, because those are manufactured in states around us that got into this industry pretty early on. [LB104]

SENATOR SULLIVAN: Okay. [LB104]

RICHARD BAIER: We have lots of companies across the state that are making parts and pieces, and I think you heard somebody reference the number of parts going maybe into Vestas. But you've got GE in Kansas and a few others who are buying lots

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of component parts even from some of our small manufacturing shops. So it really is kind of a statewide impact, and a lot of people are picking it up as additional business. And I will tell you, I've talked to several of them who said, you know, it was helpful during the recession because it was kind of coming in as the recession was impacting our other demand; and so it was really a part to help keep folks moving. But folks like Distefano and Behlen do parts, but there's other folks out there. For example, one of the largest geothermal piping companies in the country is based in Hastings. So you kind of run the gamut as well. And you have companies that are making raking for solar, and it's sort of a nice mix across the state. [LB104]

SENATOR SULLIVAN: And so all of those right now, do they enjoy a sales tax exemption? [LB104]

RICHARD BAIER: They might on their inputs, yeah, and on their equipment, because it would be a Nebraska manufacturer as the law exists now. [LB104]

SENATOR SULLIVAN: Okay. All right, thank you. [LB104]

SENATOR HADLEY: Senator Schumacher. [LB104]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Thank you for your testimony, Mr. Baier. I noticed that in the language on page 6, we're talking about renewable energy and we're limiting it to the production of electricity, and we're limiting the sources of renewable energy to wind, solar, geothermal, hydroelectric, and biomass. Suppose there was a renewable energy that just simply was a production of heat. Should this be expanded to include that if there was such a thing? [LB104]

RICHARD BAIER: Senator, I think it probably should; I mean we talked during the LB501 hearing just a few minutes ago. One of the things that's of interest to me is making sure that we have the policy broad enough that we can sort of keep up with technological advances as they evolve. And clearly, the list that's there now is not all-encompassing. So, you know, if there was another word on the end that said "or other kinds of renewable energy," I think that would make sense. And if it was a heat situation...we talked about hot water heat; it's really taken off in Japan, as an example. So maybe there's ways to look at other kinds of things and that necessarily wouldn't be electricity. [LB104]

SENATOR SCHUMACHER: Now does this also include...does that...the research into the development of this source of energy, or is this actually energy that you're actually selling or producing for location consumption? [LB104]

RICHARD BAIER: Senator...and again, I'm not the author of this legislation, but I do understand...the way I understand it now, it's really on the production side. In terms of

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research and development, you would look at other kinds of opportunities, like the research and development tax credit that we have in current tax statutes in Nebraska. [LB104]

SENATOR SCHUMACHER: Thank you. [LB104]

SENATOR HADLEY: Mr. Baier, I have a question and maybe you can't answer it, but you testified on both LB501 and now LB104. There is a difference in the fiscal notes. One is kind of \$5 million a year and the other one was \$5 million a year out. Are they different in the impact that they will have in attracting companies, the two bills, do you think? [LB104]

RICHARD BAIER: Well, again I think Mr. Lombardi talked a little bit about that. I mean they both kind of do the same thing. We do have some questions on LB104 about again that administrative section, because there's a lot of requirements about ownership and those kinds of things. I think from our perspective we have to make sure and keep this process simple, make it clear for the companies. And whatever comes out the other end of this dialogue about these two bills, that it really is something that supports the industry and brings that investment here. [LB104]

SENATOR HADLEY: And would it be a fair statement to say that ownership component was one of the concerns in the previous C-BED legislation; is that a fair statement? [LB104]

RICHARD BAIER: That is a fair statement. And obviously we have always been supportive of supporting Nebraska companies. We also have to be careful about reciprocity or retaliatory kinds of situations with other states, because we have an awful lot of our businesses that do business outside of Nebraska's borders. And so we have to...we want to make sure that we're conscious of that issue as well. [LB104]

SENATOR HADLEY: Thank you. Thank you, Mr. Baier. [LB104]

RICHARD BAIER: Thank you. [LB104]

SENATOR HADLEY: The next proponent. Looks like we're going to get tag-teamed, huh? [LB104]

JOHNATHAN HLADIK: (Exhibit 6) Yeah, I hope you don't mind our creativity. I'm Johnathan Hladik and I'm an energy policy associate at the Center for Rural Affairs, and I wanted to talk a little bit about the rural economic opportunity we think... [LB104]

SENATOR HADLEY: Would you spell your last name for us? [LB104]

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JOHNATHAN HLADIK: Oh, I'm sorry; it's H-l-a-d-i-k...the rural economic opportunity LB104 can provide. And it seems like every time we talk about rural economic opportunity and wind energy in Nebraska, we inevitably start to talk about Petersburg. You're all familiar with it, especially Senator Sullivan. Petersburg is home to two mid-sized wind projects, and these projects have revitalized the economy in Petersburg and the surrounding area. They now have a new 11,000-square-foot grocery store. They plan to expand their lumberyard. They have a new housing development. They have a host of new businesses downtown. The roads have been improved. The 1 percent sales tax that Petersburg has now brings in five to six times more revenue than they did before the actual wind projects were there. Unfortunately, though, we talk about Petersburg as if it's some sort of extraordinary example that can never be repeated. And I don't think that's accurate and I don't think that's the case. You can drive through Iowa or Kansas or Oklahoma or a handful of states and see dozens of Petersburgs, without driving too far. The best part might be when Ross Knott, whom a lot of you know, a local banker, says that now you see strollers downtown in Petersburg and you hadn't seen a lot of strollers before. And now the townspeople are no longer wondering how the town is going to survive. Instead, they're looking at the bright future ahead of them. And that's what a lot of those towns in Iowa and Kansas and Oklahoma are experiencing. Just to take Iowa, for a quick example: Annual property tax payments by wind project owners total almost \$20 million per year in Iowa; and it's just over \$1 million in Nebraska. As far as landowner lease payments go, in Iowa it's over \$13 million; again in Nebraska, we just touch \$1 million. And as far as total direct and indirect jobs supported in 2011, Iowa created 6,000-7,000; and in Nebraska we're just under 1,000. We don't need to become Iowa. You know, they've made themselves into an energy state along the lines of Wyoming and North Dakota, just by utilizing the resources they have. We don't have to do that but we can look at their model as something that we can adopt and take some lessons and take some notes and go forward here in Nebraska. We talked about a typical 80-megawatt wind project, which is the size of the first one in Petersburg. That's 350 temporary construction jobs that first year, which is \$11 million of salary to the people in local communities work in that job; 15 operation and maintenance jobs, which last the 20-year life of the project--that's over \$300,000 a year in salary going to the local community; \$5 million in lease payments to landowners; and over \$8 million in state and local tax revenue annually. That doesn't include federal income tax. We know that each megawatt of wind installed results in total county-level personal income increase of \$11,000, and each 2 megawatts installed create one job. That's not always a construction job but it's the job of the person working in the new grocery store and the expanded lumberyard, the new shops downtown--the jobs we need to keep Nebraska thriving. [LB104]

CHUCK HASSEBROOK: I'm Chuck Hassebrook, H-a-s-s-e-b-r-o-o-k, also with the Center for Rural Affairs. I wanted to add that LB104 not only removes a barrier to wind development, it provides an incentive to develop wind right in a way that builds our state, benefits our citizens, and strengthens our communities. I say that because to earn

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the 100 percent exemption, developers would have to purchase one-fourth of inputs in Nebraska or set aside stock for employees of the windfarm. Incentive to buy local inputs would help new businesses get started and existing businesses grow, creating jobs and economic opportunity. You know, there's a wealth of small...it's not only manufacturing. Manufacturing is a big part of it but there are other opportunities out there in the small rural towns. There are business opportunities associated with machine shops to make replacement parts, with service industries that serve the construction crews that build windfarms. And I would add that encouraging employee stock ownership is important because it would enable working Nebraskans and rural Nebraskans and rural communities to share in the wealth created by wind development; and that enhances its social and community benefits. Local ownership keeps a share of the profits in the local community, and asset ownership by windfarm employees provides them the cushion to weather economic storms and avoid poverty in hard times and a foundation in which to build for the future. Furthermore, employee-owned companies perform better in most measures of economic performance because the pride and the commitment that come with ownership make a difference. Thank you. [LB104]

SENATOR HADLEY: Questions? Senator Sullivan. [LB104]

SENATOR SULLIVAN: Thank you, Senator Hadley. You lost me a little bit on that last comment. So is that a feature of this bill: employee stock ownership? [LB104]

CHUCK HASSEBROOK: There's an incentive for setting aside stock for employees in the windfarm, in that each dollar's worth of stock set aside for windfarm employees counts as \$6 of local input. So it would help meet the 25 percent standard for local inputs. [LB104]

SENATOR HADLEY: One of the nice things about being a senator is you can ask a question and you don't know whether I know the answer and I'm just trying to get information for everybody else, or whether I really don't know the answer. Mr. Hladik, you mentioned...which town was it that you were mentioning was having this...? [LB104]

JOHNATHAN HLADIK: We're talking about Petersburg. [LB104]

SENATOR HADLEY: Petersburg. Okay, how did they do it if we didn't have these programs in place? [LB104]

JOHNATHAN HLADIK: I think that was very early on in my opinion, and others may know better, very early on in wind development. And that's when NPPD was a little more interested when we had more room for capacity. And so it's not an export project. It was a project for use here in Nebraska, and we don't need so much wind energy in Nebraska based on the fact that we overgenerate as it is already. And so when we talk about exports, we talk about more incentives to really draw that investment here to

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Nebraska. [LB104]

SENATOR HADLEY: That...I was curious as to how some...because we've talked about other projects that seem to have flourished in Nebraska. [LB104]

JOHNATHAN HLADIK: Absolutely. [LB104]

SENATOR HADLEY: A second question. We talk about wind for export. Do you see the time that Nebraska will be potentially relying on wind here for use in Nebraska? [LB104]

JOHNATHAN HLADIK: Yeah, absolutely. You know, obviously, not exclusively, that's not going to work. But being a part of the Southwest Power Pool creates a lot of new opportunities for us to use the most low-cost energy when it's available and export anything that's higher or draw back our coal facilities a little bit more. So being connected and having new transmission projects such as the R plan going up through Cherry County, etcetera, really creates a great new opportunity for Nebraska to look at exporting into some different areas and to make sure that our rates stay low. [LB104]

SENATOR HADLEY: Okay. Are there further questions? One last quick question. Obviously, my bill is much better than Senator Lathrop's bill. (Laughter) Is that a fair statement? No, I won't put you there. Thank you for coming down and testifying, very much. [LB104]

JOHNATHAN HLADIK: Thank you. [LB104]

CHUCK HASSEBROOK: Thank you. [LB104]

SENATOR HADLEY: Further proponents. Welcome. [LB104]

DEREK SUNDERMAN: (Exhibits 7 and 8) Good afternoon, Chairman Hadley, members of the Revenue Committee. For the record, my name is Derek Sunderman. That's spelled D-e-r-e-k, and Sunderman is S-u-n-d-e-r-m-a-n. I serve as the director of business development at TradeWind Energy, a company that is located in Lenexa, Kansas. I am here today to testify in support of LB104, and I would like to thank Senator Lathrop for his longstanding support of the renewable energy industry and for his recognition of what it can do in rural Nebraska. Earlier today on LB501, you heard from Brice Barton who is our project developer at TradeWind for our Rattlesnake Creek project in Dixon County. I will not go through all the specifics on our Rattlesnake Creek project. Instead, I wanted to discuss a little bit of this industry that I see from my perspective. As director of business development at TradeWind, I am the individual that writes the proposals that goes to the large utilities to the south and the east. I am responsible for making sure that we respond to RFPs and that I'm also the individual that talks person to person with the individuals who makes the decisions on purchasing

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power. This past October, I had the opportunity to present at the Nebraska Wind Conference here in Lincoln, and I gave a presentation there that I have recently updated, and it is the packet that you have before you. In the interest of time I will not go through each slide, but if you would, please permit me to highlight a few of the key points in this handout that you've been provided. If you go to slide 4, or page 4, it's essentially a map of the eastern interconnect of the United States, and you will see that TradeWind Energy there, we outline the projects that we have across our 11-state area. And what we have been very successful at in the past three years is export projects. We have developed approximately...we are in the process of developing 650 megawatts, 440 of which are fully developed. These projects are exported out of the Southwest Power Pool into the Tennessee Valley Authority and into the Southern Company across the Entergy system into their affiliate, Alabama Power Company. So we have been successful in acquiring transmission rights, firm transmission rights from these regions and delivering that energy to them. We have also been successful in the past in acquiring firm transmission out of Nebraska, which is a rare feat. And I will touch on that subject here real soon. On the next slide it shows all the inputs into wind development. And really the one that we are discussing here today is the "Tax Implications," because the tax policies from state to state have a significant impact on the volume of project development that you will see within your state, especially for export projects. The next page, slide 6, talks about the nameplate capacity tax that already exists within Nebraska, and that is really in place of the turbine...the value of the turbine itself and the personal property tax that...or the real asset tax that would be put on it. What we find though, is that in Nebraska we have the sales and use tax, which you've already heard about. The real impact on dollars per megawatt that the off-taker sees in a power purchase agreement is about \$3 per megawatt-hour. So the 5 percent sales and use tax that is in place now is impacting these PPAs negatively when we go before these loan-serving entities to the south and east. And as a result, when they issue their RFPs, their requests for proposals, and then we send in the proposals, we typically provide them with more than one proposal in the event that they are trying to diversify geographically or they have a view of transmission congestion or transmission rights or something of that nature. So we give them projects out of our portfolio from different states. We have offered up the Rattlesnake Creek project out of Nebraska on at least three other occasions, and in each case the project came in short on the price side of it. The net capacity factor of the wind resource is virtually exactly the same as what we had in projects out of central Oklahoma and western Kansas. All other variables are pretty much the same. The only variable that really is different between the states that we have been able to pinpoint is the sales and use tax. On slide 7 there, you will see what the taxing environments of Kansas and Oklahoma have done to incentivize the building of these projects. And you can see they have the sales and use tax abatements and production tax credit. As a result, Kansas and Oklahoma have really beefed up generation. Almost 6,000 megawatts have been developed there. That's an investment of \$10 billion that is going into rural Oklahoma and rural Kansas. So I wanted to jump real quick to slide 10, since we're short on time, because I know that Senator Harr was

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interested in figures--facts, figures, dollars. What you'll see there is an example of a 1,000-megawatt project or ten 100-megawatt projects, which is very doable in the state of Nebraska. And you'll see that that's a total project investment of \$1.7 billion. And what I have done there is in these two separate boxes outlined what that does for the state of Nebraska as far as taxes, both from an annual state income tax perspective and the nameplate capacity tax perspective. Now you'll see in there that I have added almost one job for every 2 megawatts, and that came from a recent study that was conducted by Berkeley Labs, the National Renewable Energy Laboratory, and the U.S. Department of Energy through the Department of Ag. This was the first of its kind study where they went and looked at over several hundred counties, from Texas to North Dakota, and they looked at several thousand megawatts of projects that had been developed from 2000 to 2008. And they said we want to know what really happened. They went back and looked and they found that the amount of jobs actually created in these counties was far greater than what we had thought. We had the ten jobs that you hear occur with a 100-megawatt project or a 200-megawatt project. That's the direct impact. There is a much larger impact that actually goes on because these are massive facilities that cover 30,000 acres. And as a result, we're bringing in plumbers, we're bringing in guys who haul rock to maintain the roads, graders, contractors of all sorts. And as a result, it has a much more significant impact on these counties, and that is exactly what these findings were that was found by this independent laboratory. Without the state sales tax abatement, there's a very real chance that project developers will leave the state of Nebraska. Over the past year we have dropped almost 30 percent of our portfolio. We looked over the 11 states and we said we've got to cull some of these projects, and I know that other developers are, too, because we have seen them for sale. As a result, you see a confluence of these developers migrating to states where there are incentives, and they are reinvesting their dollars there, which is exactly what my company is doing as well, where we are looking to double up in the states of Oklahoma and Kansas because there are the proper state incentives in place there. Without the state sales tax abatement, it is very possible that TradeWind could walk away from Nebraska, which would be something that I would absolutely hate to see. With that, I will answer your questions. [LB104]

SENATOR HADLEY: Are there questions for Mr. Sunderman? Senator Sullivan.
[LB104]

SENATOR SULLIVAN: Thank you, Senator Hadley. Thank you for your testimony. Your comment about dropping production in certain areas, is that across the board? I mean, are you just moving away from states that don't offer these incentives? [LB104]

DEREK SUNDERMAN: It is a combination of variables that we look at including whether or not states have renewable portfolio standards, whether or not they have a good wind resource so that we can manufacture energy at a lower price. We've obviously looked at taking them...pulling out of states like Illinois, where they have a retail choice situation

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there that is very negative to new installations of wind. So we're really just trying to refocus our portfolio in places that make the most sense and where we've had the most success; and frankly, our success has come out of Kansas and Oklahoma, and that's exactly what the load-serving entities are telling us they want. [LB104]

SENATOR SULLIVAN: So Nebraska is in a situation of producing more electricity than it needs, and so these new farms are always looking to export the electricity they produce. So is the...and what's the main stumbling block? Is it the sales and use tax? [LB104]

DEREK SUNDERMAN: Right now, it is the sales and use tax. That is what the load-serving entities we talked to tell us, is that we love Rattlesnake Creek, we love your Nebraska project; it's just too expensive. If you consider that there are, you know, 800,000 megawatt-hours produced from some of these projects on an annual basis, and you apply \$3 extra to each one of those; well, that's \$2 million to 2.5 million additional that they're paying on an annual basis for 20 years. They don't want to incur that. So they go with the lower-priced projects. And that also helps them with any risks that they may have on transmission congestion in delivering that energy. [LB104]

SENATOR SULLIVAN: And transmission lines, is that another issue though, as well, the...? [LB104]

DEREK SUNDERMAN: That is an issue for Nebraska and it has been historically. For us, our project is located in northeastern Nebraska, and we have on at least three occasions been granted or accepted for firm transmission rights completely across the Southwest Power Pool to the Entergy system to deliver this power further to the southeast. Each time, we've had to let that firm transmission path go because we did not have a deal in place. With the other projects, we were able to acquire the firm transmission path and get the deal done, and that was the difference. But for...to answer the rest of your questions, there is a, I think they call it the R project coming out of Cherry County. It's going to the...Southwest Power Pool members have agreed upon an expansion of the 345-kV transmission system that will build a very large loop around from western Nebraska, northern Nebraska, over to the eastern side of Nebraska. And as a result, that will really allow wind development to flourish from a transmission interconnection perspective. If we don't get the sales tax abatement in place, my personal opinion is that export projects will have a difficult time being built here and exported. The economics just don't make sense when you can do it across the state line, 100 miles away. [LB104]

SENATOR SULLIVAN: Thank you. [LB104]

SENATOR HADLEY: Senator Schumacher. [LB104]

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SENATOR SCHUMACHER: Thank you, Senator Hadley. And thank you for your testimony today. So what you're looking for is a sales tax break on the equipment that is...the towers and the blades and the generators? [LB104]

DEREK SUNDERMAN: Yes, sir. [LB104]

SENATOR SCHUMACHER: Somewhere in the process we've got to pay for government. To the extent that taxpayers give the wind industry a break, by investing that amount of money in the wind industry--assuming that the wind industry becomes profitable at some point in the future--what can we construct so the taxpayers get an equity interest in the wind industry in exchange? We'll bet on you, but if it pays we want to share in the profit. [LB104]

DEREK SUNDERMAN: Well really, the taxpayers, the citizens of Nebraska and the other states are also the same individuals paying for their electric bill. With renewable energy such as wind energy, you have a very long-term flat rate of price. You know what that price is. The utilities can absolutely plan through their integrated resource planning processes, around what those prices are going to be 20-25 years out. In some cases, we've seen prices coming out of Oklahoma and Kansas that are mid-20s per megawatt-hour, fixed, for 20 and 25 years. It's unheard of pricing coming out of the Midwest, and it's because of a confluence of very high and good wind resources. But we've also seen very good technological leaps in the generators themselves where we've gone from net capacity factors of 40-45 percent. We're seeing that capacity factors that are approaching 55 percent in some locations now. And as a result, it's dropping the price of power down. In fact, the Electric Reliability Council of Texas issued a statement back in...last year, mid-part of last year, talking about the impact it's having on the price of power in Texas, along with the price of low-cost gas. But their problem there is that they can't build new capacity because the price of power isn't high enough because so much wind is driving the price of power down, and that actually is a benefit for those individuals who, like you and I, who pay taxes, yes, it's going out in the form of taxes; it's coming back in the form of lower electric bills, long term. In the short term, there is a hump that occurs. But in the long term, you should see that smooth out. [LB104]

SENATOR SCHUMACHER: So how does your company end up making money on this? I mean, if we enable you to do this by giving you a tax break, how can we get a piece of your action? [LB104]

DEREK SUNDERMAN: Well, what we do, as a developer we are bringing together multiple parties, those who bring the debt sponsorship as well as tax equity investors, like a GE Capital or somebody like that who has as taxable income to take on the production tax credit--and this is only good for really one more year. What we do is we bring all these parties together to develop the lowest-cost project that we can, and we're

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competing against other developers who are doing the same thing. So wind. You offer up a sales tax abatement or a production tax credit or something like that. It pretty much flows almost dollar for dollar to the bottom line of that power purchase agreement to that utility. And as a result, their ratepayers benefit from that. Now on export, you know, it's a little bit different conversation if you're just talking import...or in-state development for an in-state utility versus in-state development for export. That's just new dollars coming through their door. And as a result, yes, you give up the sales tax side of the equation but in that you get back the benefits of assessments on real property. Keep in mind, the nameplate capacity tax only impacts the turbine itself. It does not impact the O&M buildings, substations, lines, wires, pads, any of that stuff, roads. That still gets assessed at the county level, so we're still taxed on that. So that's recurring and depreciates, but the nameplate capacity tax occurs over and over and over again for the life of the project. In addition, you've got the increased income occurring because of landowner royalties, and those landowner royalties are very substantial. Just what I've shown here on 1,000 megawatts' worth of projects, the royalties that are going straight to rural counties is over \$160 million over a 20-year period. I don't know any form of economic development...yes, we have large companies that go to large metropolitan areas and develop, and they get tax incentives; you don't see this happening to rural counties. This sort of impact is huge in that the individuals can still maintain their same job of farming, their same income. This is on top of that. This is truly a unique way of bringing in out-of-state dollars to add on top of the income that people already...that people have. [LB104]

SENATOR SCHUMACHER: Thank you. [LB104]

SENATOR HADLEY: Mr. Sunderman, something you just said clicked. Did you testify last year? [LB104]

DEREK SUNDERMAN: I did. [LB104]

SENATOR HADLEY: And I think you made the comment last year about the 20- to 25-year fixed rate power purchase agreements. [LB104]

DEREK SUNDERMAN: I may have. [LB104]

SENATOR HADLEY: And it kind of...I think it kind of astounded the committee that a business would enter into a 25-year fixed rate. How are you able to do that? [LB104]

DEREK SUNDERMAN: Fortunately, we don't have to worry about the fluctuation of fuel, so if we were developing a gas-fired combustion turbine, yeah, we would not be doing anything fixed rate, because the number one component that we are concerned about is, in fact, the fuel going into it. O&Ms, we're taking a risk on O&Ms. There's no doubt about that because inflation can occur. But that is hopefully built into the numbers and

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our tax equity investors who come along and invest in the projects apparently are happy with that as well. [LB104]

SENATOR HADLEY: Okay. And I was amazed at it as a statistic. I think it was somebody else talked about one-third of the energy in the United States is basically wind energy at this point in time. Is that a...? [LB104]

DEREK SUNDERMAN: What I would say there, not the energy produced. What has happened...in fact, last year, over 50 percent of all new generation built was wind resources. Nationwide, no, we do...we are not producing 33 percent of our nation's energy from wind itself. Maybe from renewables, because when you lock in hydro, wind, solar, all that together, then renewables and that may have been the confusion. I am not sure. [LB104]

SENATOR HADLEY: Okay. Senator Schumacher. [LB104]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Just a follow-up on that. Fifty percent of all new energy produced. But that is a pretty small number because we're not permitting the use of coal and nuclear development. That's virtually at a standstill. So that figure sounds really big but it really probably isn't. [LB104]

DEREK SUNDERMAN: On nameplate, yes and no. I guess it depends upon your perspective here. If you are looking at the generation production, keep in mind these wind facilities are now producing 50 percent capacity factors. Most gas turbines don't operate at that type of capacity factor anymore. They're used for peaking. Coal facilities, yes. Coal and nuclear, those are really the baseload resources. As a wind energy, we're not looking to replace baseload-type projects. Those stand on their own because they're supporting a part of the load that needs to be supported by that type of resource that's there 100 percent of the time. What we're doing is typically an economic analysis. And what we have found and actually the Kansas Corporation Commission used a Lazard study that was produced last year, and they found that on the new construction, not new versus old but on new construction of wind generation facilities versus combustion, versus oil, versus coal, versus nuclear, wind was the cheapest. And, in fact, Cleco Company in Louisiana, I just received some testimony out of that company where they were looking at biomass and all the different issues related to their integrated resource plan. And they went back to their commission and said, you know, we've been chasing biomass for several years now; we would really like to subscribe to out-of-state wind energy that is by the cheapest solution for our situation. [LB104]

SENATOR SCHUMACHER: But since the wind doesn't blow all the time, even though you can produce some of the energy by wind, you have to have the capacity built... [LB104]

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DEREK SUNDERMAN: Yes. [LB104]

SENATOR SCHUMACHER: ...in order to not shut off the lights when the wind isn't blowing. [LB104]

DEREK SUNDERMAN: Exactly. [LB104]

SENATOR SCHUMACHER: So you're really duplicating capacity. [LB104]

DEREK SUNDERMAN: That is correct. So wind isn't the answer to all. It's part of the equation that helps to mitigate fuel risk in the future. So if you're taking a megawatt of oil...or a megawatt of gas versus a megawatt of wind, that megawatt of gas is fully 100 percent susceptible to changes in gas prices, whereas the wind is not. And so as a corporation you're actually lowering your risk on the fuel side of the business by purchasing wind energy or renewable energy of most kinds. [LB104]

SENATOR SCHUMACHER: But don't right now we have a natural gas excess, so much that they're burning it off right in the fields? [LB104]

DEREK SUNDERMAN: Well, I'm not sure that they're burning it off. That part I don't know. Yes, fracking has absolutely changed the overall generation industry. But keep in mind, with the new EPA standards that have come out, there has been announced almost 80,000...well, they are predicting between 60,000 and 80,000 megawatts of baseload generation resources such as coal that will be retired over the next ten years. Thirty-six thousand has already been announced in the eastern interconnect of the United States. So a lot of the coal is probably going to be replaced by natural gas, and actually that stands very good for wind energy, because you now...you have wind partnered with natural gas, which is actually more responsive than the old coal facilities. And as a result, you have a very responsive grid. [LB104]

SENATOR SCHUMACHER: Does this boil down to basically a carbon versus noncarbon issue? [LB104]

DEREK SUNDERMAN: You know, for the projects that we did with Alabama Power and the Southern Company, their announcement had nothing to do with that. When they went to their commission, they don't have an RPS. They don't have a renewable portfolio standard of any kind. They went to their commission and they said, based upon everything we have seen, the economics of this makes the most sense for our company. Nothing else. It was purely economics for why they wanted wind energy. The cost of building other forms of energy has substantially increased. [LB104]

SENATOR SCHUMACHER: Because of regulatory things. [LB104]

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DEREK SUNDERMAN: For the most part, yes. [LB104]

SENATOR SCHUMACHER: Thank you. [LB104]

SENATOR HADLEY: Any other questions? Oh yes, Senator Sullivan, I'm sorry. [LB104]

SENATOR SULLIVAN: Thank you. That's all right. Can we store wind? Are they working on that? [LB104]

DEREK SUNDERMAN: They absolutely are working on that. It has not, in the United States, got to the point that it is economic. There are, however, different locations throughout the globe where it is economic. Europe, it has started to become economic. Some of the islands like Hawaii, storage through batteries has started to become a little bit on the economic side. It's mainly for grid reliability. But in cases like Europe, you know, where their cost of electricity is substantially higher than ours, storage of wind energy is actually starting to make sense and they're actually starting to install different forms of storage, whether it's through pumped hydro or air injected into the ground in caverns--compressed air. [LB104]

SENATOR SULLIVAN: And we don't have any oceans here in Nebraska, but is your company looking at putting turbines out in the ocean? [LB104]

DEREK SUNDERMAN: We actually did look at that a long time ago. It's very expensive. If you think the EPA is difficult for a coal facility, try building something in the ocean. It's very difficult. [LB104]

SENATOR SULLIVAN: Okay. All right. Thank you. [LB104]

SENATOR HADLEY: Thank you. Appreciate it. Next proponent. How many more proponents do we have? One other. Okay. Welcome. [LB104]

KEN WINSTON: (Exhibit 9) Thank you. Good afternoon, Chairman Hadley and members of the Revenue Committee. My name is Ken Winston, K-e-n W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska Chapter of the Sierra Club in support of both LB104 and LB501. The page is handing out a copy of an economic development study that the Sierra Club commissioned last fall. But basically the reason that we're supporting these bills is we support removing burdens or impediments that may be causing difficulties in wind development. To paraphrase Jimmy Fallon: Almost everybody likes having more money. And I guess I wanted to talk just a little bit about a couple of different aspects that I haven't heard discussed this afternoon. Nebraska has long had some of the lowest consumer electric rates in the country, but for the first time in my memory we're not in the top ten anymore. We're currently number 14. And interestingly enough, we're behind the state of Iowa. And Iowa has more than ten times

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the wind development that the state of Nebraska does. And a big reason why our rates have increased so much is because of the fact that so much of our load is based upon generating electricity through coal, and the cost of coal has escalated significantly over the last ten years. And there is a chart in the...on page 4 of the report that shows the increases in the costs of coal. Now this report examined both wind development scenarios and investments in energy efficiency. And his conclusion...this report was done by an economist named Skip Laitner. His conclusions were that if we invested in...if we had ten times as much wind development as we do now...well, actually he was using last summer's figures which were about 300 megawatts that were developed. If we had 3,000 megawatts, and along with investments in energy efficiency, it could create 14,000 new jobs; and the interesting other aspect of it is there would also result in savings that would be passed on to consumers in the form of lower rates. And so the other thing that I wanted to mention is the fact that Mr. Laitner is going to be in the state of Nebraska next week, and we'd be glad to make him available to meet with the committee or anybody who is interested. We're also having a luncheon, I believe it's in Room 1023, on the 21st, and Mr. Laitner will be there and will talk about his report at that time. [LB104]

SENATOR HADLEY: Thank you, Mr. Winston. Questions? Thank you. [LB104]

KEN WINSTON: You bet. [LB104]

SENATOR HADLEY: Next proponent. [LB104]

JAMES WILLIAMS: Hello, Mr. Chairman, members of the committee. My name is James Williams, W-i-l-l-i-a-m-s. I work as an energy developer for Invenergy, and I testified in favor of LB501. I also...we also support LB104. I don't want to repeat myself but just wanted to let you know that we are supportive of legislation that could encourage renewable energy and economic development in the state. [LB104]

SENATOR HADLEY: Thank you, Mr. Williams. Appreciate your coming to Lincoln. Thank you. Are there any other proponents? Opponents? Neutral? Senator Lathrop, would you like to close? [LB104]

SENATOR LATHROP: I would, and I expect to be brief. Two things that occurred to me while I was listening to the testimony this afternoon. One is, you know, as I've been here now...I'm on my seventh year. And I've watched different tiers get added to the Advantage Act, and they all seem to be directed to prospects that would end up in Sarpy County, Sarpy County, and Kearney. They're more the cities, right? And then, you know, two days later we'll have a debate and try to figure out what's happening to rural Nebraska. We're losing population in the small towns, and I was in Petersburg when they did the opening of that project and those people embraced this. They want this stuff. They want this opportunity really badly. Broken Bow, I was out there and

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looked at that project over the summer. This is great...this is like discovering oil. This is our oil. It is the opportunity to bring serious, significant economic development. And when they say there's strollers in Petersburg now, people are staying in these communities. They're developing in the communities, and it is what we're looking for. And I really think this is a great opportunity for Nebraska. This committee should rightfully ask, I believe: Would this development happen without these bills? Because if we knew the answer to that...and to some extent I've never seen anybody say, I want a tax advantage; I'd probably come anyway but I won't if you don't give it to me. That you're going to hear. I think having been involved in some of the wind bills and they started about the time, my freshman year, we were trying to deal with easement issues. There was a lot of pressure I think to start to develop wind projects in Nebraska because concern over requirements that might come down from the federal government that required that OPPD and NPPD and the rural electrics have a certain percentage of their energy-generating portfolio in renewables. And so you have projects that developed that may not have made the grade today because the economics of having, and the concern over having, a mandated portfolio of renewables pushed some of the projects that have been done early on. Now I think that wind energy has become more competitive and things like the sales tax can make the difference. And you'll have to use your best judgment. You've had a chance to look these guys in the eye. I believe them. And I believe them when they say they'll go to Kansas and when they say they'll go to Oklahoma, because they have been. And for the state of Nebraska, this is a tremendous opportunity, I believe, for our rural communities, like Petersburg, like Broken Bow and a number of communities we don't even know are on the map yet. So with that, I would encourage your support of LB104. [LB104]

SENATOR HADLEY: Are there questions for Senator Lathrop? I have one question, Senator Lathrop. You said you went to Broken Bow? [LB104]

SENATOR LATHROP: Yes, I did. [LB104]

SENATOR HADLEY: Did you have any anxiety issues when you got west of 9th and R Street in Lincoln? (Laughter) [LB104]

SENATOR LATHROP: I'm out there all the time. [LB104]

SENATOR HADLEY: Okay. I just wanted to be sure you didn't, you know, have any severe... [LB104]

SENATOR LATHROP: I know. I know those of you who live west of 9th and R in Lincoln... [LB104]

SENATOR HADLEY: ...mental-mental problems on the way out to... [LB104]

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SENATOR LATHROP: ...think that we never get out there. I'm out there all the time. [LB104]

SENATOR HADLEY: Okay. Thank you, Senator Lathrop. [LB104]

SENATOR LATHROP: Yeah, thank you, Senator Hadley. [LB104]

SENATOR HADLEY: And I appreciate it and we'll work together. We have two bills... [LB104]

SENATOR LATHROP: Right. [LB104]

SENATOR HADLEY: ...that I think we can work together and find out what's the best in both of them and come up with a bill that maybe helps. [LB104]

SENATOR LATHROP: And I'll look forward to that. [LB104]

SENATOR HADLEY: Thank you, Senator Lathrop. [LB104]

SENATOR LATHROP: Thanks. [LB104]

SENATOR HADLEY: (See also Exhibits 12, 14, and 15) With that, we will close LB104 and I see Senator Conrad here for LB627. Senator Conrad. [LB104]

SENATOR CONRAD: Hi. Happy Valentine's Day. I bring you the gift of good government. (Laughter) We'll see about that, right. [LB627]

SENATOR HADLEY: More government or less government? [LB627]

SENATOR CONRAD: Good, good government, Senator. [LB627]

SENATOR HADLEY: Good government. [LB627]

SENATOR CONRAD: Good afternoon, Senator Hadley, members of the Revenue Committee. My name is Danielle Conrad, that's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d, representing the "Fighting" 46th Legislative District of north Lincoln. I'm here today to introduce LB627. LB627 would terminate certain tax incentive laws on a five-year reoccurring basis unless extended by the Legislature. I introduce this bill to shed a little bit more light on where we spend our hard-earned tax dollars, especially in light of recent events such as the release of the Legislative Performance Audit Committee's report on the Nebraska Advantage tax incentive programs which suggests that more information is needed on whether or not these programs really work and create jobs. Additionally, a New York Times article dated December 1, 2012, with the headline, "As

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Companies Seek Tax Deals Governments Pay High Price," found that Nebraska spends \$1.39 billion annually on tax incentives. That's about \$763 per capita and about 39 cents per \$1 of the state's budget. It also found that Nebraska, along with Alaska and West Virginia, give up the most per resident. In addition, the business subsidy transparency group Good Jobs First gives Nebraska a D- rating and ranks us 35 in the nation for business subsidy disclosure for the year of 2010. They gave the Nebraska Advantage Act a score of 19 out of 100 in terms of transparency. I introduced LB627 with no bias intended but merely to take a look at these programs and their effectiveness on a regular basis, thus ensuring more accountability and transparency for our hard-earned tax dollars. I'd be happy to answer any questions. [LB627]

SENATOR HADLEY: Questions for Senator Conrad? Senator Conrad, I should know this but I thought it was maybe my first year on the committee or the second year, Senator White was very adamant about sunset provisions. Do we...we do not have sunset provisions in the Advantage Act now? [LB627]

SENATOR CONRAD: I do not believe so. No, Senator. [LB627]

SENATOR HADLEY: Or is it just reporting... [LB627]

SENATOR CONRAD: It may have been the reporting and disclosure piece. [LB627]

SENATOR HADLEY: Okay. Thank you. Any other questions? Thank you, Senator Conrad. [LB627]

SENATOR CONRAD: Thank you. [LB627]

SENATOR HADLEY: Further proponents. [LB627]

RENEE FRY: (Exhibit 10) Good afternoon Chairman Hadley and members of the Revenue Committee. My name is Renee Fry, F-r-y, and I'm the executive director of OpenSky Policy Institute, a nonpartisan organization focused on budget and tax policy in Nebraska. I'm here to testify in support of LB627. As you know, the Legislature's Performance Audit Committee released a report on Monday estimating the cost per job created under the Nebraska Advantage Act up to \$234,568 considering all earned benefits except the property tax exemption. Furthermore, they stated that, the audit's overarching finding is that the program goals expressed by the Legislature in the statutes and during legislative debate are too general to permit a meaningful evaluation of whether the programs are, in fact, accomplishing what the Legislature hoped they would accomplish. This is not to say that Nebraska is the only state that has grappled with how to best ensure that these programs are a good return on the investment. In fact, there have been several national reports over the last year focused on the ballooning costs of tax incentive programs across the country, along with steps that can

be taken to better evaluate these programs and ensure they are effectively and efficiently stimulating economic development. There are three in particular that I will highlight. The Pew Center on the States released a report called "Evidence Counts" in April 2012 finding that states spend billions on dollars annually on tax incentives for economic development but that half the states have not taken basic steps to produce and connect policymakers with good evidence of whether these tools deliver a strong return on taxpayer dollars. Nebraska was found to have mixed results. As a follow up to the Pew Report, in October the Institute on Taxation and Economic Policy released a report entitled "Five Steps Toward a Better Tax Expenditure Debate" spelling out ways that states can require evidence-based reviews of tax expenditures designed to gauge their success. They also included examples of states employing best practices in each of these areas. I have handed out a copy of this report. Step 3 of this report recommends sunseting tax expenditures every five to ten years such as proposed in LB627. Finally, the Pew released a follow up to their report in December, "Avoiding Blank Checks, States Create Fiscal Risks by Failing to Control Tax Incentive Costs." They urge states to use both estimates of tax incentives plus annual spending limits to control costs. According to the Pew, regular evaluations of existing incentives are essential but not sufficient to prevent the unexpected costs these policies can cause. Clear estimates and annual spending limits from the outset are the best approach to avoid unnecessary fiscal risk without sacrificing the economic returns of effective tax incentives. I have handed out a copy of this report as well. Between the two reports, they recommend several steps to evaluate the results of tax incentives. Those steps include the following: (1), laws should include a specific explanation of what the expenditure is intended to achieve; (2), nonpartisan analysts should regularly evaluate tax expenditures based on how successful they have been in achieving their objectives, and should offer lawmakers recommendations for reform; (3), the Governor's budget should include specific recommendations related to any tax expenditure that has been recently evaluated, which Senator Conrad has introduced in LB629; The Revenue Committee should hold... (4), the Revenue Committee should hold public hearings following the release of the tax expenditure evaluations in order to receive testimony regarding the expenditures; (5), the tax expenditures should be scheduled to expire every five to ten years so that senators can vote on the expenditure again in light of new evidence of its success or lack thereof, which is the bill before you today; (6), the process should be transparent and ensure that policymakers understand the budget implications of proposed incentives; and (7), the size of tax incentives should be managed by setting limits on their annual price tag. In addition to the two reports, I am also handing out the back of the packet are examples of statutory language from other states that embody the recommendations brought forward by both ITEP and the Pew Center of the States. This language might be useful in crafting improvements to the Nebraska Advantage program in order to address the issues raised by the audit. Also at last count, 24 states have undergone tax incentive review commissions to respond to issues similar to what the audit found here in Nebraska. LB627 is a great first step and I hope these resources will be helpful to developing a comprehensive approach to

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addressing the issues defined by the audit. Thank you for your time, and I'd be happy to answer any questions. [LB627]

SENATOR HADLEY: Are there questions for Ms. Fry? Senator Sullivan. [LB627]

SENATOR SULLIVAN: Thank you, Senator Hadley, and thank you, Ms. Fry. Is there any evidence in the states that have adopted more of a review and also maybe even some sunsets, have there been repercussions in terms of businesses feeling a little less settled because of those reviews? [LB627]

RENEE FRY: That's a great question and I don't know the answer to that. So I can do some research and see what I can find out. Most of the incentives or most of the steps that have been taken just in the last few years. This is really recent where states are starting to really take a closer look at their incentive programs. But I don't know the answer to that. That's a really good question. [LB627]

SENATOR SULLIVAN: Because it made me think of Mr. Cederberg's comment last week about the fact that this has gone nationwide what we're doing with tax reform... [LB627]

RENEE FRY: Right. [LB627]

SENATOR SULLIVAN: ...discussions and it's made some businesses look unfavorable at Nebraska. [LB627]

RENEE FRY: Yeah. The only thing that I could say is that the way that this bill is written, when it's sunset, it doesn't affect any existing projects so that anyone who has already been awarded a project doesn't have to worry that those credits would go away. It would only be for future credits. So at least there's a protection in place that if they've already been established as a project, then they don't have to worry about those credits being in jeopardy. So I guess... [LB627]

SENATOR SULLIVAN: Thank you. [LB627]

SENATOR HADLEY: Senator Schumacher. [LB627]

SENATOR SCHUMACHER: Thank you, Senator Hadley. And thank you for your testimony today. When we make a cash expenditure, we write a check and we know where the check goes and we know supposedly what it buys. What do we have, if you know, in these incentive programs so that we know who's getting the check and what we're getting for it? Do we have a mechanism to even begin to audit them? [LB627]

RENEE FRY: That's an excellent question and that is the concern. There is some

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information on the Department of Revenue Web site, but it's really difficult to ascertain exactly what it is that we're getting for those expenditures. And, you know, even the audit pointed out that they were able to estimate the costs at the state level but aren't able to estimate the lost property tax revenues. So even with the information that they're providing right now we still don't have a complete picture. And so I think you raise an excellent point. On the appropriations side, there's scrutiny every two years, and that's not happening on the revenue side. [LB627]

SENATOR SCHUMACHER: Do you know what the rationale is for guaranteeing such an anonymity and lack of transparency? [LB627]

RENEE FRY: Yeah, so what I've heard before, and this may be better if there are other people coming behind me, but that it's a privacy issue for businesses that they don't want to give away that proprietary information. I know, for example, in Florida, they have a fantastic process for dealing with the incentives and also fiscal notes in general and I'm happy to explain that, but I know that those...the folks who are assessing the programs in Florida have access to that confidential information from which to base their decisions. So they're not sharing it publicly but that information is available and they're making their estimates based on that information that they have. So that's the argument that I've heard before. I've also been told on the flip side though that usually the proprietary information is known by other companies anyway because they're...because they hire to have that done. But this is not my area of expertise. I think it's a great question. [LB627]

SENATOR SCHUMACHER: Thank you. [LB627]

SENATOR HADLEY: Senator Harr. [LB627]

SENATOR HARR: Thank you, Chairman Hadley. Let me get this straight. We don't know, let's say Acme Pest Control receives a check for \$5 million through the Nebraska Advantage Act. There's no way for us to find out that Acme Pest Control received a check for \$5 million? [LB627]

RENEE FRY: So their information is on the Web site so we know what companies have received projects, but what we don't know, we don't know the property tax, the local piece. [LB627]

SENATOR HARR: Okay. [LB627]

RENEE FRY: And we also don't know...we don't know whether those jobs would have been created anyway. And so... [LB627]

SENATOR HARR: Okay. Fair. But we know how much they received, right? [LB627]

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RENEE FRY: Yes, and we know the company name. [LB627]

SENATOR HARR: Okay. Okay. And this is a government benefit. You'd somewhat agree with that, wouldn't you? This program is a government benefit. [LB627]

RENEE FRY: Yeah. [LB627]

SENATOR HARR: And we don't make them take drug tests, do we? The companies or any of their individuals to receive this funding? [LB627]

RENEE FRY: I would doubt it. I don't know the answer to that. [LB627]

SENATOR HARR: Okay. And that's all I have. Thank you very much. [LB627]

SENATOR HADLEY: Ms. Fry. [LB627]

RENEE FRY: Yes. [LB627]

SENATOR HADLEY: You know, I'm trying to get my hands around this idea of finding out whether it's successful or not. In order to get back something from the state in the Advantage Act, you've got to meet certain prescribed goals or objective standards that are in the act, right? In creation of jobs... [LB627]

RENEE FRY: Right. [LB627]

SENATOR HADLEY: ...and spending and such as that. Is that a correct statement? [LB627]

RENEE FRY: It is, but what the audit found was that it wasn't possible to tell from the research whether those jobs would have been created but for the... [LB627]

SENATOR HADLEY: How in the world do you tell whether the jobs are going to be created? What kind of methodology do you use? Do you say to a company...I mean, let me take it a different way, do we cut it off for five years and see if we have any growth for five years, and if we don't have any we suddenly say, well, that's five years we lost out, so we better...I don't know how you find out whether they would have been created or not. I just don't know how you do that. [LB627]

RENEE FRY: Right. No, it's a great question and I don't know that there's an easy answer. I think just the regular scrutiny and regular evaluation. I understand that there is some modeling that is available to look at that. But it's a really difficult question. And part of it is that you just...I mean, you don't have any way to assess it, right, which is

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why some of these recommendations are really process recommendations and how to improve that process so that you keep an eye on them, do things like cap how much we're spending, and the regular review so we make sure that it's all public and that it's informing policy discussions. And that's where Nebraska has fell short specifically in that. The Pew Center, for example, dinged Nebraska for not...for the department not making recommendations about changes to the program that they're required by law to make. Also that the data isn't being used to inform policy discussions was another place that Nebraska got dinged. So they got...Nebraska got credit for doing a regular report, but fell apart in that it wasn't being used to inform policy discussions, so. [LB627]

SENATOR HADLEY: I just...part of me says, I guess I'm enough of a capitalist, if you teach accounting I guess you get that way. But, you know, companies making economic decisions, it just seems to me if another state gives me significant benefits and Nebraska doesn't, that's going to be a pretty good factor in my decision-making process because it's a dollars-and-cents decision that I'm making. Is that a fair statement? [LB627]

RENEE FRY: Well, so when we had our symposium in January, Professor Richard Pomp was here, and he has represented a lot of companies. And I have actually heard this from folks in Nebraska, too, that companies by and large decide where it is that they want to go. And then at that point they've decided where they're going to go. Then they go and try to negotiate the tax incentives to sweeten the deal. But they've already decided where they want to be and they're going to be there for reasons that have to do with, you know, with the...I'm trying to think of...the available work force, excuse me, transportation, location in the country, those sorts of things, or maybe proximity to where they live or want to be, but. And so his comments from a perspective of someone who represents clients is that's done on the back end, not on the front end. [LB627]

SENATOR HADLEY: And I'll just...I guess I'm make one comment. It's not...obviously not a question. But when we were doing LB405 and LB406, one of the comments that really stuck with me was Werner Enterprises that said we're in Iowa and Iowa changed its tax policy on how they were going to tax us and we moved to Nebraska. We moved to Omaha. One of the first companies in a long time that specifically said we were in one state and the tax policy of Nebraska caused us, or the tax policies of that state changed, caused us to move. [LB627]

RENEE FRY: Yeah. Yeah, and... [LB627]

SENATOR HADLEY: So I hope we get more Werners moving from Iowa, Colorado. [LB627]

RENEE FRY: Yeah, absolutely, absolutely. And I'm not at all condemning the program and I hope my comments aren't taken that way. But if you look at what's happened in

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other states in these national reports that are finding that these costs are growing and states really don't know...don't have a really good grasp on whether they're a good return on investment, and so here are steps that you can take to make sure that we're getting that good return. So it's not stopping the program, it's not throwing it out, it's just trying to make sure that this is a good investment. So...and there have been...there are several states that are doing some really innovative things to make sure that they're looking at those programs and that they're having some effect. [LB627]

SENATOR HADLEY: Is this something that we should be doing on a lot of different programs, of processes we have in government? Education? Health and Human Services? Prison system? You know, basically are we getting a good bang for the buck... [LB627]

RENEE FRY: Yeah. [LB627]

SENATOR HADLEY: ...in what we're putting into each...all these other areas also, so? [LB627]

RENEE FRY: So I think back to Senator Schumacher's point, to the extent that we're spending money on programs, there's already a pretty rigorous review, but you don't see that on the revenue side like you do on the spending side. And I think that's where, you know, these commissions and various things pop up when the Legislature finds, or the executive branch finds, that something is not working as well as it should, and then there's a committee to look at it, to study it. You know, whether it's education, finance, or child welfare or any of those sorts of issues. And so...but you don't tend to find that on the revenue side like you do on the spending side just because of the way that it's structured. [LB627]

SENATOR HADLEY: I'll just make a comment that when I retire, I'm going to take my Unicameral retirement and move to a sunnier state. (Laughter) Thank you, Ms. Fry. [LB627]

RENEE FRY: Thank you. [LB627]

SENATOR HADLEY: Are there further proponents? Are there opponents? [LB627]

RICHARD BAIER: (Exhibit 11) Senator Hadley, members of the committee, for the record again, my name is Richard Baier, B-a-i-e-r, and I appear today in my capacity with the Nebraska Chamber of Commerce in opposition to this bill. I'm also representing the Omaha and Lincoln Chambers of Commerce. And I'm just going to review a little history in trying to address some questions that I heard. I've got kind of a unique perspective. I was involved in helping to write Nebraska Advantage. I've heard the companies talk about the good and the bad and the ugly of the program, and then I've

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also been on the other side of that table when I'm sitting with the CEO of Yahoo! saying should I go to one of the following six states and why should I be in Nebraska. So that conversation does happen. Since its beginning in '06, Nebraska Advantage, I just want to reiterate, has been involved in 319 projects resulting in a minimum of \$8.5 billion of new investment in our state. Also created on the upwards of 20,400 new jobs. It's important to note since the implementation of the program that Nebraska has maintained one the lowest unemployment rates in the country, which I think you heard me say a few minutes ago. Our wages and per capita incomes are increasing. Our worker productivity has expanded faster than the national average. We have new high-tech industries growing and locating in our state, and we've seen our population increases faster than the national average three of the last four years. Interestingly, we had somebody that sat as part of the team that put Nebraska Advantage together. These were the goals that were set by the Legislature when this project was approved. Those were the things that were outlined. I've gone back and read some of the floor debate and we talked about some of those very issues. I do want to step back briefly and talk a little bit about the program because there's some things that get missed. We understand it's complicated. It is not an easy thing to understand. It doesn't operate...business doesn't operate, Number 1, on a calendar year or fiscal year basis like the Legislature. So when you get a snapshot in time, sometimes that snapshot can be misleading because you don't know where the businesses are in your cycle. I don't imagine Senator Schumacher's business makes decisions based upon anybody's calendar but his business calendar. And so that changes the way that we look at things. We're fortunate in Nebraska that, as Senator Hadley just pointed out, our programs are performance based. You have to meet certain levels of investment, certain levels of job creation to qualify. The second thing, and I will note we've been invited and really going to have a nice dialogue with Senator Harms and Senator Mello and the Legislative Research staff about their report because we're trying to understand what's in it and some of the numbers that are in it. But what we're seeing and I'll tell you the report did not address was the issue of recapture. Nebraska is very unique. The companies go through a very diligent audit process. If they don't meet those jobs, if they don't maintain employment, they are forced to repay their tax credits. That's very unique in Nebraska. I went back, I didn't bring the article with me, the state of Wisconsin two years ago came out with a big, bold plan that talked about recapture and talked about leading-edge technology it was in terms of policy. Well, we've had it in our program since 1987. So I think it's important to remember that process. The other thing I just want to reiterate is that this issue is not about grants. This is a refunding of taxes that the company has paid. So sometimes that word subsidy kind of gets mixed in there. That's a little bit difference in terms of acronyms. The final thought that I would share with you is that this transparency discussion rears its ugly head. And I think you see me sitting here every year before this committee in one form or another talking about Nebraska Advantage. So we have a dialogue about the program every year in one form or another. I would also tell you that as part of the Nebraska Advantage package that we put together in '05 and '06 that there is a very good report put out by the Department of Revenue every

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year. It goes to the citizens of this state. It's put up on-line and it gets sent to each of your offices. I did a little poll with some of my legislative friends this morning and said how many of you ever read that report. Not one hand of the senators that I talked to went up. So the question is, is it part of the policy issue? And Senator Conrad may have (laughter) because she was part of the committee. But I do believe that as a body there probably is a lack of understanding about those numbers. And again they're hard to understand, and Mary Jane can tell us as well as anyone. Again looking at them long term it's hard to kind of lay them out in a spreadsheet because they operate much differently than government in the way that we look at things. Now that I'm back on the outside of the government sector, I'm kind of back in that world where we're not focused on either biennium budgets or drop deadlines on July 1. So it is a different world. I think what I would do at this point is take any questions that you might have. I might just say in terms of looking at places, for example, we're talking about two other issues. One of them is this reference to places like Florida. I would ask you what their unemployment rate was over the last three or four years and ask you whether or not that program is working. The second thing I would ask you is if you take a look at some of the things that are out there in terms of removing sunsets, the last thing we want to do is insert more unpredictably for business into this environment. Many of these projects take two, three, four years. And I'll point out Novozymes as an example in Blair, the company that's the enzyme company that's located next to Cargill. Their project from start to finish, which now they're kind of operating, took almost five years. So if they're looking at a sunset date that's five years out, that might be a concern for somebody like them. Senator, that gets back to your question. Not all those projects operate like that, but let's assume two or three years or we get to 2016 or 2017, you are going to have companies asking that question. When I break ground or I get my application filed, will this program be in place? And it does happen and does occur that way. So with that, I'd be happy to take any questions. I also did...if it's helpful I'll leave them with the committee clerk, copies of a...and some of you may have never seen this. This is actually a summary of the Nebraska Advantage program. Tells you how it works. It's kind of in bullet points. Thought it might be helpful for some of you to understand sort of the process and how the...and again it's complicated and we understand that it's tax law. And so we wanted to just make you aware and we'll make these available to you. It's actually put out by your Department of Economic Development. [LB627]

SENATOR HADLEY: Questions for Mr. Baier? Senator Schumacher. [LB627]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Could you explain for me, and maybe it's in that sheet that you just prepared there, the mechanism of how an employer does not submit to the state withholdings from the employee and that the mechanism that they get their money? [LB627]

RICHARD BAIER: Right. That is one of the provisions that was put in place in '06. And really what it was, was an effort to monetize the tax credits more quickly up front. So a

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company goes and files their application, gets an agreement with the Department of Revenue--I may miss a step or two here but hopefully we'll get them all in the right order--gets their agreement, starts to hire people, gets through their process, requests an audit from the Department of Revenue. They come out and conduct the audit, and the Department of Revenue will say, give us the blessing, yes, you've met your investment, you've met your job creation requirements. And then what will happen is they will start to earn those credits. What happens is the employer actually collects the withholding. But rather than sending it into the state, there's a form, and I don't remember the number, forgive my "half-heimers," but the form actually goes into the Department of Revenue and says, we've earned the following credits and we want to use those to retain our employee withholding. And that was really...that mechanism was put in and was really a key component that the Legislature put in place for Nebraska Advantage and was put there to help monetize the credits on the front end, especially if you're young start-up company. If you're only getting income tax credits, a lot of times you don't make any money. You might be out 15 years before this program really helps you. And so this was an effort with the withholding credits to move the benefit to the front end. [LB627]

SENATOR SCHUMACHER: Thank you. [LB627]

SENATOR HADLEY: Okay. Mr. Baier, I have a question. How would you recommend getting at the question of these companies that have come anyway? How can we...is there a way to try to research this and come up with hard data on that question? [LB627]

RICHARD BAIER: Senator, that's the usual question. All that I can tell you is my personal experience. Companies have choices. I think you heard it last week in LB405. You heard Dirk Petersen from Nucor say we have a choice about where we're going to put investment. I think the same holds true for existing companies. And I've sat across the table from some of the CEOs from around this country who have said: I'm down to these three places. Where can I go that makes...helps me generate the most profit for my stockholders in the long term? Now can I guarantee that every project would have occurred...you know, that there wouldn't have been a project or two sneak through? I can't guarantee that. But I can tell you from personal experience it is a consideration for every project that we run into because most of these plants, and if you look at the list of companies, I did that this morning, they're based either somewhere else or if they're based in Nebraska, they have facilities in other locations. And so it is a decision that they make as a business to say, look, I'm going to put capacity here, here, or here. I wish I had an answer for you. If I did, I'd be rich and I'd be probably sitting in the Caymans sheltering my income that I'd be producing, so. [LB627]

SENATOR HADLEY: I thought it was just a comment. I don't know whether you happened to read the articles about Governor Orr. And I thought they were excellent

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articles, especially for us either who weren't in the state or didn't pay much attention in those days, the impact of mobility of companies and LB775 and such as that. And so I would encourage people to...just to take a look at that because that was certainly a significant issue. [LB627]

RICHARD BAIER: Absolutely. [LB627]

SENATOR HADLEY: Senator Schumacher. [LB627]

SENATOR SCHUMACHER: Senator Hadley. There was an article in the Columbus paper in the last week or two, and I don't know if this company is getting Advantage Act or not Advantage Act, but it dealt with a company that is taking the sand out of the Loup River diversion near Fullerton. And Loup Power sold it for dirt cheap, and they just wanted the sand cleared out of the river. And this company is apparently using this for the fracking process... [LB627]

RICHARD BAIER: Right. [LB627]

SENATOR SCHUMACHER: ...and making just a boatload of money now off of very cheap sand. And there was discussion that the Loup board of directors was having morning afterthoughts on having cut such a good deal that it lasted in perpetuity. Now that company would be there with or without the credits, and it might be there without credits, I don't know. But that's an example where if we gave them credits, and they've got quite an operation out there, that we wouldn't have had to give them. [LB627]

RICHARD BAIER: Senator, I don't know the case and I don't remember honestly if they're on the list. I'm trying to recall if they were and weren't. I did some job training and other things with that particular company. But I would also tell you that they had a huge investment up front that Loup Power was not willing to make to process that sand and do the other things to make that happen. So those were new jobs coming to the state. And what the incentives did if they received, and again I'll have to go look, I'll double-check and let you know, but if they did receive them, it really was fundamental to help them kick that business off the ground because there had been two or three other companies in there had failed at that. So the state was a partner maybe in their long-term success through the incentives. Again, that's one of those gray areas. But had we not been there to support them, we may have faced the same fate that Loup Power and their successor did as well. [LB627]

SENATOR SCHUMACHER: Thank you. [LB627]

SENATOR HADLEY: Thank you, Mr. Baier. [LB627]

RICHARD BAIER: Thank you. [LB627]

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SENATOR HADLEY: Further opponents. Seeing none, neutral. My mind is going into neutral these days. Senator Conrad. [LB627]

SENATOR CONRAD: Briefly. I know I'm standing between the committee and a long and well-deserved weekend. But I want to thank you for your time and your careful consideration, also the proponents and opponents who were here to discuss this important legislation. Just a couple of points for the record. Since Nebraska created these programs, whether you call them subsidies, tax incentives, economic development tools, what have you, I think we're all talking about the same programs, we've always moved towards improvement in terms of transparency and accountability. When you saw that with LB775 to Nebraska Advantage, whether it's disclosure, whether it's clawback, whether it's other things, we're always moving towards improvements to ensure good value for the taxpayers. This is really another step in that journey or potentially could be. And so I hope that the committee keeps that in mind. The other point, Senator Hadley, that you make about scrutiny for other governmental programs I could not agree more. And welcome to the Appropriations world. That's what we do all day every day, poring over line by line by line in that budget of every program, and we ask those hard questions on each of those. Do we have standards in place to evaluate if it is working? If we don't, why not? Let's create those. If we do have the standards, are they working? If not, then do we need to redirect funds to some place that it is working a little bit better? You know the drill in that regard. So that's really the point of this legislation is let's take these significant spending programs and put them on par with the rest of the budgetary items and processes that we analyze as part of our job to be good stewards of the taxpayer dollar. And then finally as Mr. Baier notes, and it's wonderful to work in Nebraska because even when we disagree, we disagree so in an agreeable way. And Mr. Baier is a consummate professional and represents his interests of his clients very well and very adeptly. But we serve a different interest as Nebraska state senators. And while we're always eager to work with our partners in the corporate field and the private sector when we have an opportunity to, we ultimately have to ask our questions whether or not the programs that we put forward and the decisions we make are good for the taxpayers. And all this legislation does is it's a pause button, so to speak, to allow us to ask those questions and to have those important conversations as we do with other areas of state government. Thank you. [LB627]

SENATOR HADLEY: Questions for Senator Conrad? [LB627]

SENATOR CONRAD: Thank you. [LB627]

SENATOR HADLEY: Thank you. Are we going to see you again this session or is this the last one? [LB627]

SENATOR CONRAD: Maybe just one more. [LB627]

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SENATOR HADLEY: (See also Exhibit 16) Oh, my golly! (Laughter) Senator Lathrop is now going to be wanting to show up every day too. Thank you, Senator Conrad. With that, we will close the hearing for the day and no Exec, we're done. [LB627]