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Revenue Committee  
January 22, 2014

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[LB681 LB739 LB851]

The Committee on Revenue met at 1:30 p.m. on Wednesday, January 22, 2014, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB681, LB739, and LB851 and a gubernatorial appointment. Senators present: Galen Hadley, Chairperson; Paul Schumacher, Vice Chairperson; Tom Hansen; Burke Harr; Charlie Janssen; Beau McCoy; Pete Pirsch; and Kate Sullivan. Senators absent: None.

SENATOR HADLEY: Welcome to the Revenue Committee. We appreciate your attendance; thank you for being here. We will get started. My name is Galen Hadley, and I represent the 37th District, which is Kearney and part of Buffalo County. And I have the pleasure of chairing the committee. To my left is Paul Schumacher, the Vice Chair, from Columbus; Senator Janssen from Fremont over here, not here yet. And then to his left is Senator Pirsch from Omaha and then Senator Sullivan from Cedar Rapids. Far down at the end is Senator Burke Harr from Omaha, then Charlie Janssen from Fremont isn't here yet. Senator McCoy from Omaha, and to his left is Senator Hansen from North Platte. And our committee counsel is Mary Jane Egr Edson, is to my right; Bill Lock isn't here, but he's our research analyst. And I want to make a special welcome to our new committee clerk, Krissa Delka, on the far left; she will be the one that you're handing the sheets to as you testify. If you would, please, our pages, we have Drew from Broken Bow; thank you, Drew, for being here; we appreciate that very much. If you turn off the cell phones or put on vibrate while in the hearing room. The sign-in sheets for testifiers are on the tables by both doors and need to be completed by everyone wishing to testify. If you are 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. It's very important, because we do tape the hearings, and we want them to get the right people with the right testimony. 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 at the door. The introducer or a representative will present the bill, followed by proponents, opponents, and neutral. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, state your name, and spell it for the record. If you have handouts, please bring ten copies to committee and staff. If you only have the original, we will make copies. Give the handouts to the page to circulate to the committee. With that, we will start with our first one: commissioner, confirmation hearing. If you would come up and sit up in front and let us ask you a few questions. [CONFIRMATION]

KIM CONROY: You're going to do the confirmation first? [CONFIRMATION]

SENATOR HADLEY: Yes. [CONFIRMATION]

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KIM CONROY: Okay. [CONFIRMATION]

SENATOR HADLEY: Commissioner, thank you for being here. We kind of keep this a little informal, but if you would introduce yourself, spell your name, and tell us a little bit about yourself. [CONFIRMATION]

KIM CONROY: Certainly. Senator Hadley and members of the Revenue Committee, my name is Kim Conroy, C-o-n-r-o-y, Tax Commissioner, from the Nebraska Department of Revenue. Just to give you a little bit of background about myself, and I won't go into this too long. I was born in Chadron, but grew up, for the most part, out in McCook, Nebraska. My dad taught at the McCook Community College, which then became part of Mid-Plains. I attended McCook Community College for two years, graduated from there, went to the University of Nebraska-Lincoln for the next two years, with a major in accounting, and then I went to law school at the University of Nebraska-Lincoln. That's my educational background. I concentrated...with a degree in accounting, I concentrated in tax law in law school, mainly on the federal side because there isn't a lot of state and local taxation, at least in law school, or at that time there wasn't. My first job was in Washington, D.C., with the old phone company MCI, which is now a part of Verizon. And while there, I was a part of the state and local tax group. I primarily worked in the sales tax and property tax with centrally assessed companies like MCI, any type of telecommunication company. My next job after that, we moved back to Nebraska, was with Union Pacific Railroad. And while there, I handled state tax legislation. I worked with our governmental affairs, worked with the tax department in monitoring, writing, doing a lot of information regarding state taxes dealing with railroads, whether it was sales tax, property tax, income tax, fuels taxes, primarily were the ones that I worked on while I was with Union Pacific. I left there and came to the department--that was about six and a half years ago--to become the director of compliance. Compliance Division has legal, collections, audit, discovery areas. And had that job for a year. And then Cathy Lang left to go to the Department of Labor, and I was appointed to become the deputy Tax Commissioner. And that was the position that I held until here just recently when I became Tax Commissioner. As deputy, I primarily have responsibility for our policy division and then for motor fuels division, for motor fuels taxation. Dealing...policy deals with some of the harder-to-answer tax questions; regulations; communications; taxpayer education; our Web site; taxpayer assistance, you know, our 1-800 number that you call, are the primary areas, along with research. And research is our group that writes a lot of the fiscal notes. So that was what I primarily had responsibility for as deputy Tax Commissioner. A little about my family. I've been married 31 years. The reason I moved around, how I ended up in Washington, D.C., is my husband was in the Navy, a Navy officer in the Civil Engineer Corps. So we were out at Washington, and he was at Andrews Air Force Base, Naval Air Facility, and then at the Washington Navy Yard. He got to work for the Air Force; we moved back here for a little bit. That was funny, a Navy officer working out at Offutt, closing down Air Force

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bases. So that was a little interesting for him. He did get out of the Navy after about 11 years because he thought I needed to work a bit more than what I had been, moving around. So we did, we moved back to Nebraska; that's where we wanted to raise--we have three children--that's where we wanted to raise the kids. We came back home. And he now works for the National Park Service; he's an environmental engineer. And he also...he had stayed in the Navy Reserves as a Navy captain, but he's in the Individual Ready Reserve, so he's not going active duty at this time, although he has in the past, went to Iraq twice. So I'm glad that he is in the IRR status and getting closer to retirement. That's a little bit about the background and what I've been doing at the Department of Revenue before I became Tax Commissioner. Are there any...any questions, specifically, that you have? [CONFIRMATION]

SENATOR HADLEY: Okay, I would certainly entertain any questions for...Senator Harr. [CONFIRMATION]

SENATOR HARR: Thank you, Chairman Hadley. Yeah, I have a question. What changes, if any, would you recommend for your department? [CONFIRMATION]

KIM CONROY: Well, Senator, that's a good question. I know I'm going to be tax commissioner for the next year, if confirmed, so, with one year to go, I think we're going to keep going down the road the department has been going down. We always are looking at more electronic filing options; that's important, trying to come up with ways that people can do...file their tax returns in an easy manner. And then just keep up with...we're starting to see more and more retirements all the time. So we're trying to keep up with...and you always hear it out there, that brain drain. But the brain drain got delayed for a few years, we think, because of the economy. Just this past couple of weeks, we had two long-term employees, with one in property tax that had over 40 years of experience; and we had one in compliance, and he headed up our nexus area, looking for out-of-state companies that aren't paying tax and should be, with 43 years of experience. They both left right about the same week. So we've been trying to keep up with hiring, have them mentor, while they are still here, those people that might be taking their job. So that does become a challenge for the department. [CONFIRMATION]

SENATOR HARR: Other than those two staff members, do you feel you're adequately staffed? [CONFIRMATION]

KIM CONROY: Other than those two? Well, we have...we have funding for about 426 employees in the Nebraska Department of Revenue. Currently, we are filled...it varies. I mean, we have about 400 people right now... [CONFIRMATION]

SENATOR HARR: Um-hum. [CONFIRMATION]

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KIM CONROY: ...currently hired. For what we're typically tasked with doing, I mean, I'd say we're fine. We were cut back a couple of times when we were going through the budget reductions. The Nebraska Department of Revenue took their fair share of reductions in terms of cutting vacancies. [CONFIRMATION]

SENATOR HARR: Okay. Well, let me explain the reason I asked that question, is, we went this last year through...Tax Modernization Committee, and we looked at a number of tax policies out there. And we have a great staff. We're very fortunate to have a great research staff, great committee staff, but we don't have access to raw data and raw numbers. And I, you know, I just introduced a bill today, and, you know, one of the things we want to know is how much something costs before we introduce it. And whenever I call over to find out information from the Department of Revenue, I would constantly be told that you guys were understaffed and overwhelmed. Now, I can understand that maybe now, when all the legislation is going on. But it's kind of hard, you know, September, October we're trying to make legislation that's fiscally responsible, and we don't have access to the numbers. What do you recommend we should do? [CONFIRMATION]

KIM CONROY: Well, Senator, that's quite a question. And if you've introduced a bill, we certainly, maybe, would rather address your concerns with that bill. [CONFIRMATION]

SENATOR HARR: Okay. [CONFIRMATION]

KIM CONROY: But just let me... [CONFIRMATION]

SENATOR HARR: Go ahead. [CONFIRMATION]

KIM CONROY: ...no, let me at this. You're one senator out of 49, correct? So just think, during the course of the year, if everyone has an idea, whenever they have an idea, you send it to us and say, I want this costed, and I want it costed now. [CONFIRMATION]

SENATOR HARR: Yeah. [CONFIRMATION]

KIM CONROY: That puts tremendous demands on the department. And if you do call us, especially this time of year when we have...I don't know, Garner, did you see how many tax bills maybe were introduced today? I don't know. We are extremely busy doing the fiscal notes that we are required to do right now. Our research staff isn't that large over there. And doing the fiscal notes is just one part of their job. So the department, at least since I have been here, we've been very consistent. When senators ask for a estimate of a concept, of a bill that hasn't even been drafted yet, we have responded, "No; when you have it in an LB and it's introduced, that's the time that we cost it." That's been our response to everyone since I've been here, when asked. [CONFIRMATION]

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SENATOR HARR: Yeah. Well, let me...and I understand why you say that. But here's the problem I ran into, is, you know, we have a certain amount of money we can spend, as a state. And there, you know, I see there's some money for tax cuts, but I don't see an infinite amount of money. And so what I'd like to do is be able to structure legislation so that it doesn't come in 24 hours before the hearing and it costs a lot different than what I thought it would. And so in order to make responsible legislation, for us, we have to...and to figure out how to draft legislation, we have to know what it's going to cost. I mean, it's very important when making tax policy to understand the ramifications of what you're doing. And if we can only do it one time, once a year, when we introduce a bill, and then we don't get a new fiscal note until it's on Final Reading, it makes it difficult for me. Now, maybe there are others that are smarter than myself. But it makes it difficult for myself to draft legislation in a responsible manner. And so I'm glad to hear you're adequately staffed, but my question is, if you were in my shoes--let's do it that way, let's have some creative confidence and think about this from my point of view--what would you recommend I should do? [CONFIRMATION]

KIM CONROY: Well, Senator, I wouldn't say, under the proposal you're proposing, that we are adequately staffed to run all of those fiscal notes for each one of you when you had an idea. The other problem that that causes is, we update our information at different times of the year, especially income tax information. So we may have run a scenario...say we're required to do this for you and you asked in the summer, we may be using tax year 2011 information. In the meantime... [CONFIRMATION]

SENATOR HARR: Yeah, and that's publicly available. [CONFIRMATION]

KIM CONROY: ...before you introduce your bill, we now are using 2012 information, so the fiscal note is going to look different anyway, Senator. What would I recommend? I worked in the state tax legislative area a lot of times and had to deal with fiscal notes. We would look at what had been introduced in past years, look at fiscal notes from those times, and come up maybe with a fairly good estimate, knowing it wouldn't be perfect, but at least I'd have a range. [CONFIRMATION]

SENATOR HARR: Okay. Well, but, I mean, by your own admission, it's dated data. And so...and I can look at other bills that have been introduced. But let's say I have a bold idea that's outside the box. What am I supposed to do? I mean, we have, you know, I can go to the Web site and I can look at (inaudible). And there's great data on there, don't get me wrong. But it's not complete data. And it's very difficult. And I am not sophisticated, by any form of imagination, as...you have doctorate levels, right, that work with this...in this situation? [CONFIRMATION]

KIM CONROY: Yes, we have several... [CONFIRMATION]

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SENATOR HARR: Okay. [CONFIRMATION]

KIM CONROY: ...Ph.D. economists. [CONFIRMATION]

SENATOR HARR: So, I mean, yeah, so they're... [CONFIRMATION]

KIM CONROY: Um-hum. [CONFIRMATION]

SENATOR HARR: ...a lot more sophisticated than we are--I'll only speak for myself--than I am. And so I'm trying to figure out, going forward, we all want to make good legislation, right? You'd agree with that? [CONFIRMATION]

KIM CONROY: The Department of Revenue agrees with that. We typically take what is passed... [CONFIRMATION]

SENATOR HARR: Okay. [CONFIRMATION]

KIM CONROY: ...by you, in terms of policy, and then we enforce it. [CONFIRMATION]

SENATOR HARR: Yeah, so we all want to make good legislation; we all want to make responsible legislation. And we want to do it in an efficient manner. So my question is, do you think there is a way to improve on the current process? [CONFIRMATION]

KIM CONROY: I don't know, I think the current process is working well. If you have a bold, creative idea out there, maybe you need to look at hiring somebody to take a look at it for you, talk to a professor that may be interested in it and look at it from that regard. [CONFIRMATION]

SENATOR HARR: But I did talk to your office. [CONFIRMATION]

KIM CONROY: No, I said "to a professor," not "to our office." [CONFIRMATION]

SENATOR HARR: Yeah, but you have the access to the data. And I talked to your office. And I wasn't getting a response. And you don't think that...you think that's not frustrating to me? [CONFIRMATION]

KIM CONROY: Again, I know your office contacted us... [CONFIRMATION]

SENATOR HARR: No, we...well... [CONFIRMATION]

KIM CONROY: ...during the session here just recently. And I gave your staffer the same... [CONFIRMATION]

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SENATOR HARR: Yeah. [CONFIRMATION]

KIM CONROY: ...response I have given maybe even to several of you, is, we don't cost ideas; we don't cost bill drafts; and... [CONFIRMATION]

SENATOR HARR: Yeah. [CONFIRMATION]

KIM CONROY: ...we don't cost a scenario ahead of it being an LB. [CONFIRMATION]

SENATOR HARR: Yeah. [CONFIRMATION]

KIM CONROY: That's what our process is right now. [CONFIRMATION]

SENATOR HARR: Yeah, and I'm not trying to be confrontational; I don't want that...I don't want that to come off. But what I'm doing is trying to find a way to work together. And so what I'm asking you is...and we did contact you before, your office, before, and probably also before you took over. But my question is...and I think I know the answer now, is you think this way works. Is that...your statement is, you think the current way we do a fiscal note and the way we receive information works. [CONFIRMATION]

KIM CONROY: Yes, I do. [CONFIRMATION]

SENATOR HADLEY: Okay. [CONFIRMATION]

SENATOR HARR: That's fine. Thank you. [CONFIRMATION]

SENATOR HADLEY: Thank you. Thank you, Senator Harr. We've been joined by Senator Janssen from Fremont and Senator Pirsch from Omaha. I will say that I had a discussion with the executive branch about fiscal notes, this session. And there are going to be a lot of them because we have a lot of revenue bills. And I was assured by the executive branch that they were going to...that this was going to be the number one priority at the Revenue Department, was to give us as quick and as accurate information as we can on the bills that have been put in, because there are some far-reaching bills that will have some impact, great impact, on the state of Nebraska. So in defense of the department, I did talk to the executive branch, and that was the statement that I received. And I had trouble disagreeing with that statement, because the last thing we want is to make decisions on information that is not completely correct or is not completely done. So I'm just saying that we're depending on them and our own Fiscal Office, the Legislative Fiscal Office, to get us the data. And I think it would be very unfair to have hearings on some bills where we don't have good data, to try and make those decisions. So I just wanted to make that completely clear, that I have...have been in touch. Are there further questions? Yes, Senator Schumacher.  
[CONFIRMATION]

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SENATOR SCHUMACHER: Thank you, Senator Hadley. And welcome to our committee. I have to agree with you; I mean, I probably could dream up enough crazy ideas to keep your department going full time. (Laughter) However, there are some things I'm interested in your philosophy and kind of approach to it. Your predecessor, when there was a report given to us this summer regarding the incentive programs and whether or not they're working or not working, kind of told us, well, to figure out whether they're working or not working, it's kind of our job. And it is kind of hard to do that without a lot of really good dialogue, feeling that, you know, you folks who work with incentive programs, you probably have got some feeling--at least I would think you...the people who are actually on the ground working with it--what is working and what is not working, what businesses would have come anyway, what businesses definitely wouldn't have come anyway. What, kind of from a philosophical approach, do you think we could do, not to share with any individual of us who's got a crazy idea of the moment, but as a committee in charge with figuring out how we float the budget, that we can get a feel from the people in your department on the ground as to such things as what's a worthwhile program, what isn't a worthwhile program, what works, what isn't...you know. And I know that sometimes we put in the language a high degree of confidentiality in the bills, but somehow we've got to, without maybe necessarily knowing the exact identity of somebody, know, you know, whether or not we are...we were off base or a policy needs to be changed. [CONFIRMATION]

KIM CONROY: Well, yeah... [CONFIRMATION]

SENATOR SCHUMACHER: If I've confused you, I'm sorry. [CONFIRMATION]

KIM CONROY: (Laugh) No, I understand, Senator. The thing with tax incentives and the interaction with what the department does with them is that we're the administrator. We're the ones that take the applications, that work through agreements, that do audits. I think we just see a piece of the pie out there. We see the companies that actually made the decision to apply for incentives. We don't see those that didn't. We don't see that other piece, as to who didn't come. What we see are the companies that do come. So I don't know how we can give a complete picture of how it's working, because it's set up to...there are certain companies that qualify; those are the ones that can come and file an application with us. We're not seeing companies that decide not to apply or to go elsewhere. I don't know if we...you know, we went through a legislative performance audit on this, and I think they even come to the same conclusion, when we talked with them: that it's difficult for us to make recommendations regarding that because we're administering the program. We're not the ones out encouraging companies to come; that's not what we do. We're not out recruiting businesses. So I can't really...I can't really tell you what pieces of it are working or what aren't, from that perspective. [CONFIRMATION]

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SENATOR SCHUMACHER: Well, if I can just follow up a little bit, I mean...and this is just...there's two companies that we had some contact with, rather happenstance contact with. One in Omaha that is involved in energy business, who frankly tells you unless it was for the incentives they wouldn't be here, and they pretty well can make you believe that, because they don't have any particular reason to have their office in any place other than where they want to rent a building; they can do that kind of business. And another one who is mining or sifting through sand from some of our rivers, and our rivers are the only place that kind of sand is found; they would have been here without the incentives. Now, somebody in the Department of Revenue, I would think, has got a feel that, you know, the one pulling the sand out of the only place you can get the sand, or a few places, in Nebraska here, would have been here anyway. And we need to sort that one out from the one sitting in Omaha who could pick up and move tomorrow and not skip a beat. [CONFIRMATION]

KIM CONROY: I understand. But those differences come in what the Legislature decides are the qualifying companies. We don't have a test for companies that say, I wouldn't have come here but for this. So we don't look at that. That's not something the department, when we look at companies, whether they're qualified under the Nebraska Advantage Act, that's not something we have to be concerned about. [CONFIRMATION]

SENATOR SCHUMACHER: Should we...and we're getting afar here a little bit. But should we...knowing that is really useful, because maybe it's something we want you to consider in the future. [CONFIRMATION]

KIM CONROY: Again, I'll let you leave that for the discussions you have, at least on the policy side. [CONFIRMATION]

SENATOR HADLEY: Ms. Conroy, just so you know, I did put in a bill today, because this is the year that the Advantage Act... [CONFIRMATION]

KIM CONROY: Um-hum. [CONFIRMATION]

SENATOR HADLEY: ...and a number of them sunset. So I hope that we can have a dialogue with not only DED but your department, because I do believe sincerely that the three areas, DED, Department of Revenue, and the Legislature, putting our heads together as to how we might want to change any of these, to get a better handle on what the...you know, what is the real success of these programs and how we do it. So I look forward to that conversation when we do have the hearings to... [CONFIRMATION]

KIM CONROY: No, certainly, Senator. And that annual report out there has a lot of information in it for policymakers. And that presentation that we're going to be doing every year really is a good time for all of you to take a look at that report and what is in

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it, look at how the tiers are being utilized. [CONFIRMATION]

SENATOR HADLEY: Thank you. [CONFIRMATION]

KIM CONROY: Um-hum. [CONFIRMATION]

SENATOR HADLEY: Senator Harr. [CONFIRMATION]

SENATOR HARR: Yeah, just one quick follow-up. I appreciate that you recognize we are the policymaking body. And one of the things we want to do as the policymaking body is make good legislation and good policy. And my question is, if we don't have access to the data and the numbers, how do you expect us to make good policy decisions? [CONFIRMATION]

KIM CONROY: Well, Senator, you can always introduce the bill and we will cost it for you at that time. [CONFIRMATION]

SENATOR HARR: Okay. But you realize that's a one-time shot in the dark. So if I'm wrong, what's my follow-up? Do I wait another year for another bill, or do... [CONFIRMATION]

KIM CONROY: What...what would you be wrong? You mean in terms of what you were trying to accomplish, or what the fiscal note showed? Is it... [CONFIRMATION]

SENATOR HARR: Exactly. [CONFIRMATION]

KIM CONROY: ...too high; is it too low? [CONFIRMATION]

SENATOR HARR: Yeah. [CONFIRMATION]

KIM CONROY: Are you trying to raise taxes and you didn't have enough money come in; or are you trying to lower taxes and you didn't have enough... [CONFIRMATION]

SENATOR HARR: Exactly. [CONFIRMATION]

KIM CONROY: ...lowered? [CONFIRMATION]

SENATOR HARR: Yep. [CONFIRMATION]

KIM CONROY: Well... [CONFIRMATION]

SENATOR HARR: That's exactly what I'm asking. So I'm wrong in any one of those many ways. I can be wrong a thousand ways, a million ways, a billion ways, a "gazillion"

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ways. I can only be right one way. [CONFIRMATION]

KIM CONROY: Certainly... [CONFIRMATION]

SENATOR HARR: And so if I'm wrong, what do I do? [CONFIRMATION]

KIM CONROY: Certainly, Senator, I've seen...I have seen tons of amendments put on bills when the fiscal note doesn't really portray... [CONFIRMATION]

SENATOR HARR: Yeah. [CONFIRMATION]

KIM CONROY: ...what you want on there. [CONFIRMATION]

SENATOR HARR: Okay. So let me ask you this, if I put an amendment on a bill, when do I get an updated fiscal note? [CONFIRMATION]

KIM CONROY: Once that amendment has been passed, then we'll do a fiscal note on it. LFO will request us to do that. [CONFIRMATION]

SENATOR HARR: So the amendment has to be passed. So what happens if the amendment is passed and the fiscal note is still wrong, and the numbers don't run, what do we do? Do you see the kind of Catch-22 we're in? [CONFIRMATION]

KIM CONROY: That's...but I see the Catch-22 the department gets put in when I say we're adequately staffed now, but if we have to start doing this level of work, we are not adequately staffed. [CONFIRMATION]

SENATOR HARR: Yeah. And I think there's a compromise in there somewhere, and I think we can find a way to work together. But the problem is right now, is, you know, in making fiscal decisions, we have to know the implications of our actions. And a lot of times right now I personally feel as though I'm making shots in the dark that I don't have the adequate answers for. And so I would love to work with your department. [CONFIRMATION]

KIM CONROY: And that's...I understand. But I understand also the fiscal note process has worked like this for many years. [CONFIRMATION]

SENATOR HARR: Do you think the answer is we need to put a person from the legislative branch in the Department of Revenue who can have access to those numbers? Is that...would that be a reasonable solution? [CONFIRMATION]

KIM CONROY: With our confidentiality and federal tax information concerns, I don't know if that would be something that we could do. [CONFIRMATION]

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SENATOR HARR: Well, we'd sign a confidentiality. But then there would be somebody that would have access to the data, from the legislative branch, without--well, I understand the importance of keeping everything confidential--but would have access to the numbers so that we could answer some of these questions, because you're right, there is an issue. [CONFIRMATION]

KIM CONROY: The people that work on this, for the most part, are, at a minimum, have a master's degree in economics; the rest of them have a Ph.D. in economics. And it's not just one tax, income tax; you're talking about... [CONFIRMATION]

SENATOR HARR: Um-hum. [CONFIRMATION]

KIM CONROY: ...we have sales and use, we have fuels taxes. So I don't really know that that would work, to have a legislative fiscal person in the Department of Revenue. Maybe if you looked to see if any other states do that, but that's not something that I am aware of. [CONFIRMATION]

SENATOR HARR: Okay. So maybe that's what we need to do, is look at best practices. [CONFIRMATION]

SENATOR SULLIVAN: . [CONFIRMATION]

SENATOR HADLEY: Senator Sullivan. [CONFIRMATION]

SENATOR SULLIVAN: My question or comment isn't nearly as far-reaching as this; it's actually a little, maybe, inconsequential. It has to do with corporations...that report that we have to file on a biennial basis, is it the occupation tax report? Or what is that called? [CONFIRMATION]

KIM CONROY: Senator, that is filed with the Secretary of State's office. [CONFIRMATION]

SENATOR SULLIVAN: Okay. All right. Okay, I'll take it up with him. Thank you very much. [CONFIRMATION]

SENATOR HADLEY: Any further questions? Seeing none, thank you, Ms. Conroy. [CONFIRMATION]

KIM CONROY: Um-hum. [CONFIRMATION]

SENATOR HADLEY: And we appreciate it. Are there any opponents? Opponents? Neutral? Anything further you would like to say? [CONFIRMATION]

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KIM CONROY: No, just, thank you. I look forward to this next year and working with all of you. Thank you. [CONFIRMATION]

SENATOR HADLEY: Thank you. [CONFIRMATION]

SENATOR HARR: Thank you. [CONFIRMATION]

SENATOR HADLEY: With that, I'll close the confirmation hearing. I appreciate your coming over. And we look forward to seeing you shortly. [CONFIRMATION]

SENATOR HARR: Um-hum. [CONFIRMATION]

SENATOR HADLEY: Shortly. (Laughter) Senator Mello. [LB681]

SENATOR MELLO: As quick as possible. [LB681]

SENATOR HADLEY: You want us to straighten out some bill that obviously you didn't give a full (laughter)... [LB681]

SENATOR MELLO: I've got this tax plan for you guys that...good afternoon, Chairman Hadley and members of the Revenue Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District, in south Omaha. Last session, the Legislature passed two pieces of legislation which made changes to the statutes governing delinquent property taxes: LB97, which adopted the Nebraska Municipal Land Bank Act, and LB341, which rewrote the statutes governing tax sales for delinquent property taxes. Each of these bills amended Nebraska Revised Statute 77-1807, but because they were both passed at the end of the legislative session, there was not an opportunity to harmonize the changes in the two bills. The goal of LB681 is to harmonize the language in 77-1807 so that both the changes in LB97 and LB341 are able to go into effect. Ordinarily when a section of statute is amended by multiple pieces of legislation, the Bill Drafting Office works with us senators who introduce the legislation during the Enrollment and Review process to have one bill amended to reflect the changes made by the other bill. Unfortunately, since LB341 was not signed into law until after LB97 had already come up on Final Reading, there was no opportunity to do so last session. In cases where the differences between the two bills are not correlated as part of the normal legislative process, the Revisor of Statutes must make a determination of whether the amendments are reconcilable. Because the amendments, as passed, were determined to be not entirely reconcilable, the language in LB97, my bill, went into effect since it was the second of the two bills passed during the legislative session. LB681 amends 77-1807 to include the language that passed the Legislature in Senator Wightman's bill, LB341. The bill also makes a change in the land bank statutes to reflect other changes to the tax sale process that were contained in

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LB341 but were not incorporated into LB97. Making this small change will allow both of these bills that passed last session to go into full effect. Thank you for your time. And I'd be happy to answer any questions you may have. [LB681]

SENATOR HADLEY: Thank you, Senator Mello. Are there any questions for Senator Mello? Senator Schumacher. [LB681]

SENATOR SCHUMACHER: . Senator Mello, what are the changes? [LB681]

SENATOR MELLO: Well, the changes, more than anything else, if you want to look at the green copy...essentially, because the deadline under LB341 takes effect in January, 1, 2015, there are sections in the LB341 statute as it relates to the tax sale certificates that need to be incorporated into LB97. That is essentially the gist of the bill. Because my piece of legislation, LB97, came after LB341 and became law after LB341, we have to incorporate components of LB341 into LB97. And I could walk you through, item by item, there. It's essentially just incorporating LB341 components into LB97. And it's mainly due...purely based on the date, which...LB341 doesn't take effect until January 1, 2015. [LB681]

SENATOR SCHUMACHER: Thank you, Senator. [LB681]

SENATOR HADLEY: Any other questions? Senator Harr. [LB681]

SENATOR HARR: Thank you, Mr. Chairman. So is this the fault...it is not the fault of the E&R Chair or Vice Chair, then, just to be clear. (Laugh) [LB681]

SENATOR MELLO: No. This is...I've had this conversation with my staff and Senator Wightman. Arguably, this could, in some cases, this could have been a Revisor's bill that ultimately would have been just brought to the floor without a hearing. But they felt...they talked with Senator Wightman's office and my office, simply thinking it was better to bring the bill to the Revenue Committee. It wasn't the E&R Chair's fault; it wasn't the Vice Chair's fault. It was purely based on timing, of when LB341 came up ahead of LB97 last session. [LB681]

SENATOR HARR: Thank you. [LB681]

SENATOR HADLEY: I would hate to have to subpoena the E&R Chair, (laughter) to bring him in here to... [LB681]

SENATOR HARR: Yes. [LB681]

SENATOR \_\_\_\_\_: I'd be happy to. (Laughter) [LB681]

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SENATOR HADLEY: ...justify his existence... [LB681]

SENATOR HARR: Yeah. [LB681]

SENATOR HADLEY: ...here. But then he might appoint me Vice Chair, and I don't want that to happen. Any other questions? Thank you. Are you going to stick around? [LB681]

SENATOR MELLO: I'm going to waive closing. [LB681]

SENATOR HADLEY: You waive closing. Are there any proponents for LB681? [LB681]

DEANA WALOCHA: Good afternoon, Senator Hadley, members of the committee. My name is Deana Walocha, and I am here on behalf of U.S. Assets L.L.C. U.S. Assets is a company out of Omaha, Nebraska, and we purchase tax certificates here in the state of Nebraska and several other states. I am in-house counsel with the company, and I've been there for almost 13 years. And last session I did have the... [LB681]

SENATOR HADLEY: Would you spell... [LB681]

DEANA WALOCHA: Oh, I'm sorry. Deana is D-e-a-n-a; Walocha, W-a-l-o-c-h-a. And last session I did have the pleasure of working with Senator Mello and Senator Wightman's staff on LB341 and LB97, and we supported those bills at the time. And so we are now here in support of Senator Mello's bill to harmonize those sections, as he stated previously. [LB681]

SENATOR HADLEY: Okay, thank you. Senator Pirsch. [LB681]

SENATOR PIRSCH: Have you had an opportunity to look at the green copy, the bill? [LB681]

DEANA WALOCHA: Yes. [LB681]

SENATOR PIRSCH: There's a section on page 5, (2)(a), in line 3...well, (2)(b), "If a land bank gives an automatically accepted bid for real property pursuant to Section 19-5217, the land bank shall be the purchaser and no public or private auction shall be held under" the related sections then. So can you just tell me under...upon what circumstances, then, that's premised, that new language? [LB681]

DEANA WALOCHA: The Section 19-5217 lays out certain criteria that the delinquent tax properties have to meet in order for the land bank to make this automatic bid. And if they do that and...then no other purchasers at the tax sales can purchase it. They're just...they're...essentially, they're the automatic winner of the property, for lack of a

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better phrase. [LB681]

SENATOR PIRSCH: Was the underlying premise, about the land bank, that these are highly undesirable... [LB681]

DEANA WALOCHA: Right. [LB681]

SENATOR PIRSCH: ...properties that are not...so I guess I'm not sure, where it's saying that in this instance a land bank will take over a public or private auction, is that...do you, I mean, is that what it's saying, that there may be in this public or private demand for property such that you need to put in this language that says the land bank will take... [LB681]

DEANA WALOCHA: It's not the entire auction...it's just...it's on an individual basis. And as I understand it, there are also instances...and there...and there...I wish I had 19-5217 in front of me. But there are... [LB681]

SENATOR PIRSCH: Um-hum. [LB681]

DEANA WALOCHA: ...are circumstances in there where there would only be property that is...a decent property next to a not so decent property, but to do anything with them they'll need to put them together. And so the land bank wouldn't need ownership of both parcels in order to...to build up the area. [LB681]

SENATOR PIRSCH: Is the language of 19-5217, or whatever that passage is, restrictive enough that...obviously, if you've got eight to ten bad, we'll... [LB681]

DEANA WALOCHA: Um-hum. [LB681]

SENATOR PIRSCH: ...call them "bad," bad parcels that are not commercially desirable for any usage, and the land bank then has an allure of coming in and utilizing that, and...but you want to give leeway to allow for the automatic take by the land bank of some adjoining property? But is...in 19-5217, this is from last year... [LB681]

DEANA WALOCHA: Right. [LB681]

SENATOR PIRSCH: ...although this is new language here. Is there some sort of safeguard to make sure that it's not primarily commercially viable property that is the subject of these automatic "takes," so to speak, by the land bank? [LB681]

DEANA WALOCHA: Well, I can tell you, Senator, where we come from, because we are a private tax investor...and we worked very closely with Trevor and Senator Mello on this language, and we are very comfortable with it, that it is restrictive enough. Because

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when it first started, we didn't feel that it was. [LB681]

SENATOR PIRSCH: Okay. [LB681]

DEANA WALOCHA: And we did reach a compromise that we are very comfortable with. [LB681]

SENATOR PIRSCH: Okay. Thank you. [LB681]

DEANA WALOCHA: Um-hum. [LB681]

SENATOR HADLEY: Any other questions? Seeing none, thank you very much; we appreciate... [LB681]

DEANA WALOCHA: Thank you. [LB681]

SENATOR HADLEY: ...your coming down... [LB681]

DEANA WALOCHA: Sure. [LB681]

SENATOR HADLEY: ...and testifying. Further proponents. NACO is well represented. [LB681]

BETH BAZYN FERRELL: Thank you. Good afternoon, Chairman Hadley, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. We'd like to thank Senator Mello for introducing this bill. As he said, it correlates two bills from last year. NACO supported the introduction and the passage of LB341, and we would ask for your support of this bill so that we can harmonize all of the pieces of LB341 and LB97. I would be happy to answer questions. [LB681]

SENATOR HADLEY: Questions for Ms. Bazyn? Seeing none, thank you. Any further proponents? [LB681]

JOSEPH YOUNG: Good afternoon, Chairman Hadley and members of the Revenue Committee. For the record, my name is Joseph Young. I'm the...Y-o-u-n-g is how you spell that last name. I'm the director of public policy for the Greater Omaha Chamber, testifying in support of this bill. And I just wanted to make sure that it was in the record that we submitted a letter on this behalf and essentially clean up language that would reconcile two bills from last year, and--as you've heard--and we're in support. [LB681]

SENATOR HADLEY: Questions for Mr. Young? Thank you, Mr. Young... [LB681]

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JOSEPH YOUNG: Thank you. [LB681]

SENATOR HADLEY: ...we appreciate it. Next proponent. [LB681]

JACK CHELOHA: Good afternoon, Chairman Hadley and members of the Revenue Committee. My name is Jack, that's J-a-c-k; last name is Cheloha, C-h-e-l-o-h-a. I'm the lobbyist for the city of Omaha. I'm here to testify in support of LB681. I want to thank Senator Mello for introducing it. I wanted to let you know that LB97, which was the land bank bill passed last year, I think it went into effect roughly about October 1. I know our city, a city of the metropolitan class, is very interested in it. We're doing our due diligence. And so as we're looking to maybe implement one of these in our community, it would be great to have everything harmonized and in good shape if we decide to move forward. So for those reasons, I support it. Thank you. [LB681]

SENATOR HADLEY: Any questions for Mr. Cheloha? Seeing none, thank you, sir. [LB681]

JACK CHELOHA: Thank you. [LB681]

SENATOR HADLEY: Any other proponents? We'll now move to the opponents. Neutral testimony? Senator Mello waived closing. (See also Exhibit 1) With that, we will close the hearing on LB681, and we will start with LB639. And with that, I will turn the--LB739--turn the Chair over to Senator Schumacher. You're going to have to give me a little time to get up there because... [LB681 LB739]

SENATOR SCHUMACHER: Okay. We'll do that. [LB739]

SENATOR HADLEY: ...I don't move real quick. [LB739]

SENATOR SCHUMACHER: Welcome to the Revenue Committee, Senator Hadley. [LB739]

SENATOR HADLEY: My name is Galen Hadley, G-a-l-e-n H-a-d-l-e-y. I represent the 37th District. I...it's always a pleasure to be in front of probably the premier legislative committee of all the standing committees. [LB739]

SENATOR SCHUMACHER: "Au-GUST." [LB739]

SENATOR HADLEY: "Au-gust," July, September, whatever it is, it is outstanding. LB739 is basically...amends the statute to update references to the Internal Revenue Code. It is one that we do every year. With that, I would answer any questions. And Ms. Conroy will be up also to talk about it. [LB739]

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SENATOR SCHUMACHER: Any questions for Senator Hadley? . [LB739]

SENATOR HADLEY: Thank you. [LB739]

SENATOR SCHUMACHER: Proponents. Any proponents of LB739? Going once. Going twice. Opponents of LB739. Seeing none, neutral. [LB739]

KIM CONROY: I'm back again. I hadn't planned on testifying on this, but I certainly can in a neutral capacity. [LB739]

SENATOR SCHUMACHER: Welcome back. [LB739]

KIM CONROY: Thank you. LB739 is an annual (inaudible) that references the Internal Revenue Code. [LB739]

SENATOR SCHUMACHER: For the record, would you... [LB739]

KIM CONROY: Yes. [LB739]

SENATOR SCHUMACHER: ...put your name in the record. [LB739]

KIM CONROY: My name is Kim Conroy, C-o-n-r-o-y. Thank you, Senator. It updates the federal code as it exists on the effective date of the bill. This bill doesn't really impact the Department of Revenue. This bill...it changes the Internal Revenue Code references for other areas outside of the tax code, because we automatically couple on the tax code. So you don't have to have this legislation for the Nebraska Department of Revenue or our taxes or incentive programs that we administer. The reason it's important is there's a lot of other references...I think Garner counted for me over 15,000. I mean, a lot of those are in the tax code, that the college savings plan, a lot of other things reference pieces of the Internal Revenue Code. So that's what this bill does; it just brings it up to date. [LB739]

SENATOR SCHUMACHER: Any questions for Commissioner Conroy? Seeing none, thank you for your testimony. Any other folks willing or wanting to testify in the neutral capacity on LB739? Seeing none, Senator Hadley, you wish to close? Senator Hadley waives. And that closes the hearing on LB739. Time now to open the hearing on LB851. Senator Hadley. [LB739]

SENATOR HADLEY: LB851. Thank you. My name is Galen Hadley, G-a-l-e-n H-a-d-l-e-y. I represent the 37th District. And this is basically...it's the technical corrections, cleanup bill with some substantive areas. And again we will have the Department of Revenue that will talk about the substantive areas. But I want to talk about one that kind of caught my eye when we sat and met with them. And that has to

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do with the registration of vehicles. It's interesting, in Montana they have a cottage industry now on registering vehicles in Montana. And I pulled up one of the Web sites. It is Montana RV Registration, Deer Creek Corporate Services. This company says that you can register your vehicles in Montana and pay no sales tax, undergo no inspections, keep your driver's license, pay no personal property tax; no lawyer needed. You form a Montana L.L.C. and register your RVs, cars and trucks, boats and trailers, motorcycles and ATVs, and aircraft. And I found other items. And what they do is, basically, charge you about \$1,000 to do this. And you set up a shell L.L.C. in Montana whose only purpose in life is to register your vehicles there. And why would you want to register your vehicles there? Because, as I said, you do not pay any sales tax, use tax. To register your vehicle, it is very expensive. It's \$282.50 each of the first two years, and, finally, when it gets down to eight years, it's \$97.50. Now, when you...you take a \$300,000 RV and you register that in Omaha, you're going to pay \$21,000 in sales tax. I would guess that you're going to pay a significant amount to register it. And I think people are abusing...or at least have the potential. I looked at the disclaimer by all the Montana attorneys that are doing this, and they're very specifically saying that you are in compliance with Montana law. They never say that you're in compliance with the state of Nebraska law. And they will make no assurances as to what you're doing in the state of Nebraska, whether it's legal or not. There is a difference between tax avoidance and tax evasion. Tax avoidance is, you can be Senator Pirsch and have another child and get another deduction; that's...you know, you're avoiding taxes legally. Evasion is where you're, basically, breaking the law. And I think this is a loophole we need to change. In fact, this one company says they will be happy to also do it for Wyoming and New Mexico. They will handle...if you want to register items in Wyoming and New Mexico, they will also handle it for you. I think this is just ridiculous that people go out of their way to cheat the state of Nebraska and the citizens of Nebraska for this type of thing. And it is interesting that a lot of states are doing this now and they're actually setting up hot lines. You know, Senator Chambers talked a lot about snitches in Omaha, right? Well, some states have set up hot lines where you can snitch on your neighbor if they have an RV sitting there that has Montana plates on it; you can call them in. Or if you have a brand-new Lexus sitting there and it's got Montana plates. So states are taking this very seriously. And some states have really gone out of their way to prosecute citizens that are doing this. So I just wanted to bring that...this is part of this bill. And this just did kind of upset me, that people would do that to avoid paying taxes. The rest of it is basically cleanup to harmonize some items, and I would let the Revenue Department go into detail, because it'll be kind of redundant for me to go through it and then have them turn around and go through it again. But I would be happy to answer any questions. [LB851]

SENATOR SCHUMACHER: Any questions for Senator Hadley? [LB851]

SENATOR HADLEY: I don't see anybody on the committee squirming, so I assume no one has a problem with Montana plates on their... [LB851]

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SENATOR HANSEN: I was just interested if you have that telephone number I could call. (Laughter) [LB851]

SENATOR SCHUMACHER: Does this bill address that problem? [LB851]

SENATOR HADLEY: Yes, it does. This bill addresses that problem. And it becomes a way that Nebraska can put some teeth into our laws. Thank you. [LB851]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Proponents of LB851. Welcome again, Commissioner Conroy. [LB851]

KIM CONROY: (Exhibits 2 and 3) Thank you. Chairman Hadley, thank you for introducing the bill on behalf of the department, and members of the Revenue Committee. My name is Kim Conroy, C-o-n-r-o-y. And I'm sorry about the cough, I hope I can stop it. So I appear before you today as a proponent of LB851. But after Senator Hadley's discussion on at least the RV portion, I don't know if I'm going to have to say much, because he has covered it so well. And one thing I forgot, with the confirmation--I guess I'm still not used to the fact--I'm a grandmother of two, so I don't know how I forgot those two grandbabies, but I just wanted to add that as part of my family: three kids, two "grandkids." I'm just not used to saying that yet. And so LB851. The first thing it does...and I'll go into detail on all of these a bit more: it clarifies the statute of limitations for filing claims for refundable tax credits; it changes the time period for filing assessments against non-filers or underreporters of sales and use tax; it changes just certain tax incentive reporting requirements; it allows the Nebraska Department of Revenue to share information with the Department of Insurance for purposes of the New Markets Job Growth Investment Act; it limits sales tax avoidance by certain L.L.C.s, owning the RVs that Senator Hadley referred to; clarifies the definition of an ethanol facility; and requires cities to notify the Nebraska Department of Revenue of new Nebraska Advantage Transformational Tourism and Redevelopment Act projects, quote. Okay. I'm going to first talk about what we're going to do to clarify the statute of limitations for refundable credits. First, LB851 establishes a statute of limitations for purposes of claiming refundable tax credits. Today, a taxpayer may file for a refund on an overpayment of income tax within three years from the time the return was filed or two years from the time the tax was paid, whichever period expires later. On July 24 of the last year, 2013, the Lancaster County District Court held that the statute of limitations for filing refund claims for overpayments did not apply to refundable credits claimed under the Nebraska Advantage Research and Development Act. In other words, a taxpayer can now effectively file a refund claim for a refundable credit under the research and development act at any time; there's no statute of limitations. So LB851 would limit refund claims for all refundable tax credits to a three-year period measured from the due date of the return for the year in which the refundable credit was allowable. The second thing that LB851 does is that it allows the department to issue an

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assessment against taxpayers within six years if the taxpayer fails to file a sales or use tax return, files a fraudulent sales or use tax return, or significantly underreports the amount of sales or use tax due on their returns. Today, we generally issue an assessment against a taxpayer within three years after the return is filed, including assessments that are fraudulently filed or if they're significantly underreported. We only have a three-year statute of limitations. However, the department can issue, currently, an assessment against non-filers within five years after a return is filed. So LB851 puts all of these different types of assessments on the same footing by allowing the department to issue an assessment against taxpayers within six years for all these three situations. This six-year period also more closely matches what we currently have for income tax, which allows the department to issue an assessment within six years if a taxpayer significantly underreports income on their income tax return. The third thing that LB851 does: corrects a drafting error; we, too, have a clarification on this from our LB34 last year. If you remember, LB34 eliminated two reporting requirements in the Nebraska Advantage Act that were determined to be unnecessary. Those were: the total number of employees employed in the state on the last day of the calendar quarter prior to their application date and the total number of employees employed in the state on subsequent reporting dates, for applications filed on or after September 6, 2013. However, this change should have applied to all applications, not just ones after that date. And fourth, on the new market tax credit information sharing. LB851 allows the Department of Revenue to share information...that's what we want to, to share information with the Department of Insurance. The New Markets Job Growth Investment Act authorized nonrefundable, nontransferable tax credits for investments in a qualified community development entity. The credits can be used against the income tax, the premium tax that's imposed on insurance companies, or the franchise tax imposed on financial institutions, so those three different ways. However, the New Markets Job Growth Investment Act did not allow the Department of Revenue to share information with the Department of Insurance regarding the use of the credits against the income or franchise tax versus using them against their insurance premium tax. So to effectively monitor the appropriate use of the credits, and not it happening twice, this would allow the Department of Revenue to share information with the Department of Insurance regarding the use of those credits. The fifth thing that LB851 does: again, it's on the Nebraska Advantage Transformational Tourism and Redevelopment Act. It was passed back in 2010, LB1018, and it allows a city or village to turn back local sales taxes for approved redevelopment or tourism projects. I think you're familiar with the Gretna outlet mall, and that's one that we know of, just as an example. But beginning July 1, 2015, the law requires the department to contract with an independent auditor to evaluate all of these projects that have been approved under the act. Costs are paid by the developer for these audits. However, the department is not involved in these projects at all. And there's...and the projects are not currently required to be notified...the department is not currently required to be notified by a city that the projects even exist. So LB851 just simply would require a city to give notification to the department if it's approved a project under the act so we know who to go out and

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contract an audit. The sixth thing the bill does is another clarification. LB851 defines an ethanol facility as a plant that produces agricultural ethyl alcohol, and it removes a reference to the Nebraska Ethanol Production Incentive Program, better known to all of us, I think, as EPIC. EPIC sunset on December 31, 2012, so we need to get rid of that cross-reference to EPIC on the definition. And now to Senator Hadley's favorite, on recreational vehicles. LB851 creates a rebuttable presumption that a resident operator of a recreational vehicle, or I'll refer to it as an RV, that is registered in another state but it's...and it's owned, maybe, by a limited liability company, typically, or a partnership, corporation, or other business entity...is the actual owner of the recreational vehicle and liable for all applicable taxes and fees that are due, and there's also a penalty for failing to pay these taxes and dues. As a background, a number of RVs have been purchased by Montana-based L.L.C.s over the last several years to avoid payment of sales taxes and registration fees in Nebraska and other states; we're not the only state this has impacted. Although that RV is kept in Nebraska, it's operated by a Nebraska resident, right now under a current law it can be claimed that no Nebraska taxes or registration fees are ever owed because it's owned by a Montana L.L.C. The state of Montana issues a certificate of title to the RV, and the vehicle bears Montana license plates also. However, if we're going to talk about the L.L.C. that owns that RV, they typically only have one or two members, probably, say, a husband and wife, that are Nebraska residents; they don't have any employees; they don't have any physical presence in Montana; and they don't have any legitimate business activity or purpose. So that rebuttable presumption under LB851 says that the resident operator of the vehicle is the actual owner of the vehicle and requires the presumed owner to pay those taxes and fees. The Department of Revenue and the Department of Motor Vehicles will make this determination by evaluating a series of facts to determine that the ownership structure of the RV is in essence a sham. We look to see, is it a Nebraska resident that was the initial purchaser; is the RV stored and operated in Nebraska; is the Nebraska resident the sole member of that L.L.C.; is that Nebraska resident insured to operate the RV here in Nebraska. Once the Department of Revenue and the Department of Motor Vehicles goes through the series of facts, that this is a sham, we'll issue an assessment in accordance with current law. And a taxpayer has every right to appeal the assessment and prove that they don't owe the applicable taxes and fees. And as Senator Hadley noted, there have been several other states that have enacted laws. Iowa here just recently, as our neighbor, did that, and you may have seen some articles in the Omaha World-Herald about Iowa doing that. This concludes my formal testimony, and I certainly will take any questions. On the handouts that I gave to you, I...I...they have the L.L.C. Website, another one that we found that advertises similar to what Senator Hadley found, in terms of the fees that it would take to register the vehicle in Montana and not pay any sales tax. [LB851]

SENATOR SCHUMACHER: Senator Hansen. [LB851]

SENATOR HANSEN: Thank you. I have one question about...what if I buy a ranch in

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Montana and form an L.L.C. or anything else, could I register that vehicle... [LB851]

KIM CONROY: That's a... [LB851]

SENATOR HANSEN: ...in Montana? [LB851]

KIM CONROY: Senator, that's a...that's a good question. That's one of the items that we'll look at. That would be one of those indicia that you have a business purpose; you have an actual, ongoing, viable business in Montana. [LB851]

SENATOR HANSEN: But if I buy an RV or a pickup...and the term that our insurance uses is "garaging" in what county. [LB851]

KIM CONROY: Um-hum. [LB851]

SENATOR HANSEN: Does this...does this attach it...that, I mean, is that a Department of Revenue term: the "garaging" in a state or "garaging"... [LB851]

KIM CONROY: It's one... [LB851]

SENATOR HANSEN: ...in a certain county? [LB851]

KIM CONROY: Senator, it's one of the indicia we look at. Because if you're garaging it, that's probably...it's...it's... [LB851]

SENATOR HANSEN: That's where... [LB851]

KIM CONROY: ...here in Nebraska, you're living here in Nebraska, you probably have insurance for that address here in Nebraska. So those are all things that we would look at. There's nothing that's definitive, but that's why there's indicia that you're not really running a business, your L.L.C. is not a business. And then we look to see what you're doing here in Nebraska. Those two things. [LB851]

SENATOR HANSEN: I know counties are a little bit particular on...if you live in one county and register in another, you can save money just within the state of Nebraska. And county officials don't like that, especially...it's where the vehicle is garaged... [LB851]

KIM CONROY: Right. And...and... [LB851]

SENATOR HANSEN: ...is what they keep bringing up. [LB851]

KIM CONROY: Well, Senator, that's...it's more a question for Department of Motor

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Vehicles. [LB851]

SENATOR HANSEN: Okay. [LB851]

KIM CONROY: I mean, they...their statutes are the ones that set out the rules... [LB851]

SENATOR HANSEN: But you're going to work with them, so... [LB851]

KIM CONROY: Yes, we'll be working with them on this. [LB851]

SENATOR HANSEN: That's good. Thank you. [LB851]

KIM CONROY: Um-hum. [LB851]

SENATOR SCHUMACHER: Other questions? I've just got a couple of them. With reference to the Nebraska Advantage portion of the bill, if a city fails to notify the department, what's the consequences; what happens? [LB851]

KIM CONROY: Senator, I think you mean the Nebraska Transformational and Tourism Redevelopment Act... [LB851]

SENATOR SCHUMACHER: Right. [LB851]

KIM CONROY: ...not the Nebraska Advantage program. It means, if we didn't know, then that audit is not done, so I don't know exactly...that raises a good point. We wouldn't be doing the audit on a timely basis. And the act has some requirements that have to be met, that the activity that was happening is there just because of the new activity that was brought in. We can certainly work with the committee on a outcome if we are not notified. [LB851]

SENATOR SCHUMACHER: Another question is, with reference to the Montana L.L.C. or any state L.L.C. that may be operating here, wouldn't it be a more direct way to deal with that problem by saying that an out-of-state corporation that has a vehicular presence in the state this way is breaking a criminal provision or is unable to operate that vehicle on the roads without some type of registration here? [LB851]

KIM CONROY: Well, Senator, this...this area of law, with vehicles, is extremely complicated. And we've looked at what other states have done. That's why we came up with a rebuttable presumption, because there certainly are valid reasons for some people. Just because you see a Montana RV in a parking lot doesn't necessarily mean that they're doing something that they shouldn't be. So that's why we set up these series of indicia to look at, instead of just having one, that an out-of-state corporation, as you're suggesting, would have to pay sales tax. [LB851]

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SENATOR SCHUMACHER: And, finally, with reference to the refundable credits, that's money that the state owes to somebody that isn't an offset against their existing tax but is...the state has to pay. Is that correct? [LB851]

KIM CONROY: Yes, that's correct. [LB851]

SENATOR SCHUMACHER: Okay. How does that differ from extending the credit of the state, a debt of the state? And what I'm referring to is the distinction that the court put forward in the Hollstein case, if you're at all familiar with that one. [LB851]

KIM CONROY: No, I am not, Senator. [LB851]

SENATOR SCHUMACHER: Okay. That was one we just went around in Banking Committee yesterday, about the distinction between a credit of the state and an extension of credit of the state. And it occurred to me in the course of that discussion that a refundable credit is actually a debt of the state to the person claiming the credit, rather than a credit against tax, because there is no tax. [LB851]

KIM CONROY: That's correct. I can't comment, though... [LB851]

SENATOR SCHUMACHER: Okay. [LB851]

KIM CONROY: ...on... [LB851]

SENATOR SCHUMACHER: All right. [LB851]

KIM CONROY: ...on any constitutional concerns on that. I do know we just...we have a lot of refundable credits on the individual income tax side even, so... [LB851]

SENATOR SCHUMACHER: That Hollstein case, when I read it, it certainly caused some thoughts as to how permissible refundable credits are under our constitution. Any other questions? Thank you very much for your testimony. [LB851]

KIM CONROY: Um-hum. Thank you, everyone. [LB851]

SENATOR SCHUMACHER: Any other proponents of LB851? Any opponents of LB851? Any people in the neutral position? Anybody that just wants to talk about something? Senator Hadley, you're welcome to close. Senator Hadley waives. And that closes the hearing on LB851. [LB851]