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Revenue Committee  
February 22, 2012

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[LB753 LB798 LB888 LB1114]

The Committee on Revenue met at 1:30 p.m. on Wednesday, February 22, 2012, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB753, LB798, LB888, and LB1114. Senators present: Abbie Cornett, Chairperson; LeRoy Louden, Vice Chairperson; Greg Adams; Lydia Brasch; Deb Fischer; Galen Hadley; Pete Pirsch; and Paul Schumacher. Senators absent: None. [LB753]

SENATOR CORNETT: (Recorder malfunction) ...Louden from Ellsworth will be joining us, then Senator Deb Fischer from Valentine and Senator Greg Adams from York. On my far right will be Senator Schumacher from Columbus, Senator Lydia Brasch from Bancroft, Senator Pete Pirsch from Omaha, and Senator Galen Hadley from Kearney. The research analyst today is Stephen Moore on my right, and committee clerk is Matt Rathje on the far left. The pages today are Michael Killingsworth and Matt McNally. Before we begin the hearing, I would ask everyone to please turn your cell phone to either "off" or "vibrate/silent," just so we don't hear it, because it interferes with the record. There are sign-in sheets for all testifiers by both back doors. If you are planning on testifying, you need to fill out and complete a testifier's sheet prior to coming up to testify. When you come up, please hand the sheet to committee clerk. There are also clipboards by the back of the room if you wish to indicate either your support or opposition to a bill. This will be included in the official record. We will follow the agenda posted on the door today. The introducer of a bill, followed by proponents, opponents, and neutral testimony; then only the introducer will be allowed closing remarks. As you begin your testimony, please state and spell your name for the record. If you have handouts, please bring 10 copies for committee and staff. If you do not have copies, we will make them for you. When you come up, please hand any copies you have to the pages for distribution. With that, Senator Avery, you are recognized. [LB753]

SENATOR AVERY: Thank you, Madam Chair. For the record, my name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in south-central Lincoln. LB753 amends Chapter 77 of the Nebraska Tax Code in order to lift the sales tax exemption on soft drinks. I might as well tell you--you probably already know this--that this proposal has been systematically misunderstood and mischaracterized as a new special tax on sugar beverages. It is not that at all. Let me reframe the issue and see what you think of this. Let's assume that we currently collect the sales tax on sugar beverages and I am here asking the committee to impose a special sales tax exception on these beverages; suppose we already taxed it and I'm asking you to exempt it. I suspect that the reaction would be, no, this is ridiculous, and probably I would even hear that this would perhaps even encourage kids to drink more sugar beverages and they would have an obesity problem. So what I am hoping to do with LB753 is bring Nebraska into line with 35 other states that do not recognize soft drinks as food. These 35 states presently impose a sales tax on soft drinks. If you go to page 5 of the green copy, you'll see there, starting

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with line 7, it talks about food and food ingredients, meaning substances--whether in liquid, concentrated, solid or frozen, dried or dehydrated form--that are sold for the ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients does not include alcoholic beverages, does not include dietary supplements or tobacco. All I'm asking is to include here soft drinks. Because soft drinks have no nutritional value, they should not be classified as food. The soft drink definition follows the definition in the WIC legislation--that's Women, Infants, and Children. It's defined as beverages that use artificial or natural sweeteners. It doesn't include items that contain milk or milk products; soy, rice, or similar milk substitutes; or 100 percent vegetable or fruit juice. It's anticipated that Nebraska could collect around \$11 million in sales tax revenue during the first year if we lift this exemption. According to the Beverage Marketing Corporation, the average American drinks around 45 gallons of soft drinks each year. I might actually drink more than that, but that's another issue. That's a lot of sugar. And a growing number of people are drinking these Monster Energy drinks, Mountain Dew, which has heavy concentration of sugar as well as heavy concentration of caffeine; and a growing number of the consumers of these beverages are children. I heard from one person just today, said that she's been addicted to soda beverages since she was 6 years old. And she quit drinking them and started drinking water and did some things dietarily, too--lost 130 pounds. We know that soft drinks are not healthful options for kids. Many bottled sodas pack enough calories and sugar to send your second-grader into orbit after a few drinks. We know that man-made, engineered high-fructose corn syrup is linked to childhood hyperactivity and obesity, and artificial sweeteners are linked to type 2 diabetes, which are showing up in alarming rates in our youth. You're going to hear from a number of healthcare experts who are here today who will continue to tell you that child obesity is empirically linked to high blood pressure, to high cholesterol, heart problems, stroke, cancers, type 2 diabetes. It is a growing problem and it is likely to get worse, and we're not positioned well in this state to combat this health issue, and it of course leads to a lot of problems later on down the road that the state will be bearing the cost of. We know that we are in, I think, an epidemic. It is estimated that states spend about \$50 million per 100 residents per year in associated healthcare costs. For Lincoln...or, I mean, for the state of Nebraska, that would be about \$900 million. So I don't buy the idea that this is an inappropriate, intrusive proposal, and it is certainly not a communist proposal, by the way. You ought to see some of my e-mail; it's just stunning. I did bring some, but I won't bore you with it. What LB753 does is it closes a loophole, and it does attempt to deter children from purchasing and consuming high-sugared beverages and provides some funding for a statewide database and an ongoing campaign designed to educate children and to promote good health habits in our schools and in child-care facilities. Under LB753, the bill directs the Department of Revenue to collect the soft drink sales tax and to transfer 90 percent to the Department of Education Obesity Prevention Fund. The first \$100,000 would be used to establish a statewide database to monitor student obesity and fitness. The remaining funds would be distributed to school districts for the assessment of student health, weight, and fitness and to provide other evidence-based programs to

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target obesity and improve fitness. Twenty percent of this 90 percent would be distributed in equal amounts to the schools; the remaining 80 percent would be distributed proportionally based on school daily membership. The remaining 10 percent would go to the Department of Health and Human Services into an obesity prevention fund that would be distributed to local health departments to support programs to improve and promote good health habits, eating, and physical activity for children in child-care settings. I think you will hear more about the success they're having in the Kearney Public Schools with database tracking and monitoring of children's health. They have identified development indicators and are monitoring trends in their own district, and it is an enormously successful program. Already, since starting the program, they've experienced I believe it is a 13 percent reduction in childhood obesity. That's going on here in Nebraska, and I hope that we have somebody here to talk about it. That's remarkable, and it shows what can be done if we set our minds to tackling the issue. The state of Nebraska right now, in our schools we...the best evidence we have is that about one-third of all of our students are suffering from overweight or obesity conditions. That's nearly 140,000 of the kids in Nebraska. I visited this past summer an elementary school in my own district. I had lunch with the kids. I picked out my 1 percent milk and I ate chicken patties on the plastic tray, and I had a conversation with the school nutritionist--or dietitian. She said, we have in this school 36 percent obesity, 36 percent. Now, that was a school in a middle-income neighborhood, tree-lined streets, parks, bike trails. It was not an impoverished neighborhood, where you often see problems like this. I believe it is our responsibility to set good policies to change the trajectory that we see in childhood obesity. I understand that some parents find this bill offensive and intrusive. I know that the takeaway message can be construed to say that I am anti-parental-control and a promoter of intrusive, "nanny-state" policies. This committee and this Legislature sets tax policy. I...my own guess is that nobody expected or intended that soda pop would be exempted from the sales tax back when we lifted the sales tax on food. We still tax beverages in vending machines 5.5 percent, we still tax fountain beverages. It seems to me that that makes sense and it doesn't make any sense for us to call soda beverages food. I realize that our fight against childhood obesity is much larger than slowing the consumption of sugared beverages. I know this is not going to fix the problem, but we have to start somewhere. We have to acknowledge that we have a serious and growing epidemic on our hands, and if we don't stop somewhere then we'll never tackle this issue. This bill, then, is about tax policy and the effect tax policy has on behavior and the effect that tax policy can have on health issues. It's about closing that loophole that should never have existed in the first place on an item that never had any nutritional value and never will. The exemptions should only exist...and we do have good exemptions and reasons for it. Food and medicine are legitimate items to exempt, but when we make a mistake and include something like sugared beverages, we ought to admit that mistake and end it. We need that statewide database. We need that badly, because when we get that it will provide our schools with comprehensive data to track the physical development of our children, provide us with a fact-based understanding of where we are failing our kids

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when it comes to healthful lifestyles and healthful habits, and perhaps we can do something to correct it. I'm going to stop there and let the experts behind me do a better job than I could do. Thank you. [LB753]

SENATOR CORNETT: Questions? [LB753]

SENATOR AVERY: That's good, because I have to go across the hall. I'm second over there. [LB753]

SENATOR CORNETT: Are you waiving closing? [LB753]

SENATOR AVERY: I...yes, I am. [LB753]

SENATOR CORNETT: Okay. [LB753]

\_\_\_\_\_: How do you...Bill, how do you know it? [LB753]

SENATOR CORNETT: Ma'am, shh. [LB753]

\_\_\_\_\_: The pop, how does he know it's a problem (inaudible)...? [LB753]

SENATOR CORNETT: Thank you. [LB753]

SENATOR AVERY: Thank you. [LB753]

SENATOR CORNETT: With that, we will have the first proponent. [LB753]

MICHELLE WELCH: (Exhibit 1) My name is Michelle Welch, M-i-c-h-e-l-l-e W-e-l-c-h. I'm registered dietitian and wellness facilitator in the Lincoln Public School District. In my practice over the past 20 years, I've worked with people of every age and stage of life, from infancy to elderly, birth to hospice, helping people make the most of their health through fine-tuning their everyday choices. I've had kindergartners in my office already suffering high blood pressure due to extreme weight issues. I've worked with truckers and toddlers, grandmas, bank executives, and blue-collar workers. What we know as a registered dietitian is that tempting choices are everywhere: to sit instead of stand, to supersize our lifestyles. We know that roughly 20 percent of our calories each day are taken in liquid form. From lattes to liquor, soft drinks to sweet tea, drinks do matter. In fact, the average American is only drinking 23.5 gallons of milk per year, but, as you heard Senator Avery, they're drinking tremendously more than that in soft drinks. Actually, they are drinking about an average of one and a half cans per day. Bottom line, drinks do play a major role in the future health of our state. This year, my role began as Lincoln Public Schools wellness facilitator. It is currently funded by grants and private donations. I coordinate health innovations and initiatives over 36,000 students

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and their families, as well as over 7,000 staff members at 55 schools. I don't seem to have a lot of free time. Monthly, our school sites come together and share best practices that are taken back and replicated to help more students hardwire better habits into their daily lives. These best practices are also being shared with schools from across the region, and the public is welcome to learn more about what we're doing through our Web page at [lps.org/wellness](http://lps.org/wellness). For example, in our very first district-wide health challenge, over 5,000 students completed the challenge and logged just under 62,000 hours of physical activity. Over 2,600 students reported that they recruited friends and family members off the couch to be active with them; our efforts are reaching outside of school walls. We are exploring health data trending in LPS and finding that some of our school locations are reversing national obesity trends. Efforts to explore these trends, along with Kearney, may help to hold the key, meeting our goals in reducing obesity and improving fitness of our students. Moreover, physical fitness of our students has been significantly linked to success in both reading and math testing. Our state needs to invest in our future by supporting legislation which brings activity, nutrition, and wellness resources to school districts across Nebraska. Depending on the generosity of private donors writing checks is a short-term Band-Aid fix. The very real issue of our state's future health matters is at hand. Let's face it, prevention is far cheaper, from every angle of disease management. I urge you to strongly consider passing legislation which will support sustained earmarked funding, building school wellness efforts across the state. Investing now will support building a healthier future for our children, our students, and our soon-to-be work force. Thank you. [LB753]

SENATOR CORNETT: Senator Schumacher, then Senator Pirsch. And I forgot to make an announcement: We will be working on the lights system. [LB753]

MICHELLE WELCH: Oh, okay. [LB753]

SENATOR CORNETT: Senator Schumacher. [LB753]

SENATOR SCHUMACHER: Thank you, Senator Cornett. Thank you for your testimony. [LB753]

MICHELLE WELCH: Um-hum. [LB753]

SENATOR SCHUMACHER: I guess I understand that this bill covers both artificially and naturally sweetened soda pop. [LB753]

MICHELLE WELCH: Correct. [LB753]

SENATOR SCHUMACHER: How does artificially sweetened soda pop make you fat? [LB753]

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MICHELLE WELCH: You know, really, the research doesn't support that piece of it. But because it doesn't provide any nutritive value, that's why I think it has been classified within that, and Senator Avery can address that further. [LB753]

SENATOR SCHUMACHER: Water doesn't provide nutrient value. [LB753]

MICHELLE WELCH: True. [LB753]

SENATOR SCHUMACHER: Should we tax it? [LB753]

MICHELLE WELCH: I would not say that. [LB753]

SENATOR SCHUMACHER: Now, just in a little bit of a follow-up there, right now schools have got the authority to take the pop machine out and control... [LB753]

MICHELLE WELCH: Correct. [LB753]

SENATOR SCHUMACHER: And so what we're dealing with, basically--if we're going to address sugared soda pop making you fat--is sugared soda pop that is gotten from a grocery store or a gas station, someplace like that, and you buy it for whatever, \$1 a can or something like that. [LB753]

MICHELLE WELCH: Right. [LB753]

SENATOR SCHUMACHER: Would an extra nickel a can make a kid any difference? [LB753]

MICHELLE WELCH: Well, you know, really, the difference that it will make is that it will provide...I really...I don't know if it will make a difference in the purchasing, but it can make a tremendous difference in providing resources to help look at health overall. Right now, there's no support for wellness dollars. It... [LB753]

SENATOR SCHUMACHER: So, really, you're looking at this as a revenue matter rather than a health matter. [LB753]

MICHELLE WELCH: From my personal status as a person that's funded by people that are writing checks and that there's no dollars to fund any wellness within the entire state related to this, that is just...my personal take on this is that I see it as an opportunity to be able to give more schools the opportunity to be able to help their children be healthier. [LB753]

SENATOR SCHUMACHER: Okay, so you're just looking for money rather than looking to ban soda pop. [LB753]

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MICHELLE WELCH: I don't think it's about banning soda pop, I think it's about providing an opportunity to both financially disincentivize folks from making that choice, but also...it's not as though it's a \$1 tax per can, but it will actually serve both purposes. [LB753]

SENATOR SCHUMACHER: Thank you. [LB753]

SENATOR CORNETT: Senator Pirsch. [LB753]

SENATOR PIRSCH: Yeah, and I appreciate your coming down here today. [LB753]

MICHELLE WELCH: Thank you. [LB753]

SENATOR PIRSCH: And maybe just a follow-up question with respect to giving us an understanding of, you know, obviously obesity in kids is a problem. [LB753]

MICHELLE WELCH: Absolutely. [LB753]

SENATOR PIRSCH: There's a number of different ways of solving that problem. But amongst the, you know, related problems is that kids are making poor choices at school and pushing the pop instead of the water, that kind of thing. [LB753]

MICHELLE WELCH: Exactly. [LB753]

SENATOR PIRSCH: Why haven't more school districts removed the poor-nutrition choices or offered a greater selection than in...and is that the appropriate level that should be looking at nutritional type of issues such as this, as opposed to the state, you know, mandating everywhere, you know, coming up with our findings and determining that...you know, a statewide decree. So if you want to address that... [LB753]

MICHELLE WELCH: Right. There are a lot of policies that are having impact. What we really see is that it's almost more of an internal movement within the schools and within the school systems to be able to look out for their children that they're charged with having breakfast, lunch, and in some cases supper for throughout the day--as well as snacks--and so schools play a huge part in what's happening for kids and nutrition. But what we don't have as much impact on--although we're trying to by doing initiatives that also go home--is we're really trying to get so that families understand what are better choices, because really, honestly, every time I would go out into the community, you find people that really don't necessarily recognize that drinks have calories. And so helping people to recognize that is a piece of it, but not only in the schools but also in the community it can have a bigger impact. [LB753]

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SENATOR PIRSCH: But how does it lie right now in schools? I mean, are...what...do you have an idea per se? [LB753]

MICHELLE WELCH: Right. [LB753]

SENATOR PIRSCH: Do most schools allow sodas in their...I mean, do they have vending machines with sodas? [LB753]

MICHELLE WELCH: I can speak to what we're seeing through...Alliance for a Healthier Generation is more of a national program, and they have seen an 80 percent reduction in calories from sugar-sweetened beverages in schools. What I can tell you for Lincoln Public Schools is it's strongly encouraged for schools to have low- or no-calorie beverages in their vending. [LB753]

SENATOR PIRSCH: Hmm. [LB753]

MICHELLE WELCH: It's not currently a mandate, but, once again, I started in July. [LB753]

SENATOR PIRSCH: Um-hum. [LB753]

MICHELLE WELCH: So what we're doing is looking at what are the schools' practices currently and continuing to move those things forward, but there are lots of opportunities for us to keep improving that within the school environment. [LB753]

SENATOR PIRSCH: Um-hum. It's not clear what that percentage is now. It could be a majority of Lincoln Public Schools do have the choice of Coca-Cola or the, you know, full-sugared or whatnot drinks within their schools. [LB753]

MICHELLE WELCH: At this point, I can't say 100 percent of the schools have no sugar-sweetened soft drinks, but what I can tell you from my wellness interactions with the 55 schools is a majority of them do not have those drinks available; and if they have drinks, they have more like the Propels that maybe have 30 calories. [LB753]

SENATOR PIRSCH: Okay, thank you. [LB753]

MICHELLE WELCH: Um-hum. [LB753]

SENATOR CORNETT: Senator Louden. Oh, I'm sorry. Senator Hadley, then Senator Louden. [LB753]

SENATOR HADLEY: Thank you, Ms. Welch. I guess just a follow-up. So Lincoln Public Schools does not have a policy that bans sugared soft drinks in their schools, is that

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correct? [LB753]

MICHELLE WELCH: Correct, it is not banned at this time. [LB753]

SENATOR HADLEY: I guess I find that strange, that people are coming in saying this is bad and our public schools haven't banned them. [LB753]

MICHELLE WELCH: Yeah. [LB753]

SENATOR HADLEY: Is that an inconsistency? [LB753]

MICHELLE WELCH: Well, you know, once again, you think about what's happened in schools for a long time. They have actually utilized soft drinks as a major form of funding for a lot of years, and so it's been a step-wise journey to be able to get schools to that point. But right now, once again, I started in, like, July 25th, and so previous to this they didn't have any funds to support anyone looking at the wellness and helping to coordinate this effort. And that's one piece that we've been able to look at, is what are the practices happening in our schools so we can move forward district-wide encouragement. [LB753]

SENATOR HADLEY: I guess I just find it inconsistent. [LB753]

MICHELLE WELCH: I know. It's amazing what still needs to be done. [LB753]

SENATOR HADLEY: And another question: Could we use the same argument for the state? Because this has...we're going to now tax people, right? That I, you know, this is a tax increase... [LB753]

MICHELLE WELCH: Well, it's taking it off an exemption, correct. [LB753]

SENATOR HADLEY: Because people are going to pay more in taxes, yeah. [LB753]

SENATOR HADLEY: One last question, then I'll let them go on. Why wouldn't we also include things like ice cream, cookies, potato chips? Those aren't...those are high in calories, aren't they? And, you know, if youth abused ice cream or potato chips or cookies, couldn't they have problems with obesity also? [LB753]

MICHELLE WELCH: Well, once again, there's a huge difference between banning and saying...versus all foods can fit. What they're not...what we're not saying is...really, those drinks that are included in this are drinks that have no nutritive value whatsoever. Most of those foods you listed, even potato chips, have actually some minor nutritive value, where these drinks do not have any nutritive value. [LB753]

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SENATOR HADLEY: But the caloric value is probably pretty high in ice cream, isn't it? I mean, if you have... [LB753]

MICHELLE WELCH: It...yeah, it can be. [LB753]

SENATOR HADLEY: I mean, it...so... [LB753]

MICHELLE WELCH: Absolutely. [LB753]

SENATOR HADLEY: ...so a young person who is gorging on ice cream could have an obesity problem. Is that a fair...? [LB753]

MICHELLE WELCH: Right. You could go crazy on any food that you choose, you know. [LB753]

SENATOR HADLEY: Okay. [LB753]

MICHELLE WELCH: It's your drug of choice. But at this point in time, what we really do know is drinks have a huge impact. What I can tell you as a registered dietitian, that when I've had people from kids that weigh what I weighed in college, in kindergarten, walking into my office, significant impact is what's going in that cup. And that's the place where we can change it the easiest, that kids notice the difference the least, and it has a real impact on those kids. I just can't tell you over 20 years what a huge difference it is. And by and large, what I see is it's not kids having a bowl of ice cream the size of their head, it's really a lot what's going on in their cup. [LB753]

SENATOR HADLEY: And then I'll just follow up with one more. Do you have any national data on what use do they...what percentage drink artificially sweetened soft drinks versus fully sweetened soft drinks? [LB753]

MICHELLE WELCH: From the research that I've looked at thus far--USDA does not have full data clear up to 2009--was I found some data, but it was really through 2003. At that point in time, it was about, I would say, 25 percent diet and 75 percent regular. That is shifting slightly, but they didn't have exact numbers for me to reference. [LB753]

SENATOR HADLEY: With the nondiet? [LB753]

MICHELLE WELCH: Right. And so of course, you know... [LB753]

SENATOR HADLEY: Or with the diet going up? [LB753]

MICHELLE WELCH: Right. How many people have I worked with over the years that I've switched over from regular to diet soft drinks? Yes, they would both still be taxed,

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but, you know, I have helped people to get there. If they still want to include soft drinks, there are still ways you can include everything in different ways that can be healthy for you. [LB753]

SENATOR HADLEY: Okay, thank you, Ms. Welch. [LB753]

MICHELLE WELCH: Um-hum. [LB753]

SENATOR CORNETT: Senator Louden. [LB753]

SENATOR LOUDEN: Yes, thank you, Senator Cornett. When I look at this bill, why, this is money that will be raised, then will be set up so that the schools will set up these programs to do this, right? [LB753]

MICHELLE WELCH: That is my under...that's what part of the funding...yes, that's my understanding. [LB753]

SENATOR LOUDEN: Yeah. My question is: Why should we saddle the schools with a social issue? I mean, if this is a social issue, why are we pushing it off onto the school system? [LB753]

MICHELLE WELCH: Right. You know, it...how I look at it, from my experience with working with the schools and being a parent myself with kids in there, the amount of time that our children spend in schools, schools have an enormous impact. And what we can't change is a family's structure, we can't change those other pieces of the puzzle, but we can really...we're writing the future plan for these children in school, once again, depending on how that student is set up. A lot of kids have breakfast at school, lunch at school, sometimes their afternoon snack. And in some schools where they have a late wraparound program, some kids are even getting supper. If we don't approach it in schools, how are we going to have a bigger impact on those kids? It's a huge piece. [LB753]

SENATOR LOUDEN: In other words, we're forcing kids to be in school now until they're 18 years old. [LB753]

MICHELLE WELCH: Um-hum. [LB753]

SENATOR LOUDEN: And then now we're going to tell them what they can and can't eat and when they can eat it and more or less dictate everything that they would do in a day's time. Is this what we actually want in the future? [LB753]

MICHELLE WELCH: I actually see that as just the opposite. Right now, kids have more choice than they've ever had available to them. And unlike when you or I went to

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school--I don't know if you had school lunch or not--but, yeah, we had one choice, and like it or lump it. The amount of choices that kids are given today are amazing, but they have a wide variety of choices that are also more healthy for them, because we are the place that they get their health. In a large situation, when we have 43 percent of our kids receiving free and reduced lunch, at that level of poverty, we are their major nutrition resource, and so that's where...you know, when we look at what can happen with the schools and how many people we can reach, just in Lincoln alone over 36,000 children are in schools. So when you think about the reach of what we can do to help those kids make better decisions to plan their future to be a better future, it's going to save us all tremendous amounts of money if they learn to make better choices for their health now instead of later. [LB753]

SENATOR LOUDEN: You're talking about, then, 5-18...from the ages of 5-18, then, we will orchestrate what they want to do. One last question. When you talk about nutritional value and that sort of thing, how much nutritional value is in 1 percent milk? [LB753]

MICHELLE WELCH: Actually, as much or more than is in higher-fat milks. [LB753]

SENATOR LOUDEN: How come? Because I've...I mean, I've separated a lot of milk. [LB753]

MICHELLE WELCH: Yeah, you have. [LB753]

SENATOR LOUDEN: And I know when you get down to 1 percent, why, it's colored water. [LB753]

MICHELLE WELCH: Right, right. [LB753]

SENATOR LOUDEN: So if you've taken all the butter fat out of it, how can you have any nutritional value? There's nothing left but some traces of calcium in there, is that correct? [LB753]

MICHELLE WELCH: Well, great question. It...you know, if you grew up on the farm, it's not your old farm, you know, skim-the-cream-off-the-top milk. But what happens is, because they add back the vitamins that are taken out when they remove those, actually what happens is they actually reinforce the protein a little bit. So actually, the protein levels are higher in the skim milk and the 1 percent than there are in the higher-fat milks. You just get less calories. [LB753]

SENATOR LOUDEN: Well, okay. Yeah, because mostly they've taken the fat out, so the percentage of protein will be higher than it would be if the fat was in there. [LB753]

MICHELLE WELCH: Right, right. [LB753]

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SENATOR LOUDEN: But I still would question the value of it. Thanks anyway. [LB753]

MICHELLE WELCH: Yeah, you bet, you're welcome. [LB753]

SENATOR CORNETT: Mine is more rather of a statement than a comment... [LB753]

MICHELLE WELCH: Okay. [LB753]

SENATOR CORNETT: ...or a question, but I'm going to pose it as a question also. I find it rather ironic that all of the groups that have sent in letters of support on this, none of them came in and testified in regards to the youth sports exemption bill. I think that a huge percentage of the problem is our children are not getting out and moving, and yet no one, including Lincoln Public Schools, came in and discussed or supported exempting youth sports from taxation. So you want to control a behavior through taxation by increasing a tax, but by exempting a tax no one appears? [LB753]

MICHELLE WELCH: I guess I can't speak to that bill in particular. But what I can say is my goal overall, as the LPS wellness facilitator, is to get every kid moving, no matter if they're interested in sports or not interested in sports. And so my approach with what I do outside of the realm of sports is to try and get those kids that at age 10, they decide they're not good enough to compete in an elite league, so they decide to opt for the couch. We want all of those kids that are at much higher risk of obesity to have this be an opportunity to be able to get all those kids moving. And that's really what our LPS wellness initiatives are doing right now, is they're helping both the athlete and the nonathlete to get moving, but... [LB753]

SENATOR CORNETT: How about a tax increase on video games? [LB753]

MICHELLE WELCH: Yeah, that's a...I guess that we're not talking about that specifically today, but I just really feel like this is an opportunity for us to be able to move forward the wellness efforts throughout our state, which I really find are, when I visit with at schools...from other schools, it's pretty lacking right now. [LB753]

SENATOR CORNETT: Seeing no further questions, thank you. [LB753]

MICHELLE WELCH: Um-hum, thank you so much. [LB753]

SENATOR CORNETT: Next proponent. [LB753]

KARLA LESTER: (Exhibit 2) Thank you, Senators. I'm Dr. Karla, K-a-r-l-a, Lester, L-e-s-t-e-r, and I'm representing the Nebraska Medical Association and the Lincoln-Lancaster County Board of Health, which I am the president of. I wanted to

speaking to a few of the questions, too. I think Michelle did an excellent job, but from a public health standpoint--and I'll just tell you a little bit of my history. I'm a pediatrician. I practiced in St. Louis as a hospitalist. Then I moved to Lincoln, practiced for seven years, started a healthy living clinic, had parents--had great relationships with these families--come to the healthy living clinic. Just not enough was happening in the community, at the schools to support everything that we were doing in the clinic. And so for 12 weeks, we required the parents to come; we had a psychologist, a Ph.D.; we had a dietitian, myself, nurses, an exercise trainer; and we worked with these families; and it just wasn't enough, especially for children who are disproportionately affected by the obesity epidemic. And those are children who are living in poverty, children who are minorities, children who live in certain geographic areas who don't have access to healthy foods and can't afford organized sports programs. And so I'll tell you that in May of 2008 I left my practice to start an organization called Teach a Kid to Fish, which is a nonprofit, and we work to prevent and reduce childhood obesity. And then I also worked with the NMA to start the Childhood Obesity Prevention Project to mobilize physicians and healthcare professionals across the state to be physician champions to prevent and reduce childhood obesity. It's a gap in...it was a gap in our community, it's a gap on a statewide level, and we have a lot of gaps for our children, unfortunately, in Nebraska. I will tell you a little bit about the need. Twenty-six percent of children ages 2 to 5 are currently overweight and obese. And I'm going to talk about the Little Voices for Healthy Choices program, which I'm hoping that LB753, a portion of the funds generated could be allocated to health departments across the state to fund early childhood prevention programs. And we know that public health, not just in the schools but at child-care settings, in the home...and our organization works very hard to work with parents because we feel like we can be the organization that really reaches out to parents. We put out a monthly parent newsletter and we have a lot of work that we do with parents. We feel like they are the most important health advocates for their child, they are the role models; but we reach them through healthcare, we reach them through schools, we reach them through their child care, and we reach parents through work sites. And that's, on a public health level, if you know anything about public health, you know that change has to come everywhere a child goes; and children are at school, they're at child care. So 26 percent of our kids 2 to 5 are currently overweight or obese. In Lincoln Public Schools, kindergartners enter school, 13 percent of them are obese coming into kindergarten; that doesn't count overweight. And then when we look at the schools, comparing the lower-income versus the higher-income schools, we see a health disparity, and that's what I'm very concerned about. We see children who are the ones that are living in poverty, and they are the ones that do have higher rates of consumption of sugar-sweetened beverages. A lot of the marketing is geared toward those children. We see disparate percentage points of 10 percent or so higher obesity and overweight rates in those children who live in poverty. We know obesity affects nearly every body system. As a pediatrician, I was diagnosing three of my patients with type 2 diabetes. When I was in residency--I'm not that old--we called it adult-onset diabetes. Unfortunately, so many children...1 in 2, if we do nothing, of all babies born in

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the year 2000, ethnic minority children, will have diabetes at some point in their lifetime; and think of the staggering healthcare cost that that will mean to our country...1 in 3 children overall. Little Voices for Healthy Choices was a pilot project where we worked with five pilot child-care centers. And we worked with them on a nutrition and physical activity self-assessment for child-care trainings, and they incorporated two nutrition and two physical activity policies within their child-care setting, and the parents received education and trainings as well, so we were able to reach children and the child-care providers and the parents as well. So my goal is that a portion of the funds generated, if LB753 moves forward, could be allocated to health departments for Little Voices for Healthy Choices programs in child cares and homes across Nebraska, and that we should start looking at our children as a whole, start early with child obesity... [LB753]

SENATOR CORNETT: Ma'am. [LB753]

KARLA LESTER: Yeah? [LB753]

SENATOR CORNETT: You have the red light. [LB753]

KARLA LESTER: Oh, okay. Sorry about that. I... [LB753]

SENATOR CORNETT: Thanks. You have a moment to wrap it up. [LB753]

KARLA LESTER: Oh, okay. Well, I was just going to say that in Nebraska we have the infrastructure and the model that's in place that has outcomes. And LB753 is a best-practice policy which ensures that advocacy for children's health would be a top priority in our state. Thank you. [LB753]

SENATOR CORNETT: Senator Hadley. [LB753]

SENATOR HADLEY: Thank you, Senator Cornett. Dr. Lester, thank you for coming in. [LB753]

KARLA LESTER: Thank you. [LB753]

SENATOR HADLEY: Is there any data on socioeconomic classes and drinking of soft drinks? [LB753]

KARLA LESTER: I'm not aware of it off the top of my head, but there are...there is data about...I've seen some recent data about the marketing to ethnic minority children, that there is more money spent on marketing to those children of soft drinks. We also know that in areas of a community where you have, for instance, a convenience store or a fast-food restaurant within a close distance to a school, that the risk...for every one of those that's close to a school, the risk of obesity increases by 5 percent. And we also

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know that kids who walk home who walk by a convenience store, they're getting a sweetened beverage, and so they on average consume over 300 calories more a day just because of that proximity; so environment predicts behavior; the end. I would absolutely love to spend more time with my three little kids and, you know, not have to work so hard. I gave up my practice and my living to do this. And I would say that, you know, we would love for it not to be the case and for us all to preach personal responsibility, which is a huge part of this as well, but environment predicts behavior. So those environments that have the schools, the lower-income schools, will have a tendency to have more saturation of those convenience stores or fast foods closer to those schools, and that would predict that behavior of more consumption. [LB753]

SENATOR HADLEY: I guess the only reason I ask it, I know we've had other cases where we've talked about unintended consequences (inaudible), that it's great to tax it, but it doesn't change the behavior, but it takes away resources that a family can have for nutritional food. [LB753]

KARLA LESTER: Well, yeah, and I'm not into...I'm very not into demonizing or policing food. I have no interest in doing that. I'm all up to...choice is always going to be there. I mean, none of these things are going to go away. An actual exemption of what we're closing the loophole may not curb consumption. The question you had asked earlier, a \$0.01-per-ounce tax--which we are not talking about and we are not moving or advocating for at this point--would curb consumption. There have been a lot of studies, very well studied, that that would curb consumption. That's not what we're talking about here. We're talking about an exemption. Hopefully, it would have some curbing of the consumption. But when you look at what are the root causes, you can track the consumption in children of sugar-sweetened beverages with the obesity epidemic. You can just lay those lines right over each other, and it is a main root cause of it. When we tell parents what do public health officials say, we say two things to do. Number one, get the sugar-sweetened beverages out of your house--drink more milk, drink more water--and then get the TV out of the kids' bedrooms. [LB753]

SENATOR HADLEY: Okay, thank you. [LB753]

KARLA LESTER: Get them outside and play. [LB753]

SENATOR CORNETT: Senator Brasch. [LB753]

SENATOR BRASCH: Thank you, Chairman. And thank you, Dr. Lester, for testifying today. I just...I find this very interesting. Now, you're saying 26 percent are overweight or obese. Does that mean that 74 percent are normal? Are there no children underweight? You know, is this...? [LB753]

KARLA LESTER: Well, there are some children who are underweight, but... [LB753]

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SENATOR BRASCH: Okay. [LB753]

KARLA LESTER: Of course. And, in fact, I would say look at this...reframe this whole epidemic. [LB753]

SENATOR BRASCH: Um-hum, um-hum. [LB753]

KARLA LESTER: Don't talk obesity; I get sick of that word. I mean, nobody wants to hear that word all the time, we get desensitized to it. Think of it as an epidemic of poor nutrition and physical inactivity, which affects all kids. [LB753]

SENATOR BRASCH: Um-hum. [LB753]

KARLA LESTER: So there are some kids who are underweight, but I know recent data--and Dr. Rauner may speak to this--that Lincoln Public Schools did was that they really had very few children who are underweight. And, in fact, we are so normalized to children being overweight and obese now that parents...you know, there are a lot of studies that show parents are in denial or they don't recognize it, and so you have to have that accurate measurement. [LB753]

SENATOR BRASCH: And I'm curious, too... [LB753]

KARLA LESTER: Yeah. [LB753]

SENATOR BRASCH: ...where do the parents of these 26 percent children, do they also align? Are they average-weight parents, or are they also overweight? And the other is, perhaps this 26 percent do drink soda, but perhaps they eat macaroni and cheese as well. I mean, you know, should we put an extra tax on mac and cheese? I do believe... [LB753]

KARLA LESTER: Yeah. [LB753]

SENATOR BRASCH: ...the physical activity that you mentioned earlier, but I hesitate to put the cure-all is going to be in taxing soda because it has sugar. [LB753]

KARLA LESTER: Well, I mean, I agree with you that there's not one cure to this epidemic. [LB753]

SENATOR BRASCH: Um-hum. [LB753]

KARLA LESTER: It has multiple causes, and when we look at some of the root causes, we're looking at sugar-sweetened beverages, like I said. As far as the parents' weight, it

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is common. I mean, we have over two-thirds of, you know, adults in this country, unfortunately, who are overweight and obese, so this is a real problem. And then we saw that there weren't stopgap measures for kids, so nobody would...you know, we'd listen to the flag wavers and stop all these healthcare costs and all this, and it trickled down to kids and it's getting into the early childhood and we're even seeing babies. So I can't tell you the numbers of those parents who are also overweight...probably are. And, yes, I mean, it's the whole picture you have to look at as far as nutrition goes, but when we track, look at the main root causes, again, we look at sugar-sweetened beverages as being a cause. And I would still say not to look at it as a tax, look at it as closing a loophole. So we're not demonizing that, we're just closing the loophole and looking at what are best practices that have been done in other states. [LB753]

SENATOR BRASCH: And so we're basically looking at the soda pop industry to fund a nutritional movement. Is that...? I mean, because, again, back to peanut-butter-and-jelly sandwiches. You know, there's just all kinds of sugar involved in today's typical diet of children and families, so I don't know. I would think that... [LB753]

KARLA LESTER: Well, I mean, that's one...it is a good point, because it's one of the difficult pieces of this epidemic, is because it does have so many causes. It's, like, it's harder than the tobacco issue, where we could, you know, look at the...and all tobacco is bad. So not all food is bad; all foods fit. Of course, you know, choice is always going to be there; it's not going to go away. We're not looking to the sugar-sweetened...we're not saying, okay, you need to fund this. We're looking at what are the best-practice policies that have been developed by public health experts that have been utilized in other states. This is the root cause, one of the main root causes, of the obesity epidemic in children, and we are not policing or demonizing it, we are closing a loophole which exists. And it certainly isn't going to be the main or the only source of funding. You know, we all work in Nebraska on very lean...you know, I started our initiative without any seed funds at all--that's kind of nutty--but I would say, you know, we write lots of grants. And there is a gap in Nebraska. I mean, we have so many people who are experts who are advocates for children, but we don't have a top-level plan that comes from the top, and it will make us...it would allow us to leverage more resources for Nebraska from the CDC and other groups if we can say we are doing this for our kids. [LB753]

SENATOR BRASCH: Thank you for your work. [LB753]

KARLA LESTER: Uh-huh. [LB753]

SENATOR BRASCH: I have no other questions. [LB753]

SENATOR CORNETT: Senator Schumacher. [LB753]

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SENATOR SCHUMACHER: Thank you, Senator Cornett; and thank you for your testimony today. So I think what I'm hearing is that it's not expected that this tax will really have much of an impact on the behavior of drinking soda pop by kids. Instead of having money for a whole case, they can only have money for, if they use the same amount of money, 22 cans. Okay, so...and we're not going to influence that very much. But we're going to tax soda pop in order to have a pile of money that we can plow back into teaching these kids behaviors how not to be fat. That's kind of the objective of the game? [LB753]

KARLA LESTER: Well, I think...I mean, I don't look at...you know, pardon me, but I usually don't use that word, fat... [LB753]

SENATOR SCHUMACHER: Chubby. [LB753]

KARLA LESTER: ...and certainly don't do that. I'm a child health advocate, so it just so happens that there is an epidemic of poor nutrition and physical inactivity, and children are being diagnosed with...I may not talk about obesity, I may talk about the children I see with elevated cholesterol, with hypertension, who have early heart disease. I mean, my colleague Dr. Cristina Fernandez, if she was here--she's a director of the Heroes Clinic at Children's Hospital of Omaha--she could tell you about her 15-year-old patient who came in with a heart attack, who came in with...you know. And so we could go on and on about the health consequences. It's not...we don't know. It could potentially curb consumption, this loophole. [LB753]

SENATOR SCHUMACHER: Then one other short follow-up, then. [LB753]

KARLA LESTER: Yeah. [LB753]

SENATOR SCHUMACHER: We get this pile of money by taxing soda pop, we don't...we live in a world of limited resources. We then get into the value judgment: Should we put it toward the programs specified in this bill; or should we put it toward, for example, the two years of education we're mandating--or in the process of mandating--for kids who would want to drop out, so that they have alternative education; or should we put it toward, maybe, fixing a bridge so the kids riding the bus to school don't fall in the water when the bridge crashes? [LB753]

KARLA LESTER: Well, I mean, I think that those are, you know, issues that obviously have to be...have to come up and be dealt with, but...and prioritized. And, you know, we would like to be a part of that, you know, at least for a part of it should go to...we don't have that funding in Nebraska for these kinds of programs that are needed for children's health. I mean, you could break it down and look at the healthcare cost, the cost to employers, the decrease in work force productivity. And I will tell you that the school nurses, when we did a survey of 110 of them and did focus groups with school nurses,

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they said the major thing they're seeing, these kids are in their office all the time, they are dropping out more, they are missing school, they don't achieve, they don't reach their potential like they could. It's another layer of stress that these kids have to face, so I think, you know, investing in their health--we need to look at children as a whole--is...will lead to them staying in school, hopefully, will lead to them, you know, reaching their academic potential and success, so... [LB753]

SENATOR SCHUMACHER: Thank you for your testimony. [LB753]

KARLA LESTER: Um-hum. [LB753]

SENATOR CORNETT: Again, I'm going to ask you, like I asked the last testifier. [LB753]

KARLA LESTER: Yeah. [LB753]

SENATOR CORNETT: If you're not just after the pool of money to start your program, why weren't you here with the youth sports bill? [LB753]

KARLA LESTER: Well, I was aware of that bill, but I didn't know about the specific time when it was coming. I work with the... [LB753]

SENATOR CORNETT: But you know about this one. [LB753]

KARLA LESTER: Well, I mean, I've been working with the Nebraska Medical Association. I work with the Nebraska Sports Council and the YMCA, and because I'm an executive director of a nonprofit organization, I limit my time that I can spend on these types of issues, and so I was definitely, you know, an advocate for that legislation. [LB753]

SENATOR CORNETT: But getting money is more important than not getting money and incentivizing sports. [LB753]

KARLA LESTER: I think anybody would tell you, anybody in my community--you can call anyone--would tell you that I have absolutely invested hundreds of thousands of dollars of my own money into my community and my state for children's health. [LB753]

SENATOR CORNETT: No further questions. [LB753]

BOB RAUNER: (Exhibit 3) I'm Dr. Bob Rauner--first name Bob, B-o-b; last name Rauner, R-a-u-n-e-r--representing Nebraska Medical Association. I'll first start off with some of the questions that some of you had. Senator Schumacher, you asked, will this reduce consumption? The evidence is, actually, no. The supply-demand curves say you

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need an increase around 10-20 percent before you would actually affect consumption, so that is not the reason for picking this. The main reason for picking this is an element of tax fairness. You know, you have three buckets for sales taxation. The standard bucket for toothpaste, toilet paper, snow shovels, that's where most stuff is. And then you have the tax...sin-tax type things like the cigarette and alcohol taxes. And then you have a tax encourage, where we give things tax-free status to encourage them--food, medicine, charitable deductions, things like that. If you look at it from that standpoint, where would you put pop? Most people I've talked to, when I explain it, they would say, well, I'd put it in the middle, maybe I'd put it in the sin tax. I've yet to find a person who says it should be tax free. That's the reason why most states don't do that and many of them are actually reversing that once they've noticed that. On the back of here, this is the map of the states across the country that put pop in the sales tax category; most of them do and many of them are reversing that, most recently Colorado in 2009. They said, well, this just doesn't make any sense; why would we encourage consumption of Monster Energy drink during an obesity epidemic? As far as the ice cream comment, actually Colorado included junk food, too; they didn't just do pop. So I suppose if you want to do that, we'd take that money too, but that's the main reason. I mean, if you had the choice of toilet paper, toothpaste, and pop, what would you rather have tax free? I'm going to choose something other than pop, so that's the...partially, it's a tax fairness issue. Senator Loudon, you mentioned schools. Why are we focusing on schools? The reason is because there's a lot of studies on this, dozens of them are proven effective, almost all of them are in schools, okay? So it's not that we're blaming the schools for it; they're not the only people to blame. The parents, they're...you know, the society, everybody is to blame for it, and so placing blame isn't a way to succeed. The way to succeed is to find out what works, and we know that the school programs do work. A great example is in Kearney. Kearney has lowered their obesity epidemic in their elementary by 13 percent already doing these kinds of things. That's what we want to try to do. We're in the early stages of doing that in Lincoln. We expect to have similar reductions in a couple years, too, and we actually have the data to prove it because we'll be able to track it. Part of our problem right now in the state is we don't know what the obesity rate is across Nebraska. Nebraska did a voluntary collection. A quarter of the schools submitted data. So there's a lot of schools already collecting the data, but it's not systematic. When I got those results, I saw them and found out that their results were much higher than Lincoln. I had them rerun the results. If you added first, fourth, and seventh grade in Lincoln, it was around 16.2 percent. Outstate Nebraska, it was 20 percent. So what limited data we have shows that the obesity epidemic in kids is actually much worse in outstate Nebraska. And the problem we have is that the funding we have for Kearney and Lincoln is partially due to a PEP grant, which is a federal grant. Those are going away, so even our programs are likely to go away unless we can find a substitute. And if you look at what works in public health, it's systematic efforts that work. And to make this systematic, we need state funding so we can do this in all the schools. We have great examples in Kearney, Lincoln; actually, Norris Public Schools has a great example as well. Also, as far as what cost, well, look at the other

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side. You've got the reference here, but we're going to spend probably \$1,500 per person on obesity by 2018. There's a study that says if we can hold our obesity rates in 2018 down to where they were in 2008, we'd save \$1 billion a year in Nebraska in healthcare costs. We're asking for \$11 million to reverse that. That's, you know, a pretty good return on investment. Senator Fischer, not all of it goes to schools and public health departments. Some of it goes to roads because of last year's earmark, so it's not 100 percent to that, so we'll get some money to roads. And so, you know, the biggest reason we want to do this is because we know it works. It's already been proven in Kearney and all across the country, and we want to do that systematically in Nebraska, and that's our main reason to do this. And we have to have a source of funding from somewhere, so why not this tax exemption that really doesn't have a good reason to exist in the first place? So that's kind of our rationale. And then, I think, was it Senator Hadley who asked about poor people? Yes, there are studies showing that they do drink proportionally more pop than middle and higher incomes, and I could provide you studies for that if you want to see them. That's the rationale behind the food stamps, trying to make it so food stamps don't cover pop and energy drinks, which they do now. So thanks. [LB753]

SENATOR CORNETT: Senator Pirsch. [LB753]

SENATOR PIRSCH: Thank you. I guess your proposal is that...to treat soda pop as you would cigarettes or beer, right? [LB753]

BOB RAUNER: No, cigarettes and beer are subject to, actually, a sin excise tax. [LB753]

SENATOR PIRSCH: Okay. [LB753]

BOB RAUNER: We're trying to treat them like you'd treat toothpaste or snow shovels or anything else. You know, we don't think they should deserve a tax exemption like food or asthma medicine, so... [LB753]

SENATOR PIRSCH: Okay. And if we were to do...other than...I'm trying to think. Are there any precedents that have been set so far in our tax policy that would kind of pioneer that? Or were there other...you know, I know you know that cigarettes can be over those; there's a higher tax rate. Other than those kind of substances, are there any other things that were previously sold at a grocery store, for instance, and yet, you know, not taxed, and then through a conscious policy change of this body...that you're aware of? [LB753]

BOB RAUNER: Not that I am aware of. I know one senator, who actually gave us that first estimate, he wants to get rid of all sales tax exemptions because he doesn't think any of them should exist. But, you know, I think there's good arguments for some things,

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there aren't for others, and this is one of those things. I think you could, if you want to add more money, junk food might be good, too, but we thought that's a little harder to define and a little bit more of an obstacle. We thought we'd start low and pick the obvious one first, so... [LB753]

SENATOR PIRSCH: Okay, yeah. I appreciate your testimony here today. Thank you. [LB753]

BOB RAUNER: Okay, thanks. [LB753]

SENATOR CORNETT: Senator Hadley. [LB753]

SENATOR HADLEY: Dr. Rauner, I appreciate your coming in. I guess it's more of a statement than a question. When I look at this right now, there are a number of people in the state that feel we are not funding K-12 education at an appropriate level. [LB753]

BOB RAUNER: Yes, um-hum. [LB753]

SENATOR HADLEY: And if we add another \$11 million... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR HADLEY: ...that basically is going to go to the General Fund that we're going to use for something... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR HADLEY: ...the decision I would have to have is: Does it go for this type of program... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR HADLEY: ...or does it go for funding K-12 basic education? [LB753]

BOB RAUNER: Um-hum. I honestly would agree with that. I think the schools are underfunded, but that's actually a part of the cause of this. They're underfunded. They've actually gotten rid of P.E. in a lot of schools; not maybe completely getting rid of, but actually in our elementary schools in Lincoln they're down to one day a week of P.E. a week because they just don't have enough funds to do everything. They may not have...they have to get another P.E. teacher to expand P.E., they may not have a big enough gym, and of course they've got the No Child Left Behind stress as well. If it's math versus English, who gets cut? And it's P.E. But, actually, we've got solid data from our own stuff showing that fit kids are...score much better in math and English, almost to

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the same extent of the difference between poor and rich, so the Title I difference is...the fit kids are actually almost as...as big. So you can actually fix math and English scores by getting kids more active. And this money would actually help fund more P.E. [LB753]

SENATOR CORNETT: Senator Fischer, then Senator Louden. [LB753]

SENATOR FISCHER: Thank you, Senator Cornett. Thank you, Doctor, for being here. I'm glad you know the breakdown on the sales tax. [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR FISCHER: Do you work with the schools? Does the medical association work with the schools at all, or is it up to the individual districts to hire the nutritionist in order to determine if school breakfast, lunch, and snacks meet nutritional guidelines? [LB753]

BOB RAUNER: Um-hum, um-hum, yeah. I work with schools. Nebraska Medical Association basically funds our committee to do this work, so they give us the meeting space, the money and support, basically. The stuff in Lincoln Public Schools, I work there. I basically do what Dr. Kate Heelan does in Kearney. I'm kind of that counterpart here. I'm the guy who raised the money to get Michelle because this district didn't have money to hire someone like her. And so that was our big project, was to raise money to get that to happen because we could see that this would work if we could fund it. [LB753]

SENATOR FISCHER: If you...I don't know the average weight, what it should be for a fourth-grade boy. [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR FISCHER: Do you? [LB753]

BOB RAUNER: Not off the top of my head. It's actually a complex calculation because it has to do with height and weight, and it's age; so it's tough. [LB753]

SENATOR FISCHER: Oh, no, no, no. Let's make this easy, come on. [LB753]

BOB RAUNER: Yeah. [LB753]

SENATOR FISCHER: If...whatever the average weight would be... [LB753]

BOB RAUNER: Um-hum. [LB753]

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SENATOR FISCHER: ...and then you figure how many calories a day are needed to allow for growth for the child... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR FISCHER: ...how does school lunch fit into that? [LB753]

BOB RAUNER: Well, they have guidelines as... [LB753]

SENATOR FISCHER: I get kind of disappointed with school lunches when I visit schools. I'm sorry Mr. Avery...Senator Avery left. [LB753]

BOB RAUNER: Um-hum, yeah, uh-huh. Um-hum. [LB753]

SENATOR FISCHER: Because when I visit schools for lunches anymore, we always have the salad bar... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR FISCHER: ...which is great, but it seems to be a lot of preprepared food that comes out... [LB753]

BOB RAUNER: Yeah. [LB753]

SENATOR FISCHER: ...and I'm wondering about the value, nutritionally, for that for students. [LB753]

BOB RAUNER: Well, that's part of the problem. Yeah, that's part of the problem. The most common food is either pizza or chicken nuggets or french fries. [LB753]

SENATOR FISCHER: But then why don't we focus on what's already taking place in the schools? Why are we focusing on soft drinks, which aren't available in schools during school... [LB753]

BOB RAUNER: Um-hum. They are available in schools, yeah. [LB753]

SENATOR FISCHER: But during school time, most schools don't have them available during the school day. [LB753]

BOB RAUNER: Yeah, okay. Well, you're... [LB753]

SENATOR FISCHER: And why aren't we focusing, then, on what Lincoln Public Schools is offering for lunch? [LB753]

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BOB RAUNER: Um-hum, yeah, we are. The problem, honestly, to be rather blunt, is money. Chicken nuggets are cheap, you know, baked chicken is more expensive. That's literally it. I talked, you know, Edith Zumwalt, our director of nutrition, she says, I'd love to get everybody whole wheat, but it's \$0.10 a serving more times 37,000 children times X number of days. It's money, basically. French fries are cheap, processed stuff; I can hire a minimum-wage person, throw it in a microwave, nuke it, there you go. Having someone come in to prepare a fresh meal from scratch takes more personnel costs. Getting fresh fruits and vegetables instead of french fries costs more money. The question is: Where does the money come from? And so, actually, this money could be used for that. That's one of the options, is improving the food menu. They want... [LB753]

SENATOR FISCHER: So what we need to do... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR FISCHER: ...is improve school offerings for the meals that they're serving. [LB753]

BOB RAUNER: Yes, you betcha. [LB753]

SENATOR FISCHER: And we need to encourage them to have more P.E. classes, it sounds like to me. [LB753]

BOB RAUNER: Absolutely. But the problem, though, again is: Where does the money come from? [LB753]

SENATOR FISCHER: And so we're looking for money and that's why you want to tax pop. [LB753]

BOB RAUNER: Yes. We figure it's unfair, so what a great place for the money, yeah. [LB753]

SENATOR FISCHER: Let's go after them. [LB753]

BOB RAUNER: Yeah. [LB753]

SENATOR FISCHER: Okay. [LB753]

BOB RAUNER: And they're actually part of the cause, too, so, you know, well, so... [LB753]

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SENATOR FISCHER: Okay, thank you. [LB753]

SENATOR CORNETT: Senator Louden. [LB753]

SENATOR LOUDEN: Yes, thank you. Following along on Senator Fischer's line, are you doing any study on the amount of salt that's in that? Because when you talk about your nuggets and your french fries... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR LOUDEN: ...and some of that stuff, that's a high salt amount in there, isn't it? [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR LOUDEN: And my understanding is that most people eat way too much salt. [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR LOUDEN: And so...and that is a problem that can cause heart problems and obesity. [LB753]

BOB RAUNER: Um-hum, yeah. [LB753]

SENATOR LOUDEN: So what are you doing with your school lunch programs now to cut down on the amount of salt that's in that prepared food? Because that's usually where the salt content comes from, is prepared food. [LB753]

BOB RAUNER: Um-hum, yeah. Well, a couple things. The average American eats about three times the salt they should be consuming. There are limits in the school lunch menu, and, actually, a new law called the Healthy, Hunger-Free Kids Act was passed last year and actually puts more limits on salt, so that actually will be fixed. So we're not too worried about that one because that's actually taking care of it. Is it the federal government being the nanny state? Well, maybe a little bit, but, you know, they're doing the right thing in limiting the salt, though. You know, the kids can't pick what the school prepares for them, so somebody else has to do it. You know, the kids are products of their environment. You and I, we're the ones who put them in that environment, so it's our job to solve it for the kids because the kids aren't going to solve it themselves. [LB753]

SENATOR LOUDEN: Now the next question. With your school lunch programs, how much of that does the federal government pay for, on that food that's brought in?

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[LB753]

BOB RAUNER: I couldn't tell you off by hand. I'd have to go to the food service folks. I'm going to guess it's about 50/50, but I couldn't tell you. [LB753]

SENATOR LOUDEN: Isn't a lot of that...USDA pays for a lot of those school lunch programs, don't they? [LB753]

BOB RAUNER: For some. For the free and reduced they do, but not for the non-free and -reduced, so they pay portions based on your socioeconomic status. Part of the problem, honestly, is they use it as a way to dump surplus commodities. So sometimes there's a lot of cheese in there just because that's what they've got a lot of. And so the food...school lunch program unfortunately isn't just designed for nutrition; it's designed as a way to get rid of excess commodities, which...you know, I'm from a farm family; that's not too bad, but, you know, there's downsides to that. [LB753]

SENATOR LOUDEN: Now, one other thing that I would ask. As we looked at this bill and they were trying to acquire this fund to take care of this and then I would push it off onto the schools, which I have a problem with that... [LB753]

BOB RAUNER: Hmm. [LB753]

SENATOR LOUDEN: To me, it's a social issue, so I...somewhere along the line, the social side of government should pick it up rather than schools. [LB753]

BOB RAUNER: Yeah. [LB753]

SENATOR LOUDEN: Now, if you do that, then would you have to hire personnel in order to implement this exercise and whatever it is you're doing for this wellness program and everything? [LB753]

BOB RAUNER: Well, it depends what's involved, you know. If it's more P.E. time, well, yeah, it's another P.E. teacher. We do do things where we try and kill two birds with one stone. So, for an example, we have math classes where they have fitness mats where they jump to the answer, so you're actually moving and learning at the same time. And actually, the studies show that, you know, sitting on your butt is actually the worst way to learn. And so getting kids up and active so they're active during math class, actually it's more effective and then it gets them active at the same time. [LB753]

SENATOR LOUDEN: And that would cost the school district money? Or if there wasn't enough grant money available, the school district would have to pick it up? [LB753]

BOB RAUNER: Um-hum. Yeah, probably. Some things they can do without funding

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simply by getting the kids up; some stuff requires funding. It's a balance. [LB753]

SENATOR LOUDEN: And then that could become part of your needs for your school district, in order to figure your TEEOSA funding? [LB753]

BOB RAUNER: I suppose it could; I don't know. If you're getting into the school funding formula, that's way over my head. I'd have to turn to Senator Adams for that. [LB753]

SENATOR LOUDEN: Well, I...it's real simple. Your needs, you know, against your resources. [LB753]

BOB RAUNER: Yeah, yeah. [LB753]

SENATOR LOUDEN: So if you had to do that, then this actually, if you went into these programs, this actually could affect your TEEOSA funding or the amount of state aid that you would require, if your needs were increased. [LB753]

BOB RAUNER: Um-hum. Hmm. I don't...I'd have to defer to Senator Adams on that one. I mean, you talk about the social side of these things. We had a hearing with the Education Committee last year where they said...one of the Board of Ed folks said: Dr. Rauner, is it the parents' fault or the kids' fault that they're not active? And I had said it's both, and that's part of the problem. We can't have this either/or thing; it's a both/and. We put pedometers on our kids, actually, for a while and watched them and found out that they were just as inactive at home as they were in school, and so it was 50/50. The parents are falling down and the schools are falling down, yeah. [LB753]

SENATOR LOUDEN: Well, I wasn't blaming anybody whose fault it is. [LB753]

BOB RAUNER: Yeah. [LB753]

SENATOR LOUDEN: I'm just questioning who should pick up the tabs. That's my concern... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR LOUDEN: ...because we push a lot of this on the schools... [LB753]

BOB RAUNER: Yeah. [LB753]

SENATOR LOUDEN: ...and then we come out here with that...and then that increases their needs. [LB753]

BOB RAUNER: Um-hum. [LB753]

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SENATOR LOUDEN: And some of the areas where I live, we don't get any TEEOSA funding, and so it's going into... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR LOUDEN: ...and I see on your statement that you handed out here, you talk about Lincoln Public Schools and Kearney. [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR LOUDEN: And what was the other one here? But all of those--yeah, Kearney and Lincoln--are all big receivers of TEEOSA funding. [LB753]

BOB RAUNER: Yeah. [LB753]

SENATOR LOUDEN: And so I'm wondering how this is going to fit with some of our districts that foot the bill themselves out there and... [LB753]

BOB RAUNER: Um-hum. Well, most of the funding for what we're doing so far is, honestly, coming from outside grants and charitable organizations because there isn't funding in the school to do it. [LB753]

SENATOR LOUDEN: And if you've already cut down people that were in your P.E. classes and stuff like that, that looks like to me that that would be the first place you would start... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR LOUDEN: ...if you're concerned about obesity in there, was your intramural sports and things like that for exercise on the kids. I'm wondering what good, you know, taking the sales tax off of soda pop would do. We'd just as well keep the money and put it in the General Fund because we're probably going to have to put it back on TEEOSA funding. [LB753]

BOB RAUNER: Okay, well, as long as you get it to school one way or another, I'm happy. We just want to make this happen in the schools. I'm happy if you can find another source of funding. [LB753]

SENATOR LOUDEN: Okay, thank you. [LB753]

SENATOR CORNETT: Senator Brasch, and then Senator Schumacher. [LB753]

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SENATOR BRASCH: Thank you, Chairman, and thank you, Dr. Rauner. As I'm hearing more testimony, it seems to be that lifestyle... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR BRASCH: ...seems to be the overall culprit, inactivity compared to what the diet is, then. And when we talk about funding, years ago you would get a ball and a bat and you'd go outside. [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR BRASCH: It was nothing more than the cost of a ball and a bat, you know, to... [LB753]

BOB RAUNER: Yeah. [LB753]

SENATOR BRASCH: And that was the norm. [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR BRASCH: You play outdoors until you can no longer see the ball, and then it's time to go inside or do your chores or...and so I'm just, you know...we have challenges with school diet and then challenges with P.E. [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR BRASCH: Dr. Lester before said there's lots of parks, there's lots of things to do... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR BRASCH: ...but we're not filling those parks because we're fairly sedentary during the day. Here, last night, I chose to go to the local Y here in Lincoln, and there are children and families at the Y. However, I also heard Dr. Lester say that 40 percent of our children live in poverty. Was that accurate? Did I really hear that? I mean... [LB753]

BOB RAUNER: Um-hum. It's 43 percent in Lincoln. [LB753]

SENATOR BRASCH: It's at 43? So I'm wondering... [LB753]

BOB RAUNER: Or at least they're Title I kids. [LB753]

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SENATOR BRASCH: ...should we be funding Ys and the parks that... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR BRASCH: ...you know, trying to adapt more to lifestyle than...? [LB753]

BOB RAUNER: Um-hum, um-hum. Well, the problem with obesity is that it's actually more than one cause. There's not just one cause. You know, with the tobacco issue, it was just cigarettes, you know, it wasn't a whole bunch of things. With obesity, it's, yes, not enough physical activity. It's also too many sugar-sweetened beverages. Example, I'll use my aunt and uncle. When they went on a date, they split a Coke. Now the average boy drinks 20 ounces per day. I mean, that's a huge increase, and that's three miles of walking per day. And do our kids walk an extra three miles for that? Well, no. It's also advertising. They advertise relentlessly to children. I can provide examples that have come home in my daughter's Friday folder, from Coca-Cola. I mean, advertising is part of it. Kids eat what they watch. The reason why kids who watch more TV are more obese is not because they're sitting on their bottoms. It's because of the advertising that they see on all those programs telling them to get Pizza Pockets and Coca-Cola and Monster Energy drink, and the studies are actually pretty conclusive on that. It's hard to keep kids--at least littler kids--inactive. They'll bounce around all over because they can't not move. But it's a combination of all these things; it's not just not enough exercise, it's not just pop, it's not just advertising. And that's part of the challenge, is as soon as we target one thing, that person says, well, it's not all us; why would you blame us for everything, and what about those guys? Well, you have to start somewhere. [LB753]

SENATOR BRASCH: And this is just a starting point, in your opinion? [LB753]

BOB RAUNER: Um-hum, yeah. [LB753]

SENATOR BRASCH: Okay, thank you. [LB753]

BOB RAUNER: And we do do stuff after school as well, by the way, too, so it's not just in school. [LB753]

SENATOR BRASCH: Okay, very good. Thank you. [LB753]

SENATOR CORNETT: Senator Schumacher. [LB753]

SENATOR SCHUMACHER: Thank you, Senator Cornett. And thank you for your testimony today. I think we earlier established that this tax isn't going to make much of a difference on consumption. But what I'm hearing is that these kids learn about bad foods over the television; television there is causing them to be more sedentary, and

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they don't do like we used to do and chop cockleburs and go bring the cows home from the pasture to milk, and they just have nothing to do. [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR SCHUMACHER: If we're looking for a pot of money, why don't we put an excise tax on cable TV, which would be big...much greater market... [LB753]

BOB RAUNER: Um-hum. [LB753]

SENATOR SCHUMACHER: ...on satellite dishes, on smart phones and the things that are causing them to get this bad information and also sit around doing nothing? [LB753]

BOB RAUNER: Um-hum, um-hum, um-hum. [LB753]

SENATOR SCHUMACHER: Wouldn't we get more money that way for your program? [LB753]

BOB RAUNER: Possibly, but they actually don't have a tax exemption. Pop, here in Nebraska, has a tax exemption. They're totally free, so we should start with the totally free first. Now, if you want to expand to that, I guess you could do that, but that would be a whole other can of worms, I'm sure. [LB753]

SENATOR SCHUMACHER: A big one. [LB753]

BOB RAUNER: Yeah. [LB753]

SENATOR SCHUMACHER: Thank you. [LB753]

SENATOR CORNETT: Seeing no further questions, thank you. [LB753]

BOB RAUNER: All right, thanks. [LB753]

SENATOR CORNETT: Next proponent. Are there any further proponents? We'll move to opposition testimony. Again, for the opponents, we have the lights system. You'll be allowed three minutes. [LB753]

STEVE FORD: (Exhibits 4-5) Good afternoon. My name is Steve Ford, S-t-e-v-e F-o-r-d, and I'm here today representing the Nebraska Beverage Association and the Nebraska Chamber of Commerce. The Nebraska Beverage Association is a trade association representing nonalcoholic beverage industries including beverage producers, distributors, franchise companies and supporting businesses. The NBA members offer consumers a myriad of brands and flavors of products: soft drinks, diet soft drinks,

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ready-to-drink teas, bottled water, flavored water, 100 percent juice, juice drinks, sports drinks, and energy drinks. In Nebraska alone, the beverage industry supports over 1,300 workers across the state and pays hundreds of millions of dollars in wages and benefits and generates over \$115 million annually in state and federal taxes. Without a doubt, obesity is a complex problem with no simple solution. Many factors contribute to obesity and related health problems. I'm not here to say that there's...that's not an issue, but singling out one product for taxation isn't going to make a difference in a problem so complex as obesity. In Nebraska, citizens want to get serious...if they want to get serious about obesity, we need to encourage a balanced diet with sensible consumption of all foods and beverages and promote more physical activity and exercise for all citizens. Common sense tells us and science proves for us that taxes do not make people healthier. Sugar-sweetened beverages only account for 7 percent of a person's diet. And you will see in the information that you received, there's some discussion on those food categories, and, interestingly enough, they do consider soft drinks a food category. Over the past decade, soft drink sales have declined while obesity rates continue to increase. Sales of regular soft drinks have declined year after year, by 12 percent from 2000 to 2009, according to the Beverage Digest. Adult and childhood obesity rates continued to rise across the country during that same period, according to the Centers for Disease Control and Prevention. The bottom line is the beverage industry has cut the amount of beverage calories that have gone into the marketplace. The total amount of calories the beverage industry has brought to the market has decreased 21 percent from 1998 to 2008 due to innovation and production of more no-calorie and low-calorie beverages. Soda taxes don't work. Taxes will not help. A review by George Mason University research showed that a 20 percent tax on soda would reduce an obese person's body mass index from 40 to 39.98, an amount not even measurable on a bathroom scale. West Virginia and Arkansas are two states that actually still have a tax, yet they are among the most obese. The public opposes discriminatory taxes on beverages. You'll even find, I think in your information, an editorial from Fremont. The public is sending an insistent, resounding message against discriminatory beverage taxes, making it clear that they are able to...they want to make their own choice, their own decisions. A tax on common grocery items like beverages is regressive and would burden low-income consumers. The beverage industry has taken bold steps. They have made the change in the schools, and you will find in your data the information on what guidelines are in the schools, and you'll also see that they are now putting on their cans and their bottles the actual calories that are in the product. We have done a number of things to try to lower the calories in the marketplace and provide, you know, a healthier environment for people. I'm trying to speed up so I can get you through all this, okay? [LB753]

SENATOR CORNETT: You can also, if you don't get through all of it, submit whatever you have in writing and we'll distribute it to the committee. [LB753]

STEVE FORD: Okay. Actually, you do have that, so I'll... [LB753]

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SENATOR CORNETT: Okay. [LB753]

STEVE FORD: If you don't mind, I'll just cut to the conclusion, if that's all right. [LB753]

SENATOR CORNETT: That would be fine. [LB753]

STEVE FORD: Okay. If we really want to have a significant effect on states' obesity rates, we need to look at comprehensive solutions that will have a meaningful and lasting impact on our citizens, not simplistic approaches to targeting one portion of items in a grocery cart for restrictions or taxation. The beverage tax unfairly lays the blame for obesity on the consumption of one particular product. Taxing soft drinks or any other single food item or food ingredient is simplistic and unjustified. We encourage the committee to reject the inequitable tax on beverages. Thank you. [LB753]

SENATOR CORNETT: Senator Louden, Senator Hadley. [LB753]

SENATOR LOUDEN: Yes, thanks. Since you're in the beverage industry, what's the sodium content like on diet soft drinks and that sort of thing? Is that... [LB753]

STEVE FORD: You know, I don't know the exact content, but there is an amount of sodium in each product. [LB753]

SENATOR LOUDEN: Is there more of a...more sodium...a higher sodium content in diet drinks than there is in the regular drinks? [LB753]

STEVE FORD: You know, again, I'd have to go look at the actual content. We don't deal necessarily in specific ingredients in the products ourselves. [LB753]

SENATOR LOUDEN: Well, it's written on the can. I just wondered. [LB753]

STEVE FORD: Yeah, I... [LB753]

SENATOR LOUDEN: Okay, thank you. [LB753]

SENATOR CORNETT: Senator Hadley. [LB753]

SENATOR HADLEY: Thank you, Senator Cornett. Thank you, Mr. Ford. I guess this is more of a question that I would like to put out to Senator Adams. How many school districts do we have in the state? 253? [LB753]

SENATOR ADAMS: 49. [LB753]

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SENATOR HADLEY: Two hundred and forty-nine school districts. I guess I would just like to hear from any of the school districts around the state that have implemented the beverages guidelines in their schools, just to... [LB753]

STEVE FORD: If I... [LB753]

SENATOR HADLEY: Yes. [LB753]

STEVE FORD: If I may, we're required to follow those guidelines, so...now, it's possible--and I'll be very honest--it's possible that some of these schools, depending on what kind of funding they need--and it usually happens in parochial schools--you know, they may not follow those completely. But anything that we are required to be involved in, we have put those guidelines in place. [LB753]

SENATOR HADLEY: So what you're saying is a school would not have, then, a machine...a public school would not have a machine selling regular Coke in the school? [LB753]

STEVE FORD: That's correct. [LB753]

SENATOR HADLEY: That's...okay, I didn't know that, because we had heard earlier that... [LB753]

STEVE FORD: We also have guidelines. Just so you know, we also have guidelines and timers that are put on those machines as to when they could be used. So even if...I will say this. In teachers' lounges and things like that, you can get other products. [LB753]

SENATOR HADLEY: They can get them. But for the...so, basically, for public schools, you're saying that... [LB753]

STEVE FORD: Those are the guidelines to be followed. [LB753]

SENATOR HADLEY: ...for your industry, these guidelines are being followed. [LB753]

STEVE FORD: Right, and I believe it says 95 percent at this point. [LB753]

SENATOR HADLEY: Okay. For private schools, is that a... [LB753]

STEVE FORD: I'll be honest with you, that's a little iffy. If they want the funds that come along with it, some have not followed the guidelines exactly. [LB753]

SENATOR HADLEY: Okay, okay. Thank you, Mr. Ford. [LB753]

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STEVE FORD: Um-hum. [LB753]

SENATOR CORNETT: Senator Schumacher. [LB753]

SENATOR SCHUMACHER: Thank you, Senator Cornett. And thank you for your testimony today. We heard some testimony that demand isn't going to be impacted unless you've had the tax up to 20 percent. Below that, there's really no impact on consumption. That being the case, why does the beverage industry care? [LB753]

STEVE FORD: Well, first of all, we disagree with that; we think there will be an issue with demand. Also, you're basically taking our products and saying that--and isolating them--and basically saying, so that you can gain more funds, we're going to tax those particular products. Throughout this testimony, we're...we've been trying to talk about obesity, at least that's what the discussion has been. But the reality of it is, it's been about funds and where do those funds come from. And, you know, once we start isolating soft drinks, who is going to stop us from isolating it...or expanding it further? The bottom line is, you eat too much of anything and you're going to have an issue, and I think that's what we need to be dealing with. [LB753]

SENATOR SCHUMACHER: Thank you. [LB753]

SENATOR CORNETT: Seeing no further questions, thank you. Next opponent. Could I see a show of hands for opponents, please? Thank you. [LB753]

JESSICA KOLTERMAN: Thank you, Senator Cornett and members of the committee. For the record, my name is Jessica Kolterman, K-o-l-t-e-r-m-a-n. I serve as the director of state governmental relations for Farm Bureau and I come before you today on their behalf. This past year it became very evident to our membership that there are, and continue to be, more laws and regulations proposed where the government is inserting itself into the personal choices our population makes regarding their food. As you know, Farm Bureau is a strong advocate for food choice and consumers having that option to eat or drink what they so choose without government intervention. Our members adopted policy this past December at our convention and it states: We oppose the enactment of new laws and regulations that will limit consumer choice and damage Nebraska's economy. We oppose anyone dictating food choice to consumers, including the imposition of health taxes on food and beverages. Our members are increasingly worried about the government in any way trying to control diets of the American people. For this reason, we oppose the legislation. I'd be happy to answer any questions you might have. [LB753]

SENATOR CORNETT: Seeing none, thank you. [LB753]

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JESSICA KOLTERMAN: Thanks. [LB753]

SENATOR CORNETT: Next opponent. [LB753]

KATHY SIEFKEN: Senator Cornett and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association, here today in opposition to this bill. A few things that I just wanted to point out is I think we've made it very clear during testimony today that obesity is caused by many issues, yet this bill demonizes one product and tries to make it the answer, through funding, for a problem that is caused by many different things. The second thing is that \$11 million in new taxes are new taxes. And Senator Avery in his opening had said that this really isn't a tax increase, it's closing a loophole; and we contend that an increase is an increase. One of the things that we have talked about before in front of this committee is the fact that some of our front-end systems are not top of the line or cutting edge; and when we were here talking about occupation taxes, that was one of our main complaints. If you earmark one product and cut that out and require us to track just those sales tax that are on beverages, it causes a lot of work for some of our smaller independent grocers, and that is one of the reasons why we're opposed to this. In addition to that, if you'll look at the definition of what they are calling a beverage, I believe it probably is not in compliance with the streamlined sales tax because of the percentage of content. And the other...another problem that we have with this is the fact that this would cause border bleed, just like any other product that you earmark and you treat differently than anything else. So much of our population is so close to the state line, and if people want these items, they simply drive across a bridge or they go to the next state and they buy them cheaper. One of the people that sat in the chair--and I can't remember who it was--talked about WIC and SNAP. The WIC program doesn't allow any of these beverages. They don't even allow fruit juices anymore, even the 100 percent fruit juices. The SNAP program is what we used to refer to as the food stamp program. That is...the guidelines and those rules are dictated by USDA. And again, to make Nebraska an island by trying to do something a little bit different with sales tax would...it would cause a problem not only on our state lines, but...last year there was a bill that was introduced trying to change the definition for SNAP, and USDA has to provide a waiver if you're ever going to do anything different from that. So what...in the reality, what happened is if this bill were to pass, the people that are using the SNAP benefits would not pay taxes and the people that are using their own cash to buy these products would pay taxes. And to...another thing that was talked about was front-of-package labeling. Those nutrients are on the front of the package. You can figure out what's healthy for you and what's not. And we contend that a healthy diet and exercise is really the answer. If you have any questions, I'd be happy to try to answer them. [LB753]

SENATOR CORNETT: Kathy, I spent a lot of time with streamlined... [LB753]

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KATHY SIEFKEN: Um-hum. [LB753]

SENATOR CORNETT: ...and I remember an entire day trying to figure out whether a marshmallow was candy or not. [LB753]

KATHY SIEFKEN: Um-hum. [LB753]

SENATOR CORNETT: Are you saying--and I had not actually thought of this--but is this definition in violation of streamlined, and would it bring us out of compliance? [LB753]

KATHY SIEFKEN: Yes. [LB753]

SENATOR CORNETT: Good enough. [LB753]

KATHY SIEFKEN: And the place, if you want to know where that is, it's the percentage, because this bill says 100 percent. [LB753]

SENATOR CORNETT: Yeah, I've got all those...I've got all of that in my office, because that's what we went over on the definition of what's candy, what's pop, what's... [LB753]

KATHY SIEFKEN: Right. That was a big fight back then. [LB753]

SENATOR CORNETT: It was a huge fight. [LB753]

KATHY SIEFKEN: And it's no less complicated today. [LB753]

SENATOR CORNETT: No, and I...that's what I mean. It was an entire day, basically, on what a marshmallow was. [LB753]

KATHY SIEFKEN: Yeah. Yes, you're right. [LB753]

SENATOR CORNETT: Okay, I definitely don't want to mess with streamlined right now. Senator Schumacher? [LB753]

SENATOR SCHUMACHER: Thank you, Senator Cornett. Thank you, Kathy, for your testimony. This...we've been talking about soda pop, but this also, under the definition of that, would also include things like sweetened iced tea? [LB753]

KATHY SIEFKEN: Yes. [LB753]

SENATOR SCHUMACHER: It's a soft drink with...nonalcoholic beverage that contains a natural or artificial sweetener. [LB753]

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KATHY SIEFKEN: Yes. [LB753]

SENATOR SCHUMACHER: So you'd have to, in your computers or whatever, when you...really examine each particular product to see if it fit? [LB753]

KATHY SIEFKEN: Not only do you have to go into the grocery store and read all of the labels, every new product that is introduced, you'd have to read those labels. And when you...when it's our independent grocers, there isn't a list of codes that you can just go in and do. We're not quite that advanced, so you can't just go in and set those up. Now, some of our larger stores--and I'm going to use Hy-Vee as an example--they can do that because they're big and they've got those kind of systems. But when you go over to a smaller retailer--like, here in town we've got several independents that are single-store operators--they would have to go through and read, from the shelf, read all of those labels. It would take them literally hours. [LB753]

SENATOR SCHUMACHER: Thank you. [LB753]

SENATOR CORNETT: Seeing no further questions, thank you. [LB753]

KATHY SIEFKEN: Thank you. [LB753]

SENATOR CORNETT: Are there any further opponents? [LB753]

TIM KEIGHER: Good afternoon, Senator Cornett and members of the committee. My name is Tim Keigher, that is K-e-i-g-h-e-r. I'm the executive director of the Nebraska Petroleum Marketers and Convenience Store Association, here before you today in opposition to LB753. I won't belabor the point, and most of the points that I would have were...have been made previously, so I'll just say ditto, and I'd be happy to answer any questions. [LB753]

SENATOR CORNETT: Thank you for your brevity. Senator Hadley. [LB753]

TIM KEIGHER: I tried. [LB753]

SENATOR HADLEY: Mr. Keigher, thank you. Just so it...I want to be clear on this. If they come into a convenience store and get a fountain drink out of a dispenser, that is taxed. Is that correct or is...? [LB753]

TIM KEIGHER: That's my understanding, yes. [LB753]

SENATOR HADLEY: That's your understanding. But if they go in and buy a pop out of the cooler, it is not taxed. [LB753]

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TIM KEIGHER: That's my understanding, yes. [LB753]

SENATOR HADLEY: Okay, thank you. [LB753]

SENATOR CORNETT: No further questions; thank you. Next opponent? Anyone in a neutral capacity? [LB753]

ADI POUR: (Exhibit 6) Good afternoon, Chairwoman Cornett, and good afternoon, members of the Revenue Committee. My name is Adi Pour, A-d-i P-o-u-r, and I am the director of the Douglas County Health Department, and I'm in front of you today in a neutral position. The Department of Health as well as our Board of Health has decided that this was something that we feel very strongly about. We do like the intent of the bill, and we think it is, really, you recognizing that sugar-sweetened beverages are not a food item, and we think that is absolutely great. However, we know that obesity and its risk factors are very multiple and occur due to different sources and different levels. And what we would like to propose to you--and I have talked to Senator Avery about it--that if this bill should move forward, that we really talk about a distribution of funds. And I heard a few of you mentioning today why should, really, 90 percent of these funds go to schools. We feel very strongly, through our experience in Douglas County, that probably funding needs to go to many different levels. We have been lucky in receiving \$5.7 million from the Centers for Disease Control over the last two years to address physical activity and nutrition; 75 percent of those dollars have gone to the community level. I tell you right now, we have 350 memorandums of understanding from private businesses that are implementing a healthy choice, a healthy policy in their businesses. We have eight Healthy Neighborhood Stores, because if we do not have Healthy Neighborhood Stores, how can I tell people that they need to eat five servings of fruits and vegetables? We have worked with the schools; we have 40 after-school programs that now are implementing physical activity. So what that tells us is that, really, you cannot focus your funding in silos again. You really need to look across the community. And nationwide, there is a process going on and we are working with the Brookings institute to really talk about systems change in the community, so that occurs at all different levels. So we would encourage you, if this bill moves forward, to look at that and provide funding probably in a little bit different way. And you have the testimony in front of you, so I'm not going to repeat myself. Any questions? [LB753]

SENATOR CORNETT: Seeing none, thank you. [LB753]

ADI POUR: Thank you. [LB753]

SENATOR CORNETT: Are there any further testifiers in a neutral capacity? Senator Avery has waived closing on LB753. Who has LB798? [LB753]

SENATOR HADLEY: Hmm? [LB798]

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SENATOR CORNETT: Who has LB798? [LB798]

STEPHEN MOORE: It's Urban Affairs' responsibility. [LB798]

SENATOR CORNETT: Yes, who will be testifying on it? [LB798]

SENATOR HADLEY: I would guess Amanda, wouldn't you? [LB798]

SENATOR CORNETT: I would assume so, but where is she? Are you...? [LB798]

LAURIE HOLMAN: Senator McGill is in Judiciary, so I'm... [LB798]

SENATOR CORNETT: You are going to open for her? [LB798]

LAURIE HOLMAN: Um-hum. I... [LB798]

SENATOR CORNETT: Okay, she didn't...hadn't notified us of that. [LB798]

LAURIE HOLMAN: Oh, I'm sorry. I didn't realize that. [LB798]

SENATOR CORNETT: That's quite all right. You may open on LB798. (Coughs) Pardon me. [LB798]

LAURIE HOLMAN: (Exhibit 7) Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Laurie Holman, that's H-o-l-m-a-n, and I am here today in place of Senator Amanda McGill to introduce LB798. LB798 is a long but relatively simple bill. The purpose of this bill is to clarify the current language in statutes when a political entity may levy a special assessment. The need for this bill was brought to the attention of the Urban Affairs Committee through our interim study on abandoned and vacant properties, LR203. Cities are often required to perform maintenance on abandoned buildings and properties in the form of mowing or snow removal if the property owner refuses to do so or if they cannot be found. The city may also be required to demolish the building if it becomes unsafe. Cities collect the cost of the maintenance by filing special assessment liens on the property. LB798 ensures that the liens have the proper priority if the property is sold, so that the taxpayers of the city can be reimbursed for those costs. LB798 is broader than just maintenance liens, though. It corrects references throughout the statutes for special assessment liens imposed by cities, counties, natural resources districts, sanitary improvement districts, special improvement districts, and drainage districts so that the statutory language is clear and that the priority liens filed by these political subdivisions have the same priority status. The case that was handed out to you is the 8th Circuit Federal Court of Appeals MBA Poultry v. the City of Tecumseh, and on the last pages--11 and 12--of the case, I

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highlighted the sections that are pertinent to the special assessment language that we're dealing with in this bill, and it states explicitly that in Nebraska, any statutory authorization to levy special assessments must be strictly construed against the municipality. This means that the statutory authority for a political subdivision to levy a special assessment must be very clear in the plain language of the statute, or if it tries to assess a special assessment it won't be allowed to. It would...a court would hold against the city if the language doesn't explicitly state. And that's why the bill is so large, because the language has been kind of muddied throughout the statutes throughout the years just as special assessments have been addressed in the different political subdivisions that are allowed to pass them. It came to my attention just earlier today through bond counsel from Baird Holm law firm that Sections 2 and 49 of the bill should be stricken. Those two sections actually deal with general obligation bonds, and they use some very old language dealing...referring to special taxes; so I haven't had the chance to have an amendment drafted to strike those sections, but I will do so later today. If there are any questions, I'd be happy to answer them. [LB798]

SENATOR CORNETT: Senator Hadley. [LB798]

SENATOR HADLEY: Just a quick question, I meant. Just a quick one. [LB798]

SENATOR CORNETT: Oh, no, no, it's... [LB798]

SENATOR HADLEY: Just a quick question. I'm just...just from a procedural standpoint, did the Urban Affairs...did somebody bring this to Urban Affairs and then Urban Affairs... [LB798]

LAURIE HOLMAN: Um-hum. We assumed this would be an Urban Affairs bill, but because it covers so many different political subdivisions, like NRDs and drainage districts, not just...it covers cities of all classes and villages and SIDs, but because it covered so many different groups, the Executive Board referred it to this committee. [LB798]

SENATOR HADLEY: May I ask who is pushing this legislation? [LB798]

LAURIE HOLMAN: It was brought to us by the League of Nebraska Municipalities. [LB798]

SENATOR HADLEY: Okay. [LB798]

LAURIE HOLMAN: Yeah. [LB798]

SENATOR HADLEY: Just curious. Okay, thank you. [LB798]

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LAURIE HOLMAN: Sure. [LB798]

SENATOR CORNETT: And you may not know this and I can ask Ms. Rex, who I see in the audience is after that. Isn't this just an expansion of the bill that we've heard in Revenue for seven or eight years now, in regards to liens? [LB798]

LAURIE HOLMAN: That I'm not aware of, no. I wasn't aware that it was an expansion of any authority. [LB798]

SENATOR CORNETT: Well, before, it was just for liens for cities, and this looks like an expansion into a number of different authorities. [LB798]

LAURIE HOLMAN: My understanding was that it was just to clarify the language that already existed in statute under those different political subdivisions, just to make sure that it was very clear when they were allowed to special-assess. [LB798]

SENATOR CORNETT: We've just had a bill every year in regards to special assessment and liens for probably eight years. [LB798]

LAURIE HOLMAN: Okay. I was not aware of that. Okay. [LB798]

SENATOR CORNETT: Okay. [LB798]

LAURIE HOLMAN: All right. [LB798]

SENATOR CORNETT: Thank you. [LB798]

LAURIE HOLMAN: Thank you. [LB798]

LYNN REX: (Exhibit 8) Senator Cornett and members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And I have a handout for you of the same case, so I won't bother you with more paper. But just as a clarification, this is an important bill. This is not the same proposal that has been before this committee. This addresses a court case in terms of whether or not special assessments and liens...how those are going to be treated, what constitutes a lien, what constitutes a special assessment; and based on all the other complications that have occurred, bond counsel contacted us and said, we think we need to have uniformity across the statutes. And we do support the amendment that was brought forward today to remove Sections 2 and 49, because those are backed by GO obligations, and so it's a different sort of thing. But if you do look on the back of this court case, it makes it very clear. And this is on page 538 of the opinion, which is the back sheet of the 2002 8th Circuit Court case; and actually it's the top page, which is page 538, the last sheet that you have. And what it basically indicates is with...this

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involves the city of Tecumseh. And what occurred in this particular case is that they had delinquent sewer charges and how those were going to be determined. And the court said, those will be liens but we were not going to treat those as special assessments unless the Legislature actually says it's a special assessment. And, in fact, if the page would come forward, it just occurred to me that maybe the version that she handed out is a little bit...it's the same language, maybe the pagination is different. Thanks, thank you. So it's the top case. But essentially what this is intended to do is say that these liens are special assessments. And the other legislation, Senator Cornett, that we had has to do with the order of priority of those liens. [LB798]

SENATOR CORNETT: And that is not in this bill? [LB798]

LYNN REX: This does not deal with this, no. [LB798]

SENATOR CORNETT: Okay, good to know. [LB798]

LYNN REX: This is just dealing with an express provision by the Legislature that these types of charges are, in fact, special assessments and that the Legislature is going to call them special assessments. Indeed, if you look on...again on page 538, which is the top case that you have, it basically says: because these statutes relied upon by the city of Tecumseh "do not make unpaid sewer and water bills the equivalents of special assessments" by naming them as such. "In Nebraska, any statutory authorization to levy special assessments must be strictly construed against the municipality....Construing these statutes strictly against Tecumseh, as we must, we hold that they do not give automatic priority to Tecumseh's sewer and water bills." In fact, it goes on to say, "Neither of these statutes specifically permits a municipality to treat unpaid utility bills like special assessments." And, as you know, municipalities are in the business of removing unsafe buildings, taking care of snow removal, all sorts of things; liens are filed. And this just simply clarifies for all political subdivisions uniformly that these types of charges are special assessments; it has nothing to do with the priority of those. I'd be happy to respond to any questions you may have. [LB798]

SENATOR CORNETT: Senator Louden. [LB798]

SENATOR LOUDEN: Yes. Well, Lynn, just so I understand what we're trying to do here, this bill is to set it up so that the sewer liens have priority over mechanic's liens? [LB798]

LYNN REX: Over...well, basically, this bill itself, what we're after here is not dealing with which has priority over what status. This deals with the issue of what...whether or not an unpaid sewer bill or an unpaid assessment of some kind constitutes a special assessment as you have declared special assessments to be in terms of liens on property, and that's what we're after here. [LB798]

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SENATOR LOUDEN: Okay, then the special assessment would have priority over all other liens against the property? [LB798]

LYNN REX: No, no. That...this does not say this. [LB798]

SENATOR LOUDEN: Okay. Okay, thank you. [LB798]

LYNN REX: I mean, that's my understanding from Baird Holm law firm, and they're the ones that actually brought this initially to our attention after this 2002 court case. [LB798]

SENATOR CORNETT: I was going to say, I'm assuming the Realtors or Larry Dix would be in here if it did have something to do with priorities. [LB798]

LYNN REX: Yes, yes. [LB798]

SENATOR CORNETT: Senator Schumacher. [LB798]

SENATOR SCHUMACHER: I think you just answered my question. [LB798]

LYNN REX: And I think also that Bob Hallstrom indicated that there may be a couple statutes as well that the bankers may have some--just a couple of them in here... [LB798]

SENATOR CORNETT: Okay. [LB798]

LYNN REX: ...that they have some concern about whether or not it does have an application to the other bill; that's not the intent of this bill at all. [LB798]

SENATOR CORNETT: And if that is a problem, we will work on that? [LB798]

LYNN REX: Yes, absolutely. I mean, that's not the intent of this bill. [LB798]

SENATOR CORNETT: Okay. Further questions? Seeing none. [LB798]

LYNN REX: Thank you very much. [LB798]

SENATOR CORNETT: Thank you. First proponent? Opponents? Neutral? [LB798]

BOB HALLSTROM: Chairman Cornett and members of the committee, my name is Robert J. Hallstrom. I appear before you today on LB798 in a neutral capacity on behalf of the Nebraska Bankers Association. When we first looked at this bill, we were a little bit confused as to what the difference between an assessment and a special

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assessment was, and Mr. Krumland was a... [LB798]

SENATOR HADLEY: Spell your name. [LB798]

BOB HALLSTROM: H-a-l-l-s-t-r-o-m. Thank you, Senator Hadley. [LB798]

SENATOR CORNETT: I didn't even notice. Thank you. [LB798]

BOB HALLSTROM: Well, thank you for not making me sit in the on-deck chair today. Mr. Krumland was gracious enough to share the MBA Poultry case with me; and after reading that, it became aware that there might be some need to make some changes to provide uniformity in the law. However, our concerns are raised in a neutral capacity because we indicated to the League that we would work with them on those concerns. But here's the root of the problem. The case involved water and sewer charges, and even though the case stood for the proposition that you don't have a special assessment priority unless the statute specifically provides such, the issue is: Do water and sewer charges rise to the level of being a special assessment and thus getting a priority over other competing liens? We would suggest that they do not and should not, and that may have been part and parcel of what the court was saying. We would draw your attention to Section 56, subsection (7), of the bill and Section 5 of the bill as examples where sewer system user fees or service charges, which are paid on an ongoing basis for services, we do not believe should or would rise to the level of being granted the priority that goes with a special assessment. Those do not provide a special benefit to the property, which is the common situation involved in a special assessment, so we think things of those nature should be reviewed. I would take exception with Ms. Rex's suggestion that this does not establish priorities. If you have a special assessment and define it as such, that gets you a priority right behind real estate taxes, so it does impact construction liens, it does impact secured creditors and the like. We would submit there is a difference between creating a special assessment and, as the statutes currently suggest, collecting something in the same manner as a special assessment. So we think those issues should be reviewed by the committee, and we'd be more than happy to work with an interim study or to work with the League yet this session to try and address those issues. Thank you. [LB798]

SENATOR CORNETT: Senator Schumacher. [LB798]

SENATOR SCHUMACHER: Thank you, Senator Cornett. Thank you, Mr. Hallstrom, for your testimony. So what you've just said is that because these would now be classified as special assessments and because special assessments all get a priority right after the real estate taxes, that this, in fact, does have an influence on priority and starts...sets the pecking order for mechanic's liens and other fixture liens and things like that. [LB798]

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BOB HALLSTROM: And secured creditors as well, yes. [LB798]

SENATOR SCHUMACHER: And secured? Right. Okay, thank you. [LB798]

SENATOR CORNETT: Further questions? Senator Louden. [LB798]

SENATOR LOUDEN: Yes, well, in statutes now, refuse collection can be assessed against property, isn't that right? [LB798]

BOB HALLSTROM: I assume it can, Senator. I don't know that for a fact. [LB798]

SENATOR LOUDEN: Well, I... [LB798]

BOB HALLSTROM: It probably becomes a lien, though. There are some statutes that say it can be collected through a civil action, which may create the ability to get a judgment lien, which creates a different priority, if you will, than designating something as a special assessment specifically in the statute, and if there are... [LB798]

SENATOR LOUDEN: Well, I live up where SWANN in northwest Nebraska...and that's been the big issue, that if they don't get paid, then they put a lien on the property. [LB798]

BOB HALLSTROM: Yeah. [LB798]

SENATOR LOUDEN: Now, if there's that lien on the property then, when that was sold, that lien would have priority over a lot of other issues, wouldn't it, because that would be like a tax lien? [LB798]

BOB HALLSTROM: Well, I think there's differences, Senator. One of the things we probably have to ferret out is: What is the difference under this statute between being able to collect something in the manner of a special assessment versus actually calling something by statute a special assessment. I don't know the answer to that question; I haven't had time to research and review, and perhaps somebody smarter than me can give me the answer. But if we're creating a special assessment out of something that wasn't previously a special assessment...and I think the key there is: Is it something that provides a "special benefit" to the property? That was in the MBA Poultry case, some of the language that was used by the court in describing what constitutes a special assessment. [LB798]

SENATOR LOUDEN: But do you think that the way this bill is written, then, that it would be setting up so that those sanitary fees would be a lien against the property and would be in a priority? Is that what this bill is doing? [LB798]

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BOB HALLSTROM: Senator, it's a long bill. I've read through it; I do not recall seeing anything about waste or refuse. There are abatement of nuisances regarding trees and things of that nature. Ms. Rex mentioned demolition--or maybe the witness that started out for Senator McGill mentioned demolition--and things of that nature, mowing and snow removal. I don't know that those are specifically addressed in the legislation by suggesting that we're now calling them special assessments. If that's their desire, then again, I think the same standard should apply: Are those things that provide a special benefit to the property, that rise to the level of being characterized as what we would traditionally say that is a special assessment, a paving assessment, something of that nature, that goes back directly against the property and benefits or enhances the value of that property? [LB798]

SENATOR LOUDEN: Well, one final comment is: If you're having trouble understanding this thing, Bob, it looks like we've got our work cut out for us, then. [LB798]

BOB HALLSTROM: Oh, I... [LB798]

SENATOR LOUDEN: Thank you. [LB798]

BOB HALLSTROM: Thank you, Senator. [LB798]

SENATOR HADLEY: Well, I may not agree with that. [LB798]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB798]

BOB HALLSTROM: Thank you, Senator. [LB798]

SENATOR CORNETT: Is there anyone else in a neutral capacity? Okay. And that will close the hearing on LB798. Senator Louden, you have the chair. [LB798]

SENATOR LOUDEN: Okay, we will open the hearing now on LB888, and Senator Cornett will present the bill. [LB888]

SENATOR CORNETT: (Exhibit 9) Good afternoon, Chairman Louden and members of the Revenue Committee. My name is Abbie Cornett, C-o-r-n-e-t-t. I represent the 45th Legislative District. LB888 is a jobs bill, an economic development bill, and a historic preservation bill. As the reams of letters of support we have received demonstrate, LB888 would incentivize significant investment in rehabilitation and reuse of historic properties throughout Nebraska. Over 30 other states--including Iowa, Kansas, and Missouri--have very successful historic tax credit programs, and empirical data from those states and others confirm that our state's investment in such programs would be repaid in jobs created, housing units developed, dollars invested in communities, and sales and property and income tax paid on those investments. The Historic Property

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Restoration and Reuse Act, LB888, provides a 25 percent credit against state income tax for developers who rehabilitate and place into service historically significant properties. LB888 applies to properties that are either federally listed, state listed, or designated by local ordinances. It's designed to drive economic development in both rural and urban communities by leveraging tax credits to generate private investment in historic properties and districts. Sales and property tax revenues should benefit immediately since LB888 requires developers to complete projects prior to claiming any tax credits. These projects result in jobs, sales and property tax revenues, housing units, and historic preservation. One of the areas that we have been in discussion on in the bill...and the testifier following will explain why they believe that the transferable--because this bill does contain a transferable credit--why that is important to this bill, as a financing tool. The statute would sunset January 1, 2018. I do have an amendment, which, when you look at it, looks big. But it was a technical bill, and this rewrites some of the language. There were enough changes that I asked Bill Drafters to do a white copy. I have it right here, pardon me, if the pages could distribute that. There are a number of people following me here to testify on how this bill will be implemented. And, again, I believe one of the first testifiers will explain the transferable credit aspect and how that relates to the bill. With that, I'd be happy to answer any questions. [LB888]

SENATOR LOUDEN: Any questions for Senator Cornett? Seeing none, thank you. First testifier, and can I see a show of hands how many testifiers we have? Okay, I guess we'll go on the clock again. [LB888]

DAVID LEVY: (Exhibits 10-11) Good afternoon, Vice Chairman Louden and members of the Revenue Committee. My name is David Levy, that's L-e-v-y. I'm a registered lobbyist and development attorney with Baird Holm law firm in Omaha. Baird Holm is honored to be working pro bono on behalf of this bill and on behalf of a coalition of interested parties. We greatly appreciate Senator Cornett's leadership on this, and we strongly support LB888 as amended by AM2088, which you have now before you. I've handed to the clerk, in addition to the many letters that we have burdened him with over the past couple of weeks, two more letters in support of this, which I have received today. One is from Thomas Judds, who is an executive vice president with Midwest Housing Equity Group, who is an investor in tax credits among other things; and another from Sara Kay, who is the executive director of the Nebraska chapter of the American Institute of Architects. Baird Holm has the largest real estate practice in Nebraska and we have real estate lawyers licensed throughout the Midwest and practicing throughout the Midwest. Our broad experience has demonstrated to us that these types of statutes are extremely valuable as job creation and economic development tools and as historic preservation tools in other states including Missouri, Kansas, and Iowa. Nebraska should have a similar advantage. This bill benefits large cities and small towns alike. Any place with a historic main street, town square, or neighborhood would benefit. The broad support for this bill is clearly demonstrated by the many letters sent to the committee. You've heard from Grand Island and Nebraska City, Plattsmouth and

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Genoa, Lyons and Red Cloud, Norfolk and Kearney, and you will hear from Omaha and Chadron, among other places, later this afternoon. And you've heard from people in Wisconsin, Iowa, and Idaho who want to invest in Nebraska and who feel that this statute would encourage and facilitate their investments. In the first four years of its program, Missouri realized \$60 million in state and local revenue, and 6,871 jobs were created. A Rutgers University study has found that, dollar for dollar, these types of programs are some of the most effective incentive programs out there. This credit, in conjunction with the federal historic property tax credit, helps leverage more federal dollars into Nebraska. Kansas, for example, more than doubled the federal tax credit money coming into its state when it adopted its state credit. Nebraska is currently 44th among the states in terms of federal tax credit dollars flowing into the state. Regarding transferability, you know, I understand there is some heartburn that this might be precedent-setting, in terms of creating a transferable tax credit. I want to try and explain briefly--and I'd be happy to respond to further questions on this--why transferability is fundamentally important to this statute. And as far as I know, of the 30 other such statutes around the country and the federal credit...historic tax credit statute, the federal low-income housing tax credit statute, those are all transferable. A tax credit, by its nature, brings the revenue or the money, the financial benefit, to the recipient of the credit later on, after the project has been built and placed into service. By making this credit transferable, it allows the developer or owner of the property to essentially monetize the credit. They get money up-front; somebody else who buys the credit gets the tax credit later on. It's also critical and necessary to keep nonprofits in the game. Nonprofits don't have that income tax liability--or a sufficient income tax liability--to make use of the tax credit, yet nonprofits are very commonly developers or redevelopers or owners of historic properties. And so without the transferability, you essentially eliminate nonprofits from the situation and you really hamstring and really undermine the benefits of this, because, again, it does create the financing mechanism by being able to be monetized up-front. You've got a small...a family who wants to redevelop a bed and breakfast in Ogallala. They need the tax credit investment that's given to them by somebody buying the credits up-front. That's how they go to the bank and say, here's our 20 percent of the cost of this project, and get the bank to give them a construction loan, for example, which then they pay off from the revenues of the project. So I understand the heartburn, I understand that precedent is something you want to be careful with, and I value that on the committee's part. But in this particular situation, transferability--I don't think it's overly dramatic to say--is absolutely critical and necessary to the bill. I know I'm running short on time here. I also would like to note that a developer or owner under this statute, the way we've drafted it, has to complete the project and put the building in service before they would be eligible to receive the benefit of the tax credit. That does two things. One, that makes sure that the economic development benefits to the state and the other revenue benefits from sales taxes and property taxes are flowing to the state. That also means that the fiscal impacts of this bill probably wouldn't hit until 2014. It will take awhile for projects to get put together with this as a financing tool, and then it will take awhile for them to get built and get the final

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credit, and they wouldn't actually seek to receive the credit until he or she files their 2014 tax return. I want to, finally, address the fiscal note. I guess I'm out of time. I'll take any questions and I would be happy to discuss the fiscal note briefly if that's the committee's pleasure. [LB888]

SENATOR LOUDEN: Go ahead and do the fiscal note. [LB888]

DAVID LEVY: The fiscal note? Okay. The bill does have a fiscal note, and, you know, I know the committee is aware of that, and I want to address that a little bit. The fiscal note, quite frankly, is bigger than we had hoped. I'm sure it's bigger than the committee had hoped. There are, to my knowledge, at least four ways that this can still be a viable, effective statute that can result in economic development but we can mitigate the fiscal impact to the state, and I know there's a lot of competition for these dollars this year. The first is an annual cap: only so much in these tax credits per year. And Iowa does that and it's proven not to work very well. It creates a lot of uncertainty for developers. The credit is very difficult to use because the developer does not know whether it's going to be available by the time they get there, so I would at least recommend against an annual cap on the total credit amount. One could also implement a per-project cap. A project...only the first \$5 million, or something, of a project is eligible for the credit; that limits the amount of the credit. I also would recommend somewhat against that because I think then you lose the opportunity for large catalyst projects that do result in a large tax credit but they also result in very significant investment. The third would be to reduce the credit amount. We've put in the bill...proposed a 25 percent tax credit, with a 30 percent credit for nonprofits. I can tell you that's right in the middle. Of the 30 states that have these, all but 1 are between 20 and 30 percent. But you could reduce the tax credit down to 20 percent, for example, and that in theory would reduce the fiscal note by 20 percent in its own right. Finally...and I would propose this as, I think, the best way to mitigate the revenue with still maintaining the greatest effectiveness of the program, would be to create a sliding scale. So the first \$5 million of qualified investment, for example, would qualify for the 20 percent...25 percent credit, the next \$5 million a little bit less, next \$5 million a little bit less, everything over \$15 million, for example, a little bit less. That way you still allow for and draw the big catalyst project but you also sort of mitigate the outlier effect that those projects can have on the fiscal note. You'll hear in the testimony after me that part of the reason for the fiscal note is a couple of very large projects that have occurred and have--under the federal tax credit program--and have drawn significant dollars that way. And I would estimate that that tiered approach--of course, depending on how you do it--could reduce the fiscal note by approximately one-third. With that, I will strongly urge you to send LB888 and AM2088 to the full body, and I'm glad to answer any questions that you might have. [LB888]

SENATOR LOUDEN: Questions? Senator Hadley. [LB888]

SENATOR HADLEY: Thank you, Senator Louden; Mr. Levy, thank you for coming.

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[LB888]

DAVID LEVY: Certainly. [LB888]

SENATOR HADLEY: I guess, for my own information, we had a letter that talked about the Federal Historic Preservation Tax Incentives and the Nebraska Valuation Incentive Program. Are those only for for-profit entities, or are those available for 501(c)(3)'s also? [LB888]

DAVID LEVY: The federal program applies for income-producing property. [LB888]

SENATOR HADLEY: Okay. [LB888]

DAVID LEVY: The Valuation Incentive Program, I believe, can be used by anybody, but I'm not positive about that. I'm not sure whether...well, a nonprofit, I would think, could use it. It goes to property tax, so depending on the use of the property, it may or may not be subject to property tax. [LB888]

SENATOR HADLEY: Okay. [LB888]

DAVID LEVY: If it's not subject to property tax, that program would not help the nonprofit. [LB888]

SENATOR HADLEY: Does the Federal Historic Preservation Tax Incentive, do you know, is there...is that a percentage? [LB888]

DAVID LEVY: It depends on the project. It's a 20 percent credit for projects that qualify. [LB888]

SENATOR HADLEY: So if we have a 20 percent there and we pass ours, that's 45 percent of the project is going to be basically paid for by government, then, for for-profit entities. [LB888]

DAVID LEVY: That's right. Once that...but I think it's important to frame that as that that still requires the investor, the private party, to bring their capital to the table. It's not that government is paying for the whole project. That person or company has to bring their capital to the table and do the project in a way that the State Historic Preservation Office approves of as meeting the historic standards, and then, yes, they can receive a significant property tax credit if they qualify for both the federal and the state credit. I'd just take one more opportunity and explain. We drafted this bill, actually, so that a project could qualify for the state credit that cannot qualify for the federal credit. And we did that because we thought it would incentivize and allow smaller projects in particular who couldn't afford to do all of the things you need to do to qualify for the federal credit

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to still be viable projects by using the state credit, and also we wanted to try and address that issue. We're not just trying to pile on to the federal credit. This is a different program that, yes, may be used in conjunction with the federal credit but may also be used separately and may incentivize or allow a project that the federal credit does nothing to help. [LB888]

SENATOR HADLEY: Okay, then a question on the...for the nonprofit, the 501(c)(3)'s. Would this be a possibility, that if I went down to the Nebraska Historical Society--and I just picked them as a name I happened to think of--and I give them \$100,000 because they want to remodel some part of their building, and they say, okay, we'll give you the 30 percent credit, and I get to deduct that on my state tax as a charitable deduction, I get to deduct it on my federal tax as a charitable deduction, so if my numbers are right, then the government is going to pay 72 percent of that remodeling? [LB888]

DAVID LEVY: I don't think that's correct, because if you gave the State Historical Society, for example, \$100,000 and received something of value in return... [LB888]

SENATOR HADLEY: That's what I was wondering. [LB888]

DAVID LEVY: ...it's no longer a charitable contribution, so... [LB888]

SENATOR HADLEY: Okay, okay, I...I...that's what I kind of thought, but I just wanted to clear that up, that if you had the...if you put some strings on it... [LB888]

DAVID LEVY: Right. [LB888]

SENATOR HADLEY: ...the government would probably say that's not a charitable... [LB888]

DAVID LEVY: Yeah. You could deduct it on your federal tax return, but it might not go very well. [LB888]

SENATOR HADLEY: As an old accountant, I used to say there's a difference between "may" and "can," you know. [LB888]

DAVID LEVY: There you go. [LB888]

SENATOR HADLEY: The last thing, you know, I...just from a personal standpoint, obviously, this is an important bill and...but I think you hit on the hammer standing out there, and that's the fiscal note that's sitting there. So with that, thank you. [LB888]

DAVID LEVY: We appreciate that. Thank you. [LB888]

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SENATOR LOUDEN: Seeing no other questions, thank you for your testimony. Next testifier? [LB888]

DAVID LEVY: Thank you. [LB888]

BOB PUSCHENDORF: (Exhibit 12) Thank you, members of the Revenue Committee. My name is Bob Puschendorf, and that's spelled P-u-s-c-h-e-n-d-o-r-f, and I am associate director and deputy state historic preservation officer for the Nebraska State Historical Society. I am pleased to testify in support of LB888 as amended. If passed, this legislation will provide a significant tool not only to preserve the historical merits of places in Nebraska but become a significant driver of economic development and community revitalization. The Historic Property Restoration and Reuse Act offers incentives to spur revitalization in both urban and rural communities, it offers incentives to invest in older buildings, it leverages private investment, and it offers a financing tool for nonprofit organizations. Rehabilitation of historic properties has been documented to add to the property tax rolls, stabilize older and substandard neighborhoods and commercial main streets, create local jobs, and create housing units. In our agency's fiscal note, we have calculated the implications that may come from this bill. The following items have been calculated from data obtained by the...from...for actual historic rehabilitation in Nebraska, compiled by the National Park Service for the years 2002 to 2011. Those numbers are as follows. Average qualified rehabilitation expenditures on historic buildings: \$22,739,034 per year. I would alert you that this number is skewed because we had two years of very...that included very, very large projects in Nebraska, unprecedented in the many years that we've been administrating this program. So that number...we don't know of any of those kind of large projects on the horizon, but that \$22 million could be tempered with the fact that there were higher rehabilitation expenditures for 2 of the 10 years. Also, the total number of housing units created from 2002 to 2011: 1,195. Of these, 568 units were for low- and moderate-income households. This has been an area where the federal tax credit has been quite successful, and we're very proud of those statistics. And the following statistics have been compiled applying this data from a model developed by Rutgers University for the National Center for Preservation Training and Technology (sic) of the National Park Service. We took our statistics and put them into their formula, similar to some statistics we obtained from Kansas and Iowa, and the average number of jobs created from historic rehabilitation in Nebraska is about 480 jobs a year. Historic rehabilitation is noted to be more labor-intensive than new construction, local jobs are created, and materials and supplies can be provided by Nebraska suppliers. Also, under this formula, the average yearly state taxes generated are nearly \$690,000; local taxes generated, \$700,000; and gross state product, \$19 million. As proposed, our agency would administer the provisions. As such, standards would be applied to ensure that our most significant historic buildings are recognized and evaluated and carefully certified in the final analysis of the work that's done. We've reviewed the amendment and feel it will serve the major intent of this legislation. However, several small and more technical

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comments will be coming from our agency. These comments come in terms of administrative aspects that our agency would oversee. The Nebraska State Historical Society extends its thanks to the many people and organizations that have come forward in support of this bill. We, too, extend our highest support for opportunities it supports and offers for historic preservation and economic development. Thank you very much. [LB888]

SENATOR LOUDEN: Questions? Senator Schumacher. [LB888]

SENATOR SCHUMACHER: Thank you, Senator Louden. We have about 300 communities 300 or less in population in Nebraska, and let's just posit a scenario that in one of them there is a bar that's open. Maybe it opens at 4:00 every afternoon, for lack of population, stays open until 8:00/9:00 at night, maybe 10:00 or 11:00 on weekends, and it's just a bar. But on the second floor used to be the brothel, it used to sit next to the railroad line, and it's no longer there. And we also have, somewhere in that same vicinity, the old cobbler's shop, which now probably has a, maybe, feed store for the excess feed or something for the local coop, for sacks of lawn fertilizer, something like that, fairly typical description of a lot of those towns. Either one of those two buildings qualify for this? Or are they worth investing in? [LB888]

BOB PUSCHENDORF: Without seeing them and the significance researched, I would say...I would have to say a brothel in Nebraska could be seen as a...as socially significant for its time and period; the other buildings, yes. And we have, in my years working with the State Historical Society--and we have been in charge of historic preservation policy since 1967--we've seen the decline in rural communities, and that's where we feel this bill could really work. It's hard to put the investment into buildings that are substandard and the market value is lower than a typical building that could be snatched up in Omaha for redevelopment, for example. And this would help, I think, generate some of those projects on Main Street. [LB888]

SENATOR SCHUMACHER: Then I...and just the big policy question, then. So we're going to maybe use a tax credit; and, you know, a tax credit looked at one way is a tax credit, looked at another way it's a tax expenditure. At any rate, it's money that we won't have for something else. So at what point do we make the value judgment that the old brothel needs to be redone in the town of 232 population and that the money is better spent there than on some other state purpose? [LB888]

BOB PUSCHENDORF: Well, the way LB888 is--and the way that I see tax incentives working--is it's private investment up-front. That's where the decisions are made, with the incentive that can bring a project over the top. So it's trying to leverage private investment in communities where sometimes we don't see that type of investment happening, unfortunately, in our very small communities. [LB888]

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SENATOR SCHUMACHER: Well, it's private up-front, it's public on the backside. [LB888]

BOB PUSCHENDORF: Right. [LB888]

SENATOR SCHUMACHER: Thank you. [LB888]

BOB PUSCHENDORF: I would agree. [LB888]

SENATOR LOUDEN: Senator Pete Pirsch. [LB888]

SENATOR PIRSCH: Thank you, and I appreciate your testimony here. I'm trying to understand--I had to present in a different hearing room, different committee--but is there a listing of--under the proposal in the bill here--of if you make this type of investment, then this type of credit would come? Is there a...is that how it's structured or is it...is there ever a "but for" type of determination that needs to be employed in terms of whether or not funding would be allocated through this program? You said it kind of puts projects over, you said, right? [LB888]

BOB PUSCHENDORF: Um-hum. [LB888]

SENATOR PIRSCH: But is that a formal requirement that is employed either in...or is that just conceptually... [LB888]

BOB PUSCHENDORF: Well, this would be market driven. The investment would come without an analysis of distribution of the credit. David Levy had talked about putting a cap on the total amount of tax incentives that would be available for any given year. It would be competitive in that scenario, which I would not support, but it was one way that...for instance, Iowa started out their program and they found out it was burdensome. They had given points and credits to rural projects, projects in very substandard areas of communities and things like that. [LB888]

SENATOR PIRSCH: But the way the bill is conceptualized now, there's a fixed sum of dollars that will be distributed over the course of a... [LB888]

BOB PUSCHENDORF: No, not as it's drafted now. [LB888]

SENATOR PIRSCH: Okay. [LB888]

BOB PUSCHENDORF: But we have some options that we would...be helpful, you know, we would be very happy to discuss, on keeping the revenue at a lower level. [LB888]

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SENATOR PIRSCH: Okay, okay, thank you very much. [LB888]

SENATOR LOUDEN: Senator Hadley. [LB888]

SENATOR HADLEY: Thank you, Senator Louden. Mr. Puschendorf, thank you for coming. A couple things. First, I didn't want to...mean that the old Elks Club is worthy of renovating for the Nebraska Historical Society. Secondly, the thought just crossed my mind, if I am an entrepreneur in Kearney, Nebraska--and we really have a dearth of kind of older homes that have been fixed up because they turned a lot of them into student housing with four or five apartments and such as that--could I get into the business of, basically, fixing up older homes, getting the credit, and then turning right around and selling them, and so basically the government has financed 30 percent of my investment to fix it up and I get 100 percent of the profit on the home? [LB888]

BOB PUSCHENDORF: There would be that potential. [LB888]

SENATOR HADLEY: Okay, I just...you know, the...I just don't know if that's something to look at, that the person has to own it for a period of time or... [LB888]

BOB PUSCHENDORF: Um-hum. Again, it's... [LB888]

SENATOR HADLEY: ...or something like that to keep them from literally trying to make a business out of fixing up historical buildings, getting the tax credit. [LB888]

BOB PUSCHENDORF: Again, that would be a decision made in the private sector. [LB888]

SENATOR HADLEY: Okay. [LB888]

BOB PUSCHENDORF: And we'd very much support that sort of a concept. [LB888]

SENATOR HADLEY: Okay. Yeah, you're... [LB888]

BOB PUSCHENDORF: We'd like to see more of it, actually. [LB888]

SENATOR HADLEY: I would assume that the idea of this is not to have people just fixing things up to sell them. [LB888]

BOB PUSCHENDORF: Yeah. [LB888]

SENATOR HADLEY: Okay, thank you. [LB888]

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

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[LB888]

BOB PUSCHENDORF: Thank you. [LB888]

BOB HALLSTROM: (Exhibit 13) Vice Chairman Louden, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the Nebraska Bankers Association in support of LB888. There have been a number of banks over the years across the state who have refurbished and rehabilitated historically significant properties. We think that this bill would provide some incentives for those activities to continue, to provide upgrades to buildings on Main Street in communities across the state. I have handed out a potential amendment. In reviewing the bill, it appears that banks have a number of different ways that they could benefit from the tax credit. One is obviously through the transferability. Secondly is through a holding company investment where the holding company may or may not--and most likely might not--have any income tax liability. The third is if they are an S corporation, they can pass that tax credit benefit through to their shareholders. The one aspect which is not covered by the bill is to allow the bank to have a direct tax credit against their bank deposit tax under Chapter 77. If that's something that the committee would be inclined to consider, to tie that loose end together, I have presented an amendment that I believe would carry out that intent and that objective. I'd be happy to address any questions. [LB888]

SENATOR LOUDEN: Any questions for Mr. Hallstrom? Seeing none. [LB888]

BOB HALLSTROM: Thank you. [LB888]

SENATOR LOUDEN: Next testifier. [LB888]

RICKY CUNNINGHAM: (Exhibits 14-16) Senator Louden and Revenue Committee members, my name is Rick Cunningham. Actually, my legal name is Ricky, so it's R-i-c-k-y; Cunningham, C-u-n-n-i-n-g-h-a-m. I am the planning director for the city of Omaha. I am here to offer our enthusiastic support for the advancement and approval of the Historic Property Restoration and Reuse Act, LB888. Providing a Nebraska state credit for restoration of existing historically significant buildings would complement the state's and the city of Omaha's ongoing efforts to incentivize redevelopment and reinvestment within existing areas of the state and in particular the city of Omaha and the goals and objectives, therefore, of our city master plan. I've handed out some handouts. One is the printed version of my testimony, so I will divert a little bit from what you've got in your hands; you can read that. I have also handed out a letter from the city supporting this bill, and I've also handed out an executive summary of our city master plan. Our city master plan...in December 14, 2010, the city council adopted a new element of our city master plan. It's the first environmental element of our master plan. It was adopted by the city council 7-0. That was significant in that it was 7-0 by our city

council and is, as I indicated, the first environmental element component of our master plan. That component resulted from a collaborative effort of over 4,000 volunteer hours by Omahans from all walks of life within the city of Omaha and our community and created an environmental vision for the city. The process, led by the city of Omaha and Omaha by Design, created an element of our master plan that includes more than 25 goals and 600 recommendations in five sections. Those five sections are the natural environment, urban form and transportation, building construction, resource conservation, and community health. Building construction is the one that I want to highlight today. Under building construction, there are four goals, and they seek to help Omaha become a national leader in innovative building construction, renovation, and maintenance. The building construction section introduction reads, "Omaha's built environment has a substantial impact on the city's economy and culture. Maximizing the use and efficiency of existing buildings, promoting the creation of inspiring new places, and providing the tools and resources necessary to make all of that possible can help turn this impact into a recruitment strategy for business, industry, and newcomers to the city." I would offer that all of that is the same for the state of Nebraska also, not just the city of Omaha. Under the "goals" section for...the Nonresidential Renovation goal states the following: Take full advantage of the city's building resources and tools to maximize the functional, economic, and cultural value of existing buildings and sites and to improve their environmental performance. The fact is that many of our existing neighborhoods and commercial areas are faced with the enduring threat of disinvestment of historic buildings as they reach the end of their life cycle. The economic feasibility of redevelopment and recapitalization of such buildings is most often untenable when considering the convenient access to new, undeveloped greenfields. As a result, older, historic buildings are devalued, underutilized and place a burden on the tax base by not maintaining their full potential for their highest and best use. Some districts and specific projects in Omaha that some of you may know that may benefit from this legislation would be: the former Northern Natural Gas building--I wanted to call it Enron, but I've been told that that's a bad word here in the state of Nebraska right now; the Burlington Railroad station, a very historic structure in the city of Omaha and Nebraska, and we have had a hard time finding a developer that can make that project work, it's been going through a number of hands in the past; the federal office building, which is right now nearing, hopefully, somebody redeveloping it; the federal...the Postal Annex Building; the Standard Oil Building; the Army Quartermaster Depot in south Omaha; the Vinton Street historic district in south Omaha; the Nicholas Street historic district in Omaha; the Webster Telephone Exchange Building, which is the home for the Great Plains African-American History Museum. And I'm out of time, so I won't go through all of that. I will say that an important part, the point that we want to make, is that the increased property taxes and permanent and service jobs that result because of the investment in these types of projects and historic buildings--those benefits, those taxes, those jobs, that income--continues way beyond any period of time where the tax credits are being realized. So this is an investment, not unlike TIF in a short term, for a very long term and can potentially be a great return on

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investment. I am available for any and all questions. [LB888]

SENATOR LOUDEN: Questions? Senator Hadley. [LB888]

SENATOR HADLEY: Senator Louden. Mr. Cunningham, I don't expect you to answer this, but it's...the thought just crossed my mind: a lot of projects across the state have worked through partnerships, and I just wonder if the cities sitting out there would be willing to come to the table to talk to the state about maybe some kind of rebate on property taxes to these investments, some kind of rebate on the city's sales tax for some kind of period on these kinds of investments; so it could be a partnership between the city and the state in trying to get these projects. And I don't expect you to speak for the city of Omaha and such as that, but I just throw that out there as a possibility for us to look at in these type of projects. [LB888]

RICKY CUNNINGHAM: Well, Senator, I've got a lot of things I want to continue to do in the city of Omaha, so I won't answer that question for the city of Omaha. [LB888]

SENATOR HADLEY: (Laugh) Okay. [LB888]

RICKY CUNNINGHAM: I will say, however, we do participate in a lot of projects with property tax; we call that TIF. [LB888]

SENATOR HADLEY: Um-hum. [LB888]

RICKY CUNNINGHAM: And, in fact, a lot of projects that have occurred in Omaha and a lot of historic buildings have been reinvested in in the city of Omaha...TIF has been a key component of a lot of, if not most of, those projects. I will say that there was one project that when I came on board in 2009 we were working hard to get done, and that was the Park Avenue project there at St. Mary's, about 28th/29th. And one owner had it or a group of owners had it, they couldn't make it go. We tried everything we could, we pushed TIF as far as we could to get that historic group of structures done. Finally we got a developer in there that could make it happen; they are using historic tax credits. But I think that project would have moved a lot faster if this bill had been in place and they could have force-multiplied with the...the national tax credits with Nebraska tax credit for those projects. [LB888]

SENATOR HADLEY: And I might... [LB888]

RICKY CUNNINGHAM: And those are housing projects. They are market rate, by the way, because they couldn't really make it go at a low and moderate income. [LB888]

SENATOR HADLEY: And maybe we just want to expand that to Kearney tax (inaudible). [LB888]

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RICKY CUNNINGHAM: There's a lot of opportunities for this, yes. [LB888]

SENATOR HADLEY: Okay, I understand, sir. Thank you. [LB888]

RICKY CUNNINGHAM: And it dovetails...the other part that it dovetails in our master plan is a real focus on reinvestment, redevelopment in the core of our city, the older core, and that's where a lot of these historic structures are. [LB888]

SENATOR HADLEY: Sure. Thank you, Mr. Cunningham. [LB888]

SENATOR LOUDEN: Senator Schumacher. [LB888]

SENATOR SCHUMACHER: Thank you, Senator Louden. And thank you, Mr. Cunningham, for being here today. Is this a case where one size does not fit all? You described several buildings and--in Omaha--and one can almost see how it is functional, viable to remodel, to invest, to spruce them up and to try to make them into an attractive zone of some historic significance. On the other hand, an example I gave a little bit ago: remodeling the old brothel or maybe putting in a new convenience store. There's clearly far more economic benefit in dispatching state resources or incentivizing a new convenience store in that town than sprucing up the old brothel, unless you're going to fill the brothel with brothelites. And so, you know, it...does this try to fit in two different things? Shouldn't we look to use what resources we have, to where a community puts its value, rather than an arbitrary assignment of "historic" to accommodate, basically, the areas where you're from where this may be practical? [LB888]

RICKY CUNNINGHAM: I don't know quite how to answer that question, in that economic development doesn't necessarily only work in cities like Omaha. It works in small towns because small towns are still there, they still attract--you know, for different reasons, perhaps, than the city of Omaha might attract--new business, new residents that need services and so forth. I can see where it would be a benefit in those towns to reuse existing buildings rather than go out on the perimeter of town and build a new structure and let the other old structures continue to degrade. So I think that this would be an incentive, perhaps, to reinvest in the core of old towns too...or small towns in Nebraska just as we are trying to reinvest in the core of the city of Omaha, regardless of size. [LB888]

SENATOR SCHUMACHER: But if we can't do both the...don't have the resources to subsidize both a convenience store and the brothel, shouldn't the local community, under some mechanism like this where we can only spend...can spend the money once, have the option to say, you know, we probably would need a new convenience store more than we need that old bar or second-floor remodel? [LB888]

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RICKY CUNNINGHAM: I don't know how you would do that, but I think that that kind of decision-making process probably usually would be made when they start spending their dollars at the convenient mart versus the other structure. But I kind of understand you want to short-circuit that and not get to the point where they're not spending the dollars here and you've got a project that fails and next door you've got a convenient mart that continues to thrive. I don't know how you'd do that, other than to have some local control over the approval of a project based upon the viability of the project for the local area. [LB888]

SENATOR SCHUMACHER: Thank you. [LB888]

SENATOR LOUDEN: Senator Brasch? [LB888]

SENATOR BRASCH: Thank you, Senator Louden. And thank you, Mr. Cunningham, for your excellent testimony and your materials today. And when Senator Schumacher talked about the not one size fits all, I do know in our district specifically that Lyons, West Point, you know, they are taking tremendous undertakings to preserve historic buildings on Main Street. Some of our small towns back in the day, in the history, they weren't so small; they've gotten smaller. But the facilities are magnificent, and I'm hoping that these historic restorations and reuses...if we build it, they will come, where we're working diligently to repopulate our rural communities at this point. You mentioned many facilities in Omaha. So would these funds...how do you see the...is it just a credit? And I would think it's a benefit if somebody wants to come in and fix up that old house and make money at the same time and then someone comes in, as you indicated, and makes a purchase and there's property tax. Do you have examples already of--in Omaha, perhaps--where a building has been restored, maybe not by a tax credit but how...it wasn't...it made economic impact, that this was once crumbling and now it's bursting at the seams with activity, new life? I don't... [LB888]

RICKY CUNNINGHAM: The simple answer is yes. [LB888]

SENATOR BRASCH: Yes, okay. [LB888]

RICKY CUNNINGHAM: The more complicated or more drawn-out answer is, just come downtown in Omaha and you will see many historic structures that have been repurposed, renovated, rejuvenated and now are participating at a high level in the economy of the city of Omaha. So the answer is yes. I could say something else, blanketly-yes, that...yes, I mean, it works. I...you probably don't know my history. I was born and raised in Omaha. I left over 18 years ago with my career with HDR. I went to Kansas City and then to Richmond, Virginia, and then D.C., and then I came back to Omaha. When I left Omaha, Omaha's downtown was very much like Kansas City's downtown when I moved there: 5:00, the sidewalk is rolled up. When I came back in

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2009, it was night-and-day difference, and part of that has to do with the reinvestment in downtown, the utilization of historic structures; so, yes. And, again, I can keep going on if you want, but... [LB888]

SENATOR BRASCH: And it works for all of Nebraska, from Benkelman to Omaha to West Point and corner to corner, that this would... [LB888]

RICKY CUNNINGHAM: You know, and I think historic structures have a draw by themselves. And if they are in good shape and they're being used for even visitor centers or for stores and that kind of thing, that they, from the perspective of tourism--which is, I can't remember what it is right now, but at one time it was, like, the third-largest industry in the state of Nebraska--there is a reason to preserve our past so that people can benefit from it, from learning the history and so forth and keeping towns across Nebraska viable and open. So I think this would be certainly a benefit there. The other thing I see is that I keep hearing it, because, you know, I'm an advocate for the city of Omaha--I'm not bashful, from that perspective--and there are a lot of projects that we have potential to move forward, to just blow your mind in the city of Omaha. But what it comes down is: Where is the capital to get these projects moving? I keep hearing it's out there, but people will not invest it. I see this as a tool to help incentivize people to perhaps move some of that capital off the sideline...and you're saying shut up? [LB888]

SENATOR LOUDEN: Yeah. [LB888]

RICKY CUNNINGHAM: Okay. (Laughter) [LB888]

SENATOR LOUDEN: Other questions? I hope not. Thank you for your testimony. [LB888]

SENATOR HADLEY: He got out of here alive. [LB888]

RICKY CUNNINGHAM: That will teach you for inviting me to come down here. (Laughter) [LB888]

SENATOR LOUDEN: Next testifier. And thank you for coming, Steve, and we won't have a conversation. Go ahead and testify. [LB888]

STEVE CLEVELAND: Good, good enough, thank you. I'm Steve Cleveland, that's C-l-e-v-e-l-a-n-d. I'm president of the First National Bank in Chadron. I'm also president of the Chadron Community Foundation, and we offer grants to enhance our historic downtown historic district. First National Bank is a small community bank, and it's, again, located in downtown Chadron. Our building was constructed in 1917 and remodeled in 1961 and 1978. Banking has changed tremendously over those years.

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Thirty years ago, 99 percent of our business was via paper. Now, 99 percent of our business is digital records. Our old First National Bank building was worn out. It just wasn't functional anymore, and it was time to either look at the outer edges of Chadron or reinvest in our building and in our central business district. The building is part of a commercial historic district, surrounded by 1880s buildings and 1920s buildings. It was eligible for the federal tax incentives and the Nebraska Valuation Incentive Program. We sharpened our pencils. We learned, by using these incentives, that we could make the revitalization, the rehabilitation, of downtown Chadron and the First National Bank building somewhat economically feasible. By reinvesting in downtown Chadron, we now continue to remain as the flagship of our central business district. The historic district and these incentives were the primary reason why we reinvested in downtown Chadron, and I strongly support and encourage this committee to advance this bill. Questions? [LB888]

SENATOR LOUDEN: Any questions for Mr. Cleveland? Pirsch, Senator Pirsch. [LB888]

SENATOR PIRSCH: Yes, thank you. And you testified there was a couple of incentives that helped solidify your decision, the federal incentive and then the Nebraska Valuation Incentive Program, right? [LB888]

STEVE CLEVELAND: That's correct. [LB888]

SENATOR PIRSCH: How does this, the latter program, work, or work in your case? [LB888]

STEVE CLEVELAND: The VIP, the Valuation Incentive Program? [LB888]

SENATOR PIRSCH: Yeah. [LB888]

STEVE CLEVELAND: What it does, it freezes our valuation, our tax assessment of our property. Our property was assessed at \$297,000, and it's about a \$300,000 building. We invested \$1 million into the building, so there was great incentive over seven to eight years, those...that valuation is frozen, so it incentivized us by maintaining property taxes at the current level. [LB888]

SENATOR PIRSCH: Wonderful, thank you. [LB888]

SENATOR LOUDEN: Senator Fischer? [LB888]

SENATOR FISCHER: Thank you, Senator Louden. Nice to see you, Steve. Thanks for coming in. I just wanted to tell you we are a nice bunch here, and I appreciate it that you drove all the way down from Chadron today. [LB888]

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STEVE CLEVELAND: Well, thank you. [LB888]

SENATOR FISCHER: Thank you. [LB888]

STEVE CLEVELAND: You're welcome. [LB888]

SENATOR LOUDEN: Senator Hadley? [LB888]

SENATOR FISCHER: Be nice. [LB888]

SENATOR HADLEY: She's speaking for herself when she talks about...we call her "Nice Senator Fischer." (Laughter) Just out of curiosity, just--I had asked somebody earlier--approximately what percentage, then, did the government pick up of your... [LB888]

STEVE CLEVELAND: Well, our total cost of the project was \$1,050,000. I think the building and fixtures, the cost attributed to the building and...the building improvements, I should say, was about \$800,000, so there is a 20 percent federal tax incentive, which would be roughly \$160,000. [LB888]

SENATOR HADLEY: Thousand dollars, okay, okay. And I probably should know this, but did you pay sales tax, then, or did the contractor, on the materials and such as that, that went into the remodeling of your...? [LB888]

STEVE CLEVELAND: Well, we paid sales tax; the contractors, the employees of the contractors paid income tax, so on and so forth. [LB888]

SENATOR HADLEY: Okay, okay. So we are nice. And secondly, I would echo what Senator Fischer said: I always appreciate it very much when people drive this long distance, and we're going to look into two-way telecommunications someday in this body to make it a little easier to testify from Chadron. [LB888]

STEVE CLEVELAND: Well, thank you. I really have a nice drive home. It's...all I have to do is find Interstate 80, take a right at Ogallala, and I'm home in three hours--after I reach Ogallala, that is. (Laughter) [LB888]

SENATOR HADLEY: You might want to stop... [LB888]

STEVE CLEVELAND: So it's a simple... [LB888]

SENATOR HADLEY: ...stop up and fill up with gas in Kearney, would you? We need a little money. (Laughter) [LB888]

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STEVE CLEVELAND: I will do that. Any other questions? [LB888]

SENATOR LOUDEN: Other questions for Steve? Seeing none, thank you for coming down, Steve. [LB888]

STEVE CLEVELAND: Um-hum, you're welcome. [LB888]

SENATOR LOUDEN: Next testifier. [LB888]

TODD HEISTAND: Thank you, Senator Louden and members of the committee. I'm Todd Heistand, it's H-e-i-s-t-a-n-d. I'm with NuStyle Development. We've done, over the past 25 years, we've done 41 rehabilitated buildings that are on the National Register, in Iowa and Nebraska. And I guess I just had a couple quick points I wanted to make. One was, over in Iowa when we...when you...when they did the cap, it really did cause a lot of grief for the developers--and still is--that you really...even the Iowa Finance Authority, on a low-income housing tax credit, will not count the state tax credit towards a source as you're doing the development because they don't know it's...it goes into a lottery and they select this many for the year, and that's how they set their tax credit program up. It's...you know, that's...definitely I would rather not have one at all than to take that approach, and save everybody a lot of grief. I think Mr. Levy has done a great job on putting this bill together and even giving some other options on not needing to put a cap on and doing some other pieces. I did want to touch base just a little bit on, maybe, on Senator Schumacher's brothel, because I do live in a town of 1,500, and we've been doing some rehabs on some real small scales for there. We've only done one big...one project in Omaha in the last...since 2004. And a lot of it is because the cost of materials have run up; you can't make the numbers work. It's tough right now. We...that project we did in 2004 was actually a New Markets Tax Credit project, and that filled that 20 percent gap that we're filling right now, you know, to be able to make that work. It's on the TipTop building there on 16th and Cuming Street, and that area really has went...really, really grown since we did that project, and it did...New Markets Tax Credit did their jobs; it's a blighted area, and it's really done a great job. But we did do this small brothel--this was in Odd Fellows--and we just built...all we did was we turned around...and it was about a \$170,000 project, and we put two apartments up above on Main Street, Woodbine, which is a whole two blocks long, and we...you know, it does provide good housing for people that want to be downtown. And we've actually kind of turned our downtown around to where it's maybe...doesn't feel bad to be downtown like some of the upper-story housing used to be. And so there is some incentives to help Main Street and provide in the small rural areas. I think we can really...this would be a big piece to help with the small towns, to be able to say we're that 20 percent short, we can't quite make it work and...because they're not going to appraise out. We all know that the money you put into these small buildings in rural Nebraska are not going to appraise out to the right amount anyhow. We're lucky to get 50 percent on the dollar. So, hey, I'm here to answer questions if you have any. [LB888]

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SENATOR LOUDEN: Any questions? Senator Schumacher. [LB888]

SENATOR SCHUMACHER: Thank you, Senator Louden. Thank you for your testimony. You're a town of 1,500? [LB888]

TODD HEISTAND: Yes. [LB888]

SENATOR SCHUMACHER: Economics in that is probably fairly different than a town of 200-300. [LB888]

TODD HEISTAND: Yes, correct. [LB888]

SENATOR SCHUMACHER: And we have, in Nebraska we don't have so many towns even above 1,000 population. Since you're here... [LB888]

TODD HEISTAND: Yeah. [LB888]

SENATOR SCHUMACHER: What...generally in Iowa, the experience with that new markets thing been pretty good? [LB888]

TODD HEISTAND: And that was a federal program, and that's actually...kind of feels like it's going away; I mean there's not much there. We haven't been able to make it work on anything since then, and there hasn't...I think there's only been, I think, three projects in Nebraska done total, and those were all done in 2005 and 2006, so that really isn't much of a program anymore. I'm not sure what happened. [LB888]

SENATOR SCHUMACHER: Is the...are the feds phasing it out, then? [LB888]

TODD HEISTAND: It kind of feels like it. That's why it's kind of like that Iowa state tax credit where it's kind of that lottery and you don't know if you're going to be able to use it, so it's pretty hard to make work. So we're down to the federal tax credit and TIF, and those are both great programs and it works, but in order...we're just that little bit short trying to make these historical buildings and doing them right and really making them...and they're going to outlast...you know, you can build a white box and make apartments and, you know, 20 years from now they're shot. Or you can do these historical rehabs, and in 50 years they're still this cool building that's been rehabbed and still in place on the tax rolls. [LB888]

SENATOR SCHUMACHER: Thank you. [LB888]

TODD HEISTAND: Yes. [LB888]

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SENATOR LOUDEN: Senator Pirsch? [LB888]

SENATOR PIRSCH: So you haven't done but one project since 2004. [LB888]

TODD HEISTAND: Right. [LB888]

SENATOR PIRSCH: And you said cost of materials is a factor in that. [LB888]

TODD HEISTAND: Right. [LB888]

SENATOR PIRSCH: What type of tools...is that the only difference between...you did the, for instance, the 1700 Farnam Street...or, sorry, 1600 Farnam Street, the Panda House project, some years ago. [LB888]

TODD HEISTAND: It...yeah. [LB888]

SENATOR PIRSCH: How...what type of tools...did you use that financing? [LB888]

TODD HEISTAND: And that was. And that was we had TIF, we did use CDBG funds on that project also and...that was the low-income housing tax credit. So we actually had, along with the historical tax credits...these projects do get fairly complicated, you know, so you do have to add quite a few on top of them. You know, now, with low-income housing tax credits, you know, as we all know, they're pretty...it's tough to...they're very competitive, and it's hard to make them work even in the rural areas. So I think it'd be nice to have a piece to add that would help these rural communities without having to go through all the pain of a low-income housing tax credit. They could just...I think the state tax credit could really fill that void and you'd see some things happen along with the city. It's not just...it does fit both areas. [LB888]

SENATOR PIRSCH: Thank you. [LB888]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. Next testifier? Are there any more testifiers or proponents? Okay, opponents? Any opponents? Seeing none, neutral testimony? Senator Cornett, do you wish to close? [LB888]

SENATOR CORNETT: Very briefly. I have been working with the people that brought me the bill on reducing the fiscal note and to address some concerns of the committee. We will be happy to work with you over the next couple of weeks on reducing the note and addressing any questions you have. With that, I'll be happy to answer any questions. [LB888]

SENATOR LOUDEN: Questions? Seeing none, that closes the hearing on LB888, and

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now we will have the hearing on LB1114. Speaker Flood, you're ready to open. [LB888]

SENATOR FLOOD: Are you ready?

SENATOR CORNETT: I am ready whenever you are, Mr. Speaker.

SENATOR FLOOD: Well, good afternoon, Chairman Cornett, members of the Revenue Committee. [LB1114]

SENATOR CORNETT: Could we please clear the room and keep our voices down. We still have testimony. [LB1114]

SENATOR FLOOD: (Exhibit 17-19) My name is Mike Flood, F-I-o-o-d. I'm from Norfolk. I represent District 19. I am pleased to present you with a short compromise amendment, AM2118, which will be handed out to the page right now, which will take the place of the original green copy of the bill. Let me just back up for a second and talk about the Municipal Equalization Fund. In the 1990s, you might remember Ed Jaksha, he was running around the state, he was working very hard to cap property taxes, with good reason. And as a result, Senator Jerry Warner worked very hard to institute caps on cities and other political subdivisions. At the time, in the mid-nineties, you could look at a couple of cities and one city would have a levy over \$1, one city would have a levy probably close to 60 cents, one city would have a levy of 30 cents, one city would have a levy, you know, above \$1, way above \$1. So what the Legislature did in the mid-nineties is instituted a 45-cent cap per \$100 of valuation on property taxes. And Senator Warner looked at that and said, that's the right state policy. But, if you take Schuyler and Seward, Schuyler's per capita valuation was about \$26,000, \$29,000 now, where Seward's is much higher. And Senator Warner said, in the interest of equalization, they still have to have a police force in Schuyler, they still have to have a swimming pool for the kids in Schuyler, they still have to have a fire department and all those things. So he came up with the idea of municipal equalization funding so that cities with a low per capita valuation and a local effort rate had the same amenities, to the extent possible, that a city with a much higher valuation had. We deal with this all the time in state aid to education. I know that's controversial, at best, at times. But that was what the purpose of the Municipal Equalization Fund was. And at the time, it was funded in two ways. And right now, I'll give you the current numbers. Municipal Equalization Funding in Nebraska today gets about \$17 million: \$8 million comes from a 1 percent tax on premium...of insurance premiums paid in Nebraska; about \$9 million comes from local option sales tax. Let me explain that. So cities in this state have a local option, you know, up to 1.5 percent. For a long time the state would collect 3 percent of that local option and put it in the state's General Fund; it was termed to be kind of a collection fee, an administrative fee. Senator Warner took that...for instance, Norfolk's share of its local option sales tax administration fee is \$220,000; Kearney's is about \$360,000; Omaha's is \$3.8 million; and Lincoln's is \$1.6 million; those are round

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numbers. So Senator Warner took that 3 percent of the local option administrative fee, and that comes to \$9 million today, so \$9 million from that plus the \$8 million from the 1 percent insurance premium tax comes to \$17 million. And then it goes into a formula. And Norfolk called me last year when we were cutting state aid to cities, counties and NRDs, and said, okay, if you've got to do that, somebody has to look at the Municipal Equalization Fund. And Norfolk says, we are sending our 3 percent administration fee to the state, and we get zero MEF funds. And I looked at it, and Norfolk's levy is low; culturally, historically, Norfolk's levy has always been lower. We're one of the five lowest cities in the state. Kearney has a low levy, York has a low levy, Scottsbluff has a low levy. And MEF doesn't look at your total levy for a city, it only looks at the general fund operations levy. It doesn't look at your bonded indebtedness. So by looking at the general fund operations levy, it says to itself: Okay, Norfolk's levy is 17 cents; even though your per capita valuation, Norfolk, is below the state average by about 6 percent, you're entitled to \$341,000 in MEF funding; but your local effort rate isn't high enough with your general fund operations levy to qualify you for MEF. And that's an inequity that has caught my attention. So I put together a bill and here's where I started learning a lot more about MEF, because when I put my bill in I don't know near what I know now. I know much more now than I did the day I put my bill in. I put my bill in and I said--that's the green copy--and said, okay, I'm going to let all these cities that have local option sales tax keep their 3 percent administrative fee. And I thought, well, this will...and then we'll just use the money from the 1 percent premium tax, and that will take care of the small cities. And I didn't want to hurt the small cities because they don't have the shopping base that the bigger cities do. And Norfolk isn't successful without people from Madison and Battle Creek and Pierce and Stanton. Valentine is actually a hub in its area. Omaha is actually a super hub; Kearney is a hub, but at the expense of these smaller communities. And I didn't want to hurt the small towns because they are at 45 cents. And people will say, in larger towns, well, we've had to cut our swimming pool. The difference is their levy is at 30 cents. Schuyler has nowhere to go, Lexington has nowhere to go. And I do think there's a good, sound state policy in helping those smaller towns that don't have the tax base, that have below average valuation. But all I was focusing on when I put my bill on was the levy. And, really, the levy is the second step of a two-step process. The first step is what do you have for valuation per capita? And there are a few towns in the state--Norfolk is one of them, and I can see why they brought this to my attention--where they have below-average valuation. And average is a little bit over \$50,000; Norfolk's is under the average by about 6 percent. Schuyler, Lexington are in the mid-twenties to high twenties, \$20,000, \$25,000, \$29,000; Omaha is at \$90,000 per capita; Lincoln is at \$70,000 per capita; Kearney, you're doing pretty good, you're above the state average. So when I put my bill in I heard from a lot of cities. I heard from South Sioux, I heard from Wayne, O'Neill, Hastings, Plattsmouth, Papillion, Lexington, Norfolk, obviously. And I sat down with all those folks and, to provide you a little background, we have been meeting and having phone conferences for the last couple of weeks. And I've got to credit the city administrator in Lexington, who came forward with an idea that I think makes sound sense and good policy. He

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said, communities that are below the average, and are entitled to MEF on that element alone, should receive some money from MEF and shouldn't be incentivized to raise their property tax levy. And so that's what my bill does. It says, if you have below-average valuation, you're essentially, in this case, entitled to about 20 percent of what you would get from MEF. And what I handed out to you is the amendment we worked on together. And I want to credit Bill Lock and Senator Cornett. But Bill Lock worked his tail off and ran numbers and numbers and numbers. I thought of a lot of different scenarios. But all the scenarios I looked at really hurt the small towns. And that's not my intent. What my bill would do, would reduce funding for MEF-eligible cities by about 1 percent, 1.1 percent, 74 bucks for one town, 600 bucks for another. And it would actually increase...there's a handful of cities that do get an increase because they have below-average valuation and they have a low levy. Now last year we had Grand Island. And you can't blame them, they looked at the law and they said, and I can't impute their motives, but they raised their levy 5 cents in Grand Island. And in the newspaper it said, in addition to raising our levy 5 cents, we'll also get a couple hundred thousand dollars from MEF. When we ran for the Legislature, every one of us waved our hands and said we don't want to see property taxes increased. And I'm not...and Grand Island was up against a wall, they probably had to raise their levy anyway. But on top of it there's a bonus. And that's not what MEF was intended for, it was not intended to help communities, you know, by raising their levy, and then getting more money. Now, it's not fair to say that's why Grand Island did it. It was the law, and that's the result. And Grand Island's valuation, you know, is...I'd have to look at it, I shouldn't just guess off the top of my head. But that's something we should talk about. So bottom line is, I didn't want to hurt the small towns. That's the AM2118. This compromise amendment becomes the bill, and it preserves the equalization aid program and the policy principles involved. Section 77-27,139.03 currently states that, quote, if a municipal tax levy for operational purposes was less than the average property tax levy in the immediately preceding fiscal year, the MEF aid provided to such municipality shall be reduced by 20 percent for each 1-cent increment the levy was below the average property tax levy. AM2118 simply adds that the reduction shall not exceed 80 percent, meaning there's a 20 percent floor that we're going to respect. The amendment thus caps the amount of reduction in MEF aid for low-levy cities at 80 percent. In effect, it allows cities that are eligible for MEF funding to receive a portion of what they would have received had their property tax levy been higher. In other words, a city like Norfolk, which has property tax rate over 5 cents lower than the average, does not have to raise its property taxes to receive some of the funding it is otherwise eligible to receive. This has been going on as a discussion point in the League for a long time. You'll see in the printout of the numbers that everybody looks at, just like the state aid formula, towns aren't taking a big hit. It is equitable, it's fair, and I think it does provide some incentive to keep the levies low in those towns that have historically had low levies. And who...and I've come to terms with the fact that, after meeting with these cities, you know, every city is different, and South Sioux has challenges that Norfolk doesn't, and Lexington the same way, and Plattsmouth the same way. And I credit those city managers for coming forward and

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working with me to find a solution. But I think what you have in AM2118 is a fair compromise. Norfolk would receive \$220,000 if it kept its 3 percent administrative fee. But, to be honest, if we did that and a couple other cities did that, we'd decimate some of the small towns in Nebraska with funding, again, on top of the cuts we made last year. And this at least respects the principles of the formula; it modifies it slightly. And I think if you're for lower property taxes, this is a decent counterbalance. And I worked very closely with the city of O'Neill, Nikki Johnston. She was kind of my second-class city spokesman that I appointed. And I can't say that she speaks for all of them, but she went through this. And there were other options that we could have gone to, a 40 percent floor; we didn't do it because I felt like it violated, kind of, the trust with the smaller communities because they do shop and oftentimes work in those larger cities. And I just didn't feel it was fair to have that kind of impact on them. That's my testimony; I didn't read it off the sheet. But that's the story that we are in the middle of. And I think there's going to be some cities that are going to come up here. I specifically can represent to you, South Sioux City, Wayne, O'Neill, Hastings, Plattsmouth, Papillion, Lexington are all in agreement that AM2118 preserves the original intent and provides a more equitable distribution of MEF funding. I couldn't meet with every city, but we did the best we could. And as far as Omaha and Lincoln, and I talked to both of their mayors yesterday, while they would love to see their 3 percent administrative fee...and they certainly had interest in the bill. They are super hubs: people from across the entire state shop there. They are the host of not only big, statewide events, but they are the home of large state universities that receive a lot of money from the Legislature. And while they are taking a neutral position on this bill, I think the question for this committee and this Legislature long term is, how should we fund MEF, not the formula, but how should we fund MEF? Should we take the 3 percent administrative fee and redistribute it to other cities, or should we find another source of revenue to make up that \$9 million? And I'd hope over the summer, if there was ever a chance...I'd like to pass this bill as amended this year, but I think over the summer we should have that conversation, because it would allow some cities to do some things that I think would be very good. And York, for Senator Adams' sake, has the lowest city levy in the state. And, you know, I'm sure that's something people in York are proud of. I know that people in Norfolk pride themselves on a low levy. And, you know...but at the same time, it works against those cities when it comes to MEF. So that's my testimony. I'd be happy to answer any questions. [LB1114]

SENATOR CORNETT: Yes, Senator Fischer, then Senator Hadley. No, go ahead, I was just looking at these numbers. [LB1114]

SENATOR FISCHER: Okay, thank you, Senator Cornett. Thank you, Senator Flood, for bringing this in. I haven't looked at the printout yet to know what each city is getting or losing or whatever the printout is. My question is, did I understand correctly that if your city has a low levy you receive aid or you do not receive aid? [LB1114]

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SENATOR FLOOD: Not necessarily. The first step is, where is your valuation? [LB1114]

SENATOR FISCHER: Right. [LB1114]

SENATOR FLOOD: Is it above average or below average? [LB1114]

SENATOR FISCHER: Say you have a high valuation, what happens then? [LB1114]

SENATOR FLOOD: You have a high valuation, you're not getting anything, for the most part... [LB1114]

SENATOR FISCHER: Okay. [LB1114]

SENATOR FLOOD: ...because you have got the local resources to provide... [LB1114]

SENATOR FISCHER: So it doesn't matter what your levy is if you have high valuation? [LB1114]

SENATOR FLOOD: Well, it does look at your levy, but I'd probably have Randy Gates answer that question, the Norfolk finance officer. Cities with high per capita valuation that have the resources per capita aren't even in the MEF discussion. And Sidney is a good example of that. Sidney has a high levy, not high levy, but Sidney has an above-average levy, but it doesn't have...it has high valuation per capita. And so I tried to address Sidney's issue because Sidney has not gotten any MEF. But their per capita valuation is so high that they don't qualify. That answer your question? [LB1114]

SENATOR FISCHER: I'm...Senator Adams knows I always like to compare things to the state aid to schools formula. So I'm trying to, for policy concerns here and policy discussions, I'm trying to compare this formula with regards to valuation and levies and how we also reward or punish school districts with regards to valuations and levies. [LB1114]

SENATOR FLOOD: Well, that's a good...the striking difference between the state aid formula and MEF is that in the state aid formula, what is our local effort rate requirement? One dollar right now? Okay. So it's above 95 percent. The local effort rate on MEF is probably, and where is Bill Lock, it's between...it's 26 cents out of 45 cents. So the local effort rate to get MEF is much, much, much lower than it is for K-12. And I manipulated that local effort rate several different ways in several different scenarios, and it had crazy results in different ways. [LB1114]

SENATOR FISCHER: Okay. It sounded like in your presentation, though, you're trying to reward cities that have low levies. You're trying to reward cities that... [LB1114]

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SENATOR FLOOD: I'm trying... [LB1114]

SENATOR FISCHER: ...keep property taxes down. [LB1114]

SENATOR FLOOD: That's true. [LB1114]

SENATOR FISCHER: We don't do that in the state aid to schools, do we? [LB1114]

SENATOR FLOOD: No. It has a much higher local effort rate, first of all. And I'm trying, in this amendment...this amendment recognizes cities that have a low levy and below-average valuation. There's a MEF need there, but they're not getting it because they don't have...they haven't made the choice to raise their property taxes. And I think those cities in that select group, that have below-average valuation and have chosen to maintain low property taxes, should receive some equity out of the formula. [LB1114]

SENATOR FISCHER: Do you see a contradiction, though, with this formula and then how we distribute state aid to schools? [LB1114]

SENATOR FLOOD: As far as the local effort rate? Yes, I do, because the local effort rate is above 95 percent on schools and it's probably 58 percent, you know, when you look...I don't have my calculator in front of me. But, you know, when your local effort rate on MEF is 26 or 30 cents out of 45 cents, that's much different than the \$1 out of \$1.05. [LB1114]

SENATOR FISCHER: Okay, thank you. [LB1114]

SENATOR FLOOD: Yeah. [LB1114]

SENATOR CORNETT: You know, I haven't had a chance to look down all the numbers, but just on first glance--I'm sure you have--what city is the biggest benefactor of this? [LB1114]

SENATOR FLOOD: Yeah. That would be Norfolk. But I also think you can say Norfolk is, under the current formula, the biggest loser because we are supposed to get \$341,000 in MEF aid and we get zero. [LB1114]

SENATOR CORNETT: Why are you supposed to get \$341,000? [LB1114]

SENATOR FLOOD: Because of our below-average valuation per capita. [LB1114]

SENATOR CORNETT: But why don't you get it? [LB1114]

SENATOR FLOOD: Because our levy is too low. So I guess I could look at my

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constituents on the city council and say, you raise your levy 6 cents, you can take that 6 cents and you can add \$341,000 to it. But that's not the right result for the taxpayer. The taxpayer shouldn't be incentivizing a higher, you know, the Legislature shouldn't incentivize the city council to raise the levy 6 cents to get the MEF aid. And our needs aren't that much either, you know. There's two things at play here. I mean, I don't...I think Norfolk is a well-run city and it's an efficiently run city and it runs with the property tax levy it has. But, you know, I'm their senator and I looked at this, and I do think there's an inequity in the formula. [LB1114]

SENATOR CORNETT: Senator Hadley. [LB1114]

SENATOR HADLEY: Senator Cornett, Speaker Flood, just a quick comment. I can't figure out the headings; they both say the same thing at the top. Is one under the old MEF formula and then one under yours, is that... [LB1114]

SENATOR FLOOD: The one on the left is this year's, what they're supposed to get this year under the existing law. [LB1114]

SENATOR HADLEY: Existing, and the other one is...? [LB1114]

SENATOR FLOOD: And on the right it is what they would get under my...as amended. [LB1114]

SENATOR HADLEY: Okay. [LB1114]

SENATOR FLOOD: And any community that loses, loses no more than 1.10 percent. [LB1114]

SENATOR HADLEY: Okay. Is this a lot to do about not much? I look at, you know, just quickly looking at just the differences in a lot of them, it's \$1,000 here or \$1,000 there. [LB1114]

SENATOR FLOOD: Seventy-four bucks here, 60 bucks there. [LB1114]

SENATOR HADLEY: Yeah. So is it worth changing the... [LB1114]

SENATOR FLOOD: Is it worth changing? [LB1114]

SENATOR HADLEY: ...the formula? I guess that's the question I ask, Senator Flood. [LB1114]

SENATOR FLOOD: I think it is, and the reason it is, is I focused on what the right policy was and I couldn't justify a policy that destroyed the formula and caused, you know...I

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could come in here and I'm sure there would be a huge line on both sides, of cities that said...like Kearney would get \$380,000 under my bill as amended. [LB1114]

SENATOR HADLEY: Right. [LB1114]

SENATOR FLOOD: But you're getting zero now. The winners and losers are so stark. My concern is that this is a surgical compromise to try to address the inequity in the formula by providing a floor for cities that should be getting MEF aid that aren't, without destroying the funding that these other communities need. Hastings is up against a wall. They've got challenges with the DEQ and the EPA, and they've got, you know, things that we don't have. And their sales tax isn't what Norfolk's is, their valuation is below average further than ours is. And I know they get a lot of money under the MEF formula. But...and I met with the mayor of Hastings a couple times, and I met with their city officials. And I couldn't justify a state policy that completely destroyed what the MEF formula was about. And so I compromised with these cities to try and address an inequity for the cities that are below average in valuation per capita and have low levies. [LB1114]

SENATOR HADLEY: Speaker Flood, just one more follow-up question, then. We will not run into unintended consequences under your amendment where we would have a city raising property taxes just to keep MEF funding or increase MEF funding? [LB1114]

SENATOR FLOOD: You know, the formula is still going to work very similar to the way it did before. It doesn't, you know, the question is, you know, the city officials have to be held accountable as to whatever they do. But, yes, cities could still raise their levy and qualify for MEF funding. And, you know, some...the biggest, one of the biggest winners out of the MEF formula in the last couple of years has been Lexington. And I looked at the increases that they've had in MEF funding, and at face value you look at Lexington and you'll say, I don't know if that's right. And then I looked at their valuation per capita, and it's \$29,000. And I'm sitting at \$49,000 or something like that in Norfolk. And Omaha is sitting at \$90,000. And I thought, you know, the people in Lexington have to provide police services, they have to provide ambulance and fire and all of...the library and all those things to provide the amenities. And I felt like Lexington has a reasonable and acceptable answer, you know, the need for the funding, because their valuation is so low. [LB1114]

SENATOR HADLEY: Okay. [LB1114]

SENATOR FLOOD: So I think it's fair. [LB1114]

SENATOR HADLEY: Okay, thank you. [LB1114]

SENATOR CORNETT: Senator Pirsch. [LB1114]

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SENATOR PIRSCH: Just a couple of issues or questions I have. First of all, so this was set up by Jerry Warner in the '90s, is that what you said? [LB1114]

SENATOR FLOOD: I want to say the caps were passed in '97 and they went into effect in '98, but Lynn Rex would probably give you the more complete history there. [LB1114]

SENATOR PIRSCH: And so \$8 million of funding source for this comes through insurance premiums. Is that right? [LB1114]

SENATOR FLOOD: Yeah. [LB1114]

SENATOR PIRSCH: How did it settle...is there some logical nexus, or was this just...how did it come about that that source of funding would be used for municipal...for the MEF? [LB1114]

SENATOR FLOOD: I don't have the answer. My guess is Senator Warner saw a problem for low-valuation cities and said, we've got to provide a safety net for these communities when we cap them at 45 cents. And they looked at the funding sources that were available to the state at the time and they picked a 1 percent premium tax and then the 3 percent administrative fee on the local option. [LB1114]

SENATOR PIRSCH: So it just was available as a source. [LB1114]

SENATOR FLOOD: That's my guess. I don't know. [LB1114]

SENATOR PIRSCH: And then it's a two-part analysis to determine your eligibility as a city for these type of funding, right? And so the first part is valuation. And just generally speaking, to become eligible for MEF funds and probably the reason why Senator Warner was looking at this is because...dealing with situations where you have low valuation and high levy, relative high levy amounts, is that... [LB1114]

SENATOR FLOOD: Well, I think I can safely say he was concerned about the towns that didn't have the per capita valuation and the access to the resources through property tax with the 45 cent cap. And he knew that they'd be at their cap the first day the cap went into place. And if you're going to have a high local effort rate or you're going to have a local effort rate, you're going to do what you need to do to get the money, you should benefit from the Municipal Equalization Fund. [LB1114]

SENATOR PIRSCH: Yeah. And on the whole, would you agree that the fact that you have \$8 million from the insurance premium and the \$9 million through this other administrative...local option administrative fee, so for a total of \$17 million, because that pot is being split in so many big ways that it's not currently having major dynamic effects

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in terms of incentivizing cities or municipalities or towns to act in major ways to change to kind of affect those two figures, the levy or valuation? Is that fair to say? [LB1114]

SENATOR FLOOD: Well, I think the reality is a lot of small towns are at their 45 cent cap. And I think they're frustrated when larger communities, especially communities that have a high per capita valuation, say, we need more money from the state. When you're sitting down in, I don't know, Battle Creek and your levy is at 45 cents and you're at the max and the larger cities that have the valuation are saying, we need some room here, we've got some needs, the Battle Creeks of the world don't have a lot of sympathy because they're at the max and they've been there for 15 years. And I think what makes York and Norfolk and some other cities different is we actually have a below-average per capita valuation. And when your valuation is below average, you do have legitimate needs because you don't have the same resources that somebody with a \$90,000 per capita valuation has. [LB1114]

SENATOR PIRSCH: And so that's, then, the incentive, kind of illustrated in Grand Island and whatnot, to then hike up the levy, maybe, to... [LB1114]

SENATOR FLOOD: Well, Grand Island...and I've got an Omaha World-Herald article that says during a meeting they said, well, if we raise our levy 5 cents we'll also now qualify for MEF aid. And by pushing up their local resources they qualify for more from the state. [LB1114]

SENATOR PIRSCH: And there's a certain...in terms of pushing up their levy, of course, you know, obviously, you know, the people of Grand Island are going to be a little sensitive to that. But the extra MEF funds, in the grander picture, is that a significant proportion in relation to dollars increased by the levy increase? [LB1114]

SENATOR FLOOD: What extra funds are you talking about? [LB1114]

SENATOR PIRSCH: Well, you're saying there's two things that go...to the extent Grand Island increases their levy, right, they also... [LB1114]

SENATOR FLOOD: Oh, it all comes out from...it's all static. So some communities are entitled to a bunch more MEF aid than they get. So it's not fair to say Norfolk will get \$341,000. But we don't appropriate more money to keep pace. Whatever the 3 percent administrative fee is comes in, and whatever the 1 percent insurance premium tax is comes in. And then the pot is at \$17 million, and then it's divvied up by the formula. [LB1114]

SENATOR PIRSCH: And that's it. Yeah. [LB1114]

SENATOR FLOOD: And that's a difference from the state aid formula, where it's funded

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at whatever the expectations are. [LB1114]

SENATOR PIRSCH: Yeah. I'm just saying, with respect to viewing it as the city of Grand Island does, then, so that they're looking at increasing their levy, right, and they're seeing that it also has this other effect upon their MEF funds, right? So I'm saying, is the increased MEF funds that would flow to the city, is that a significant amount with respect to the size of the extra increase in revenue through their levy? [LB1114]

SENATOR FLOOD: Well, last year Grand Island got zero. They raised their levy 5 cents, and this year they get \$241,000. [LB1114]

SENATOR PIRSCH: Okay, and they raised it 5 cents. [LB1114]

SENATOR FLOOD: Well... [LB1114]

SENATOR PIRSCH: How much did the 5 cents equate to, do you know, roughly? [LB1114]

SENATOR FLOOD: I don't remember what it raises. I want to be very clear about one thing, I was not at the Grand Island City Council meeting. I'm not on the Grand Island City Council, nor am I the mayor. [LB1114]

SENATOR PIRSCH: Yeah. [LB1114]

SENATOR FLOOD: I don't want to suggest that they didn't have the need to raise their levy. [LB1114]

SENATOR PIRSCH: Understood, yeah, no, I understand. [LB1114]

SENATOR FLOOD: But the reality is, when they raised the levy it came in. [LB1114]

SENATOR PIRSCH: Yeah. [LB1114]

SENATOR FLOOD: But I do think it's safe to say that we essentially reward communities, in some sense, for upping the property taxes. And Norfolk has a remedy. If you don't want to move this bill, Norfolk has a remedy, and the remedy is, raise your property taxes and cash in, if Norfolk wanted to do that. And I don't think that is what...I mean, if you're going to have a justice...the scales of justice over here, in one hand you want to take care of the Schuylers and the Lexingtons of the world that have legitimate city needs, and on the other one you say, well, if you want to be over here raise your property taxes. I want a counterbalance over here that says, okay, if you have below-average valuation, you should have...there should be something that recognizes the fact that you aren't raising your levy, you know. Norfolk came in and said, if we got

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our 3 percent back we get \$220,000. Today they get, under my proposal, \$83,000. [LB1114]

SENATOR PIRSCH: Yeah, I think I understand what you're saying now. So thanks, I appreciate it. [LB1114]

SENATOR FLOOD: Okay. [LB1114]

SENATOR CORNETT: Senator Schumacher. [LB1114]

SENATOR SCHUMACHER: Thank you, Senator Cornett. Thank you, Speaker Flood, for bringing this to us today. So as I...if Norfolk did that and Norfolk said, okay, we're going to jack up our levy so that we can get some of this bonus money, the pie of bonus money doesn't get bigger or smaller, so who loses if Norfolk does that? [LB1114]

SENATOR FLOOD: Well, as I've learned, every time you tweak the formula in any direction there's always a winner and a loser. The pot is stable and static. So you're going to reduce what some communities get. For instance, I ran a number on letting cities...the five lowest-levy cities keep their 3 percent administrative fee for that counterbalance. It removed \$1.1 million from the \$17 million formula. And Hastings saw a drop in excess of about \$300,000-some. So it comes out of the backside of other folks that need the MEF. And I couldn't, you know, Hastings is up against a wall. I have spent the time with them. I can appreciate their situation. What I really got concerned about is...you know, Hastings may lose \$300,000 and their levy is at about 31, 30 cents. What I really got concerned about is towns like Wausa, you know. Wausa doesn't have anywhere to go when you take their levy, I'm just using them as, you know, if they're at 45 cents and you take \$25,000 away from them, that may be the swimming pool. And I couldn't justify doing that under this analysis. [LB1114]

SENATOR SCHUMACHER: Thank you. [LB1114]

SENATOR CORNETT: Seeing no further questions, will you stay for closing? [LB1114]

SENATOR FLOOD: You bet. Am I the last bill of the day? Very good chance I'll waive. [LB1114]

SENATOR CORNETT: May I see a show of hands for the number of testifiers, please. All right. We are limiting testimony to 3 minutes strictly. [LB1114]

RANDY GATES: I'm Randy Gates, G-a-t-e-s, finance officer for the city of Norfolk. And Senator Flood did such a good job of explaining this bill, he stole a lot of my thunder. But I was making notes with the questions the various senators had. And I'll try and address some of them. And I also want to cover a few things that Senator Flood didn't

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cover. The MEF formula, we have felt for a long time in Norfolk, was very unfair. We've got a relatively low assessed valuation per capita. And there's two pieces to that, well, three pieces to the MEF formula. The first one: where you calculate whether the city's need is greater than its resources. And when you do the need calculation, you're taking the city's population times average per capita property tax, and their population group. And the cities are divided up into three population groups--first-class cities and larger, second-class cities, and villages. So that has some impact as to whether or not your assessed valuation is above or below the average in that population group. And then the second part of that, where they calculate the resources, is that city's particular valuation times the average nonbond levy rate for all cities, and not divided by the population group. So Norfolk is, as the senator mentioned, about 6 percent below the statewide average in all population groups in assessed valuation per capita. We're 17 percent below in the large cities in valuation per capita. And both of those have an impact on what you're going to get for funding. The senator also said that...I believe he was referring to Norfolk being entitled to \$380,000-some of MEF funding. I think that was based on some old numbers. I have some new numbers from the Department of Revenue. And I believe their calculations are that when you do that first part of the formula, where you calculate a community's resources and you calculate their need, if need is greater than resources, that gives you a preliminary MEF funding amount--and I'm already running low on time--but gives you a preliminary MEF funding amount. In Norfolk's case that would be \$466,000, I believe, under the new formula. And we're not getting any because our levy rate is 17 cents, which is way below the statewide average levy rate of 30 cents. So we're a long ways from getting MEF. I wanted to address Senator Fischer's concerns about the school formula and the city formula, and start off by saying I think the theory behind the MEF formula would make some sense if cities were more like schools in our funding sources. Schools primarily are property tax and state aid. Cities are not that way at all. We have multiple funding sources. The senator mentioned the cities of York, Kearney, Scottsbluff, and Norfolk as being the four lowest property tax levy rates of the first-class cities. Those cities have something in common, and that something in common is they're all NPPD retail communities. They lease their municipally owned electric systems to Nebraska Public Power District for 12 percent of system revenues. In Norfolk, that is our second-largest general fund revenue source, that's \$4.4 million; sales tax is \$7 million. So you can see we have a huge amount of funding. And all four of those cities get a large amount of funding from NPPD lease revenues. I think that's one of the main reasons all four of those cities have low levy rates. Property tax, at \$1.5 million in our general fund, is a distant third. So we're putting forth local effort. That local effort formula in MEF, that part of the formula is what we really, vehemently disagree with because our citizens are putting forth that local effort. They do it when they write their check every month to Nebraska Public Power District, way more so than when they write that semiannual check to the Madison County Treasurer to pay their property tax, because 12 percent of what's in that Nebraska Public Power District bill comes back to us as lease revenue. So I think that's one of the big differences between trying to make the cities' MEF look like the schools' aid formula.

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It may make some sense, and I think it probably does, to have an aid formula like it is for schools, where you've got basically two revenue sources. Municipalities have multiple revenue sources. And the Revenue Committee has been addressing some of those here lately, like occupation taxes. Norfolk gets a lot of money from occupation tax. Our voters wanted it that way because they didn't want their property taxes to go up. We have that; we have keno; we've got multiple revenue sources. So we're not at all like school districts, where we're limited. One of the comments was on Grand Island and their raising their property tax to get MEF. I don't know if that's what they did. But I know their CPA firm made a recommendation to them that they do that. And I think that, if you read the newspaper articles, that seemed to be a consideration that played out. And there is that incentive in the current MEF formula. There will still be that incentive in the...under the proposal, in the AM2118. But it takes away some of that incentive to raise your property taxes because you're already going to get part of it. Oh, talk about who's the largest beneficiary of this, in absolute terms that's the city of Norfolk, \$83,000. In relative terms, when you look at it per capita, we're one of the lower beneficiaries. There's 51 cities under AM2118 that would get additional MEF funding. On a per capita basis it goes from \$6.66 for the 5 second-class cities, \$8.75 for the 43 villages, and the 3 first-class cities, of which we're one, average \$2.33. Norfolk's is, I think, \$3.40-some, so we're on the low end of that. I better close. My red light has been on for a while. But I was wanting to address some of the questions. I've got other things I would say if I had more time, but I will close. And I would definitely welcome questions from the senators. [LB1114]

SENATOR CORNETT: And you're also welcome to submit whatever you would like, in response to questions you heard, in writing, and I will distribute them to the committee. Senator Hadley, I believe you have a question. [LB1114]

SENATOR HADLEY: Just a quick question. I've heard the thing about NPPD and the four cities before. But Hastings runs their own utilities, I believe, water and gas maybe. [LB1114]

RANDY GATES: I think they run them all. [LB1114]

SENATOR HADLEY: And Grand Island has their own electricity. So I would think those would be great money generators that would offset NPPD's payments to the other four cities. So how can those two cities have such problems when they're having utilities that they can basically charge what they want on? [LB1114]

RANDY GATES: Hastings, I think, is a good example. From talking to Joe Patterson I understand they've got a bond coming at the limits that are transfers from the electric utility to the general fund to 4 percent. So their general fund is getting 4 percent of their electric system revenues. In other words, when you're in Hastings and you write your check out for your electric bill, I believe 4 percent of that, in Hastings, goes to the

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general fund. When you're in Norfolk and write a check for your electric bill, 12 percent of it goes to the city of Norfolk and goes into the general fund. So there's a lot less local effort being put out when a Hastings citizen writes that monthly check to the city of Hastings than there is when a Norfolk citizen writes his monthly check to the Nebraska Public Power District. [LB1114]

SENATOR HADLEY: Do you know anything about Grand Island and their electric? [LB1114]

RANDY GATES: I don't know about Grand Island. [LB1114]

SENATOR HADLEY: I remember, and I'd hate to...I can't quote Senator Utter. But he did mention to me once that they...those were separate corporations, I believe, in Hastings, or separate entities, so that basically the utility company could kind of decide what they gave to the city of Hastings... [LB1114]

RANDY GATES: Yeah, I believe there is some separation of that. [LB1114]

SENATOR HADLEY: Yeah, separation, so... [LB1114]

RANDY GATES: They are owned by the cities but different boards. [LB1114]

SENATOR HADLEY: ...I guess I would be interested in hearing from Hastings and Grand Island as to what impact their city-owned utilities have on their situation. [LB1114]

RANDY GATES: Right. But I think that is a great point, in that, you know, there's definitely big differences in the local effort. And a lot of that can be explained just with the electric utility. [LB1114]

SENATOR HADLEY: Okay, thank you. [LB1114]

SENATOR CORNETT: Seeing no further questions, thank you. Oh, I'm sorry. Senator Adams, I didn't see your hand. [LB1114]

SENATOR ADAMS: Just very quickly. When we talk about local effort, and I'm not sure how you would do this, but should sales tax as a source of revenue be also considered part of your base when judging what you need? [LB1114]

RANDY GATES: Trying to write an equalization formula and local effort formula is very difficult. That, you know, may... [LB1114]

SENATOR ADAMS: I mean, it fluctuates, which is going to make it very difficult to do. I

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get that. What my concern is...and one of the things I'd like about this is at least we're recognizing some of those small communities that don't have the sales tax base that are up against it. [LB1114]

RANDY GATES: And I think... [LB1114]

SENATOR ADAMS: And, quite admittedly, I'm talking about York when I say this, there's that huge sales tax base out there. And it really is part of their resources to run their city, undeniably, as it probably is for Norfolk and Kearney and all of these others. Do you have any thoughts on that? [LB1114]

RANDY GATES: Well... [LB1114]

SENATOR ADAMS: I don't mean to muddy the water, but... [LB1114]

RANDY GATES: ...a couple comments. We are bringing in a lot of people from out of town that are shopping in Norfolk and paying the sales tax. But when they come into town they're using a lot of city services. [LB1114]

SENATOR ADAMS: Right. [LB1114]

RANDY GATES: We got to pay for those city services. You know, they're using our streets, they're using our libraries, and we don't charge them to use our libraries; they're using our parks. If something happens to them, the rescue squad comes. They're using our fire services. I do believe there's probably a net benefit to Norfolk for that, just like there's a net benefit to York. [LB1114]

SENATOR ADAMS: You're in effect saying, how do you quantify that? [LB1114]

RANDY GATES: Yes. And York is in a very similar situation to Norfolk. When you run through the MEF formulas, under the new formula I think York is going to get just about the same amount per capita as the city of Norfolk does. I think they're both in, like, the \$3.40 or \$3.30 range. [LB1114]

SENATOR ADAMS: So in effect what you're saying is, then, you take sales tax out of this picture, because in theory if Norfolk collects \$1 in sales tax, they're probably also expending it on services for those people internally as well as from the outside that come in. I... [LB1114]

RANDY GATES: We're definitely expending part of it. [LB1114]

SENATOR ADAMS: All right. [LB1114]

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RANDY GATES: I can't tell you whether we're spending \$1 of it, but we're definitely expending part of it. [LB1114]

SENATOR ADAMS: Okay. So then you come back to the property tax element. [LB1114]

RANDY GATES: Yes. And this whole thing is so complicated because...we've touched on a couple of them. We've touched on the different revenue sources, and that's one of the things that can affect your property tax. Another thing that can affect, how efficient you operate. Senator Flood mentioned that, and he said he thinks Norfolk operates very efficiently; we do too. And then there's a third thing, as to what level of services your citizens are going to have. Some cities have full-time, paid fire departments; some cities have volunteer fire departments. Some cities have more trails; some cities have more parks. We think those cities' citizens should be paying if they want higher levels of services and not taking Norfolk's sales tax dollars and using it to provide those higher levels of services. So it's a complicated thing, and there's a lot of factors that affect that property tax. But I know that formula is unfair the way it is now. We've been unhappy with it for a long time. And I think this does a little...goes a little ways towards correcting what we've felt has been an inequity for a very long time. [LB1114]

SENATOR CORNETT: No further questions. [LB1114]

RANDY GATES: Thank you, Senators. [LB1114]

SENATOR CORNETT: Next proponent. Could the proponents please move forward. [LB1114]

ROGER FOSTER: Senator Cornett and members of the Revenue Committee, my name is Roger Foster, F-o-s-t-e-r. I serve as the mayor of Crete, and I started the day in strong opposition to this, until I saw Senator Flood's amendment. I spoke with Senator Hadley and Senator Schumacher, and I have to apologize that I told you one of the calculators was population. It does make a difference as far as the per capita valuation. That would be the part that we benefited from. I guess I'll give you a scenario so you don't feel...when you look here and you see Crete is getting \$385,000, you may say, why does Crete get so much? Why does Seward get so little? Seward, their population compared to ours, they have 6 more people. We have 6,900, they have 6,906. But with their property valuation, they collect \$500,000 more than we do. So if you look at it, we are offering the same services to a population similar to ours for less, even with the MEF money. Not to pick on Mayor Eickmeier, but we're not cutting the fat hog with this, and this is funds that we seriously need. And the reason I support his amendment, because it would have eliminated 15 percent of our general fund revenue. And I probably don't have to tell the past mayors on the committee what a 15 percent cut overnight would do to a budget of a town our size. But that's all I had. I just...I stuck

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around. I could have easily just left because our money was virtually restored to a neutral level, but I wanted to stick around and testify as a proponent because of how important this money is. And I wanted to make sure that that wasn't lost. And I'll answer any questions. [LB1114]

SENATOR CORNETT: I just want to clarify something. You're not really testifying in support of the bill. You're supporting the amendment because it doesn't hurt you. [LB1114]

ROGER FOSTER: The amendment, the amended bill, yes, I support that. [LB1114]

SENATOR CORNETT: But do you agree with the underlying principle or policy? [LB1114]

ROGER FOSTER: With the new calculation of... [LB1114]

SENATOR CORNETT: Yes. [LB1114]

ROGER FOSTER: We...I guess we can always find areas where we need more money. I understand the reasoning behind this. I don't have a problem with it as long as it doesn't happen overnight and isn't, you know, catastrophic to our budget. If it's something that is manageable, which...this compromise is manageable for us. Before, when it stripped us of \$385,000 and 15 percent of our revenue, it just...it would not have been manageable. I mean, it would have been a cut in services and many other things. [LB1114]

SENATOR CORNETT: No further questions. [LB1114]

ROGER FOSTER: Thank you. [LB1114]

SENATOR CORNETT: Thank you. Next proponent. [LB1114]

LANCE HEDQUIST: Senator Cornett, members of the committee, my name is Lance, L-a-n-c-e, Hedquist, H-e-d-q-u-i-s-t. I'm the city administrator of the city of South Sioux City. I'm here in support of the bill as amended by Senator Flood. We think that the amendment has done...gone a long ways in terms of solving some of the concerns we had on the initial bill. Initially we would have seen over a 20 percent drop in terms of revenue as it compares to our property taxes in town. So we had significant worries about that. While we still take a reduction in terms of the funds we get, we think this is much more manageable for us to deal with the MEF situation in our particular community. I do want to also commend the city manager of Lexington; he put together the basis for this bill. And obviously Senator Flood did an outstanding job in working with us, looking at alternatives to try and find out what would be best for all the

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communities involved. And so we think this has gone a long ways to get that done.  
[LB1114]

SENATOR CORNETT: Senator Hadley. [LB1114]

SENATOR HADLEY: Just, I have two questions, Mr. Hedquist. First, where did you go to school? [LB1114]

LANCE HEDQUIST: Wayne State College, and then I went to...been to 13 different colleges. [LB1114]

SENATOR HADLEY: Was one of them the University of South Dakota? [LB1114]

LANCE HEDQUIST: Oh, yes. [LB1114]

SENATOR HADLEY: Okay, I just wanted to be sure that we got that on the record.  
[LB1114]

LANCE HEDQUIST: I went...South Dakota is the second-largest school I went to, yes.  
(Laugh) [LB1114]

SENATOR HADLEY: Secondly, the most striking thing I guess I've heard so far in this whole discussion is the disparities in the valuation per capita. I really didn't realize that there was such significant disparities. And I knew that smaller towns generally had smaller home valuations and such as that. But there are some significant disparities.  
[LB1114]

LANCE HEDQUIST: And it's also interesting because you have the state assessment process you go through. So you have to reach a 95 or 99 percent level. To see that disparity is significant. [LB1114]

SENATOR HADLEY: Um-hum. I think when we had the Crete vis-a-vis Seward...just kind of struck me, 5 people different and that big a disparity in the...thank you. [LB1114]

LANCE HEDQUIST: Absolutely. [LB1114]

SENATOR CORNETT: Senator Adams. [LB1114]

SENATOR ADAMS: Lance, a year ago when we were debating Senator Ashford's sales tax bill on the floor, on the one hand as a former mayor of York, I know the benefit of that; then I sit here as a policymaker and maybe I get too absorbed in state aid equalization for schools and like formulas. But my concern at that point in time was that if we add more sales tax on we create a bigger gap between the Omahas, the Lincolns,

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the Yorks, the Kearneys that have that retail base versus those that are off. And it seemed to me at that time we needed to be focusing on this more. Now, I'm not sure we've hit on it here, but this is 180 degrees from that green copy. And we're headed in the right direction here. So if you got another half a cent before this legislative session is over, have we further separated haves from have-nots? [LB1114]

LANCE HEDQUIST: I think that's a really good question. And it's also important to note that the sales tax funds have a whole variety of uses. Some of the cities have used the sales tax for property tax relief, some have used it for streets, some have...we built a library, part of our funds for that, and we also built a county jail; 88 percent of the money for the county jail came from the city of South Sioux City citizens. And so it really gets exasperated by the fact that the sales tax has multipurpose uses out there. [LB1114]

SENATOR ADAMS: So the fact that York has used it dollar for dollar to lower property tax, they shouldn't be penalized for having done that? [LB1114]

LANCE HEDQUIST: That's correct. And that's what this...actually, this amendment to this bill actually does provide some relief for that. [LB1114]

SENATOR ADAMS: It keeps that penalty, it keeps this from being punitive, or their decision. [LB1114]

LANCE HEDQUIST: It reduces that punitiveness, yes. [LB1114]

SENATOR ADAMS: Okay. [LB1114]

SENATOR LOUDEN: Questions? Other questions? Seeing none, thank you for your testimony. Next testifier. [LB1114]

DAN HOINS: Thank you, Senator Louden. My name is Dan Hoins, D-a-n H-o-i-n-s. I'm the city administrator of the city of Papillion, Nebraska. My testimony is probably a little bit unique here today because Papillion has never qualified for MEF funds and we probably never will qualify for MEF funds. My involvement started as I read a string of e-mails of my fellow city administrators and how some of them, in particular Hastings, Lexington, Plattsmouth, were going to be severely damaged by the green bill, as you've referred to it, by the loss of that 3 percent. In reality, Papillion would have been the benefactor of almost \$200,000, the bill in its original intent. But in working with those other administrators...and I think Speaker Flood said it very eloquently when he gave the briefing on this bill, Papillion is successful when Plattsmouth is successful, when Gretna is successful, when the other small communities around our Papillion are successful. They shop in Papillion and they support Papillion. And so I'm here today on behalf of supporting them and saying that we support the amendment. I sat at the table, worked with the other cities and the Speaker on the amendment. And I think it is fair. If

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you're going to have MEF funding, this is probably the most fair method of doing that. And again, not having a dog in the fight, if you will, I think it was important to come in today and say that it's important that we support those other cities in their efforts to at least mitigate some of the damage of the original bill and actually come out with a pretty good product once everybody worked together. [LB1114]

SENATOR LOUDEN: Questions? Senator Adams. [LB1114]

SENATOR ADAMS: Thank you. Do you think, I mean, I've said it once, I'll say it again. This is way better than the green copy. What about Weeping Water, Louisville? Have we recognized their issues enough in this formula? Is that something that down the road we need to look at? [LB1114]

DAN HOINS: I've spent 12 years...worked for the sheriff in Plattsmouth, so I know those two communities very well. I think that Speaker Flood was very cautious about any negative impact to those smaller towns, Senator Adams. I haven't looked at their impact. But if...average of 1.1 percent is far better than the original green bill, and so my answer to your question is, yes, I think we've taken them into consideration in the amended bill. [LB1114]

SENATOR ADAMS: But I guess what I'm saying here is...you're right, and Senator Flood has been sensitive to that here. We've not hurt them a great deal. I guess what I'm wondering, down the road as we continue to look at this equalization fund, might there be other mechanisms that we're leaving out that are unique to communities the size of a Weeping Water or a Louisville or a Superior or a Hyannis, that are off of the beaten path, that we need to look at? [LB1114]

DAN HOINS: Well, I think you can always attempt to address it and make it better for them. But again, that law of unintended consequence and the pot being so big is always going to come into play there. And so until the pot grows, I'm not sure that there's much more can be done. [LB1114]

SENATOR ADAMS: Right, you're right. Thank you. [LB1114]

SENATOR LOUDEN: Any other questions? Seeing none, thank you for your testimony. [LB1114]

DAN HOINS: Thank you. [LB1114]

ERVIN PORTIS: Thank you, Mr. Chairman. I'm Ervin Portis, E-r-v-i-n Portis, P-o-r-t-i-s, city administrator in Plattsmouth, and just be real brief here. We were one of the communities that came to the table asking Senator Flood to visit with us. We compliment him that the amendment is...it's a compromise crafted from those who

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dissented with the original bill. I agree with you, Senator Adams, that this is a remarkable difference. The amendment is a remarkable difference from where we started. You know, reality is, when you've got a bill that not...or an amendment that not everybody likes, you probably have a relatively good bill because you don't have anybody who's happy. There are still winners and losers in this. And in regard to your question of, Senator Adams, the Weeping Water and the Louisvilles, in Cass County 77 percent of the dollars, of our retail dollars are spent out of Cass County in those super hubs, in Papillion. My wife goes and spends money in Dan's town. So we, all of us in Cass County, fully appreciate that we are the small communities where our dollars are spent elsewhere and that there is a need, through the formula, to ensure that we're providing some measure of equal access to services. So we do support the amendment. And we thank Senator Flood for listening to those who said, you know, the first bill has got some problems. [LB1114]

SENATOR LOUDEN: Questions? Senator Hadley. [LB1114]

SENATOR HADLEY: I guess not so much a question as a comment. I think Senator Adams has asked some very good questions. And maybe this is something down the line as a state we're going to have to take a whole look at, you know, how we're funding counties, cities, schools, the state, you know, the whole thing and how it all works together, because in my district, the smaller towns just don't have a lot of flexibility. [LB1114]

ERVIN PORTIS: Senator Hadley, I'm going to thank both you and Senator Adams and anybody who would make that statement. The pressure at the local level to provide services is extreme. But just as you experience, nobody wants to raise any taxes. So I agree wholeheartedly with you. State policy, we really do need to take a look at what's necessary to operate a local government and help communities find the support mechanisms to do that. [LB1114]

SENATOR HADLEY: And we consistently hear that property taxes is the number one thing that...in my district, if I want to sit down and talk tax policy with any citizen, tax policy turns out to be property taxes. So that's just... [LB1114]

ERVIN PORTIS: Senator, I've been in local government for 40 years. I've never yet in my life met a mayor or a city council member who said, I'm going to run for election on the premise we're going to raise property taxes; never happened, never will. [LB1114]

SENATOR HADLEY: Thank you. [LB1114]

ERVIN PORTIS: Thank you. [LB1114]

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

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Next testifier. Are there any more testifiers in the proponents? Okay. Opponents? And welcome to Lincoln, Gary. [LB1114]

GARY PERSON: Thanks, Senator. [LB1114]

SENATOR LOUDEN: You drove about as far as Steve Cleveland. [LB1114]

GARY PERSON: (Exhibit 20) I sure did. It's not my first trip either. My name is Gary Person, spelled like "person," P-e-r-s-o-n. I'm the city manager of Sidney, Nebraska. I made the commitment to drive the 700 miles to testify today originally to be a proponent of LB1114. I still support the original language. But I have to go on record as opposed to the amendment because I think the MEF formula is flawed, it's discriminatory, it penalizes hard work and effort by communities who grow Nebraska's economy. It's that simple. It's been a great source of frustration and irritation to the city of Sidney for the past 15 years. I don't think it's anything short of an earmark funding for some first-class communities at the expense of others. Consider, over those same 15 years, the city of Sidney has lost \$5 million of local sales tax revenue to pay for state incentive programs. Yet in that time frame we've ranked dead last among the 30 first-class communities in receiving a combination of state aid and MEF funding. If you want to talk about true equalization funding, help us replace the lost local revenue to pay for the state programs. In addition to that, we've spent \$15 million in recent years to meet new water and wastewater standards because of failed state water policies and \$3 million to meet new landfill regulations, yet we're not given any credit for that. Hastings says they have EPA and DEQ problems? What do you think that does to a community of 6,000 people when you have that kind of debt structure and the highest water rates in the state of Nebraska? And I could go on and on and on about our needs. But I ask you, for a community of 6,757 people to continue to subsidize Hastings, Bellevue, North Platte, South Sioux City, Fremont, and now the list has continued to grow, how do we explain that to our local citizens? Why are we asked to do that? I want to draw your attention to a chart I provided you in my testimony. Those are the first...and I just used the last six years of these figures, because that's all that's available on Department of Revenue Web site, but at least it's there now; it hasn't been previously. And you look what Sidney has lost in local sales tax revenue to pay for state incentive programs. So you look at that per capita loss, yet we're given no credit for that. And it was done without local approval. You know, I think the MEF thing has been a game for a lot of communities. I think some of them have moved their bonded indebtedness, which didn't count toward MEF incentive funding, and moved it into their general fund. It's just because you get credit for it there and you get rewarded for it. You know, this isn't the Nebraska that my great-granddaddy helped homestead. You know, you were taught to stand on your own two feet and work hard. And all we're asking for is a level playing field and fairness. We have to put up with Wyoming and Colorado as border states, and we fight that mentality all the time, that they have a better tax climate than Nebraska. And yet we've worked extraordinarily hard to build our economy. We provide those jobs for all those little

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communities around us so they can stay viable. And that's how you do that. But if you're going to continue to penalize the Sidney, Nebraskas, of the world every time we turn around, whatever formula has come up, we're the bottom feeder, and we're tired of it. [LB1114]

SENATOR LOUDEN: Questions for Gary? Senator Schumacher. [LB1114]

SENATOR SCHUMACHER: Thank you, Senator Louden. Thank you for coming all that way. Maybe, as Senator Hadley will point out, we might be able to make that easier at some point in the future. [LB1114]

GARY PERSON: We're all for it. [LB1114]

SENATOR SCHUMACHER: You struck on a chord that I've often thought whether or not it's accurate. If...I mean, we've got governments, whether it's the federal government, state government, moving money around, trying to make things equal, more equal, less equal. And in the process we may be creating a process which does not respond to economic reality. But we prop up things because we feel they should be propped up and tear down things because we feel they should be torn down. From your perspective, from your town, which is along the interstate...should be viable into the future, it's got that 5,000 population base and you got the little towns in the vicinity, the Gurleys and the Lodgepoles and those. How much do you give to the system, in--and I've tried to get this number from...and I can't get this number, but maybe you can shed some light on it--give--your population base, however we define that--give to the system, in income taxes, in sales taxes, in various other assessments, and then get out of the system, from the higher levels of government, in aid for water towers, aid for street repairs, aid for this and aid for that and aid for school districts. Any idea, are you ahead, or are you behind? [LB1114]

GARY PERSON: Almost every formula, we're penalized for being...for having grown our economy, for having worked hard, for having...on per capita wages, Sidney probably ranks among the highest, but it's because of hard work. We lost almost 80 percent of our job base in the '50s, '60s, and '70s. All those jobs were dependent on the federal government and Mother Nature. And we did it with homegrown entrepreneurs, like the Cabela family and several others I could mention. And now we've completely reformed our economy, but we did it with a lot of hard work and a lot of effort and a lot of risk taking. [LB1114]

SENATOR SCHUMACHER: Does it strike you that that is also...is there...guess that's true or not true with reference with the small towns that probably are, you know, marginal, in the 300 population range, around you? [LB1114]

GARY PERSON: They're surviving because they have good jobs in Sidney. And they

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can go home to their homes in the Lodgepoles, the Potters, the Daltons, the Gurleys, the Bridgeports, and they have a nice paycheck. And their schools stay viable and their communities stay viable because Sidney has built a job base for them. If Sidney had not done that, where would they be? [LB1114]

SENATOR SCHUMACHER: In your opinion, is our meddling doing more harm than good? [LB1114]

GARY PERSON: I'm all for being left alone. I think you...I'd be all in favor of home rule. Let us function like other cities in other states do. We compete with Colorado communities all the time because they have home rule. They can decide locally what's best for them. In Nebraska we play this "Mother, may I" game. The Legislature says you may, and then you have the ability to say or convince your local folks that you can do that. But our flexibility is very, very limited in being able to react. I mean, 16 years ago when this formula was invented we got about a half million dollars in state aid. And it was taken away and said, you got nothing, so go fend for yourself; so we did. [LB1114]

SENATOR SCHUMACHER: If we were to design some mechanism by which you and like-situated communities could form a relationship through some type of overriding interlocal agreement and turn you loose with your own resources, good thing or bad thing? [LB1114]

GARY PERSON: You know, we're so spread out, out west, I don't know if you can...you know, we share resources all the time, and we try to do that through regional cooperation. We do it with the county on a lot of different things. You know, we try to give the ratepayer, the taxpayer the best bang for the buck. But there are so many regulations out there, so many federally mandated things, so many state-mandated things, and you got to pay for them somehow. And that's what's making communities not be able to function; it's because of the continual mandate that you shall do this, this, this, and this. They don't help you figure out how you're going to pay for them. [LB1114]

SENATOR SCHUMACHER: When I say turn you loose, I'm not necessarily being entirely kind, because the state right now puts a lot of money into roads and to other pieces of infrastructure. I mean turn you loose, that's your problem, for all but the big parts. [LB1114]

GARY PERSON: So we keep all our state income tax and we keep all our state...all the state sales tax within a local jurisdiction where we generated it? [LB1114]

SENATOR SCHUMACHER: Can we run that scenario? I wonder how it would come out? [LB1114]

GARY PERSON: I think we'd come out just fine. [LB1114]

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SENATOR SCHUMACHER: And so if we're worried about western Nebraska and how to revitalize that... [LB1114]

GARY PERSON: Help us be competitive with Wyoming. You know, we sit right there and we compete with them all the time for industry. We'll work on an industry prospect for two years and convince them that's the place they ought to be. Cheyenne can work on them for ten minutes because the state has allowed them to do whatever it takes to get them; that includes property tax abatement, exemptions, you name it. But yet we find a way to compete because we work hard. [LB1114]

SENATOR SCHUMACHER: Those numbers would be interesting. Thank you. [LB1114]

SENATOR LOUDEN: Other questions? Senator Hadley. [LB1114]

SENATOR HADLEY: Mr. Person, if I heard you right, then the state incentive programs did nothing to Sidney to get any jobs there or anything else. Is that...I think that's what you said. [LB1114]

GARY PERSON: Absolutely they did. They've been a good partner. But my point is this, I appreciate the fact that you do have state incentive programs, and I think they've been a very, very positive thing for this state. But we also did that as a local community, we came up with LB840 funding, the local, you know, tax that you could provide incentives. We did some creative things with utilities and everything to help accommodate that, to create this environment, and the state has been a wonderful partner with that. Our issue is, with the state...not only do we put those local dollars and investment there for our future, but the state expects us to help pay for their program. It's your program. [LB1114]

SENATOR HADLEY: How is that? [LB1114]

GARY PERSON: Because all of the state sales tax...all the sales tax that is generated through projects or qualifying companies originally comes in the form of city sales tax because it was adopted by local citizens for a reason. And then years later, when the companies qualify or they have the financial need and they file the paperwork, then it's clawed back. But we never know where it comes from to start with or how to, you know, or how to protect against the future. And the state has only afforded us a 30-day window of notice on when this happens. [LB1114]

SENATOR HADLEY: Well, we got a bill before us right now that's trying to change that. [LB1114]

GARY PERSON: LB...and we... [LB1114]

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SENATOR HADLEY: Would you be...are you opposed to that bill? Are you opposed to that bill? [LB1114]

GARY PERSON: I have preached it for four years. I've begged for it for four years. [LB1114]

SENATOR HADLEY: Okay. Well, I would guess that there's probably a lot of cities that would like to have lost \$3.3 million, because that would...their local economic base grew because... [LB1114]

GARY PERSON: Absolutely. [LB1114]

SENATOR HADLEY: So I would guess that there are probably a lot of cities that would like to trade places with Sidney. So with that, I'll shut up now. Thank you, Senator Louden. [LB1114]

SENATOR LOUDEN: Other questions? Seeing none, thank you for being here, Gary. [LB1114]

GARY PERSON: Thank you. [LB1114]

SENATOR LOUDEN: Next testifier. Okay, no more opponents; then neutral testimony. [LB1114]

LYNN REX: Senator Louden, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And originally I was not planning on testifying. But due to some of the questions, I thought I might shed some light on a few things. First of all, the Municipal Equalization Fund was created in 1996 with passage of LB1177. At the same time that that was being created, the Legislature also passed LB1114, and that basically put in play a requirement that from 1996 to 1998 municipalities in this state would have to lower their property tax levies. Second-class cities and villages were going from \$1.05 per \$100 of valuation down to 45 cents plus 5 in two years. They had, I think, the most draconian effects of LB1114. First-class cities were required in 1996 to go from 87.5 cents per \$100 of valuation down to 45 cents plus 5 in two years. But virtually all the first-class cities were at a rate so low that it wasn't that much of a burden for them, comparatively. So the reason why LB1177 was put in place is because Senator Warner, as I think Speaker Flood already noted, Senator Warner thought it was very important to try to provide some kind of assistance to those municipalities that were struggling the very most, and that's why this formula was put in play. The insurance premium tax was previously given to municipalities on a per capita basis; 30 percent of it goes to municipalities, 10 percent still goes to counties, and 60 percent goes to schools. So the 30 percent that was going to municipalities on a per

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capita basis was rolled into the Municipal Equalization Fund. The 3 percent collection fee that the state of Nebraska had been collecting for decades from local option sales tax was taken out of the state's General Fund and put into this fund as well. And we had, year after year after year, come before this committee asking that those funds be returned to municipalities because, in fact, the last numbers we saw, it took the state of Nebraska less than 0.7 of 1 percent to actually collect those fees. So that's where the Municipal Equalization Fund comes from. The League is neutral on this bill because we obviously have municipalities on both sides of the questions, but I'd be happy to respond to any other issues that you may have. [LB1114]

SENATOR LOUDEN: Questions for Lynn? Seeing none, thank you for your testimony. [LB1114]

LYNN REX: Thank you. [LB1114]

SENATOR LOUDEN: Anyone else in a neutral testimony? Seeing none, Speaker Flood, do you wish to close? [LB1114]

SENATOR FLOOD: It will be brief, I promise that. Senator Schumacher raised some of the same questions I had, and that is, when you manipulate the system over here to get a result, then it has this effect over here. And you talk about home rule and all that. And the answer is simple. If you want to get out of the MEF business, you have to take the caps off of property tax. The caps started the MEF discussion. And I don't think any of us want to do that, for the same reasons we don't want to do it on K-12 education. But you raise the point that I thought about. And I think Senator Adams raised the point about the small towns. And, actually, the part of MEF that's compelling is the small towns. Louisville loses 67 bucks in my deal; Weeping Water gets \$2,961 more, it got zero last year; Randolph, Nebraska, which is north of Norfolk, gets \$67,000, that's a lot of money in Randolph, and that's going to help pay a police officer to work the streets of Randolph; Beaver City, \$40,000. I mean, I think...Deshler, \$43,000; Walthill comes out pretty good in the MEF formula, and I think we can all recognize that they have some challenges up there: 74,000 bucks. So I do think the formula, Senator Adams, responds to the smaller communities. I think the only problem in the formula is the funding source, from where I sit. And we have to make a decision as a state how we're going to fund it. I think you would find 100 percent, because I don't...I want Hastings to have the resources it needs to fund its community and recognize that they have problems we don't. I want the same for South Sioux, I want the same for Schuyler, I want it for Madison, I want it for Norfolk. I'm not going to be here next year, but I'd like the summer to at least make the pitch that we should talk about a funding source for MEF outside of the 3 percent and let those communities keep it. And then take Norfolk's piece of the pie out and just let them keep their 3 percent admin fee. And I think the fund will work, with some modifications, just fine. So I feel like this is a bill that I made my personal priority this session. I know it doesn't change the world, and it doesn't change the world

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because I couldn't sleep at night making the changes that it did in the green copy because I didn't think it would be good state policy and I didn't want to hurt the small towns. And I don't want a situation where it's one community against another, because how do I know what their needs are? I know that Norfolk's value is below average and our local effort rate would have to go up to qualify. York has the same situation. And I think at least this is a recognition of the problem and an attempt to fix it. So with that, I thank you very much. [LB1114]

SENATOR LOUDEN: Okay. Any questions for Speaker Flood? Senator Adams has a question. [LB1114]

SENATOR ADAMS: Mr. Speaker, just one quick comment. As we were going through this today and listening to your closing, this is just what happened on community colleges. I tried desperately to equalize and pull in all the factors. But when there is a finite pot and a lid on top of things, you create winners and losers. So even though there could maybe be other things done here, I think, frankly, you've come a long way, given those restrictions. [LB1114]

SENATOR FLOOD: Well, thank you. And the city administrator from Lexington and Bill Lock from our committee deserve a lot of credit for this. One of the things I think as a member of the Legislature is you have to be willing to challenge your own ideas and you have to be willing to listen to other people's ideas. And to Joe Peplitsch's credit, from Lexington, he gave it a weekend and he came back Monday morning with something that had merit, and I think it has value. So thank you. [LB1114]

SENATOR LOUDEN: Okay. This closes the hearing on LB1114 and it closes the hearings today. [LB1114]