[LB23 LB270 LB304 LB444 LB456 LB459]

The Committee on Revenue met at 1:30 p.m. on Thursday, January 25, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB444, LB23, LB270, LB459, LB304, and LB456. Senators present: Ray Janssen, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Don Preister; Ron Raikes; and Tom White. Senators absent: Abbie Cornett and Chris Langemeier. []

SENATOR JANSSEN: Good afternoon, ladies and gentlemen. Welcome to the Committee on Revenue. For the record, my name is Ray Janssen. I happen to be the chair of the committee and will introduce the committee members who are here today. To my far right is Senator White. Senator Langemeier is not going to be here. On his left is Senator Raikes and on my left is Cap Dierks, vice chair of the committee. Senator Burling was here. He'll be returning and Senator Preister is probably off doing something else. I know Senator Langemeier will not be with us today. He is somewhere else. Erma James is our clerk to my right. Let's see, Marcus are you still our page are you? Okay, Marcus is our page. George Kilpatrick, legal counsel for the committee. When you come up to testify would you please drop your testifier sheet in that little box right to Erma's left and don't forget it. Please turn your cell phones off. What did you say, George? [LB444]

GEORGE KILPATRICK: I said under penalty of death. [LB444]

SENATOR JANSSEN: Oh yeah. Under the penalty of death. But make sure those...we had someone in here the other day that was testifying and that phone went off and, you know, he felt terrible. I was mad. So make sure you've got them off, will you? Okay, we talked about the sign-in sheets. If you're testifying for more than one bill you need to submit a form for each bill. Okay. There are clipboards in the back of the room, the sign-in sheets. If you do not wish to testify and want to drop in that you were here, that's fine. I think that's about it. I've covered everything. With that, I think Senator Stuthman is raring to go to tell us all about his exciting idea for this afternoon. Senator Stuthman, welcome to the Revenue Committee. [LB444]

SENATOR STUTHMAN: Thank you, Senator Janssen and members of the Revenue Committee. For the record, I am Senator Arnie Stuthman, S-t-u-t-h-m-a-n, and I represent the 22nd Legislative District. I'm here to introduce LB444. LB444 addresses a need to provide incentives for small customer-owned renewable generation systems. The bill revises the Renewable Energy Tax Credit Act by removing the one-megawatt minimum size requirement for a qualifying renewable energy project and increases the incentive rates. Under the eligible renewable resource section, it also changes the term moving water to hydropower. This does not change the application. Hydropower is just a more commonly used term. For energy generated before January 1, 2010 the credit will change from three-quarters of a cent to one cent kilowatt hour of electricity. After January 1, 2010 and before January 1, 2013 the credit will change from a half a cent to three-quarters cent per kilowatt hour of electricity. After January 1, 2013 and before January 1, 2018 the credit will change from a quarter of a cent to a half a cent per kilowatt hour of generation. Credits can still be earned for ten years after the date of the facility's start. The $400,000 cap for credits earned for all facilities remain the same as last year. I have a constituent in my area that has an 80-kilowatt methane digester. The 8,000 hogs in this confinement operation provides the fuel for the 80-kilowatt generation unit. This 80-kilowatt system generates enough energy over the course of a year to power 35 homes. The generator runs 24/7. Under the current act, an operation like this individual would not qualify for tax credit incentive, because it is too small. In fact, for a methane digester to qualify he estimated that he would need almost 80,000 hogs to produce enough manure to reach the level of generation to equal one megawatt. The changes proposed in LB444 are meant to encourage small, local renewable generators by providing a state incentive for these smaller operations. These are my opening comments and I will hope to try to answer any of the questions. If I'm unable to answer some of the questions I know I have some testifiers behind me that are more familiar with this situation. Thank you. [LB444]

SENATOR JANSSEN: Any questions? Ron. [LB444]

SENATOR RAIKES: Was this facility or this energy generation unit in place before the credit? [LB444]

SENATOR STUTHMAN: My constituent? It's been in place two years, but it only generates, you know, the 80-kilowatt. [LB444]

SENATOR RAIKES: I guess what I'm getting at is this person decided before there was any credit available that this was a doable, workable project and so went ahead and... [LB444]

SENATOR STUTHMAN: Yes, yes. [LB444]

SENATOR RAIKES: ...did it. [LB444]

SENATOR STUTHMAN: Yes. He installed this operation not for the incentive part of it. He installed the operation for the social effect of the methane digester, the renewable energy portion of it, and to more or less create something that would generate electricity. It's been a very expensive project for him. He has got some assistance on it, but he generates 24 hours, he buys his own electricity from himself is what he does. [LB444]

SENATOR RAIKES: So there is not any electricity to sell from this particular operation.

It's all used in-house. [LB444]

SENATOR STUTHMAN: No. Well, he generates into the power company's infrastructure and he buys electricity back. He sells...yes, he does sell electricity to the power line. He sells it at wholesale and buys it back at retail. And this individual was going to be here to testify, but I think Kristen Gottschalk will be able to give you more figures on that. [LB444]

SENATOR RAIKES: Okay. [LB444]

SENATOR STUTHMAN: But he put this renewable energy apparatus in for social environment, that many hogs, and that's probably the reason why he did it. [LB444]

SENATOR RAIKES: Okay. Thank you. [LB444]

SENATOR JANSSEN: Arnie, did I get you right here? He hooks this right into the power line... [LB444]

SENATOR STUTHMAN: Yes. [LB444]

SENATOR JANSSEN: ...and it goes right up to the transformer that comes into his farm, and then the power company estimates how many kilowatts he is generating and they actually deduct that from his bill then, I would imagine. [LB444]

SENATOR STUTHMAN: And I'm not sure if they deduct it from his bill or they pay him... [LB444]

SENATOR JANSSEN: Give him credit. [LB444]

SENATOR STUTHMAN: ...credit him so much, but he's paying the same amount, I'm sure, as you and I are paying for electricity generated, but he is selling what his excess at a lower price of really cheaper than the cost of production. And Kristen can give you those answers. [LB444]

SENATOR JANSSEN: Okay. Don. [LB444]

SENATOR PREISTER: Senator Stuthman, I want to compliment you on the drafting of your bill. [LB444]

SENATOR STUTHMAN: Thank you. [LB444]

SENATOR PREISTER: It's virtually word-for-word identical to the one we'll hear next week that I'm introducing, too, LB648, except I've added a couple things in addition. So I would comment on what we have just been asking and as I understand it and correct me if I'm wrong and I think Kristen will as well, but I think Danny Kluthe got a stinking deal. Right now he has to sell everything he generates. He can't use a single kilowatt hour of what he generates, and he has to sell it back at the wholesale cost, the avoided cost, which is about one cent a kilowatt hour. And he can't use any of that. He has to buy all of his own electricity from the utility and he has to pay the wholesale rate. So he's getting absolutely no benefit and he's locked into that stinking rate for 10 whole years. I mean, I think that's terrible, but if you know more or have other information, that's how I understand the contract. [LB444]

SENATOR STUTHMAN: Yes, yes. He is generating into the power's infrastructure, but he's buying it back just as you and I buy electricity back. And Kristen can give you the real details on this. [LB444]

SENATOR PREISTER: Okay. [LB444]

SENATOR DIERKS: Senator Stuthman, what's the population of his swine operation? [LB444]

SENATOR STUTHMAN: 8,000. [LB444]

SENATOR DIERKS: 8,000. [LB444]

SENATOR STUTHMAN: It takes 8,000 head to generate enough manure to run this methane digester on a daily basis. [LB444]

SENATOR DIERKS: And how much power does that take on a daily basis? [LB444]

SENATOR STUTHMAN: You mean... [LB444]

SENATOR DIERKS: How many kilowatts do you... [LB444]

SENATOR STUTHMAN: Is he utilizing in his own operation? [LB444]

SENATOR DIERKS: Yeah. [LB444]

SENATOR STUTHMAN: That I don't know. [LB444]

SENATOR DIERKS: Okay. [LB444]

SENATOR STUTHMAN: That I don't know. But he can generate 80 kilowatts. [LB444]

SENATOR DIERKS: Okay. [LB444]

SENATOR WHITE: Senator Stuthman, there are other advantages besides the power that's generated. As I understand it, the methane method eliminates or severely reduces odor and flies. [LB444]

SENATOR STUTHMAN: Yes, yes. [LB444]

SENATOR WHITE: Have those been serious problems where we have large hog confinement operations that work without these type of methane confinement methods? [LB444]

SENATOR STUTHMAN: Senator White, I don't know whether I would consider it a serious problem. They are an issue to allowing people to build an operation of an 8,000-head swine finishing unit because of the odor and the motions of the people in the neighborhood. And with this it realistically eliminates, you know, 80 or 90 percent of the smell. [LB444]

SENATOR WHITE: So there's good reasons for a tax credit? [LB444]

SENATOR STUTHMAN: There's a social effect to this also. [LB444]

SENATOR WHITE: The Freedom Farm laws were driven by odor and flies, aren't they... [LB444]

SENATOR STUTHMAN: Yes, um-hum. Um-hum. [LB444]

SENATOR WHITE: ...and those issues? So this helps alleviate those problems? [LB444]

SENATOR STUTHMAN: Yes, it does. Yes, it does. [LB444]

SENATOR WHITE: Thank you. [LB444]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Arnie. [LB444]

SENATOR STUTHMAN: Thank you. [LB444]

SENATOR JANSSEN: How many proponents do we have? How many opponents? I don't see any. Okay. [LB444]

KRISTEN GOTTSCHALK : Senator Janssen, members of the Revenue Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I am the registered lobbyist for the Nebraska Rural Electric Association and I'm here to testify on their behalf. I'm also here to testify on behalf of the Nebraska Power Association. The Rural Electric Association has 35 rural members controlling about 80,000 miles of distribution line in the state. NPA represents all of the electric utilities in the state--rural, public power, public power and irrigation, the generators, and also municipal systems. So all power systems. And we're here today to testify in favor of LB444 and both entities that I'm representing today feel very strongly that we support incentive-based renewable energy development rather than mandates. And this is a small incentive if you actually do the math, it's actually a portion of a cent per kilowatt hour generated. And I can talk a little bit more about Danny's facility. And I did find that I had a brochure on that OLean methane digester for reference for the committee. But we do support the renewable energy incentives for projects such as these. And maybe what I'll do is I'll just talk a little bit more about Danny's project. Danny Kluthe, those of you that have met him will find that he is a very energetic, tenacious individual who put this methane digester in primarily for the benefits of reducing the odor on his facility. He's probably one of the best operators you'll ever hope to meet with running a livestock operation. The side benefit was that in collecting this methane he could also generate a clean, dependable energy source that, you know, those hogs are producing fuel 24 hours a day, seven days a week. It's perpetual. I believe he dumps about a quarter of a pit from each of his confinement buildings into the digester every day to generate electricity. He generates about 549,000 kilowatt hours a year from this facility and, in fact, when Danny put this together he overbuilt, because he wanted to make sure that everything was right. He did things that most producers probably couldn't do simply because of the monetary restrictions. Danny's situation right now is that he is in a simultaneous buy/sell agreement with Nebraska Public Power District. I don't think we'll probably see that same situation arise again. Policy changes at the utilities are beginning to look at customer generation interconnections a little bit differently. And in fact, we worked with Senator Stuthman on this legislation and there's a companion piece to the bill that would allow for somebody like Danny Kluthe to use their own energy first and then sell only the excess energy back to the utility in an interconnect situation. The rural systems do believe that that's a better way of conducting that operation. But these sorts of renewable energy projects are expensive and the smaller the scale of the project, the less cost benefit there is to the actual project. So for the cost of some of these, say, if we were going to incent somebody to put in a 25-kW wind generator, well the cost of those wind generators are quite large and an incentive is a good encouragement. Although, the person putting in those facilities obviously have to have a social factor involved in what they're doing, because one of the things that--I always hate to say this--one of the probably most detrimental features to incenting renewable energy in Nebraska is that we have really low electric rates. There's not much to incent on. We have low rates and so the buyback of energy tends to almost appear as a disincentive when it's just by virtue of the fact that we have electric utilities, we have public power in Nebraska that's done a good job of managing our electric systems and keeping those rates low. We do feel that what this bill is doing expanding the renewable energy tax credit to smaller systems by removing that megawatt restriction and bumping up those incentives rates is another step towards incenting renewable energy development. And if you have other specific questions I'd be happy to answer those. [LB444]

SENATOR JANSSEN: Questions? Don. [LB444]

SENATOR PREISTER: Kristen, in this bill, and maybe you weren't a part of the drafting, but you didn't provide any additional funding so that the smaller producers which I support providing incentives to could conceivably use up the funds since it's limited and restricted. But there's no additional funding there so the bigger projects that we had hoped originally to incent would not have anything left, or potentially could not. Any reason or thoughts on why there wasn't at least some additional funding to offset? [LB444]

KRISTEN GOTTSCHALK : We would support additional funding without hesitation. We would support that, but to be perfectly honest the political aspects of getting more money, we figured, were not there but that it should be part of the discussion. [LB444]

SENATOR PREISTER: So you think... [LB444]

KRISTEN GOTTSCHALK: Providing a bigger package...I guess our position really stands that if the state truly believes that these projects are valuable and warranted and contribute to the state, then we do believe that the state should support at a realistic or a meaningful level. And so even though the bill does not have that increase, we would strongly support increasing those dollar amounts. [LB444]

SENATOR PREISTER: Okay. We're in agreement on that. [LB444]

KRISTEN GOTTSCHALK : Absolutely. I don't think we're far off on a lot of things, Don. [LB444]

SENATOR PREISTER: I don't think we are either. On the contract that Danny Kluthe has, did I misstate other than my characterization of it as stinking, that being my word, but the payments and the structure. Is that accurate or did I misstate anything? [LB444]

KRISTEN GOTTSCHALK : The structure is accurate. Danny generates his electricity. A hundred percent of his electricity is delivered to NPPD and it would be at approximately what their cost for producing that energy is. Obviously, those costs would be different at a distribution level than they are at a generation level. Danny also receives other benefits from the federal government, you know, and he had grant funds to help support him. Yes, and I don't want to speak for Danny. I wish he were here because his enthusiasm is so contagious. He wishes he could have got more, but he would have done this project regardless. I don't think anybody else would have stuck it out through all of the bureaucratic steps that he had to do to make this happen. He would have liked more for his project and he would have liked to have been able to use his energy first before it was delivered into the distribution system. [LB444]

SENATOR PREISTER: What is the likelihood or possibility of him renegotiating that contract with NPPD? [LB444]

KRISTEN GOTTSCHALK : You know I couldn't speak to that. We'd have to have somebody from NPPD answer that question. [LB444]

SENATOR PREISTER: Okay. Thank you. [LB444]

SENATOR JANSSEN: Senator White. [LB444]

SENATOR WHITE: When you were looking at the costs and the feasibility of getting more money for this type of project, did you look into the cost to the economy of hog confinement, other livestock operations, that are not allowed zoning and are not allowed to operate because of fear of flies and odors? Was that cost considered? [LB444]

KRISTEN GOTTSCHALK : That cost was not considered. Although, you know, from the comments you've made we would agree with you that those costs should be. [LB444]

SENATOR WHITE: How about the loss of property tax revenue from the higher value of those projects? Was that cost considered when we looked at this? [LB444]

KRISTEN GOTTSCHALK : No. [LB444]

SENATOR WHITE: Fecal pollution of ground water, I understand, is one of if not the largest pollutant in the state of Nebraska. For the cost of that pollutant, either in reducing the usability of our waters for recreation, drinking, or in the terms of cleaning it up, considered when you thought about the cost of these projects? [LB444]

KRISTEN GOTTSCHALK : Evaluated as part of creating an incentive amount? [LB444]

SENATOR WHITE: Yes. [LB444]

KRISTEN GOTTSCHALK : The thought of those values was considered. The dollar amounts and the amounts that were proposed don't even come close to reaching that level. They don't even come close to reaching the level of benefit, strictly from the energy development, not counting those. So do we think that those costs should be valued in and is there value in increasing incentives? We would agree that there likely is a value that should be attributed to that. [LB444]

SENATOR WHITE: The project that you described, does it prevent or reduce water pollution? [LB444]

KRISTEN GOTTSCHALK : The project? Danny's? [LB444]

SENATOR WHITE: Yes. [LB444]

KRISTEN GOTTSCHALK: Oh absolutely. Danny's pit that he stores his methane in is lined and large. The methane goes into the digester. The solids, of course, do their little duty and create the methane. You have an effluent on top which is almost odor-free. Now you ask a hog producer, they're going to say absolutely odor-free. For the rest of the public there's still that little sweet smell there. Not much, but it's significantly better. That water is significantly cleaner and can then be applied without the concerns of direct application there. [LB444]

SENATOR WHITE: So just so I'm clear, for one tax credit we could produce renewable energy, we can increase availability of farm land closer to population centers without objection because of flies and odors, we can decrease water pollution and they spin-off a compost and a liquid fertilizer that's safe to apply to the land. [LB444]

KRISTEN GOTTSCHALK : Yes. [LB444]

SENATOR WHITE: And we get that for one tax credit. [LB444]

KRISTEN GOTTSCHALK : We would get that for one tax credit. Now I do have to caution, you know, I don't want to advocate that we need to begin to mandate that these types of projects be applied to all livestock operations... [LB444]

SENATOR WHITE: But we're talking incentives, not mandates today. [LB444]

KRISTEN GOTTSCHALK : Okay. Because, you know, these projects are very expensive, but for that tax incentive, yes, you're getting multiple benefits. [LB444]

SENATOR WHITE: Are you aware of any project in the state where we could get more returns on working towards solving serious problems than in an incentive in this case? [LB444]

KRISTEN GOTTSCHALK: Am I aware of others? Where we benefit... [LB444]

SENATOR WHITE: Yeah. If we have so much money, we have limited amounts, where could we get more benefit for fewer dollars? [LB444]

KRISTEN GOTTSCHALK: I would say this is probably one of your best bangs for the buck. [LB444]

SENATOR WHITE: Thank you. [LB444]

SENATOR JANSSEN: Any other questions? Ron. [LB444]

SENATOR RAIKES: You mentioned that there are economies of size in these kinds of operations and once they get so small it's really tough to make them work. Would it be a good idea then to do what's suggested here and lower the minimum that is required in order to qualify for the credit? Or would that be, in effect, misleading to a potential user of the credit? [LB444]

KRISTEN GOTTSCHALK : You know, it's an interesting question. And when you actually look at the size of the incentive there's not a lot of dollars going for what it is. Is it misleading? I think that, I honestly don't know how to answer that question. I think we have to be up front about the value and how much, if it's a small wind generator, how much energy value the customer generator is going to get. I don't know that it's misleading, but it also is not, as Don said, you probably get more value for the larger projects. But I think it's somewhat disingenuous to support just large renewable projects and not incent, at a state level, the smaller projects as well. [LB444]

SENATOR RAIKES: One other question if I might, Mr. Chairman. [LB444]

SENATOR JANSSEN: Sure. [LB444]

SENATOR RAIKES: Senator Preister mentioned the--surely a pun--stinking deal. [LB444]

KRISTEN GOTTSCHALK: I didn't want to say it. [LB444]

SENATOR RAIKES: But actually the energy produced by this unit is not a sort of a retail product, I'll say. Is that true? Otherwise you would simply hook the generator into your system on the place and just, you wouldn't have to buy anything from the power company. I would assume because it's a 24/7 production, it's produced continually over that time whereas your use is not. [LB444]

KRISTEN GOTTSCHALK: Right. [LB444]

SENATOR RAIKES: So you need to have storage or you need to, you know, the timing of the energy production isn't right. So from that standpoint... [LB444]

KRISTEN GOTTSCHALK : You need to have a way to push the energy. [LB444]

SENATOR RAIKES: ...you basically need the distribution system in order to fully utilize this. Isn't that true? [LB444]

KRISTEN GOTTSCHALK: Yes. That's true. [LB444]

SENATOR RAIKES: And what is a fair price for the use of that distribution system? [LB444]

KRISTEN GOTTSCHALK: Well, for every rural electric system--and I speak on behalf of them--that cost will be slightly different, be based on their cost of service study the size of the delivery of energy to and from that system, and the costs. In general, I think for a distribution system the cost for use of the distribution are between 50 and 60 percent of the system...if you were paying a retail rate it would be 50 to 60 percent of that rate. And that's a generalization, a broad generalization. [LB444]

SENATOR RAIKES: Okay. Thank you. [LB444]

KRISTEN GOTTSCHALK: Did I answer your question? [LB444]

SENATOR RAIKES: Yeah. [LB444]

KRISTEN GOTTSCHALK: Okay. [LB444]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Kristen. [LB444]

KRISTEN GOTTSCHALK: Thank you. [LB444]

SENATOR JANSSEN: Senator Burling has joined us. Ken, you're next. [LB444]

KEN WINSTON: (Exhibit 1) Good afternoon, Senator Janssen and members of the committee. My name is Kenneth Winston, last name is spelled W-i-n-s-t-o-n. I'm appearing on behalf of the Nebraska chapter of the Sierra Club in support of LB444. I'm going to talk mostly about wind energy, but I do have some comments about the use of methane generation systems that I'll make at the end. In particular, we're supporting LB444 because of the fact that we have a lot of untapped renewable energy resources. There's a number of studies out there describing Nebraska's renewable energy resources, in particular wind is one of our best renewable energy resources and many studies indicate that we're sixth in potential for wind energy development, but we're far behind our neighboring states in the actual development. And I'd like to note that wind energy has been used as a rural economic development tool in a number of other states, in particular in Minnesota. There's a number of areas where it's been used as an economic development tool by farmers in that state. And as you all know, there are a number of rural areas of the state that desperately need economic development opportunities. And right now we've got several obstacles to the development of renewable energy in the state and there's a number of bills that have been introduced to deal with that particular issue. Senator Preister has some bills, Senator McGill has legislation, and I'm trying to think of some of the other senators. I think Senator Lathrop has a bill. Senator McGill...anyway, there's a number of different bills that have been introduced. Senator Dierks has a bill on the community-based energy development. So there's a number of different bill that have been introduced in this area. And this would just be one part of that package of looking at how to do more renewable energy in the state of Nebraska. I just wanted to talk a little bit about some of the benefits of renewable energy. In addition to rural economic development, it also helps deal with global warming gases that are caused by coal fire power plants. It reduces those emissions, helps reduce energy dependence on foreign countries, particularly the Middle East. It also can help insulate from fuel costs. For example, the wind doesn't cost any more today. It won't cost any more tomorrow than it does today, whereas gasoline prices and other fuel prices tend to escalate and it promotes energy security and it also helps keep money in the state. There are a couple of other comments that I wanted to make since there was some discussion about the methane generation. And the Sierra Club has traditionally opposed use of methane generators, but that's a position that's changing, in part because of the fact that there's new technology that's been developed, and I think Senator White's discussion of the issue is perfectly on point. I've had a couple of opportunities to go out to the facility at Mead that's operated by an enterprise called E3 Biofuels. And interestingly enough, there are 30,000 head of cattle on the facility and I won't say that I have the most acute sense of smell, but it wasn't...you could stand right next to the cattle confinement facility and it wasn't oppressive. I mean, there was odor there but it was not horrible. And I'm sure the people who have been around cattle confinement facilities can tell you that sometimes they do smell pretty bad. And so it does address the odor issues by capturing the methane and by channeling it away, and it should address the water issues by providing a place, keeping the manure confined in one place, and then because of the refinement process the distribution of manure on the fields is much less because of the fact that it goes through a digestion process. So even though it's not exactly...there's still some issues that the Sierra Club has regarding confined animal feeding operations, this appears to be a step in the right direction and addresses a lot of the concerns that we have about those kinds of operations. So with that I would be glad to respond to any questions. [LB444]

SENATOR JANSSEN: Questions? I don't see any, Ken. [LB444]

KEN WINSTON: Thank you. [LB444]

SENATOR JANSSEN: Thank you for being here. Next proponent. [LB444]

DUANE GANGWISH: Good afternoon, Senator Janssen, members of the committee. My name is Duane Gangwish, it's D-u-a-n-e G-a-n-g-w-i-s-h. And to steal a joke that Ken made last year where the Sierra Club and the Cattlemen testified together that the sower might tip. We hope he's bolted on today. I appear before you this afternoon to provide our support to LB444. Our board of directors has met yesterday and today and we've gone over a magnitude of bills. They want to provide their support to the ideas and the concepts of renewable energy in a broad scope. There are going to be many solutions provided to you over this session. Senator Preister has some bills and as Ken said others have also. And we'll be here at the table and hope to be part of that solution. This one may not be the ultimate solution, but we will be a part of the process to discover that solution. And so we offer our assistance there. One of our members, as Ken mentioned, what used to be called Mead Cattle Company is now E3 Biofuels has been a benchmark in this kind of thing and has received a great deal of notoriety around the nation, and I have seen in some international publications. It's a rather unique model. It may not be applicable in a lot of places, but it is a very unique model. I'm very familiar with an operation in Ohio where they're going to have a combination of feedlot cattle and dairy cattle and do the same kind of concept. So where there is sufficient capital and sufficient land it can be very well. At another time and another place I might like to visit with you, Senator, about some of our other concerns, but that's not germane to this bill. I don't have a lot of things. We just want to provide our support and be a part of the solution and ask you to advance this bill, please. [LB444]

SENATOR JANSSEN: Any questions? Don't see any, thanks for being here today. [LB444]

DUANE GANGWISH: Certainly. [LB444]

SENATOR JANSSEN: Next proponent. Any other proponents? Any opponents? Opponents? Anyone in a neutral capacity? Seeing none, Senator Stuthman to close. [LB444]

SENATOR STUTHMAN: Thank you, Senator Janssen. One of the main reasons that I introduced this bill is hopefully to make the availability for livestock operators to possibly, you know, have a situation like this where they can generate electricity with their operation on a smaller scale. I know this is not what you call a real small scale, but it's not a large scale 8,000-head unit. But I think that if we don't make an attempt to try to give some incentive to some of these smaller producers, this may be the last one that is ever built and I really respect Danny Kluthe for attempting to do this process. It's very good. I would like to mention also that, you know, the pits are lined. There's nothing going into the ground water. The methane digester itself is lined. Everything it's around, a silo in the ground that is completely lined, and then the water moves off of there on a regular basis into his large pit that he pumps out for fertilizer on his property. So there's really no way that, you know, anything can get to the ground water. He's quite a ways from ground water in that area, but there are situations that are very close to the ground water also. But the pits are lined. And I think this is an operation that we need to look at, but we need to look at it in a way that it can be doable for other young producers. And realistically it adds a lot of value to the community, to the county, to the tax base of schools. So those are my closing remarks. I would hope that you would favorably look upon this and would possibly move it out. [LB444]

SENATOR JANSSEN: Thank you, Arnie. That ends the hearing on LB444 and next we'll move to LB23, Senator Wightman, I believe is here. [LB444]

SENATOR WIGHTMAN: (Exhibits 2, 3, and 4) Chairman Janssen, members of the committee, my name is John Wightman, spelled W-i-g-h-t-m-a-n, representing the 36th Legislative District. I appear before you today to introduce LB23 a bill that provides for a phased in reduction of taxes on long-term capital gain, similar to the treatment afforded long-term capital gains under the federal code which has a substantially lower rate on long-term capital gains as compared to ordinary income, and as many of you know it provides a 15 percent cap on those capital gains. This bill would allow a 10 percent reduction of qualified long-term capital gains as defined under the federal tax code for calendar year 2008, a 20 percent reduction for the year 2009, and a 30 percent reduction, and then it would continue at that rate for 2010 and subsequent tax calendar years. The page is passing out to you now some information that I will discuss later in my presentation. According to the legislative fiscal analyst, capital gains or loss filers probably total between $100,000 and $150,000 in numbers. It's very difficult to get a handle on that, because they aren't necessarily separated out for purposes of state calculations. I know one of the bills you'll be looking at and I certainly don't want to cast that in any negative light. It is proposed by the Governor, LB331, which would eliminate the state death tax. I would suggest to you that compared to the number of filers that would be benefitted by the capital gains reduction, the number would be very small as far as repealing the state estate tax. For instance, there were only 500 estate tax returns filed, or approximately that. They don't know the exact number or couldn't give me the exact number, but approximately 500 estate tax returns filed in 2006. The previous year 460, or 463, were filed. Of that number only about 250 had a tax liability. And just to inform you in the event you aren't aware of the state death tax, it has a $1 million filing requirement. There's been discussion of increasing that to $2 million. There's been discussion of the total elimination of that. But at any rate, so near as they could estimate probably 250 of the 460 had any tax liability, and with an increase from $1 million to $2 million then perhaps only about 100 or 150 of those filing had an actual tax liability. So as far as comparing the numbers who would benefit from it, you're talking about 100,000 to 150,000 perhaps, compared to about 200 with regard to the elimination of the state death tax. This tax reduction if it were passed, would provide tax benefits to investors holding capital stock or mutual funds who have either capital gain dividends or profits from the sale of a stock. And I have called them Group A. Group B would be those selling real estate other than residential real estate, because under residential real estate they already are considered a tax-free sale. And particularly in our area, livestock producers who sell breeding stock or have a liquidation sale, but breeding stock is probably the main item that would be entitled to capital gains treatment under the federal act. So capital gains treatment, just for your information, under the federal tax code provide for a 5 percent tax for those people in a 10 and 15 percent income tax bracket and then they cap it at 15 percent for anyone with a 25 percent or higher income tax bracket. So you could compare that to the treatment under LB23 which would provide a 30 percent reduction when fully phased in. I passed out to you some information concerning how some of the other states handle capital gains. Certainly all of them do not allow a reduction for capital gains. Iowa is one of the states that does provide for a capital gain, and particularly benefit to agriculture. And I won't go into that a great deal, but it does provide that capital gains from breeding stock would certainly be included in that. To give you an idea of why I am particularly interested in this among other things I do. In my practice of law, we do quite a bit of filing of federal and state income tax returns for mostly smaller farmers. Over the past several years, particularly since the rates have been capped at their present levels under the federal capital gains reduction, we find farmers who maybe have not a lot of income, $20,000 of farm income, maybe have sold off their breeding herd of $60,000, $65,000 net, and when we finish the tax returns, believe it or not, they owe more state tax than they do federal tax because of the fact that we're taxing that at 6 percent. You only pay 5 percent on that up to the top of the 15 percent bracket on the federal level. So it's been a great hardship to some farmers who liquidate kind of at the end of their farming career. Probably affects small ones more than it does larger ones, but certainly this would have a benefit to anyone selling items entitled to capital gains treatment. It would be a big benefit to people who are liquidating their farmland, but it would also be a great benefit to people who are liquidating their business and selling their capital stock if it happens to be an incorporated business. Now again, the sheets that I've passed out to you that show the calculation of tax, and I might just briefly go over those. The first one would be a farmer that had $20,000 of ordinary income which, believe it or not, is not unusual out in our area for a farm return, has $1,000 of interest. I tried to make it somewhat indicative of what we might see out there. And then he had $65,000 capital gains from stock. On that one there's an $86,000 adjusted gross income. By the time we work all the way through the tax, he would owe a tax of $4,001. By contrast under Nebraska law on this particular example, he would owe $3,582 of state income tax. All because of the different treatments on capital gains. I have another example in here to where it actually works out higher. If we take out the $20,000 of farm income and replace it with $10,000 and go through that he owes $2,855 of federal tax, but he owes more than that of state tax. He actually owes $2,855. So it's not a lot more, but it is more. And it just seems to me that if the federal government has accorded special treatment to capital gains that it is entitled to have at least some treatment of that type as far as the state income tax return is concerned. I know it will be discussed at the time that we discuss elimination of the state death tax, that the state death tax causes people to move out of the state of Nebraska, and I'm not suggesting that that's not the case. I think probably as many people move out of the state because of the treatment of capital gains, and I give you two examples. I certainly won't mention names, but I know of two bankers in our area who have sold their stock in the bank, were majority shareholders.

One moved to the state of Florida on the year of sale. One moved to the state of Wyoming, maybe on a fairly temporary basis, to avoid the capital gains tax on that treatment. So I think we are losing people just as much from the present method of taxing capital gains as we are from the state death tax. And I think there's a whole wide variety of issues. Obviously, one of them is that many of those states have no income tax at all, state income tax, so they may well be moving out for that reason, but I think these are all factors in their moving out of the state. As I say there are other states that are included in the materials that I gave you. North Dakota has one similar, New Mexico one similar to what I would be discussing here. In summary, I believe that many people would benefit from this bill. We would encourage new business, because I think as a new business came in he'd be more willing to take that risk if he thought when he liquidated that business there would be more benefit to him. We would also be in line with taxation of this particular class of income being capital gains under the federal tax law. So I would urge your support and hopefully report it out of committee to where it could be considered on the floor. I'd be happy to answer any questions that any of you might have or at least to try to. [LB23]

SENATOR JANSSEN: Thank you, Senator. Senator Preister. [LB23]

SENATOR PREISTER: Senator Wightman, you mentioned two numbers and two years. The 460, I believe, returns who had actually filed for the estate tax. What year was that? [LB23]

SENATOR WIGHTMAN: That was 2005. And I'm not sure of the exact number. I think 463, but I'm not... [LB23]

SENATOR PREISTER: Roughly 460. [LB23]

SENATOR WIGHTMAN: Roughly 460. [LB23]

SENATOR PREISTER: And then the roughly 500 would be what year? The previous year? [LB23]

SENATOR WIGHTMAN: It would be this year. The past year--2006. [LB23]

SENATOR PREISTER: 2006. Okay. [LB23]

SENATOR WIGHTMAN: And they didn't have an exact figure on that. I might quickly address while you're on that issue, the fiscal note which I meant to mention. And you see the fiscal note attached. Part of the reason for the phase in, as I've provided in here, is that it would have very little impact in probably the year of passage, but it would escalate. And it's about $3,000 for the first year, and then it goes up rather substantially as one might suggest as we get toward that 30 percent limit. It's $14,000 for the second year, approximately $27,000 for the third year, and $37,000 then for when it is finally fully implemented. [LB23]

SENATOR JANSSEN: I believe that is millions. [LB23]

SENATOR WIGHTMAN: Millions. I did not mean to mislead you. [LB23]

SENATOR JANSSEN: You were scaring me a little bit, John. [LB23]

SENATOR WIGHTMAN: Might be an easier sale. [LB23]

SENATOR PREISTER: Getting past the question that I just asked, you used those numbers with the estate tax to illustrate the small number of people, the 250 approximately, who actually had a tax owed... [LB23]

SENATOR WIGHTMAN: Right. [LB23]

SENATOR PREISTER: ...and that more people would benefit from the capital gains exclusion that you're preferring. So you're prioritizing and saying more people would be benefitted by this approach. Is that... [LB23]

SENATOR WIGHTMAN: I don't want to have you take anything that I'm saying to negate the repeal of the state death tax. I think it could be considered if the committee got to that point that maybe you would consider raising the exemption level under the state death tax to the $2 million that's provided for under the federal tax. And I address that issue as to how that would affect, at least somewhat in my presentation. [LB23]

SENATOR PREISTER: Sure. What I'm getting to in my question is that we, too, as a committee are going to have to prioritize. We're hearing lots of bills with exclusions, exemptions, incentives, and the list goes on. We'll have more after this and we'll have more through the rest of the hearings. We're going to be in a position where we're going to have to deal with limited amounts of money and prioritize what we end up doing. I would just ask you set a priority here, a personal one I assume, in your identifying that you don't want one to necessarily negatively affect the passage of the other. But in terms of the various taxes do you have a priority that you would offer to us who are going to have to make that decision ultimately on this committee? [LB23]

SENATOR WIGHTMAN: Well, I certainly don't want to hurt those groups or in any way reflect upon those groups that will be pushing for the repeal of the state death tax. I think one option, at least, would be to adopt the $2 million level, instead of a repeal, modify the state death tax to provide the $2 million limitation that's presently afforded under the federal estate tax law and fit this one into the same scheme, but--and scheme may be an improper word. It's not a word of art. [LB23]

SENATOR PREISTER: Thank you. [LB23]

SENATOR JANSSEN: Ron. [LB23]

SENATOR RAIKES: Senator Wightman, you handed out a sheet here that outlines how several states handle this issue. [LB23]

SENATOR WIGHTMAN: Right. [LB23]

SENATOR RAIKES: Your proposal, how would that...if your proposal were adopted, how would Nebraska fit into this scheme? Would we be the sort of the most generous, kind of the middle, least generous, what? [LB23]

SENATOR WIGHTMAN: Kind of the middle and exactly where some of them are. I think New Mexico--I'm not sure whether that's the correct state--provided 30 percent. One or two may have provided...one I know got up to 50 percent. [LB23]

SENATOR RAIKES: I think that was New Mexico. [LB23]

SENATOR WIGHTMAN: Arkansas...but some of them are limited, of course, to...and I'm not trying to say that all of them are across the board cut. Some of them are limited to sale of a qualified small business. Some of them, Iowa, pretty much hones in on the agricultural issue and has more benefits for the ag producer than others. North Dakota, I think, is almost exactly the same as I am proposing here. New Mexico has a 50 percent reduction by the time it's fully phased in which would be this year, 2000 and subsequent years, so it would be pretty much in line with the federal code. Nebraska would kind of be in the middle if you adopted this. [LB23]

SENATOR RAIKES: Okay. Thank you. [LB23]

SENATOR JANSSEN: Any other questions? I don't see any, John. [LB23]

SENATOR WIGHTMAN: Thank you. [LB23]

SENATOR JANSSEN: Are you going to stick around to close? [LB23]

SENATOR WIGHTMAN: I will. [LB23]

SENATOR JANSSEN: Okay. All right. Next proponents. [LB23]

JAY REMPE: Senator Janssen, members of the Revenue Committee, my name is Jay Rempe, J-a-y R-e-m-p-e. I am state director of governmental relations for Nebraska

Farm Bureau, here today on behalf of Nebraska Farm Bureau in support of LB23. And I'll make this short and sweet, because I think Senator Wightman did an excellent job of outlining the bill and its benefits. I think he grouped them Class A and B, where B were real property owners that, as you know, farmers and ranchers have a lot of capital investments in their land and when they turn to sell that that's when the capital gains tax gets them. So for that reason we're interested in the bill. I also will note one other maybe slight benefit of the bill. One of the concerns we continually hear is on the valuation of ag land is 1031 tax exchanges where somebody may sell land near an urban area for development, they come back in order to avoid the capital gains tax will purchase ground elsewhere and we hear constant concerns about inflating that value. And to the extent that this lowers capital gains tax, it may help in that arena just a little bit, too. So with that I'll be happy to answer any questions that you might have. [LB23]

SENATOR JANSSEN: No questions? Thank you, Jay. Next proponent? [LB23]

DAVE McCRACKEN: Senator Janssen and members of the committee, my name is Dave McCracken, D-a-v-e M-c-C-r-a-c-k-e-n. I'm from Friend, Nebraska. I'm the chairman of the Nebraska Cattlemen Taxation Committee and I'm a corn producer and a cow-calf producer. And I'm here to provide testimony in support of LB23. I'd like to thank Senator Wightman for introducing this. It's important to us as cattlemen to have some relief from income tax on the long-term capital gains. We think this is a good step forward. Some of the other things I was going to cover have already been covered, so I'm going to add a couple of things. As most of you already know, the property taxes on breeding beef are already substantially higher than surrounding states, and with some folks the way they operate and then the drought, they can exceed $40 clear up to $80 per head per year per breeding cow. So we're already fairly substantially taxed on breeding beef. Another thing it allows us to take these deductions similar to capital gains deductions on the federal tax level. And we just reviewed this yesterday as Duane said, and so we're really happy to support this. If you have any questions I'd be glad to answer those. [LB23]

SENATOR JANSSEN: Any questions? Seeing none, thank you. [LB23]

DAVE McCRACKEN: Thank you very much. [LB23]

SENATOR JANSSEN: Um-hum. Next proponent. Any proponents? Any opponents? Opponents. Anyone in a neutral capacity? None, Senator Wightman to close. [LB23]

SENATOR WIGHTMAN: I won't keep you very long. In closing, I would merely say that I think this would be a great benefit to agriculture, to farmers who are struggling, and I think if you looked at it it would really benefit relatively small farmers. It's going to benefit all of them. But it's going to provide a lot of benefit to the small person who is getting out and would be in that 5 percent bracket if he was on his federal return, but he's paying 6 or 7 percent on some of that under the state returns. So we would appreciate your favorable consideration. Thank you. Any questions? [LB23]

SENATOR JANSSEN: We've got a question here. [LB270]

SENATOR RAIKES: One quick question, John. George raises the possibility, should the excluded long-term gains be limited to those in excess of short-term losses? [LB23]

SENATOR WIGHTMAN: I think it does, because the act does provide net...I'd have to check and we would certainly be willing to provide some sort of an amendment to that or a suggested amendment. [LB23]

SENATOR RAIKES: Okay, thank you. [LB23]

SENATOR JANSSEN: All right. Thank you, John. [LB23]

SENATOR WIGHTMAN: Thank you. [LB23]

SENATOR JANSSEN: That ends the hearing on LB23. The next one, Senator Johnson is here, I believe. [LB23]

SENATOR JOHNSON: Yes, sir. [LB270]

SENATOR JANSSEN: Tell us all about the rural health loan repayments from income and income tax purposes. Welcome to Revenue, Senator Johnson. [LB270]

SENATOR JOHNSON: Thank you, sir. Senator Janssen, members of the Revenue Committee, I'm Senator Joel Johnson, J-o-e-l J-o-h-n-s-o-n, representing the 37th district. This bill that I bring to you today is LB270. It was brought to me by members of the Nebraska Rural Health Manpower Commission for a very important reason. Several years ago, both the federal government and the state of Nebraska put together incentive programs to get health care workers to go to rural areas. Because of problems that have developed with both of these areas, one for instance, and I testified at another committee regarding this one, is that the interest was so high being 24 percent per year from the origin of the loan, not the completion of their training, that the cost was so prohibitive that no one dared opt out of these loan agreements. Well, it also made it so no one opted into the loan agreements. And so I think the last numbers I saw that they had gone from 17 applications to three. And so out of the desire of the plans as suffering from unintended consequences. What I'm here to talk to this group about, though, is that the incentives are becoming ineffective in another way. And what this is is this, is that what we want to try and accomplish, of course, is to get programs where health care professionals, and that is more than physicians, will start practicing in rural shortage areas. Now what we have is this. In reality, Nebraska ends up imposing an income tax on its own incentive funds to attract health professionals to these shortage areas. Well, you ask how would this come about? Well, there first started out to be a federal program along these lines, but they put in their own criteria. And these criteria really didn't match what Nebraska, or as far as I'm concerned didn't match much of anything. At any rate, so in 1991, Nebraska created their own incentive program. The loan repayments made under the federal program were exempt from income taxes, but loan repayments made under Nebraska's program are subject to income taxes because the Nebraska program did not match the way the federals went about it. Here's some of the examples. One, it does not require health professionals to practice in only federally designated shortage areas. And I can tell you from my own experience, their ideas of federally shortage areas would not make much sense to many of us here in Nebraska. Secondly, does not require a sliding fee scale that the federal people insist upon and it allows part-time practice in state designated shortage areas and covers more health professionals than just physicians. Nebraska's is a considerably wider law to attract nurses and other health professionals to these areas. So what has happened is that the federals...since Nebraska includes this on the income tax, the federals say the same thing. And I've been told that basically what happens if you get a loan for $100,000 you essentially write a check for $20,000 just to pay off the interest to start with, and then go with your interest or other payments beyond that depending on how that works out. So in a sense it's a double taxation. You borrow the money to go to school and then you end up paying tax on the money that you borrowed is basically how it works out as I understand it. It doesn't make sense to me either, Senator Janssen. And what I would ask is that you listen to the people from the Nebraska Rural Health Manpower Commission and perhaps they can explain and expand on what the problems have turned out to be in their areas. [LB270]

SENATOR JANSSEN: Questions? Ron. [LB270]

SENATOR RAIKES: Joel, okay, you end up paying tax on a loan, but only because you call it a loan when really it ends up being a payment to you. [LB270]

SENATOR JOHNSON: Yes, it would be an incentive to go. That's, I think, even what the act is called. [LB270]

SENATOR RAIKES: Okay. [LB270]

SENATOR JANSSEN: Carroll. [LB270]

SENATOR BURLING: Senator Johnson, this program is dependent upon them serving in these rural short areas. [LB270]

SENATOR JOHNSON: Yes, sir. [LB270]

SENATOR BURLING: So I just say that I'll serve there and I qualify or do I have to sign a contract? [LB270]

SENATOR JOHNSON: Some of them are that way. The problem with the other one, Senator Burling, that I referred to is that there was an opt out clause there. Let's say that you have a person going through and he completed his first two years of medical school or some school, and then runs into a nurse from Omaha or Chicago and they decide not to go to the small town in Nebraska. And so under those circumstances they request a buy out. Well, those stories get around enough so that the next freshman that comes along says I don't want any part of that program, because of the tremendous interest rate. Here what we have is Nebraska, as I understand it, tried correcting the federal law that made it so that people didn't go to these designated areas that the federal said were important. Nebraska created their own law, but because it doesn't match the federal law on the income tax requirements the income taxes in the federal law are not taken away like they would be if we went just with the federal program. So if you go with a Nebraska program, you pay all of the taxes because of the way this present Nebraska law is written. [LB270]

SENATOR BURLING: Okay. [LB270]

SENATOR JANSSEN: Any other questions? [LB270]

SENATOR JOHNSON: Complicated, isn't it? [LB270]

SENATOR JANSSEN: Doesn't seem right. Cap. [LB270]

SENATOR DIERKS: When you talk about the Nebraska law, are you talking about the loan repayment law? [LB270]

SENATOR JOHNSON: Yes. Yeah, but the problem, Senator Dierks, comes in with its relation to the federal legislation since we don't match what their requirements are, the federal subsidy, so to speak, of the federal income tax is not taken away like it would be if you went just with the federal law rather than the Nebraska law. I guess that's the best way of saying it. [LB270]

SENATOR DIERKS: Okay. Well, you mentioned something about the underserved areas. And I understand that federal government has established medically underserved areas across the nation and we have those same areas established in Nebraska. Does that have no effect then on what you're talking about? [LB270]

SENATOR JOHNSON: Yes, it does. I think both of the ones that I've referred to before and this one make it so that nobody uses these incentive laws to go to the rural areas that we're trying to get them to go to. It's just about dried up both programs as I understand it. [LB270]

SENATOR DIERKS: Another question I have and maybe you don't know the answer to this, and maybe I'm foolish in asking, but I thought there was such things as usury laws. I didn't realize you could get 20 percent interest from your loan. [LB270]

SENATOR JOHNSON: Well, this is the state of Nebraska. And this of course is on the other bill, but it says 24 percent right in the information that I was given. And from the time of the incurrence of the debt. [LB270]

SENATOR DIERKS: They realize then that there's a fool born every minute, didn't they? (Laughter) [LB270]

SENATOR JOHNSON: I think so. And several of them go to medical school and become nurses or whatever apparently. But they are getting smarter. [LB270]

SENATOR JANSSEN: All right. Any other questions? Seeing none, thank you, Joel. You're going to waive closing? [LB270]

SENATOR JOHNSON: Thank you and I'll waive closure, because I have other things going on. [LB270]

SENATOR JANSSEN: All right. Okay. [LB270]

SENATOR JOHNSON: Thank you very much. [LB270]

SENATOR JANSSEN: We will take proponents. How many proponents do we have? We've got a couple. How many opponents? Anybody in a neutral capacity? Okay. First proponent. [LB270]

MARTY FATTIG: (Exhibits 5, 6, and 7) Senator Janssen and members of the Revenue Committee, my name is Marty Fattig, that's M-a-r-t-y F-a-t-t-i-g, and I'm the CEO of Nemaha County Hospital in Auburn, Nebraska. I serve on the Governor-appointed Rural Health Advisory Commission and I am also a member of the Nebraska Hospital Association. It is on behalf of both of these organizations that I am here to express support for LB270 which will exclude certain health education loan repayments from income taxation. Just a little background here. In 1994, the Nebraska Legislature established a loan repayment program for health professionals willing to practice in state-designated shortage areas. Initially, only physicians, nurse practitioners, physician assistants, clinical psychologists, and master's level mental health providers were eligible for loan repayment. However, in 1998, pharmacists, occupational therapists, physical therapists, and dentists were added to the program. The Nebraska Loan Repayment Program requires community participation in the form of a local match for all state money awarded and then a three year obligation by the health care professional. Communities with state-designated shortage areas may apply for participation in the program. The program has been quite successful in that since 1994 the Rural Health Advisory Commission has approved 296 loan repayment awards and 85 percent of the loan repayment recipients have completed their practice obligation or are currently serving their practice obligation in state-designated shortage areas. As of August 1, 2006, the Rural Health Advisory Commission is awarding loan repayment at a maximum of $35,000 per year, and this includes the local match plus the state money, to physicians, dentists, and Ph.D. psychologists; and $17,500 for all other eligible health professionals. Unfortunately, the state-fund loan repayment program comes with a catch. The money the health professional receives to use for loan repayment is first subject to federal income taxes on the same basis as earned income. Consequently, a chunk of this loan repayment award disappears before there is any opportunity to repay a loan. The United States Congress recognized the unfairness of the taxation problem and voted to exempt loan repayment through the National Health Service Corp from federal taxes. In addition, the state programs eligible for funds under Public Health Service Act were also declared exempt from taxation. This provision was added to assist the various state loan repayment programs. Yet, despite its strong track record of success, the Nebraska program does not qualify for tax exemption all because of a technicality. And Senator Johnson voiced some of these technicalities. Number one, the program does not place health professionals in only federally designated shortage areas. It does not insist that providers use a sliding fee scale when billing their patients. And it allows part-time practice in a designated shortage area. Consequently, Nebraska's program does not meet the absolute letter of the Public Service Act. Several other states have the same programs very similar to Nebraska's and they have the same tax problem. It should be noted here that the Nebraska Legislature created the Nebraska Loan Repayment Program because many medically underserved rural areas of Nebraska do not rank high enough nationally to qualify for the federal programs. In addition, the Office of Rural Health and the Rural Health Advisory Commission work first to assist health professionals who are eligible to apply for the National Health Service Corp Loan Repayment Program before they apply for the Nebraska Loan Repayment Program. They can only participate in one of the programs at a time. The Rural Health Advisory Commission has recognized the disincentive the tax liability places on our new graduates, and has sent letters to our Nebraska Congressional delegation requesting that they investigate the feasibility of changing the federal law to recognize successful state loan repayment programs such as Nebraska's. Senator Nelson's office has expressed support for such a change but he has also told us that the state of Nebraska needs to resolve this at the state level before we will have any clout at the federal level. The financial impact of this legislation will be a reduced general revenue to the state of Nebraska. Based on the highest Nebraska income tax rate for 2006 of 6.84 percent and the current state and local match dollars used for loan repayment of $1.04 million, the maximum amount of lost revenue to the state would be about $71,000 per year. Recruiting health professionals to the medically underserved areas of this state is a very challenging job. We have a vehicle in place with the Loan Repayment Program that can be very helpful in this effort provided we correct the tax problem. I can assure you that the Rural Health Advisory Commission will continue to work with the Nebraska Congressional delegation to fix the problem at the federal level once we have it fixed at the state level. I'd be happy to answer any questions you may have or clarify any issues. [LB270]

SENATOR JANSSEN: Any questions? I don't see any, thank you. [LB270]

MARTY FATTIG: I also am a member of the Nebraska Rural Health Association and I have a letter here of support for this from the executive director of that organization and I'll just leave that with your page. [LB270]

SENATOR JANSSEN: All right. The page will take care of that for you. Thank you very much for being here. [LB270]

MARTY FATTIG: Thank you. [LB270]

SENATOR JANSSEN: Proponents. [LB270]

JIM CAVANAUGH: Senator Janssen, members of the Revenue Committee, my name is James Cavanaugh. I'm an attorney and registered lobbyist for Creighton University. We appear here today to express our support for LB270. We commend Senator Johnson for bringing this matter before you. Creighton, as you probably know, produces about half of the doctors every year in the state of Nebraska, and a lot of those people are brought here to get a medical education and we try to ensure that a goodly number of them stay here to practice and provide us with the health care that we need. This program has had an excellent impact over the period that it has been in operation. We helped in the drafting of the original legislation and its passage. And I can tell you that it's really made a big difference in a lot of local communities around the state. A personal example that I can give you is Mullen, Nebraska, where you will find the only doctors in Nebraska between Broken Bow and Alliance and Valentine and North Platte, pretty big area of the state. They're brought there because the Mullen community invested in the Rural Health Loan Repayment Initiative and saw that it was in their best interest to have some doctors within a hundred miles and it's worked out very well. The doctors that came there established a clinic in Mullen. They also serve the assisted living facility that's in Mullen where many of the elderly local residents can live out their lives in a local community and not have to go hundreds of miles away. And they also run the veterans clinic in North Platte. All of this because the very modest investment that the state made years ago in these kinds of programs. I can tell you that it's worked great because the doctors that I'm referring to are my sister and brother-in-law and they were some of the first applicants for these funds when the program was first established, and have since established a ranch, a clinic, raised a family out there. All because we had the foresight to invest a little bit in their education. This is good bang for your buck program. You should do everything you can to support it. And the idea that we will tax what we're trying to do with tax monies, I think, should be eliminated. I'd be happy to answer any questions you might have. [LB270]

SENATOR JANSSEN: Any questions? I don't see any, Jim, thank you. [LB270]

JIM CAVANAUGH: Thank you. [LB270]

SENATOR JANSSEN: Any more proponents? Proponents? Opponents? Neutral capacity? Seeing none, Senator Johnson waives closing. That will end the hearing on LB270. Senator Gay is here to tell us all about LB459. Senator Gay, the floor is all yours. [LB459]

SENATOR GAY: Good afternoon, Senator Janssen. I'm Tim Gay. Members of the Revenue Committee, my name is Tim Gay and I represent the 14th Legislative District. I'm here to introduce LB459. LB459 would allow Nebraska residents to subtract from their federal adjusted gross income any deduction allowed for interest paid on education loans under federal law. To put it another way, if you're able to deduct interest you pay on the student loans under the federal law, LB459 would allow you to take an additional deduction if you live in Nebraska. For example, if I could now deduct $1,000 from my adjusted gross income under the bill I would now be able to deduct $2,000. The deductions are limited to individuals making less than $65,000 or single or $135,000 if married and filing jointly. The maximum deduction is $2,500 under the federal code and would be $5,000 for state tax purposes. The reason I introduced LB459 is to generate a discussion on how to stop Nebraska's brain drain. I know this is not a new issue, but it is an issue that needs attention and I believe this issue calls for legislative action. U.S. Census data indicates that Nebraska is the tenth most heavily out-migrated state for young, single, college-educated people. Approximately one-third of our graduates from our state's largest university, University of Nebraska-Lincoln, are now living outside the state. According to an in-depth report by the Daily Nebraskan the graduates most likely to leave are architects, engineers, and lawyers. More importantly, a survey by the UNL Career Services found that there appears to be a correlation between degree levels and GPA's at the probability of leaving the state after graduation. So individuals with higher degrees and higher GPA's were more likely to move out of the state. Those are the people we can least afford to lose. So this report states that figures from the University Alumni Association is where they got their figures. It shows that while 76 percent of the graduates with a GPA of 3.0 or lower tend to stay in Nebraska, but only 53 percent of people with graduate degrees and 30 percent of the Ph.D.'s remain here. I realize that the fiscal note is rather high, but this is a case of it takes money to make money. Individuals who are leaving the state are those who hold the higher paying jobs. The higher the income, the more income tax dollars for the state in the long run. Nebraska is facing a serious workforce shortage. Figures from the Nebraska Department of

Economic Development show that as of this past summer, there were a total of 34,306 job vacancies. This will only get worse. In the three years, population projections indicate that over one-third of our population will be under the age of 16 and over the age of 65. By 2020, this group will make up nearly 40 percent of our state's population. Without a labor force, Nebraska will not be able to continue to track businesses and quality jobs. Without the jobs, Nebraska will not be able to track young, quality workers. This cycle will continue and the state's economy will suffer. According to a study of the National Center for Education Statistics, about 50 percent of college graduates owe on student loans and have an average debt of $10,000. On higher education levels, those debts are much larger. LB459 would give Nebraska a unique tool to retain our graduates and possibly attract individuals from other areas. In the past we have concentrated on legislation to incent businesses to come to Nebraska. Now I think it's time to incent people to call our state home and I urge you to advance LB459. [LB459]

SENATOR JANSSEN: Any questions? Don. [LB459]

SENATOR PREISTER: Senator Gay, I appreciate your raising the issue of our great export. We want to keep some of that export at home and this is one approach which I appreciate. Have you looked at other types of incentives or are you just looking at lots of things but decided this might be one that you would offer? [LB459]

SENATOR GAY: This is one, quite honestly, that I offered that I had been thinking about. As I talked to other people, constituents have brought this up to me, friends I know who have left the state. You know, once they leave there's not a whole lot of opportunity as you get in a career and you start a family and some of those things, so there's not a whole lot of opportunities to sometimes come back. Again, I do think this is a unique tool, because not a lot of people are doing this. But as I talked to recruiters or businesses and they're trying to recruit engineers, doctors, whatever the case may be. I love our state like we all do, but sometimes it's a little incentive to what can you do to come back and how could we entice them a little bit more? Now I know the fiscal note is rather high, but we spend millions and millions of dollars trying to attract these businesses and now we have 34,000 open jobs. You know, and I don't have the statistics exactly of the quality of those jobs and the education force needed. I just heard on several occasions and I did talk with the Department of Economic Development on this and it's a worthwhile idea. I think it would be a unique tool for Nebraska, because I understand no other states are doing this, but we have to do something to get that gap filled or, you know, as I mentioned in my statistics, in 2020, you know, we're going to be hurting for those people. So I think this is a step in the right direction. Two million dollars compared to some of the money that we're spending on incentives. I think this is a small price to pay in the long run. [LB459]

SENATOR PREISTER: Thank you. [LB459]

SENATOR GAY: Thank you. [LB459]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Tim. How many proponents do we have? Any proponents? Any opponents? Anyone in a neutral capacity? Don't see anybody. Might as well stay and close, Senator. [LB459]

SENATOR GAY: I'll waive my close on that. [LB459]

SENATOR JANSSEN: Okay. He waives closing. That ends the hearing on LB459. Okay, Tim you want to stay there and open on LB304. [LB304]

SENATOR GAY: You bet. Thank you. Again, Senator Janssen and members of the Revenue Committee. Tim Gay, for the record. I'm here today to introduce LB304, and this bill according to the Legislative Fiscal Office, Medicaid dollars spent on nursing homes increased from $97.7 million in 1990 to $278.9 million in 2005. In fiscal year 2005, total long-term care expenditures accounted for nearly 36.3 percent of the Medicaid budget. Despite success with Medicaid reform efforts, we can expect long-term care costs to continue to rise due to our aging population. Obviously it would benefit the state as a whole if more individuals would plan for their future long-term care needs. This would be purchasing long-term care insurance and saving money for long-term care expenses. Last year, the Legislature took the first step in encouraging more people to consider planning for their future needs with the passage of LB965. Many of you were involved in that. This bill established the Long-Term Care Savings Plan Act. Under the act, a participant may set up a long-term care savings account and deduct contributions from their federal gross adjusted income. The maximum deduction is $2,000 for married couples filing jointly and $1,000 for all others. The lifetime maximum dollars that can be contributed is $165,000. Principle and interest from the fund can be withdrawn tax-free by qualified individuals to pay for long-term care expenses refer to long-term care insurance premiums. Participants who did not fall under the definition of a qualified individual may make a withdrawal from the account, are subject to a 10 percent penalty, and lose the tax benefits much like an IRA. Qualified individual is defined as somebody who is 65 or older and has a medical necessity, a person who is disabled and has a medical necessity, or is a person who is at least 62 who uses the funds to make payments for their long-term care insurance premiums. What LB304 does it simply change the last qualifying category from age 62 to age 50. The best time to purchase long-term care insurance is prior to age 62 and a person is generally in better health and more likely to be eligible for this policy which thereby is making premiums lower then purchasing a policy at a later age. By lowering the qualifying age for insurance premium payments, people should be encouraged to start saving for their future earlier. They can use the accumulated funds to purchase a policy before they are faced with the necessity for long-term care or unable to work and have to rely on the state to pay for their care needs. Please be aware that the fiscal note has been revised so if you'll note the revised fiscal note has been revised since it was first released yesterday, and the latest fiscal note should read revision 01 at the top. I would urge you to consider this amendment and pass it. The one thing I would want to say just for the record, I ran a long-term care policy on myself and my wife and so this, for the record, 42 and age 39. If I were to buy that policy today it's $1,651. If I wait and buy the policy at age 50, it's $2,289. Now these are annual accounts so wait 10 years. If I wait now until age 60, it's $3,862 for those same premiums annually from then on. It's an ongoing policy. So many people in Nebraska can't afford or should be planning for this. What this does is create, much like an IRA you start saving, and that's what the intent of the bill was, but when you're trying to entice somebody to start saving at a young age it's easier to start talking to them about it when the numbers aren't quite so high and so imposing. So if you're going to save at age 20 or probably 30 when somebody starts thinking about this, they have to see some incentive at the end of the day. Age 50 when you're 30 is not too far away, but if I say you've got to wait until age 62 it becomes a tougher sale. What the intent of this bill would do, in my mind, as somebody who practices in this field, is to lower and to change the thought process of people. People need to start thinking right now about long-term care. You cannot wait and start thinking about it as you age. It's too much of a hill to climb. So I think in order, and I just left from the Health and Human Services Committee, but the key as we work on this is to change some attitudes in the long run. To do that, you need to incent people to start thinking that way. I think this is a reasonable opportunity to lower that age and start the thought process, because if we don't start now, like I say, 33 percent of the Medicaid budget is long-term care. That will only increase. So this is, what I think, is a simple way...and the one thing I would point out again, on the fiscal note is very limited, but this is enticement to entice people to do the right thing for the long term. Anytime we can come up with some opportunity like that I think is a good opportunity. Thank you. [LB304]

SENATOR JANSSEN: Questions? Ron. [LB304]

SENATOR RAIKES: Tim, money you put into this account, the way the law is now you can begin putting it in most any age it's just that you can't start paying a health insurance premium until you're 62, but you could put it in at, say, age 50 and allow it to earn interest and then use the expanded amount of money to pay the premium later. Is that a workable strategy? Are you better off to let the money sit and earn income, rather than pay a premium at a younger age? [LB304]

SENATOR GAY: Thank you, Senator Raikes. That's an excellent question. That's exactly the way the bill reads now, but you must wait until 65. So the strategy in this practical working--again, that's what I do for a living, we're in a financial planning business--is the strategy is to start as young as you can, because you need to be able...I want to talk to a client or anybody in my industry and I think others will testify to this, you want to talk to that client as early as possible to buy this if they can afford it. But like I say it becomes such an imposing figure as you wait that it's a much tougher sale. So the way that all of these products and the financial services go, most of the time is they're sold. People don't usually come in wanting to spend $2,000, $4,000. Usually you have to educate them. You go through that process. Most financial planners, I think...that's already in a retirement planning, you need to start thinking about it now, and it's starting to be integrated into the retirement planning like a 401K or an IRA. The earlier you start, the better off you're going to be. That cap at $165,000 I think was put there because the need you saw, the tremendous cost of the long-term care, and now if they don't want to buy the policy that's fine, too. They can still use the money, the way I read the bill, to go and pay their expenses if they wanted. I think the way to go--my own personal opinion--is the long-term care policy route. So I guess long answer to your question, but it's a difficult, complex sale is what I'm saying. The earlier you can start, the better off you're going to be. Any enticement to get that conversation started earlier is going to be better off. Now this is for reasonable people and moderate incomes to do this. What's happening, I think, is that the longer you wait, the only people who will be able to afford this are wealthier people, because they're the ones that can come up with the $4,000. So if we're going to change attitudes we need to do at a younger age and start that process. And I think by lowering this age, and I picked age 50, there may be other testimony to lower it which I would support any amendment to that, too. [LB304]

SENATOR RAIKES: Okay. Thank you. [LB304]

SENATOR GAY: Thank you. [LB304]

SENATOR JANSSEN: Senator Burling. [LB304]

SENATOR BURLING: Thank you, Senator Gay. Did you talk to anybody about why this 62, 65 age was put in there in the original legislation? Do you know the reason for that? [LB304]

SENATOR GAY: I did talk former Senator Jim Jensen about it actually and it was one of those things, and again, I can't word exactly, he said we probably should have put it in there. It just...we didn't. When I pointed out when we're drafting the bill, he encouraged that. I can't speak of why it was left out, it was just an oversight. But then I looked at it and I think you can improve an already good bill by lowering the age, but the answer to your question, I don't know why that number was chosen. It would be improved if it was lowered. [LB304]

SENATOR BURLING: Thank you. [LB304]

SENATOR GAY: Thank you. [LB304]

SENATOR JANSSEN: I don't see anymore. Thank you. Proponents. Do you want to stick around and close, Tim? [LB304]

SENATOR GAY: Yeah, I do. [LB304]

SENATOR JANSSEN: Okay. [LB304]

JESSICA KOLTERMAN: (Exhibit 8) Thank you, Senator Janssen and members of the Revenue Committee. For the record, my name is Jessica Kolterman, K-o-l-t-e-r-m-a-n, and I serve as the chief of staff for the State Treasurer, Shane Osborn. I'm also serving as the acting director of the Long-Term Care Savings Act Program. I come before you today in support of LB304 introduced by Senator Gay and I submit a letter of support for the record from Treasurer Osborn. When Treasurer Osborn took office on January 4, he asked me to begin to work on this program. In the few weeks I've been involved I have been able to speak to members of the financial planning community, also members of the banking community regarding the program and the status today. Although it's in its developmental stages, everyone I have visited with has been very positive and excited about the possibility of this program growing. By the year 2020, one out of six Americans will be 65 years of age or older. As State Senators I know you're aware of the trend lines of the aging population specific to the state of Nebraska. We know these trend lines are not good. Another statistic I found is that in Nebraska the average cost of a nursing home is $183 per day. Currently, that breaks down to approximately $67,000 per year, an amount of money that very few individuals can afford out of pocket. People need to have money available to purchase long-term care insurance and many individuals start looking at this issue as they're beginning to approach their retirement ages. Because of that reason, this legislative change makes sense to us and we are supportive of it. I'll conclude by giving you an example about how this program could be utilized. I'm in my late twenties. If I started saving now for long-term care, I could put it in this account and it could grow. And if I wanted to I could try to buy my insurance plan when I'm in my fifties which it would be much cheaper, but if I waited until I was 62, the cost of the insurance plan would be much more expensive and my money would not be worth as much. So with that, I'll conclude with this is a new program and there is some tweaking that needs to be done. This is one of the things that we're supportive of and I'd be happy to answer any questions you might have. [LB304]

SENATOR JANSSEN: Any questions? Seeing none, thank you. [LB304]

JESSICA KOLTERMAN: Okay. Thanks. [LB304]

SENATOR JANSSEN: Any other proponents? Proponents? There we go. [LB304]

ROBERT GRUNDMAN: (Exhibit 9) Chairman Janssen, members of the committee, my name is Bob Grundman, last name is G-r-u-n-d-m-a-n. I am an independent insurance agent and I am here representing the combined 1,500 members of the Nebraska

Association of Insurance and Financial Advisors and the Nebraska Association of Health Underwriters. I appreciate the opportunity to provide comments in support of LB304 regarding incentives for individuals to assume more personal responsibility for their long-term care needs. Our associations represent insurance professionals involved in the sales and service of insurance and savings products including long-term care insurance. I was a member of the working group called by the State Treasurer which met several times last fall following the passage of the Long-Term Care Savings Plan Act. From the beginning, members of the insurance agents' community expressed concerns regarding confusing wording and ages designated in the Act and we thank Senator Gay for beginning the process of identifying and minimizing these concerns. Specifically, we agree that age 50 is more appropriate than age 62 for the eligible distribution of premiums. As agents, we encourage our clients to purchase insurance at as young an age as is feasible for them. This provides both a lower premium and greater probability of good health. With the fiscal constraints it is doubtful that a younger person making insurance premium payments will put additional monies into the Act for future premium payments. Also, it would be irresponsible of myself as an agent to suggest that a person make contributions to the Act for their premiums and then wait until age 62 to purchase a policy when the premiums would be higher and the person may no longer have the good health to qualify. In addition to this change suggested by LB304, we would ask the committee's consideration of additional points. Number one would suggest that we change the qualified age in item 4(a) where it's the distribution for long-term care expenses to age 50, also, to be consistent or to delete age in both (a) and (c). Statistics show that 40 percent of long-term care claims are for those younger than age 65. A 52 year old incurring long-term care expenses and unable to tap the contributions previously made into this act would understandably feel trapped by the system. Therefore, potential participants in the act may hesitate to contribute, and what about a 45 year old then? Also, we suggest that we replace the phrase a medical necessity for long-term care in both 4(a) and (b) with long-term care expenses. And I do have those highlighted on the back of the sheet that you received. Long-term care expenses is a phrase already defined in item 1 using terminology describing the current activities of daily living criteria which is required by most insurance companies and in the Federal Qualified Plan language. Medical necessity is a much more stringent criteria implying illness or accident which many persons receiving long-term care don't meet. We urge the Revenue Committee to support changes in the Long-Term Care Savings Plan Act begun in LB304. We believe the changes suggested above would help to make the plan more appealing to individuals and able to generate longer term contributions which, in turn, would make it more appealing to financial institutions. With these incentives, more Nebraskans will be encouraged to take responsibility for their own long-term care costs rather than depending upon the state's Medicaid program. I'd be happy to answer any questions. [LB304]

SENATOR JANSSEN: Any questions? Ron. [LB304]

SENATOR RAIKES: A question about how this works. Suppose I'm, you know, putting money into this thing and when I'm 50 years old I'm riding high and I go ahead and buy a long-term care policy and begin, as I understand it, taking money out of this account to pay the premium as would be allowed in this bill. And probably would be the case that I would need to continue contributing to the account tax-free so that I could then take money back out of the account and pay, each year, pay the long-term care premium. [LB304]

ROBERT GRUNDMAN: Correct. [LB304]

SENATOR RAIKES: Alright. Say that things start going downhill for me and so when I get, you know, 55...57...whatever, I don't have any money to put into this account. Taxes are not a problem for me, particularly income taxes. So there's a period of years I can't pay the premium. What happens to my policy? Do I still have one or is there some accumulated value or am I just out of luck? [LB304]

ROBERT GRUNDMAN: Depending upon the insurance policy that you took out, there are non-forfeiture provisions and so that if you were to have to cancel your policy there still may be value within that for an existing level of claims for a period of years, but that really depends upon the policy that you take out. [LB304]

SENATOR RAIKES: So you could come up with a scenario in which I would be better off at age 50 to just leave the money in the account and let it grow rather than spending the money for a premium on a policy which, in this particular scenario, I couldn't continue to fund annually. [LB304]

ROBERT GRUNDMAN: That would be very difficult, because the interest that you would be generating in this account would be so modest by comparison of what the annual premium increases would be if you delayed the purchase of a policy. Also, with the average cost of long-term care as was mentioned by Ms. Kolterman being so high, you would have to start saving awfully early in order to accumulate the funds to even accommodate one year of long-term care expenses. [LB304]

SENATOR RAIKES: Okay. Thank you. [LB304]

SENATOR JANSSEN: Any other questions? I don't see anymore, thank you. Next proponent, please. [LB304]

GALEN ULLSTROM: Senator Janssen, members of the Revenue Committee, for the record my name is Galen Ullstrom, that's G-a-l-e-n U-l-l-s-t-r-o-m. I'm senior vice-president and registered lobbyist for Mutual of Omaha Insurance Company, appearing today also on behalf of the Nebraska Insurance Federation in support of LB304. I have testified in front of this committee on other occasions on the tax incentives for long-term care insurance. I think the key is to try to provide some incentive to people to purchase. Long-term care insurance is different than some other forms of insurance such as homeowners, auto. People know they need homeowners, they know they need auto, they mostly think they need major medical coverage. Unfortunately, though, unless you've had a personal experience or a relative or immediate relative or a friend who has experienced a long-term care stay, it's not as easily--and I think Senator Gay said it's a product that's sold. It's not a commodity that people know they need to buy or they need to have. I think that's a couple reasons. Most people, first of all, they don't understand the costs of being in confinement in a nursing home facility. They also don't understand that other public programs don't pay for it. I think a lot of people still believe that Medicare provides for long-term care insurance, and frankly, except in a very limited skilled nursing benefit, it doesn't. So it doesn't pay custodial care. The same thing with Medicaid. Medicaid will pay as our Medicaid budget expanded, but it does, you have to spend down. So effectively you have to eliminate the assets that you've had. I have to admit, personally, I didn't understand the costs until my mother spent the last six years in a nursing home, the last six years of her life, and we were in a spend down capacity. And I think it really hit home and it was right the year after she died that we happened to come up with a group policy and I took one out, because I think nobody likes to be spent down. Nobody likes to provide assets that they had planned on their family using to do this. So I think anything that incents people to purchase coverage is good for their own personal well-being and also good for the Medicaid system down the line. As has been previously stated, I think we estimate that purchasing a policy at age 50 is about 40 percent less than purchasing a policy at age 62. So if you encourage people to get in at a younger age it is a lot less premium, a lot less financially burdensome for them, and in most cases as far as I know, it's a level premium product. So it's like everything else. It's like term life insurance in a way. If you buy it a younger age you pay significantly less and it becomes expensive when you buy it an older age. So I think the amendment that Senator Gay is proposing makes sense and hopefully will help encourage people to purchase things and take care of their own responsibility. I'd be glad to answer any questions if I could. [LB304]

SENATOR JANSSEN: Any questions? I might have one. Oh, Cap. [LB304]

SENATOR DIERKS: Galen, these long-term care policies do they all have a guaranteed rate of payment for the rest of the life of the person purchasing? [LB304]

GALEN ULLSTROM: Yes, they're guaranteed renewable by law, by statute, by the Long-Term Care Act. The company cannot terminate your product, for example. And they have different rates depending upon what benefits are provided. Probably one of the most expensive benefits is what is known as inflation protection which is generally the benefit goes up 5 percent every year, 5 percent per year compounded and that's a pretty expensive benefit, but in some cases, the stay of a nursing home has gone up that rate, so it's a benefit that a lot of people do purchase. [LB304]

SENATOR DIERKS: Thank you. [LB304]

SENATOR JANSSEN: Anyone else? Galen, I may have one. What is the oldest you can be to buy this insurance and get any type of benefit at all? [LB304]

GALEN ULLSTROM: Well, I think we issue up to age 75 maybe beyond, but that's about it. And then again, it's underwritten. So you could not be in infirmed health in order to buy it. It's an underwritten product and so you need to be in good health to purchase it. [LB304]

SENATOR JANSSEN: You have to be in good health, yeah, but what is the chances, I mean, of someone 75 years old, he's going to be in somewhere and what would that premium be? [LB304]

GALEN ULLSTROM: And that's why the rates go up significantly. [LB304]

SENATOR JANSSEN: I know. I realize that, but how much would that rate be. Do you have on an average per year? [LB304]

GALEN ULLSTROM: I don't have that. I've got an age 69 rate. At age 50 a product, and this is with inflation protection, is $952 a year. At age 69 it's $2,545 per year. So it's roughly two and a half times more at age 69. I don't have any rates beyond that, but our average age now is about age 60, average age of a person buying long-term care. [LB304]

SENATOR JANSSEN: About 60? [LB304]

GALEN ULLSTROM: Age 60. And we frankly, it would be cost-effective and it would be better if we got that down. [LB304]

SENATOR JANSSEN: About $2,500? [LB304]

GALEN ULLSTROM: Yeah. [LB304]

SENATOR JANSSEN: Is that a month or a year? [LB304]

GALEN ULLSTROM: No, that's a year. [LB304]

SENATOR JANSSEN: That's a year, but my gosh, that's a lot. [LB304]

GALEN ULLSTROM: It is. [LB304]

SENATOR JANSSEN: It wouldn't hold a candle to what it costs to keep someone. [LB304]

GALEN ULLSTROM: That's exactly right and that's the concern. I think when my mother went in it was about $80 a day and I equate it to somebody if somebody's staying down here at the Marriott hotel everyday for the rest of their life, because that's what it comes down to. You've heard the testimony of $180 a day here. Omaha I think it was about $150, $160 a few years ago. So it is a very big benefit and presumably you won't have to use it. I mean, not everybody goes in a nursing home, but when you do your expenditures are compounded. It costs a lot of money to stay there. [LB304]

SENATOR JANSSEN: Oh absolutely. I know that very well. Any other questions? Ron. [LB304]

SENATOR RAIKES: A question, it doesn't have to do with this bill, but the statutes says that you can contribute either to your own or your spouse's, I think is what is the policy. Would a useful expansion or would it be useful to expand that so that, for example, yeah your children or... [LB304]

GALEN ULLSTROM: Children. [LB304]

SENATOR RAIKES: ...the reason I think of that is that this is kind of the reverse of the College Saving Plan where you've got the grandparents paying for the grandkids. Should we reverse it and get the grandkids paying for the... [LB304]

GALEN ULLSTROM: Sure. [LB304]

SENATOR RAIKES: Probably not. [LB304]

GALEN ULLSTROM: Well, in a way, I mean it is asset protection in a way for them, and it's also the means of taking care of somebody. I mean, we provide...certainly there are a lot of situations where children purchase long-term care policies on their parents. [LB304]

SENATOR JANSSEN: Um-hum. [LB304]

GALEN ULLSTROM: That is clearly a market. [LB304]

SENATOR RAIKES: Thank you. [LB304]

GALEN ULLSTROM: Sure. [LB304]

SENATOR JANSSEN: Any other questions? Thank you, Galen. [LB304]

GALEN ULLSTROM: Thank you, Senator. [LB304]

SENATOR JANSSEN: Um-hum. Next proponent. Bob? [LB304]

ROBERT J. HALLSTROM: Senator Janssen, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB304. We were supportive of LB965 last session that created the Long-Term Savings Plan Act and continue to do so with the revisions proposed by Senator Gay in this legislation. One of the issues I just wanted to comment on briefly to bring the committee up-to-date and Ms. Kolterman from the Treasurer's Office had referenced her communications with the financial institutions community, is that the original act not covered in this bill, but part of the original act, had directed the State Treasurer by November 1, I believe, of last year, to attempt to get a single administrator for this particular program. And in the failure of the Treasurer to get proposals that were acceptable to administer the program to enter into participation agreements with individual financial institutions in the state of Nebraska. We did not get a single administrator so we have been working with the State Treasurer's Office since mid-November trying to finalize the participation agreements to send information out to the banks to promote the availability of their activity in this program. I think Ms. Kolterman referenced that it's in its infancy stages and it's simply, I think, because of the timing. We haven't had much time for the banks to review and get involved in the program, but we think over time that they will participate and assist in making this program successful. I'd be happy to address any questions of the committee. [LB304]

SENATOR JANSSEN: Questions? Seeing none, thank you, Bob. [LB304]

ROBERT J. HALLSTROM: Thank you. [LB304]

BRENDON POLT: Good afternoon, Chairman Janssen and members of the Revenue Committee. My name is Brendon Polt, that's spelled P-o-l-t. I'm here in support of LB304 on behalf of the Nebraska Health Care Association which represents approximately 400 nursing homes and assisted living facilities. As an association of providers of long-term care we support policy that encourages individuals to plan for their future long-term care needs. And so I'm here just to go on record on that point. We thank Senator Gay for introducing this legislation. One point of clarification that came up. I think it was Senator Burling had asked in the original act which we worked on last year with a working group where the years came from. Why was it set at 62 originally? And my recollection of that decision was purely a way to balance the budget. It was a matter of purely fiscal concern, but it wasn't a policy decision based on anything other than that. [LB304]

SENATOR JANSSEN: Okay. Any questions? I don't see any, thank you. Any other proponents? Any opponents? Anybody in a neutral capacity? Senator Gay to close. [LB304]

SENATOR GAY: Thank you, Senator Janssen. In closing, I would say this--I'm fortunate to serve on the Health and Human Services Committee and the Banking and Insurance Committee for a reason. Since I started new this has been, in both those committee, about every other day we're discussing long-term care one way or another. In the Medicaid Reform Plan that was looked at in finding number three is long-term care for the elderly and disabled are the largest expenditure categories in the Medicaid program. I mentioned that in my opening. As you look through here, though, in 2025 if we continue on this spending trend--no, I'm sorry, for the smallness of this--the Health and Human Services General Fund Medicaid Projection is $2 billion range, but the variance between our current appropriations and that in 2025 is $785 million short fall. So we're discussing ways in which somebody can avoid entitlements, those kind of things, plan for your future, make sure you take care of yourself. These long-term care policies allow people to stay at home if they can, if they have the money. That's going to have to be the route we take, because there just will not be enough beds for people. So this is, again, an incentive that people will start taking a plan of action and many of the questions dealt with they didn't know a lot about long-term care policies. It has to start down here in an information age to a different generation. If you wait too long we're going to be in deep trouble. Senator Raikes, you talked about, you know, when you're older, exactly, you need to start talking to people in their twenties, probably thirties. But I assume in ten years this will be a common conversation with any financial planner. It probably is now with any good financial planner about taking care of this issue. And I think by doing this we're starting down the road, and any improvements...Bob Grundman made some amendments...any amendments that you deem would be appropriate to improve this I'd fully accept. But anyway in the long and short of it is, we need to start doing something now. I think this is a cost-effective way to incent people to do the right thing and I'd appreciate your support. Thank you. [LB304]

SENATOR JANSSEN: Okay. Thank you. That ends the hearing on LB304. Last bill of the day, Senator White is going to tell us about LB456. [LB456]

SENATOR WHITE: (Exhibit 10) Good afternoon, Mr. Chairman, Senators, thank you for the opportunity to appear here. My name is Tom White, T-o-m W-h-i-t-e. I'm a state senator representing District 8 in Omaha, Nebraska. LB456 is one of those bills that comes up or should come up, because our tax code does not automatically adjust changing business realities. The tax code that we have right now with regard to the taxation of banks which LB456 applies to, was set up at a time when the only type of corporate form or business form that could hold a bank was a C corporation. That has changed. Let me read the Statement of Intent and I'll go back to finish why we should be looking at this as a change to keep pace with the changing business climate. The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby: Current state law requires financial institutions organized as a subchapter S corporation to pay a franchise tax, as well as requires the shareholders to pay personal income tax on the income of the bank. This results in a double tax on these individuals. LB456 would provide a tax credit to a shareholder of a financial institution that is organized as a subchapter S corporation. The credit amount shall be equal to the franchise tax paid under 77-3801 to 77-3807, by the financial institutions. The credit will be proportionate to the amount of subchapter S corporation income the taxpayer reports. This bill would harmonize state tax law and business formation law to permit Nebraskans to take full advantage of federal tax laws by adopting the most favorable business structure without being penalized by state law. Essentially what occurs in business, business moves to places where it can most effectively operate. As a state, our ability to affect business locations and choices is far more limited than the federal government. When our current franchise tax, also known sometimes as a deposit tax, was enacted it was a method chosen by the Unicameral to tax banks and it was uniformly applied because the only method that a bank could be held in was a C corporation. In this state, C corporations pay no taxes, holding banks pay no income taxes other than the franchise tax. Federal law changed. Federal law provided that a subchapter S corporation which is a form of business organization often used by families, small groups of people, could be utilized to hold a federally insured bank. What this meant is that people who had banks could hold them in a subchapter S and obtain very much preferential tax treatment on the federal level. What the federal government does for subchapter S is you will pay no corporate tax, but we will tax you at your income tax. So in other words, for income tax purposes the subchapter S corporation does not exist in federal law. Whatever it comes into the bank, goes right to the individuals who own the shareholders as income. We, however, make no provision to adjust for the fact that we still tax any corporate form--any corporate form whatsoever with a franchise tax. This means that a person who, for good federal tax reason, chooses a subchapter S tax system and to obtain a benefit from the federal government, pays a double penalty to the state government. The fact that there are such institutions tells you that the potential benefit of taking a subchapter S or even other corporate forms, and this bill would adjust those, those would be limited liability partnerships, LLP's, or limited liability companies which act the same as a subchapter S passing the income right through to the individual, are substantial. What I believe we need to do as a matter of policy is to examine whenever the business climate has changed so that our tax laws no longer follow what is the best business course. We may choose or choose not to tax, but those taxes should be levied consciously with an understanding of what it does to the underlying industry. One of the areas that we've done a very good job in is the insurance industry. We have one of the lowest premium taxes in the United States, and yet, we derive substantial income from it and more importantly, the jobs and the income generated because Security Pacific, other industries locate here to take advantage of our intelligent and forward thinking regulatory environment more than offset the short-term loss of having a lower premium.

There are many states that have much higher premium taxes, for example, than Nebraska, but derive nowhere near as much income, either from income tax, property tax, or even premium tax, as we do. This is one of those situations where the business practices have changed, the law on corporate formation has changed, but our tax code has not. It is one of those, among several, that we should look at and I hope that the members of the committee will look at this as a method, not only of short-term which it does have substantial fiscal note short-term, but those who will follow will indicate to you that they believe, and I think with good reason, over the next several years it will be income producing. That as more institutions in Nebraska shift to subchapter S's, we will actually gather more money on state income tax than we lose in franchise taxes. And that is consistent with what happens when you have a rational tax policy following business practices and following other aspects of the law. I'd be happy to try to answer any questions anybody may have. [LB456]

SENATOR JANSSEN: Questions? Ron. [LB456]

SENATOR RAIKES: This is technical and I could be wrong about this, but it seems to me that with this proposal if you're a sub S you're paying income tax. If you're a C corp, you're paying deposit tax. [LB456]

SENATOR WHITE: Correct. [LB456]

SENATOR RAIKES: Okay. [LB456]

SENATOR WHITE: But the sub S is also paying deposit tax. [LB456]

SENATOR RAIKES: No, I'm talking about under your proposal. [LB456]

SENATOR WHITE: Correct. Well, no, what would happen is under my proposal, the sub S would pay income tax, the C corp would pay the franchise tax or the deposit tax which is an election that the Unicameral had made years ago. We don't charge C corps, as I understand it, Senator. We do not charge C corps that hold banks' income tax. We charge them a franchise or a deposit tax in lieu of that. [LB456]

SENATOR RAIKES: Yeah. So I guess what I'm suggesting...I own a bank under two scenarios. Number one, I'm the only owner and it's a sub S. [LB456]

SENATOR WHITE: Yes, sir. [LB456]

SENATOR RAIKES: I'm the only shareholder and it's a C. In the one case, however much money that bank makes and however it deposits or whatever there's X dollars of deposit tax and there's X dollars of income tax on the operations. In the one scenario, the sub S scenario, under your proposal I pay the income tax. [LB456]

SENATOR WHITE: Yes. [LB456]

SENATOR RAIKES: In the other scenario, on the C, I pay the deposit tax. [LB456]

SENATOR WHITE: Yes. [LB456]

SENATOR RAIKES: Okay, thank you. [LB456]

SENATOR WHITE: And this will be an argument you'll hear me make in other situations. We have what I think are "losery" taxes. Deposits, as you know, can be easily transferred quickly from state to state. There are other ones where we think we are being secure and we're really taxing an entity that can move quickly. I think we are far better by telling the people who live in this state, look, we're going to work with you to help you find the most favorable treatment from the state government, and we're not going to penalize you when you do. And that's what this bill is intended to do. To improve the climate, and in the belief that when we do that, Senator, not only will you be better off, but the state will in the long run, because the additional, more intelligent, economic structure will create additional profits that we will share in. [LB456]

SENATOR RAIKES: Thank you. [LB456]

SENATOR WHITE: Thank you. [LB456]

SENATOR JANSSEN: Proponents. [LB456]

MARK HESSER: (Exhibit 11) Senator Janssen, members of the committee, thank you. My name is Mark Hesser, M-a-r-k H-e-s-s-e-r. I'm president of Pinnacle Bank and I'm here today to testify in support of passage of LB456. Basically, as Senator White said, we think this is an issue of fairness. Nebraska basically has two tax systems out here. They have corporate taxes out here and they have personal income taxes out here. Some of the corporate taxes as we've discussed vary a little bit. Most are based on income, banks pay a franchise tax based on deposits and income, insurance companies pay on a premium. And then we've got the personal income over here. S-corp banks, today, have to pay both taxes. What the body has done in the past as corporations came about, LLC's--limited liability companies--LLP's, they went into the corporate code and they exempted them from paying corporate tax and subjected them to the personal income tax code in theory. I think Mr. Kilpatrick can correct you on the specifics, but they went into the corporate code and exempted those entities and said you're going to pay personal income tax. Because banks could not be S corps at the time, nobody went into the bank deposit code and exempted them from paying this corporate tax, but they were added in because S corps are over here in the personal category. They had to pay that tax, too. So today they pay both taxes. We think it's one of fairness in that

Nebraska, as far as I know, does not put a double tax on any other corporate entity where they have to pay corporate tax and pay personal income tax. I'm not aware of any situation. Our surrounding states also do not put a double tax on banks and their states many of them do use a franchise tax, but none of them make them pay both taxes. There are different ways to get around the payment. There will be some more testimony from John Cederberg on some of the specifics, but one of the states exempts them from paying the franchise tax over here. They just say you don't pay the corporate tax, you pay the personal tax. The approach that Senator White takes in this bill is more the Missouri model where you're going to pay the franchise tax, but to the extent you can utilize the credit that's passed through against the personal side, it will reduce your personal tax liability. We've taken that approach, frankly, because one, there is a cost to getting rid of any double taxation situation. If you're already collecting it, you get rid of it. There is a cost. You can't get around that. We've chosen a model that we think makes that the least amount, hopefully so we've got the best chance of passage from you as the committee and the body eventually. So we've tried to minimize that impact. But with fairness we ask that it be done. We do feel that the impact is not...there are some things, at least from a banker's standpoint, that offset the fiscal note as far as cash flow goes. And that is very simply that because of a number of recent conversions, and there's some pages behind my outline of my testimony here on the second page and third page where we outline these numbers, but because of recent conversions of banks going to sub S there's about $2.2 million that we've identified that's going to be paid in personal income tax that you don't know about. The body doesn't know about, the Revenue Department doesn't know about it. That's going to flow in. Those are recent conversions in very late '05 and '06. So there's cash flow coming in that will help offset the elimination of this double tax. And that's one of the reasons we picked this year to do it. We've got some cash flow out there that will help offset the cost of eliminating the double tax. We think in the future that your passage of this will promote more banks switching from C corp to S corp generating even more money. Basically, what has happened with the double tax is the S corp banks are paying in this hand the $3.8 million of franchise tax. They paid in a whole other $8 million of personal income tax over here. That's the gain to the state or the double tax, one or the other. The $3.8 million kind of is what we look at as the cost. And that's the benefit. And so as these banks switch from C corps to S corps, the state will gain revenue because the personal income tax rate effectively is higher for them than the bank franchise rate. So passage of this bill, you can look at like Nebraska Incentive Act or LB775. In some cases it will promote people to do that increasing revenue out there. So there is a cost. There's no question about that. As I outline on the back page, I think over the next five years, even at the pace of recent conversions over the last five years, it will generate over $4 million in cash flow. One exception in my numbers that I think Revenue Department picked up in the fiscal note, and Mr. Kilpatrick knows more about it, but in the first year of a change there's five quarters of tax paid instead of four or something. I don't have that accounted for. With that I'd be happy to answer any questions. [LB456]

SENATOR JANSSEN: Questions? Ron. [LB456]

SENATOR RAIKES: Again, for my own information bear with me here. So back to my bank. I own a bank under two scenarios. Is it likely that in the bank or automatic even, that the deposit tax paid by that bank is going to be the same as the personal income tax that would be paid by that bank? [LB456]

MARK HESSER: No, and as I kind of referred to the deposit tax they're going to pay over here, the corporate income tax which they'll continue to pay under this bill. Our research has shown that the personal income tax is going to be about 215 percent, 2.15 times more than the franchise tax. [LB456]

SENATOR RAIKES: So it's not fair then or not fair in the sense that the C corp and the sub S are going to pay the same, because the C corp is going to pay the deposit tax. The S is going to pay the income tax and you're saying, typically, the income tax is more than the deposit tax. [LB456]

MARK HESSER: Right. I would agree that some s-corp banks are going to be paying more tax into the state than C corp banks, but that's a choice we made. The benefit we get is the double taxation we get away from at the federal level. That's who's really paying us to do it. So we're willing to pay that price to the state. Obviously, we've been willing to pay the price some banks have of the double taxation, but it doesn't make it fair, it doesn't make it right. And so the s-corp banks will pay more. We're not asking you to eliminate us from paying a personal income tax. I'd love you to come up with that idea in committee, but it's got more of a cost. [LB456]

SENATOR WHITE: New sponsor. (Laughter) [LB456]

SENATOR RAIKES: Okay, thank you. [LB456]

MARK HESSER: And I might add, too, it kind of refers to that. The other reason with this credit, there's going to be shareholders from out of state. We know 9-10 percent, I think, in John's study. They're not going to have any other income to use against that credit. So the credit doesn't get utilized in that case as opposed to just exempting them from the tax. So there's benefits in doing that, too. [LB456]

SENATOR JANSSEN: Carroll. [LB456]

SENATOR BURLING: Thank you. I might even be a little slower to catch on than Ron to some things, but what's the incentive to change from a C corp to an S? So we'll get more income? Can you repeat that? [LB456]

MARK HESSER: I can. The big advantage, and you might think S corps, too, some of you might know LLC's more or LLP's. If you were going to get an investment today your accountant is going to probably recommend you go form an LLC, limited liability company, get limited liability provisions, but get the flow through taxation. And then the benefit is primarily at the federal level. If you're a corporation and you pay corporate income tax, someday you want to pay that money to you individually. The government taxes it again whether it be in the form of your dividend gets taxed. And so you pay income twice. The corporation pays it, then you as a shareholder pay it on your dividend or you sell the company. There's a tax on that side of it. By forming an S corporation or electing that status or forming an LLP/LLC, you avoid paying both taxes over time. And that's why very few C corps are formed today in any kind of family-owned company, really anything less than 300, 400, 500 members I think is the number that you can have today. [LB456]

SENATOR BURLING: Thank you. [LB456]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. [LB456]

MARK HESSER: Thank you. [LB456]

SENATOR JANSSEN: Proponents. John. [LB456]

JOHN CEDERBERG: (Exhibit 12) Good afternoon, Senator Janssen and the members of the committee. I'm John Cederberg, J-o-h-n C-e-d-e-r-b-e-r-g. I'm a CPA here in Lincoln. I did much of the sort of detailed, financial research as background to LB456, and so I certainly come forward to answer questions after my remarks as well. I'm a little bit disappointed that I don't see Don Ellingson in the room from the Revenue Department, because I think that perhaps he and I are about the only individuals who were very actively involved in the deposits tax who are still active. And I think it would be worthwhile for us to spend just a few minutes to review how we got here. In 1983, the U.S. Supreme Court ruled that the tax in Tennessee on banks was unconstitutional. Our tax looked very much like Tennessee's. Later, the Nebraska Supreme Court agreed that our tax was unconstitutional. But in the meantime it was necessary for the Legislature to scramble about and get themselves a new tax. A task force was formed that he had several members of the banking industry, a member of the thrift industry, several senators, representatives of the Department of Revenue, and a representative from the Governor's Policy Research office. And they worked all summer long devising what became the franchise tax. And I remember them having adopted three very, very cardinal principles which to this day are important parts of the deposits tax. Principal number one, and you have to remember that this was within 18 months say of the federal decision, so there wasn't a lot of knowledge as to the breadth of the federal decision, but principal number one--we have to have a separate tax that doesn't look like an income tax so that we are not unconstitutional. We don't want to take this chance again. If you remember after the Nebraska Supreme Court decision, the banks got refunds of the unconstitutional tax for the open years in Nebraska. And this came in the mid-eighties which was a tough period in Nebraska. The time of troubles when banks were failing and farmers were failing, and this was a real financial concern. And so principal number one is avoid at all costs creating something that's also unconstitutional. That's why we have a separate tax from the income tax and that's why the income measure of this tax is book income not taxable income, because it was felt that by going to book income which is a universal income concept that we were nondiscriminatory and would pass constitutional muster. The second overriding principal was simplicity. The industry people on the task force wanted every bank to be able to prepare their return without going to their accountants, and to this day I think some of the returns are prepared by accountants, but certainly every bank has capacity to do its own return. And the third, and if you remember again back to the eighties' time of troubles banks had plenty of examiners around. They had FDIC examiners and they had federal tax examiners, and they had all kinds of examiners and an overriding principal was that the Department of Revenue should be able to enforce and examine these returns from their desk with publicly available information. And again, that had a great deal to do with the details of how this tax was structured. It's been a very successful tax. We've been 20 years and I have to admit, I'm getting older and perhaps my memory isn't as sharp as it could have been, but I cannot remember more than one technical change to this tax in the last 20 years. And that was to accommodate out of state branches of Nebraska banks when interstate branching became available, updated our statute for that. Otherwise, it has been an extraordinarily successful tax. I passed around a memo which tells you a little bit about--on the front page--how the S election has become very material in the banking industry since just 1997. When this tax was done, as Senator White said, in the eighties banks could not make the S election. That first became available in 1997 and so we've only had S electing banks now for 10 years. And in that 10 year period you'll see there's a number of statistics, I'm not going to go through them all with you, but just to highlight some of them. A third of our banks, roughly, are now S banks. About 30 percent of the assets are in S banks. So they're not all the little banks in the towns of 400 people. Six of the largest 15 banks in the state are S banks. They're very material players in our banking industry. And about 39 percent of all S corporation bank income of the Nebraska S banks is apportioned out of state. S banks are multi-state players and I think that's important. So we are dealing here with a material issue for a very material segment of our banking industry. On the second page, a comment has been made that other states have dealt with this, and on the second page of my memo I basically summarize how all of the other states in our general region have dealt with it. Iowa, Missouri, Oklahoma, Kansas, North Dakota all have separate bank taxes similar to ours. Iowa and Missouri have some years ago adopted a credit that in most respects is similar to LB456. Oklahoma, they have a separate tax. They simply acknowledge the S election for their tax and so the Oklahoma bank does not pay the tax that the C corp banks pay and the shareholders pay the tax. Kansas and North Dakota have taken the opposite approach. The approach that Senator White observed would require a different sponsor and that is that because the banks in their state pay the separate bank tax, the shareholders pay no individual income tax. They exempt that tax on the individual return. And then of course any other states that are listed there, they do not tax their banks outside of the income tax. Their C corp banks pay the corporate income tax and they acknowledge the S election and so the shareholders pay the tax. So basically Nebraska is the last one to address the question. We are the only ones in the area who levy a tax at the corporate level and then also levy the full tax at the shareholder level. I would like to respond to the question that Senator Raikes has asked, I think, a couple times, because this is a confusing situation and perhaps I can add a little light to it. At this point, a C corporation bank, and using the example that there's a single shareholder making the election, a C corporation bank pays no state corporation income tax on its income. Now if that C corporation bank is owned by a bank holding company and if the bank holding company has taxable income--and some do--they pay the corporate income tax on the holding company's income. But a C corporation bank pays no state corporation income tax on its income. It pays the deposits tax. Under the current law, the S corporation bank still pays the franchise tax at the corporate level, and then the shareholders also pay an income tax at the shareholder level. So the decision to elect S does create a new tax on that income that did not exist as a C corporation. So that is definitely one of the things that is weighed. I helped a bank that made the election effective January 1, 2007. So it's not in any of the records or any of my research yet, and I can't really talk about who they are, because that doesn't become public until their call report becomes public at the end of March. But when we were in the directors' meeting and then when we were again in the shareholders' meeting, I was explaining to the shareholders and the directors the impact, both in terms of federal tax and state tax and cash flow, of making the S election. And when I told them that the taxes that they would pay to the state of Nebraska would go up about $80,000 I thought that they thought they were looking at a ghost. As a matter of fact, the reaction was negative enough that I thought perhaps the election was not going to happen. You know, as we went through it and they looked at the federal benefits and so on, and I explained to them that I was doing the research for a potential possible change, you know, calmer minds prevailed and the shareholders were unanimous that the incentives for making the S election were good enough that they should still make it. But it certainly did get their attention when I told them that it would be about $80,000 more in tax. So it's not that we have two taxes going to one, it's that we have one tax which is levied on the franchise tax at that rate going to an income tax that is levied at that rate. With that I would be very happy to answer questions. [LB456]

SENATOR JANSSEN: Questions? Ron. [LB456]

SENATOR RAIKES: The income tax was $80,000 additional. What was the deposits tax? [LB456]

JOHN CEDERBERG: The deposits tax that they are paying now is, I think, is in the range of $35,000. [LB456]

SENATOR RAIKES: So the deposit tax does not offset the income tax. [LB456]

JOHN CEDERBERG: Oh no. No. This credit would not, on average, now obviously things are day and night difference, but... [LB456]

SENATOR RAIKES: Right. So for a fiscal note LB56 (sic) would be less than a proposal that mirrored Kansas and North Dakota? [LB456]

JOHN CEDERBERG: Oh absolutely. [LB456]

SENATOR RAIKES: Okay. [LB456]

JOHN CEDERBERG: Yeah. I mean, if this were the Kansas or North Dakota model my hunch is the fiscal note would have been more in the order of $12 million maybe. [LB456]

SENATOR RAIKES: Okay. Thank you. [LB456]

SENATOR JANSSEN: Okay. Any other questions? I don't see any, John, thank you for being here. [LB456]

JOHN CEDERBERG: Thank you. [LB456]

SENATOR JANSSEN: It's always nice to have you here. [LB456]

JOHN CEDERBERG: Thank you. [LB456]

SENATOR JANSSEN: Um-hum. Next proponent. [LB456]

CARL SJULIN: (Exhibit 13) Good afternoon, Chairman Janssen, members of the Revenue Committee. My name is Carl Sjulin, C-a-r-l S-j-u-l-i-n. I'm president of West Gate Bank. West Gate Bank is a state-chartered community bank located here in Lincoln. West Gate Bank has eight branches and approximately 100 employees. Prior to becoming president of West Gate, I worked as a legislative aide to Congressman Doug Bereuter in Washington, D.C. for the House Banking Committee. I returned to Nebraska for law school and practiced banking law with the Lincoln law firm of Rembolt, Ludtke, and Berger for 12 years. It is with that background that I am testifying today in support of LB456. LB456 would cure a tax inequity that has become an issue to community banks in Nebraska. Back in 2004, West Gate Bank and its holding company joined the growing number of banks that have elected to become a subchapter S corporation for income tax purposes. Only since 1997 have banks been allowed by the

IRS to make this S election. Approximately 86 banks in Nebraska have made the S election with more converting each year due to the reduction in federal and personal income tax rates in recent years. There are many federal tax benefits to being a subchapter S corporation; however, the Nebraska state tax on deposits, known as the franchise tax, has become a growing issue. Nebraska banks that have made the S election are the only businesses in Nebraska that pay tax both at the corporate level and at the individual shareholder level. No other business or industry pays two levels of state tax. This double taxation, I believe is to some degree has been explained here today, by historical accident and unintended. LB456 would rectify this situation by giving bank shareholders who pay tax on the bank's income a state income tax credit in an amount equal to the franchise tax paid at the bank level. LB456 does not change the franchise tax in any way. All banks will still pay the franchise tax based on their deposits. It is important to note that the franchise tax is considerably less than the state income tax on profits. S electing banks are therefore already bearing a higher state tax load than banks that are C corporations. The fiscal impact of LB456 is relatively small, but it will have a large impact on Nebraska's economy due to the multiplier effect. Every dollar a bank saves in tax allows that bank to lend an additional $12 into their local communities for economic development. LB456 would effectively inject tens of millions of dollars into economic development throughout the state including rural areas where most banks are S corporations. Banks are the delivery system for economic development in our state. The community banks affected by the current double tax are the backbone of their communities through leadership in the Chamber of Commerce, local charities, schools, hospital boards, United Way, civic groups and other charitable causes. LB456 provides tax relief that will be immediately reinvested in local communities. The current taxing regime taxes the shareholders of S electing banks at a materially higher rate than the shareholders of other S corporations. This reduces the availability of credit in our state by taking money out of the banking system that would otherwise be available to be reinvested in their communities. None of Nebraska's neighboring states double tax banks in this manner. These states realize that it is counter to economic development to double tax banks. This session you will, I'm sure, review many tax bills that claim to have an impact on economic development. I respectfully submit that few will have the immediate and direct and significant positive effect of LB456. This bill drills down to the precise delivery channel for economic development with surgical precision. And more fundamentally, LB456 corrects an unintended situation that has arisen in recent years that has resulted in an unfair tax system. Nebraska's current tax structure discriminates against community banks that are S corporations and this needs to be fixed. Thank you and I'd be happy to answer any questions the committee may have. [LB456]

SENATOR JANSSEN: Questions? I don't see any, thank you. [LB456]

CARL SJULIN: Thank you. [LB456]

SENATOR JANSSEN: Next proponent. [LB456]

ROBERT J. HALLSTROM: (Exhibit 14) Senator Janssen, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB456. For the record that's H-a-l-l-s-t-r-o-m. I've submitted my written testimony. I think to go through that or to even make much public comment would be repetitive in nature. I do want to note for the record, though, that the Nebraska Bankers Association represents about 250 banks in the state of Nebraska, 86 of which are S corporations. And despite the fact that not all of them are or will elect to be sub S corporations, we are definitely in support of the legislation. I'd like to latch onto something Senator White said in his opening comments. I think the state of Nebraska has consciously and I might add appropriately created a tax and regulatory environment to incentive financial institutions and insurance companies to locate and operate in the state of Nebraska, and I think simply put LB456 continues to foster that appropriate public policy. And with that I'd be happy to address any questions that the committee might have. [LB456]

SENATOR JANSSEN: I don't see any questions. [LB456]

ROBERT J. HALLSTROM: Thank you, Senator. [LB456]

SENATOR JANSSEN: Thank you, Bob. [LB456]

KURT YOST: Chairman Janssen, members of the Revenue Committee, my name is Kurt Yost, K-u-r-t Y-o-s-t, and I am the registered lobbyist for the Nebraska Independent Community Bankers. All my membership are members of the Nebraska Bankers Association and Mr. Cederberg has pointed out about 80-plus banks are currently sub S banks. We simply are here today to lend our support to LB456. More qualified people have preceded me with the technical discussion, Chairman. [LB456]

SENATOR JANSSEN: Any questions for Kurt? Thank you, Kurt. [LB456]

KURT YOST: Thank you. [LB456]

SENATOR JANSSEN: Any other proponents? Any opponents? Anyone in a neutral capacity? [LB456]

BRANDON LUETKENHAUS: Good afternoon, Mr. Chairman and members of the Revenue Committee. My name is Brandon, B-r-a-n-d-o-n, Luetkenhaus, L-u-e-t-k-e-n-h-a-u-s. I am here on behalf of the Nebraska Credit Union League and I am testifying in a neutral capacity on LB456. The Nebraska Credit Union League represents 96 percent of the state's credit unions and their 420,000 members or consumers. Credit unions are member-owned, democratically-controlled, not-for-profit cooperatives generally managed by volunteer boards of directors. All earnings of the credit unions are returned back to their member/owners in the form of lower fees, lower loan rates, and a higher yield on savings. In 1937, Congress granted the nation's credit unions a federal tax exemption because of their unique structure. LB456 would significantly expand and enhance subchapter S benefits for the banking industry by providing state tax credits for shareholders of subchapter S corporations. We have no objections to the financial institutions reducing their tax burden; however, we strongly believe that any tax savings should be passed along to the consumers. We also feel compelled to point out the duplicity of the banking industry's position when it comes to taxes. While aggressively lobbying to increase the tax advantages of subchapter S banks, the banking industry also continues to actively lobby to impose additional taxes on credit unions arguing that credit unions federal tax status provides a competitive advantage and that imposing additional taxes would level the playing field. It should be said that the state of Nebraska does not provide any preferential tax treatment to not-for-profit, state-chartered credit unions. The state's credit unions pay the same state taxes as any other Nebraska-based business, including banks. To conclude, we have no problem with easing the tax burden on banks. We would respectfully request, however, that equal and fair consideration be given to reducing the tax burden on the Nebraska state-chartered credit unions which pay sales tax and the financial institutions deposit tax. Thank you for your consideration and I would answer any questions you may have. [LB456]

SENATOR JANSSEN: Any questions? I don't see any. All right, thank you, Brandon. [LB456]

BRANDON LUETKENHAUS: Thanks. [LB456]

SENATOR JANSSEN: Anyone else in a neutral capacity? Seeing none, Senator White, close. [LB456]

SENATOR WHITE: Thank you, Mr. Chairman. One of the things that is important to me is that we remain fiscally responsible throughout this. I have made inquiry again from experts who state that their best belief in four years or less this will be a positive, economic force for the state. We will collect more money if we make this change. If we are successful at convincing the owners of C corporation banks to switch to sub S corporation banks sooner because of this change in the law that day will come far earlier. The economic benefits, and you can't get something for nothing, but the economic benefits of transferring come from the federal tax laws. Congress had made the determination. What we need to do is get out of the way of our banks from taking advantage of what Congress has provided, but at the same time, responsibly collecting taxes. This bill will allow us to make money as they also prosper. I hope you will seriously consider it and at the proper time, move it onto the floor. Thank you. [LB456]

SENATOR JANSSEN: Thank you. That ends the hearings for the day. Thank you all for being here. [LB456]

Disposition of Bills:

LB444 - Indefinitely postponed.
LB23 - Indefinitely postponed.
LB270 - Indefinitely postponed.
LB459 - Indefinitely postponed.
LB304 - Advanced to General File, as amended.
LB456 - Advanced to General File, as amended.

Chairperson

Committee Clerk