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Natural Resources Committee  
April 03, 2009

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[LB561]

The Committee on Natural Resources met at 1:00 p.m. on Friday, April 3, 2009, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on AM769 to LB561. Senators present: Chris Langemeier, Chairperson; Annette Dubas, Vice Chairperson; Tom Carlson; Tanya Cook; Deb Fischer; Ken Haar; Beau McCoy; and Ken Schilz. Senators absent: None. []

SENATOR LANGEMEIER: Welcome, everyone to the Natural Resources Committee. It's kind of nice to be back in a committee setting which we've been out of for a little while. My name is Chris Langemeier. I'm the chairman of the Natural Resources Committee. I'd like to introduce to you the people around the table as they come in. We're going to start, to my far left, we have Senator Beau McCoy who represents Elkhorn, Nebraska, or Omaha. We have Senator Ken Haar who represents northern Lancaster County and southern Saunders County. We have Senator Ken Schilz from Ogallala, Nebraska. We have the vice chair of the committee, Senator Annette Dubas from Fullerton. Our legal counsel for the committee is Laurie Lage. Moving to my far right, we have the committee clerk for the committee which is Barb Koehlmoos. And then we have Danae Escher who is my AA. She's going to be running the clocks here today. We have Senator Tanya Cook from Omaha, representing the Omaha area. We have joining us is Senator Tom Carlson who represents Holdrege and District 38. Senator Deb Fischer will be here shortly, who is from Valentine, and represents District 43. We have two pages...oh, we have different pages today, so I'm not sure I know their names, but, first of all, Malinda Frevert who has been with us all year long is from Omaha, Nebraska, and our second page is Justin...tell me your last name. []

JUSTIN TRAUERNICHT: Trauernicht. []

SENATOR LANGEMEIER: From? []

JUSTIN TRAUERNICHT: Beatrice. []

SENATOR LANGEMEIER: Justin Trauernicht from Beatrice, Nebraska, who's new to the committee, and welcome. They will assist you if you have something you'd like to pass out. We ask that you have ten copies to pass out, and if it's something you'd like us to see and you do pass it out, just a note of forewarning, we're going to keep it for the record. So if it's something you don't want us to keep from you, I ask that you just hold it up at the table and make a reference to it in that regard. Otherwise, like I said, when you do pass it out, we will keep it. We'd like to welcome everybody that's here in the crowd today as those also that are watching us on the closed caption television, and those that are watching us new on our live Internet feed. We welcome you to the Natural Resources Committee hearing. At this time, I would ask that you turn your cell phones off so we do not interrupt those people that are testifying at the table. If you do

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care to testify, in the corners of the rooms we have these green sheets. We ask that you fill those out for our ability to keep records, and when you come forward, we ask you to give them to the committee clerk before you sit down to testify. If you're here today, and you want to be on the record in support or opposition to the AM, there are also these sheets in the corner that we ask that you put your name and address and information on, so we can keep a record of your attendance and your opinions, if you don't care to come up and testify in front of us. When you do come up and testify, we ask that you state and spell your name, so we can keep a very clean record for the future of this hearing. No matter how simple it is of a name, we do ask that you still state and spell both your first and last name. At this time, I'm going to do the introduction since there's no introduction. As chair, I'm going to go out and move out and do the introduction. I would ask that as you come up to testify, you are going to get four minutes, so the lights will come on in front of you. The green light will come on; it'll be on for three minutes. The yellow light will come on; it'll be one minute. And then when the red light is on, we'll ask you to stop. Then after that time, the senators will have questions, and when they ask you a question you'll get two minutes to respond, and so there won't be any lights ahead of you until the two-minute mark. Then the red light will come on, and if the senator doesn't believe that you've fully finished yours, I'm sure they will ask you another question, so I don't know how limiting that...it never has been limiting in the past. And with that, the microphone right there is standing pretty much up. It picks you up, for the record, the best just like that, so we ask that you don't touch it, that it picks up very well there, and it doesn't broadcast out to the seats anyway. And so by pulling it down just muffles it, and you're not getting it where anyone else can hear it any better anyway. So we just ask that you don't touch the microphone. Otherwise, the page will come up and pull it back up for you which we have done throughout the year. And with that, it's great to see everybody here. I'm going to come around and give a brief introduction to the amendment. We are here to talk about AM769, not LB561. We would ask that you limit your testimony to the amendment we're having the hearing on today, and with that, we'll get started, and I'll turn it over to Senator Dubas. []

SENATOR LANGEMEIER: (Exhibit 1) Good afternoon, Chairman Dubas and members of the Natural Resource Committee, my name is Chris, C-h-r-i-s Langemeier, L-a-n-g-e-m-e-i-e-r. I'm here on behalf of the Natural Resources chairman, to do an opening on AM769 offered to LB561. AM769, and I'm going to be brief in my testimony, is an amendment designed to aid in the development of wind energy in Nebraska. It's truly a great day in Nebraska when everyone behind me, whether they're proponents, opponents, or neutral testimony, is all here to support wind energy. It's truly a great thing we didn't see three years ago when C-BED was officially put into law, and it's truly great to see that. Now, the question is, is with AM769, is this a tool necessary to further aid in the future development of wind energy? It's not designed out to remove C-BED from legislation. It's not designed to make C-BED rendered nonuseful. It's truly designed and brought with the intent, to my belief, and we will have as a committee the opportunity to determine whether the wording is perfect, but how many times have we

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seen legislation come before us that the wording is perfect the first round? This is truly brought to us with the idea that this will help both C-BED and wind development within the state of Nebraska. With that, I'll conclude. There's a lot of people behind us that would like to testify, and we'll get started on that. So if there's any questions for me, I'm more than happy to take them. [LB561]

SENATOR DUBAS: Questions? Seeing none, thank you. And if our first proponent that would like to come forward, please. [LB561]

GREG VAN DYKE: (Exhibit 2) Mr. Chairman, members of the committee, my name is Greg Van Dyke. It's spelled G-r-e-g and V-a-n D-y-k-e. I'm here today to testify in support of Amendment 769 as an investor in the Elkhorn Ridge project and future C-BED projects in Nebraska. Thank you for allowing me this opportunity. As background, my wife and I were born and raised in Columbus, Nebraska. My parents grew up on farms near Humphrey and currently reside in Columbus. I attended college at the University of Nebraska, and after graduating from college I took a job with an accounting firm in Omaha. I have lived in Omaha since 1987. I am an investor in the only C-BED project in operation in Nebraska. I now serve as vice president of finance and treasurer for a company called Tenaska. We're based out of Omaha. I have been with the company for 13 years. Previously, I worked in the accounting industry for over eight years. I know you have already heard background on the Elkhorn Ridge project and the amendment, so my comments today will be brief, and I will be happy to try to answer any of your questions. A quick recap of the Elkhorn Ridge C-BED project near Bloomfield, Nebraska. It's a project that consists of 27 wind turbines and has a net output of about 80 megawatts. The reported total capital costs of the project exceed \$140 million. The project generated approximately 100 jobs throughout construction. I'm very excited to be a part of this project. It has been great for the community. It has brought a much needed injection of economic activity to our state. Elkhorn Ridge Wind, LLC, which is the entity that is made up of employee-owners of Tenaska, who represent the Nebraska residents who must own at least a third of the project. The other partner in the project is Edison Mission Energy. Midwest Wind Energy served as the lead site developer. We feel very fortunate to be associated with these companies who have proven track records in the industry. This is very important to us. These projects are complex and require a significant amount of expertise in several areas including engineering, finance, environmental, transmission, operations, and legal, so good partners are extremely important. NPPD is the power purchaser for the project, and they've played a pivotal role in the success of this project. It's been a team effort. The landowners involved in the community have been very, very supportive. We believe the amendment before you today will enhance the current legislation in a couple of ways. The amendment will enable more Nebraska investment in wind projects due to a more efficient capital structure. Currently, it is no secret there is a real scarcity in available capital. A more efficient capital structure permits the projects to charge a lower price for the power. This amendment will make it easier and more efficient to add capital at a

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lower cost than the equity investors will require. Energy projects are capital intensive. A 100MW project will typically cost approximately \$200 million to construct. This amendment will enable the project rather than investors to attract debt to supplement the overall capital requirement in a more efficient manner. The debt will be the obligation of the projects rather than the obligation of the individual investors, and will also result in the objectives of the investors, both Nebraska and non-Nebraska residents, to be aligned during the entire life of the project. And this concept is fundamental, we believe and I believe, in the success of any project that has a 20-year life. I understand there are other models that have been created to fit within the C-BED structure. We have looked at numerous models, and I am certainly not qualified to speak to the viability of these models. I have learned a great deal in the past few months about the different ways to structure projects to meet the C-BED requirements. While I'm not qualified to speak to the details of other models, I can only speak with confidence about the business model that we're proposing here today. I can say with certainty that having the ability to replace higher-priced equity with lower-priced debt in an efficient manner, whether it be a wind project or any other type of capital intensive project, will result in a lower-priced product. So the message I leave you with today is we believe, whether it's a large project or a small project, the financing structure is fundamental to providing the best deal for the residents of Nebraska who are buying power from public power companies. This amendment before you today will attract more investors, whether it's a landowner or another interested Nebraskan. It does not weaken C-BED; it strengthens it. Thank you for your patience. I have enjoyed visiting with many of you, and with the staff members who have contacted me. I hope I have helped paint a clearer picture of how and why this language is needed, and I'm happy to answer any of your questions. [LB561]

SENATOR LANGEMEIER: Very good. Thank you. Are there any questions? Senator Haar. [LB561]

SENATOR HAAR: To begin with, you state in your letter that Nebraska owners must own at least a third of the project, and I've just gone back and forth over this C-BED legislation which I think is pretty sketchy, and I don't find that. Could you tell me why you think it's ownership of a third of the project? [LB561]

GREG VAN DYKE: Sure. The reason we've applied the third...the concept that a third of the ownership needs to be Nebraska investors is because we've also applied the concept that our interest with the other investors should be aligned, so that if a third of the revenue is going to find its way to an investor, they should own a third of the project. We haven't been able to make the numbers work where somebody owning less than a third of the project gets more than a third of the revenues and still result in a product that has a competitive price power. [LB561]

SENATOR HAAR: But saying they must own at least a third isn't part of the C-BED

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legislation. That's your model; that's part of your business model, right? [LB561]

GREG VAN DYKE: That's correct. [LB561]

SENATOR HAAR: Okay. And then could you just explain just a little bit further? You said the concept is fundamental in the success of any project that has a 20-year life. Could you explain that a little bit more to me, what you mean by that? [LB561]

GREG VAN DYKE: What I mean by that is having partners whose interests are perfectly aligned over a 20-year period is important to make sure that both partners are acting in a consistent manner to address any issues that might come up over a 20-year life. So for example, if you end up with a situation where you own a greater portion of the project in the early years and a much smaller portion of the project in the later years, your interests aren't perfectly aligned with the investors who are on the other side of that. [LB561]

SENATOR HAAR: Okay. So, again, that's part of your business model and not necessarily a... [LB561]

GREG VAN DYKE: That's a...certainly a theoretical point that I as an investor believe in, yes. It's not a C-BED requirement, no. [LB561]

SENATOR HAAR: Okay. Well, one thing perhaps, and you can help clarify this as well. Some people have been talking about that working with NPPD or OPPD, you have to produce a certain amount of energy for 20 years. Do you see that in the contract? [LB561]

GREG VAN DYKE: That would be dependent upon the specific contracts, so I've seen...I can't speak to other contracts. I can speak to contracts that we've worked with, and wind projects, generally speaking, are contracts where power is only purchased if it's produced. [LB561]

SENATOR HAAR: Okay, okay. Thank you. [LB561]

SENATOR LANGEMEIER: Senator Dubas. [LB561]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Van Dyke, for being here. I think we probably are in agreement that C-BED was created to help with economic development in rural areas. Would you agree with that statement? [LB561]

GREG VAN DYKE: I agree with that. [LB561]

SENATOR DUBAS: Okay. How do you see this amendment maximizing rural economic

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development in a way that the original bill doesn't? [LB561]

GREG VAN DYKE: I think what this amendment does is it increases the likelihood that there will be rural economic development by accessing a larger pool of capital for capital intensive projects. It makes it more likely that more 80MW Elkhorn Ridge type projects will actually get done. [LB561]

SENATOR DUBAS: Okay, thank you. The original C-BED legislation is based on the Minnesota flip model. Is there a reason why your company decided not to use that model? [LB561]

GREG VAN DYKE: Well, there are some important differences between the Minnesota flip model and the Nebraska flip model or the Nebraska C-BED legislation and the Minnesota C-BED legislation, and so I can't speak to the Minnesota legislation. For the reasons that I stated earlier, we weren't comfortable with the flip model from the standpoint of having a misalignment, at least as I understand it, and as we looked at it, a misalignment of interests between the partners. Our preference is a strong preference to make sure that our partners and Tenaska and me as a personal investor are lined up precisely over the life of the project. And then as a result of the competitive process to win the long-term power purchase agreements with the NPPDs and OPPDs of the world, we believe that a structure that we're proposing to have the ability to use, which is the same structure that's used, I'll say throughout the United States, for many capital intensive projects--so this is really not a new concept--will result in the lowest price of power and make it more likely that you would win or someone would win the rights for the long-term power purchase agreement. [LB561]

SENATOR DUBAS: It's my understanding that employees of Tenaska are part of this... [LB561]

GREG VAN DYKE: Employees of Tenaska are the C-BED investors; that's correct. [LB561]

SENATOR DUBAS: Okay. If we...or if you had used the Minnesota flip, would you have seen giving more employees the opportunity to participate or is this...? [LB561]

GREG VAN DYKE: And again, I apologize. As I understand the flip structure, it's unlikely that me personally and my colleagues would be investors in the Elkhorn Ridge project. [LB561]

SENATOR DUBAS: Because? [LB561]

GREG VAN DYKE: Because the flip structure relies on equity investment, as I understand it, from people who have the ability to utilize tax credits, tax depreciation, to

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typically...because of the way the federal tax laws work, is typically almost exclusively corporations. [LB561]

SENATOR DUBAS: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Senator Schilz. [LB561]

SENATOR SCHILZ: Thank you, Chairman Langemeier. Mr. Van Dyke, thanks for coming in today. As I look at the amendment, I guess is it your understanding or your belief that AM769 basically allows for a project, and that would be the entire project, whatever, however that's put together, to go out and just borrow money to create what they...the investment that they want to get done? Is that correct? [LB561]

GREG VAN DYKE: That's generally correct. It's designed to allow for the project to take on debt that's collateralized by the assets of the project itself with no outside collateral, and service that debt and still be able to satisfy the requirement that 33 percent or a third of the...what I'll say cash flow after debt service makes its way to qualified owners. [LB561]

SENATOR SCHILZ: Sure. And that being the case, this would be no different than any other company that would want to build some sort of capital intensive endeavor to go out and borrow money as in any business model. Is that correct? [LB561]

GREG VAN DYKE: Yes, yes. [LB561]

SENATOR SCHILZ: So basically, all we're doing is give him the ability to go out and find a good banker. We hope. [LB561]

GREG VAN DYKE: That's correct. That's the point I made earlier. This is not a new concept. This is a concept that's employed...well, in business throughout the world, and that's what we're trying to get accomplished here. [LB561]

SENATOR SCHILZ: Thank you. [LB561]

SENATOR LANGEMEIER: Senator Fischer. [LB561]

SENATOR FISCHER: Thank you, Chairman Langemeier. Welcome today. [LB561]

GREG VAN DYKE: Thank you. [LB561]

SENATOR FISCHER: It's my understanding that the project you're involved with right now is the only C-BED project in Nebraska. Is that true? [LB561]

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GREG VAN DYKE: That's my understanding as well. [LB561]

SENATOR FISCHER: Would you anticipate if this amendment is not adopted, that we would see very many more C-BED projects go forward? Would you be able to invest in another one? [LB561]

GREG VAN DYKE: If this amendment didn't go forward, it would be unlikely that I would or my colleagues would be able to invest in another project like Elkhorn Ridge due to the high capital requirements. [LB561]

SENATOR FISCHER: I don't want to ask your personal finances, but can you give me a range of what it would cost to be an investor in a C-BED project currently? [LB561]

GREG VAN DYKE: Well, it depends on the size of the C-BED project certainly, but if you're talking about using the Elkhorn Ridge project, as an example, again, as I mentioned earlier, that was an 80MW project that had capital requirements of over \$140 million. And so, based on the business model that we used, a third of that \$140 million needed to come from investors like myself, and so we didn't employ any sort of model where there was a minimum ownership requirement. So technically, the answer to your question is, is anybody could. But because of the amount of capital that's required, if you're not able to put debt on the project then the number of people that you would need to satisfy that capital requirement would be a large number. [LB561]

SENATOR FISCHER: With the amendment right now, and it speaks to debt financing, that's what the amendment is all about. Am I reading that correctly? [LB561]

GREG VAN DYKE: Yes. [LB561]

SENATOR FISCHER: If we open it up by adopting this amendment, does that diminish the risk for investors? [LB561]

GREG VAN DYKE: Well, it diminishes the equity dollars that would be required to be invested. Does it change the risk profile of every dollar that is invested? I would argue that it may change it, but I don't know if it changes it for the better or for the worse. By having a lender come in and loan money to a project, then there is another set of eyes doing due diligence on the financial viability of that project, and their concern about getting repaid the loan. So you could argue that the risk is diminished slightly. Then the flip side of that argument is now you also have an investor in there who has rights to dollars ahead of you because the debt would be repaid before the equity would be repaid, so you could argue that your risk is slightly higher. Either way, I could see both sides of that argument, but I don't see either one of them as being materially different. [LB561]



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SENATOR FISCHER: And speaking of flips, on the Minnesota flip, I had some folks stop by my office and visit with me about that. In the original legislation, I don't remember a discussion about using that as the model, the Minnesota flip and I've been on the committee. So I don't know...I don't recall that it was part of the discussion when C-BED was passed. I don't recall that it's in the current C-BED statute. Do you? [LB561]

GREG VAN DYKE: I don't recall seeing it in there specifically. [LB561]

SENATOR FISCHER: On that model, maybe not the term, but the model. [LB561]

GREG VAN DYKE: Yeah, or the model, yeah. [LB561]

SENATOR FISCHER: Okay. And I've been hearing some opposition to this amendment. Do you know why there's opposition to the amendment? [LB561]

GREG VAN DYKE: I do not. [LB561]

SENATOR FISCHER: Do you feel this will weaken C-BED? [LB561]

GREG VAN DYKE: I do not. [LB561]

SENATOR FISCHER: The concept of C-BED. [LB561]

GREG VAN DYKE: I do not. I think it actually enhances C-BED. [LB561]

SENATOR FISCHER: Okay. Thank you very much. [LB561]

SENATOR LANGEMEIER: Senator Carlson. [LB561]

SENATOR CARLSON: Thank you, Senator Langemeier. Mr. Van Dyke, you were raised in Columbus, but you live now in the Omaha area? [LB561]

GREG VAN DYKE: Yes, sir. [LB561]

SENATOR CARLSON: And you are an employee of Tenaska? [LB561]

GREG VAN DYKE: Yes, sir. [LB561]

SENATOR CARLSON: But you are a personal investor... [LB561]

GREG VAN DYKE: Correct. [LB561]

SENATOR CARLSON: ...in the C-BED project. [LB561]

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GREG VAN DYKE: Yes, sir. [LB561]

SENATOR CARLSON: On the second page of your letter, your statement is, it does not weaken C-BED; it strengthens it. Is that from the standpoint of an individual investor or from the standpoint of Tenaska? [LB561]

GREG VAN DYKE: It's from the standpoint of an individual investor, and from the standpoint of the state, because it should enhance C-BED and provide for more projects to get constructed and to get under development. [LB561]

SENATOR CARLSON: Okay. If the amendment is not a part of the bill, and you're already an investor,... [LB561]

GREG VAN DYKE: Yes, sir. [LB561]

SENATOR CARLSON: ...being an investor in that position versus if the amendment is adopted and would change the current project, as an individual investor, under which arrangement do you stand to make more money? [LB561]

GREG VAN DYKE: No, I don't think we stand to make any less or more money. The amount of cash that's payable under the power purchase agreement is fixed and set, and will not change and has not changed. The application of this amendment to the Elkhorn Ridge project may, if we chose to do so, if we could put that on the project, may free up capital to invest in other projects. But on a nominally valid basis, we'd actually make less money. And arguably, depending upon your interest rate that you got for the loan at the project level, you might make a slightly higher or a slightly lower return. The biggest benefit to Elkhorn Ridge would be the opportunity to free up capital to invest in other projects if we chose to do so. [LB561]

SENATOR CARLSON: Okay. One other question, when we go through the order that we do in these hearings where the proponents testify first and then the opponents, we can't come back and ask the proponents questions following those that are opposed to it. There are a number of people that will be opposed to it. Senator Fischer asked you kind of the same thing. I'll ask you again. Why are they opposed to this amendment? [LB561]

GREG VAN DYKE: The conversations I've had with people who are utilizing the flip structure, which I'll apologize that I don't have a deep understanding of the flip structure. But my limited understanding of the flip structure is that there is a set of investors who invest a very small amount of capital and in return, gets 33 percent of the gross revenues over the life of the project which means there is somebody else who's investing a large amount of capital and getting 67 percent of the gross revenues of the

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project. That disproportionate sharing of equity and revenues could create some opposition to the bill because what we are doing would result in those interests being more aligned where a 33 percent owner of the project and investor in the project gets 33 percent of the revenues. [LB561]

SENATOR CARLSON: Okay. With the design as is now, and that 33 percent is there throughout the life of the project before debt service, and then to enact the amendment, would you agree that is a huge change? [LB561]

GREG VAN DYKE: Yes. I would say it's significantly different than the way the law is written today. I want to go back to your original...your first question or your question immediately preceding this one. This amendment in no way diminishes the people's ability to use the flip structure. So that option is available and if it results in a competitive price of power, I suspect it will be used. This in no way diminishes the ability to utilize that structure. [LB561]

SENATOR CARLSON: And I understand it doesn't change that. What it changes is the amount that's to be shared after the flip takes place, and I can understand opposition to that. And many times in working out bills and so forth, we start at one end and then there's a request made...I'll say in this case, at the other end...we end up someplace in the middle. Is it possible to end up someplace in the middle on this? [LB561]

GREG VAN DYKE: I'm certainly open to understanding what other options are available. Again, when we proposed this language, we didn't believe it would become as much of an issue as it apparently has for people, because what we are certainly trying to do is enhance the ability for future projects to get constructed in the state on using a business model that's been employed a lot of places. Now I understand the C-BED legislation is unique and specific to wind projects, and I'm not familiar with any wind projects the size of Elkhorn Ridge that utilizes C-BED structure on a recurring basis, so I could be mistaken there. And I think the amendment that we're talking about here is, we're hoping, is designed to enhance the likelihood that there will be future projects developed and still continue to have at least a third of those projects owned by Nebraska residents. [LB561]

SENATOR CARLSON: Okay, thank you. I've asked a lot of questions. Thank you. [LB561]

GREG VAN DYKE: Thank you. [LB561]

SENATOR LANGEMEIER: Mr. Van Dyke, I'm going to ask one, and then we'll move on down the line. As we talk about the financing of these structures, whether we do it your style with 33 percent purchase into a cash format, and...or you do the flip model which we've all got all these examples of. To get down to the simple end of this is if I want to

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invest in the Minnesota flip model where in this example, that 1 percent interest is \$45,000, my current option is, is to go take out a second mortgage on my house, and put my \$45,000 in. Or if I wanted to go your...let's say I became a partner with you guys, and I needed a million dollars, my option is, is I go take out a second mortgage on my house to come up with the million dollars to invest your method. And with the passing of this amendment, would allow me to take my percent ownership, whether it's in that 1 percent, put my \$45,000 against the project and borrow it as a concept of a project based on a contract with Nebraska Public Power or through your model, I still didn't borrow my share. My \$1 million is what I'm making out my \$1 million versus my \$44 million that you all put in as 33 percent owners towards that big project. [LB561]

GREG VAN DYKE: Um-hum. [LB561]

SENATOR LANGEMEIER: So that's what we're doing is, is we're trying to allow me to invest in this project, and this is all hypothetical, would allow me to invest in this by putting my debt against theirs versus mortgaging my house where I and my kids live. [LB561]

GREG VAN DYKE: That's a fair characterization. [LB561]

SENATOR LANGEMEIER: Okay. Senator Haar. [LB561]

SENATOR HAAR: Yeah. Could you tell me, are any of your investors landowners in the area? [LB561]

GREG VAN DYKE: In the area? [LB561]

SENATOR HAAR: Yeah. [LB561]

GREG VAN DYKE: I don't believe they're landowners specifically in that area, no, sir. [LB561]

SENATOR HAAR: Okay... [LB561]

GREG VAN DYKE: Although I can't say with certainty, because I don't...I'm not familiar with the personal investments of all the different investors. [LB561]

SENATOR HAAR: Okay. Probably not, though, right? [LB561]

GREG VAN DYKE: Probably not. [LB561]

SENATOR HAAR: Yeah, okay. [LB561]

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GREG VAN DYKE: But they are landowners. I know that a lot of my colleagues are landowners in other places in the state, so that's why I don't want to dismiss it as a sure answer. [LB561]

SENATOR HAAR: Okay. We got a letter from a Mr. Barton Ford. Is he here today or? [LB561]

GREG VAN DYKE: No, he is not. [LB561]

SENATOR HAAR: Okay. Well, one of the things I'd like to ask you about from his letter, this was a letter that came, I don't know, just...February 26, so...wow, that's over a month ago. But to quote from the letter, he said that Tenaska is concerned that community residents may or may not be suitable investors, and these are quotes, "How are they" meaning the local investor...the..."How are they" meaning the community residents..."How are they going to become well enough informed to make a sensible investment decision?" Could you comment on that? That sounded sort of like a putdown of community residents. [LB561]

GREG VAN DYKE: Yeah, I apologize if it did. I'll apologize on behalf of my colleague. That certainly wasn't the intent. I think the point that he was trying to make is that...and I made it in my testimony earlier, is that these are complicated projects. And when the colleagues that invested in Elkhorn Ridge, before they made that determination, we spent well over 1,000 hours, 1,000 man-hours diligencing the investment. It's a 20-year investment; that's a long time horizon. Wind projects, power projects, in general, are complicated...complicated projects and there's a lot of legal maneuvering; there's a lot of financial information that needs to be digested. So I think what Mr. Ford was referring to there, is that by having the ability for people to digest all of that information and get comfortable with it and make an informed decision, and get comfortable with the investment, is something that we should consider because they are so...the projects are so complicated. And so, the point I made earlier about having access to debt at the project level does represent another set of informed investors, in a way, in the form of lenders, who are...have to get comfortable that the 20-year project is viable and is going to perform as has been sold to NPPD or investors or whomever. [LB561]

SENATOR HAAR: Well, yeah, I think we agree that any group of investors, whether they're community-based or, you know, working for Tenaska or whatever, would hire consultants that really understand a project, at some level. I mean, according...with the Minnesota flip, for example, there can be many small investors and, in that case, I believe...is there any advantage to a larger company being an investor versus a small company with consultants or? [LB561]

GREG VAN DYKE: I...probably not, probably not an advantage one way or the other. I think when Mr. Ford wrote his letter, though, he was...and we were operating under the

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belief that the 33 percent owners would be required to make a 33 percent investment. And so, for the \$150 million project, you need...if you actually literally need \$50 million worth of checks written by Nebraska residents, that's a lot of people that are going to have to do a lot of due diligence to write a lot of checks. So at that point, when he wrote the letter, I don't think he was familiar with the concept that investors would put in 1 percent of the equity and in return get 33 percent of the revenue. And so, it's certainly much more feasible to think that you could find adequate investors who would be willing to put in 1 percent in exchange for 33 percent of the revenues over the life of the project rather than 33 percent of the investment to get 33 percent of the economics over the life of the project. [LB561]

SENATOR HAAR: Okay. Now it's my understanding, you had answered to Senator Fischer that there's no other C-BED project. My understanding is that there has been one allowed, or that there has been one contracted for that actually uses the Minnesota flip model. [LB561]

GREG VAN DYKE: That may be. I may have misspoke. I'm fairly certain that the Elkhorn Ridge project is the only C-BED project that's currently been constructed and in operation. [LB561]

SENATOR HAAR: Currently. Okay. One other question I'd like to ask you then...well, several. But the basis of LB561 is to give public power the...to let them use the word "may" in terms of eminent domain, in terms of may waive eminent domain which has really been one of the big obstacles in terms of big companies coming into the state and investing in public power. Wouldn't you agree that taking that out, that some big companies...or in other words, giving the public utilities the option of waiving eminent domain for any project, for any energy project as LB561 is, that people wouldn't really care very much about C-BED. They'd just go ahead with their own financing. [LB561]

GREG VAN DYKE: I'll apologize, Senator Haar. I'm not as familiar with LB561 and the eminent domain issue, because we have focused on the C-BED language for any of the investments we've worked on, so I'll apologize that I'm not able to answer that question. [LB561]

SENATOR HAAR: Okay, okay. And then, do you have any idea how the new investment tax credit the feds are giving out would impact C-BED? [LB561]

GREG VAN DYKE: I guess I would say that the most significant impact is it should enhance the likelihood that more wind energy projects are going to be developed everywhere, not just Nebraska, but anywhere, and so generally, it should enhance the C-BED product as well. [LB561]

SENATOR HAAR: Do you know how that would enhance your particular business

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model? [LB561]

GREG VAN DYKE: Well, it should...it would enhance our particular business model as well as the flip model, and anybody who actually was relying on individual personal investors, the federal stimulus package, as I understand it, as it relates to the wind benefits if that rather than relying on production tax credits over the course of ten years, you're able to take an investment tax credit for 30 percent of the capital costs or you can request to have that given to you in the form of a grant. So you...what that does is it eliminates the complexity or minimizes the complexity of having to find an investor...a corporate investor who can actually utilize the tax attributes, the credits, as well as the depreciation for a project. [LB561]

SENATOR HAAR: Okay. And then, I've really studied this a lot to try to understand the difference between the amendment and the way it exists now, and the way I boil it down, in the original C-BED it says 33 percent of the gross revenue stream goes to the qualified owners. And, according to the Tenaska amendment, it would be 33 percent minus debt service. Right? So, in the original one it says gross, and you have redefined gross as net. [LB561]

GREG VAN DYKE: Net of debt service, correct. [LB561]

SENATOR HAAR: Yeah, okay. Okay. [LB561]

GREG VAN DYKE: That's right. [LB561]

SENATOR HAAR: Okay. Thank you. [LB561]

GREG VAN DYKE: And again that...and, as I said earlier, and I think this was an important point because I feel like a lot of the opposition is coming from people who are proponents of the flip structure. Our amendment in no way, and I think if you look at the words you'd agree that in no way is designed to minimize the ability to utilize the flip structure. And so if the price of power that results from a flip structure type model is more attractive than the price of power that would come out of the model that we would propose based on this amendment, then by all means, I would expect that the flip structure would actually get utilized. [LB561]

SENATOR HAAR: So if the eminent domain passes which I think it...LB561 is going to pass, again, which gives public utilities the option of waiving eminent domain, what's...why would your company even be interested in C-BED any longer? [LB561]

GREG VAN DYKE: Well, C-BED does provide the sales tax exemption benefit which can become a significant number. And so that's...if one chose to go down a path where you developed a project without the C-BED type...outside of the C-BED legislation, then

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that's one pretty quantifiable benefit that you'd be giving up. [LB561]

SENATOR HAAR: So really with your amendment, and about the only benefit left to going C-BED is the tax exemption on equipment. [LB561]

GREG VAN DYKE: I guess I'll have to think about that. I haven't thought about it in that way. And the way we've thought about it from the amendment that we've added here under AM769 is this would simply just allow us to put debt on a C-BED project in a more efficient manner. [LB561]

SENATOR HAAR: Okay. Well, maybe you could get back to me on your thoughts on that. [LB561]

GREG VAN DYKE: I'd like to. Thank you. [LB561]

SENATOR HAAR: Okay. And then I've passed out something which I gave to everybody. It's just the two sides; one says developing big wind and the other says, a Minnesota flip, and I'd like you to just take a look at that too, after you're done, not right now, but... [LB561]

GREG VAN DYKE: Oh, okay. All right. [LB561]

SENATOR HAAR: Okay. But I appreciate that. Thank you. [LB561]

GREG VAN DYKE: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Senator Schilz. [LB561]

SENATOR SCHILZ: Yeah, as we sit here and talk about this, I just want to make sure that it's clear. If this amendment would pass, and projects could go out there and incur debt for a project, the owners, whoever they are, would only be on the hook for those financing costs according to their percent ownership of the project. Is that correct? [LB561]

GREG VAN DYKE: Actually, the owners would be only on the hook for whatever they chose to invest, and it would be irrespective of the financing costs at the project level. [LB561]

SENATOR SCHILZ: Excuse me, yes, the project. [LB561]

GREG VAN DYKE: Okay. [LB561]

SENATOR SCHILZ: The project would be as overall, there wouldn't be anything singled



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out as hey, this group or the qualified investors or the qualified owners would have to pay back all the debt. That's not...it's the project itself. [LB561]

GREG VAN DYKE: It's the project...project level that would be the responsibility of the project, yes. [LB561]

SENATOR SCHILZ: Okay, thank you. [LB561]

SENATOR LANGEMEIER: You're doing really well in the hot seat here. I got one question for you. Is from the opponent's side, Tenaska is a big, multimillion dollar, billion dollar company; they're the big, bad, rich guys in this deal, and you're killing local farmers. In this Minnesota flip, we got to have 99 percent of the investment in that model from somebody like you then if that allegation they want to make is true. In that world, how many of you are out there? I mean, how many of you can put up this 99 percent investment to make this flip model work? I mean, all of these have John Deere as an example as that person. They can only invest in so many of them. [LB561]

GREG VAN DYKE: Yeah, that's right how...but you're not limited to any geographic region, so that 99 percent could come from anywhere, anybody in the world. All right, so the 25 percent or the 51 percent in Minnesota, the 33 percent in Nebraska, has to come from Nebraska qualified owners. But under the flip model, at least as I understand it, that 99 percent investor could be John Deere; it could be somebody in Europe; it could be anybody. [LB561]

SENATOR LANGEMEIER: Okay. Senator Fischer. [LB561]

SENATOR FISCHER: Thank you, Chairman Langemeier. Just to clarify, you are a C-BED project, right? [LB561]

GREG VAN DYKE: Yes, ma'am. [LB561]

SENATOR FISCHER: This is not the big, bad company coming in that's taking away economic development from rural Nebraska. You met the...what's required in law right now for a C-BED project, correct? [LB561]

GREG VAN DYKE: That's correct, yes. [LB561]

SENATOR FISCHER: How many megawatts is Elkhorn Ridge? [LB561]

GREG VAN DYKE: Eighty megawatts. [LB561]

SENATOR FISCHER: And it is the only C-BED project currently, correct? [LB561]

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GREG VAN DYKE: In operation, yes. [LB561]

SENATOR FISCHER: So Nebraska currently has 80 megawatts in a C-BED project. [LB561]

GREG VAN DYKE: As I understand it, correct. [LB561]

SENATOR FISCHER: Minnesota is always held up to us as the father of C-BED projects, and as the example that we need to follow, and an example that's working well. You know how many megawatts of power in Minnesota come from C-BED projects? [LB561]

GREG VAN DYKE: I'm sorry, I do not. [LB561]

SENATOR FISCHER: Okay. Thank you very much. [LB561]

SENATOR LANGEMEIER: Are there any other...Senator Dubas. [LB561]

SENATOR DUBAS: I would have one more question. Thank you again for your indulgence. When...I don't know the process that you or your company went through when you were making your decision about investing in a C-BED project. Did you look at...here is the Minnesota model. Here's how we'd like to see it set up, and do a comparison and decide, you know, this is really, I think, a better way for us to go. I guess early on, when I was listening to you talk, I was getting the impression that you thought your model...your...the way you're doing it is the way it should be done. And then later on, you said, well, no, you could use Minnesota flip, if you want. So did you do a comparison and make your decision based on those comparisons or? [LB561]

GREG VAN DYKE: Yeah. The short answer is yes. We were actually contacted by the developer who needed a C-BED investor, and so they did the analysis on the Minnesota flip structure versus a more straightforward structure or probably not fair, a structure with what we ended up with ourselves, and they concluded independently that they were able to offer a lower price of power under the RFP process with NPPD which increased the likelihood that they would be selected to negotiate and finally execute the long-term agreement. So, under our analysis, we haven't been able to come up with a way to get a lower price of power under a different model than what we're proposing here. I don't doubt that there are people who believe that they can come up with a lower price of power which I think is great and terrific, and at the end of the day, if that proves itself out, then this amendment will not be that terribly critical to the whole argument. [LB561]

SENATOR DUBAS: Thank you. [LB561]

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SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: Well, with this amendment, why would any...because it seems to me then the one benefit of C-BED would be to get the sales tax exemption on equipment which is significant. Why would anybody come into Nebraska and not use C-BED? [LB561]

GREG VAN DYKE: I can't, I don't know. I don't have a good answer to that. [LB561]

SENATOR HAAR: Okay, okay. Thanks. [LB561]

SENATOR LANGEMEIER: Are there any other questions? Very good. Thank you very much for your testimony. [LB561]

GREG VAN DYKE: Thank you very much for your time. [LB561]

SENATOR LANGEMEIER: Further testimony in support or proponents to AM769? Come on up. Don't hesitate. It's a friendly group (laughter). Come on up. Welcome. [LB561]

BRUCE LEMKE: (Exhibit 3) Good afternoon. Mr. Chairman, members of the committee, my name is Bruce Lemke spelled B-r-u-c-e L-e-m-k-e. Thank you for allowing me to testify today. I'm a fifth generation of my family to operate a crop and livestock operation in Nebraska, one generation in Cuming County, four in Knox County, which is along the northern border of the state near Bloomfield, also the location at Elkhorn Ridge wind development. I was approached by investors of the Elkhorn Ridge development to testify in favor supporting LB769...I'm a little nervous...which I agreed to do. I agree with their position on the amendment which is better explained by their people, but for my reasons also. That reason being the chance to speak for guys like me, a person and landowner outside of the Lincoln-Omaha I-80 corridor where it's hard to find funds for a large-scale economic development. I think one source has been found--wind powered electrical generation. But there's one big problem: the huge development costs. The Elkhorn Ridge project is comprised of 27 Vestas 3 megawatt towers developed at a reported cost of \$140 million. Divide it out and a little more than \$5 million per tower. The current C-BED legislation requires one-third of these types of projects to be owned by noncorporate Nebraskans. That means on this project, \$45 million. Edison Mission International and Tenaska are the equity partners in this project with Tenaska picking up one-third of the project cost. There are 14 landowners participating in this project in the form of leasing small parcels of their property to locate towers on. These landowners, who I am one, receive an annual rent payment. But it doesn't stop with me. The state, the county, the local school district all benefit from this project. The local businesses benefit. Six to eight full-time permanent, good-paying jobs are created. All this is good, so what's the problem? The source of the funding. I just don't think you can raise that

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kind of money with the private sector in Nebraska. We landowners were offered a prospectus to invest in the project. No one to my knowledge participated. The minimum amount to participate was not, depending on your financial status, terribly high, but no one did it. In the end, I would like the committee to consider people like myself as well as all Nebraskans in moving forward on this amendment. If you have any questions, I would sure try to answer them. Thank you. [LB561]

SENATOR LANGEMEIER: Very good, Mr. Lemke. I have one to start us. In listening to your testimony, and you're not real specific in the amendment. Am I safe to say that if this is a hurdle to wind development, get over it so we can have more wind? Is that what you're saying, because this is a good thing? [LB561]

BRUCE LEMKE: I suppose. You know, the money thing. People like myself, people...the general population of Nebraska just don't have the kind of money required to invest in it. I mean, where are you going to get it, \$45 million for this one project...one-third of this project? It's quite a bit of money. [LB561]

SENATOR LANGEMEIER: Um-hum. Thank you. Senator Haar. [LB561]

SENATOR HAAR: Sir, thank you for coming to testify. According to various C-BED models, though, people like yourself wouldn't have to put up \$45 million. This model they talked about, the Minnesota flip, for example, if you're in a group of 20 other people in your local area, for \$5,000 apiece you could actually own those turbines eventually. Were you given that kind of information or was it offered? [LB561]

BRUCE LEMKE: For \$5,000 apiece? [LB561]

SENATOR HAAR: Yes. [LB561]

BRUCE LEMKE: We were sure...weren't given that kind of information. I don't know that that's really true. I can't really answer that. [LB561]

SENATOR HAAR: Let's see, I'll do a quick calculation; \$200 million and 1 percent of that is...yeah, that could work out. In this...and we're saying that the model used by Tenaska was a separate business model, but there's another business model where for a much, much smaller amount, actually people in the community cannot only rent their land, but also wind up owning the turbines. [LB561]

BRUCE LEMKE: Is it realistic? I... [LB561]

SENATOR HAAR: Yes. It's being done in Minnesota right now that way. [LB561]

BRUCE LEMKE: Very much of it? [LB561]

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SENATOR HAAR: Yes, yes. [LB561]

BRUCE LEMKE: I don't know what's happening in Minnesota. I know that I have come up with no money to put into this, not a nickel, not for legal representation, not for anything. I've gotten two rent checks already; 18 more to come. [LB561]

SENATOR HAAR: That's neat. [LB561]

BRUCE LEMKE: With...and there's an escalation cost besides, so it's...it's very good. I'm 55 years old. It's a 20-year lease. I'm 75 years old in 20 years. I think I'm the youngest landowner in the project. Most of these people are going to be dead (laughter), maybe including me (laughter). [LB561]

SENATOR HAAR: And me maybe (laugh). [LB561]

BRUCE LEMKE: You know, it's...you've got to...a bird in the hand is worth two in the bush kind of, you know. Sure, there's your heirs to think of, but I've been talked to a little bit about this Minnesota flip thing. I'm not an expert on it, but it sounds a little too good to be true. You know, the equity partner is going to walk away from their \$45 million in ten years after I put up \$100,000? Is that what we're saying? [LB561]

SENATOR HAAR: Yes. There are actually ways of doing that, and there's some people in the room that could fill you in on the details, because again, that's...and we're not saying the Minnesota flip model is the only way that C-BED can work. But with that model, yes, by investing much, much smaller amounts of money, you can actually wind up owning...owning the turbines as well as the... [LB561]

SENATOR LANGEMEIER: Senator Schilz. [LB561]

SENATOR SCHILZ: Thank you, Senator Langemeier. Thank you today for coming in. I guess I have one...basically one question for you, and, obviously, the way I see the amendment, it doesn't look like it precludes any sort of flip scenario or anything from going on. The real question is, is were you ever offered the opportunity to invest in something like that? [LB561]

BRUCE LEMKE: We were offered the prospectus. [LB561]

SENATOR SCHILZ: Right. [LB561]

BRUCE LEMKE: You know, as I said. [LB561]

SENATOR SCHILZ: But in a flip sort of...as a flip scenario, were you offered that by the

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developer or whoever the money entity has to be? [LB561]

BRUCE LEMKE: Before...excuse me. Before I became involved with this project, there were some earlier people around talking, making offers and talking one way or another. People in...landowners involved now, who owned some of the more desirable property in the area, and a fair amount of it, they talked to those people concerning the Minnesota flip early on. They were going to have to come up with quite a bit of money, and things were very vague from what I'm told. I wasn't part of those negotiations. Pretty vague. Had to come up with a bunch of money, and they told them they weren't interested. Along came Midwest Wind with their proposal. By this time, they had increased...Midwest Wind increased the size of the project. We went with them. It was a good offer. [LB561]

SENATOR SCHILZ: It was a business decision that you made that says hey, this one, at this point in time makes the most sense for us. [LB561]

BRUCE LEMKE: Yes, yes. I think so. [LB561]

SENATOR SCHILZ: And that's how it got off the ground and actually was made to happen, correct? [LB561]

BRUCE LEMKE: I think so. [LB561]

SENATOR SCHILZ: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Senator Dubas. [LB561]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Mr. Lemke, for being here. So you just lease your land, correct? You have a contract, and you lease... [LB561]

BRUCE LEMKE: I own my land. I lease it to them. [LB561]

SENATOR DUBAS: You lease it to them for their use, correct. And you're...it sounds like you're quite satisfied with this arrangement, and that it's working well for you. [LB561]

BRUCE LEMKE: Everybody would like to have more (laughter), but you know what? I have something. [LB561]

SENATOR DUBAS: So you're satisfied with that. [LB561]

BRUCE LEMKE: I am satisfied. [LB561]

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SENATOR DUBAS: If you had...and it sounds like you did have an opportunity maybe to be an investor. If you had had the opportunity that you felt you could have afforded, would you prefer to be an actual owner of the project, or are you more satisfied with just being the lessee of the land for their use...? [LB561]

BRUCE LEMKE: Sure, I'd like to own it. I can't afford it. I don't know, you know, if you're talking \$5 million per tower, I can't buy a \$5 million tower. I probably can't finance it. If you look at financing it like I financed my farming operation, you're going to be talking 40 percent equity before my bank will...and you're kind of weak at 40 percent equity. Now, these things might be financed differently or looked at differently by financial institutions, I don't know. I didn't go that far with it; we didn't go that far with it. [LB561]

SENATOR DUBAS: Okay, thank you. [LB561]

SENATOR LANGEMEIER: Senator Fischer. [LB561]

SENATOR FISCHER: Thank you for being here today. You sound...you live east of me, but you sound like a lot of people in my district. It... [LB561]

BRUCE LEMKE: I'll take that as a compliment. [LB561]

SENATOR FISCHER: It is a compliment (laughter), you bet it is (laugh). You want me to move east now too, don't you? No, that is a compliment. I have a number of constituents who are interested in wind power, but don't have the resources to invest in it, and not just to do the setup of a wind farm, but to maintain it until ten years when they could finally, possibly own it. And they are looking for ways to reach your position where they can receive some rent through a lease of turbines on their land. So I thank you for being here today and bringing that forward. [LB561]

BRUCE LEMKE: Thank you. [LB561]

SENATOR LANGEMEIER: All right. Senator Carlson. [LB561]

SENATOR CARLSON: Senator Langemeier. This will be brief, because I think it's interesting that you were asked to come and testify, and you chose to rent your small parcel of ground to this company and pay you an annual fee. And you decided it...to be satisfied with that which is certainly your prerogative. Is that your understanding that the other landowners in your area did the same thing? [LB561]

BRUCE LEMKE: The landowners in this project were represented by a landowners' committee, of which I was one. The three of us were given the okay to go ahead and negotiate a lease. [LB561]

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SENATOR CARLSON: Okay. [LB561]

BRUCE LEMKE: And we did. [LB561]

SENATOR CARLSON: Okay. Okay, thank you. [LB561]

SENATOR LANGEMEIER: Are there any other questions? Seeing none. Mr. Lemke, thank you very much for your testimony. [LB561]

BRUCE LEMKE: Thank you. [LB561]

SENATOR LANGEMEIER: Further testimony in support of AM769? Welcome to the committee. [LB561]

ROBERT J. HALLSTROM: (Exhibit 4) Senator Langemeier, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association--spelling is H-a-l-l-s-t-r-o-m--to testify in support of AM769 to LB561. I have also signed in and been authorized to express support for the amendment by the Nebraska Chamber of Commerce and Industry and the Greater Omaha Chamber of Commerce. Given the current economic conditions, the impact of wind energy projects in terms of rural economic development is significant. These projects enhance Nebraska's energy and independence, utilize our state's abundant and renewable wind resources and contribute to a clean environment. Current law impairs the ability to obtain cost-effective debt financing for C-BED projects for the following reasons. First, the Nebraska component of ownership is significant. Second, these transactions are complex and difficult for ordinary citizens to analyze and understand. And third, the ability to finance projects with appropriate levels of debt is severely limited, resulting in higher financing costs and energy costs for...higher energy costs for Nebraskans. We fear that projects currently under active consideration in Nebraska may not be able to obtain financing given the current restrictions in state law. AM769 will enhance the ability to incorporate debt into the total capital structure of each project, resulting in a lower cost of capital for each project, thereby lowering the cost of power for Nebraska residents; a more manageable level of Nebraska ownership and an opportunity for Nebraska lenders to assist in developing our state's wind energy potential by providing debt funding for these projects. In conclusion, the changes proposed by AM769 will help make Nebraska a more promising area for future wind development and lower the cost of power for Nebraskans by making the financing process more efficient and cost effective. For these reasons, we would encourage the committee to support the addition of AM769 to LB561. I'd be happy to address any questions of the committee. [LB561]

SENATOR LANGEMEIER: Thank you. Senator Haar. [LB561]



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SENATOR HAAR: Yes. I have kind of the same question that I asked before. If LB571 passes, and I believe it will, that...or I'm sorry, LB561. I can't remember bill numbers yet. If LB561 passes, and that gives the public utilities the ability to waive eminent domain which has been the main road barrier to big companies coming into Nebraska, do you see any significant reason why people would use C-BED other than just the way anybody else does business with big companies, they just come in and build a wind farm? [LB561]

ROBERT J. HALLSTROM: Senator, I'm probably not the expert to answer that question. I would suggest that there would still be some apprehension if it's only an option to waive the eminent domain, that you may still have consideration given to utilizing C-BED under those circumstances. But, again, I'm not well versed enough in the area, probably be the one to address that question. [LB561]

SENATOR LANGEMEIER: They're not hearing you in the back (laugh). [LB561]

ROBERT J. HALLSTROM: Excuse me? Oh, excuse me. [LB561]

SENATOR LANGEMEIER: They're not hearing you on the mike. [LB561]

ROBERT J. HALLSTROM: I'm not going to touch the mike. Senator Langemeier addressed me not to. [LB561]

SENATOR LANGEMEIER: Okay. Thank you. Senator Schilz. [LB561]

SENATOR SCHILZ: Mr. Hallstrom, thank you for coming in this afternoon. I guess my question for you is, you know, some of the concern...I think that's going on, on this issue is the fact that we're worried about money that's going towards financing, get out of the...do you know, are there...and maybe you know this; maybe you don't. Are there Nebraska banks right now that are ready to step up and start to loan money to these projects? [LB561]

ROBERT J. HALLSTROM: Senator, in looking at this particular issue, I did canvass some of the banks in Nebraska. I visited with some representatives of those that represent multiple states to determine what they might be doing in other states, and to determine what their level of interest was. And all of the banks that responded indicated that we should be supportive of the amendment, the enhancement of the financing alternatives that it provides, and the development of your enhancement of more wind energy projects in Nebraska in general. [LB561]

SENATOR SCHILZ: So we have Nebraska banks that are willing to loan some of this money and keep that finance money working here in Nebraska as well. Is that...?

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[LB561]

ROBERT J. HALLSTROM: I believe that would be an accurate statement. [LB561]

SENATOR SCHILZ: Thank you. [LB561]

SENATOR LANGEMEIER: Other questions? Seeing no other questions, Mr. Hallstrom, thank you very much. [LB561]

ROBERT J. HALLSTROM: Thank you. [LB561]

SENATOR LANGEMEIER: Further testimony in support of AM769. Welcome. [LB561]

TOM RICHARDS: Thank you. Don't touch the mike, I got it (laughter). [LB561]

SENATOR LANGEMEIER: But do talk into it. [LB561]

TOM RICHARDS: But do talk into it. Chairman Langemeier and members of the Natural Resources Committee, my name is Tom Richards, T-o-m R-i-c-h-a-r-d-s. I am the manager of governmental community relations for the Omaha Public Power District. After a review by the general counsel and senior management of OPPD, we are in support of what this amendment will accomplish. OPPD recently announced that it plans to have 10 percent of its generation produced by renewable energy technologies by 2020. It is OPPD's belief that if adopted, the amendment will bring more working capital to develop wind energy projects in Nebraska. And for the above reasons, OPPD supports this effort. Pretty plain and simple. I'll attempt to answer any questions that you might have. [LB561]

SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: Thank you. Again, with the amendment that's probably going to pass, it will take away the eminent...that will take away the threat of eminent domain, have there been other major concerns with public power other than the issue of eminent domain that OPPD is hearing? [LB561]

TOM RICHARDS: I've heard you mention that about eminent domain on all the different questions. And, basically, all LB561 does is allows us to contract with a party to say we will not use our eminent domain authority for condemnation purposes if we choose to do business with you. That's all LB561 does. [LB561]

SENATOR HAAR: Exactly. [LB561]

TOM RICHARDS: So, and when I came and testified before on LB561, basically, we

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talked about the cornerstones of public power, and one of the cornerstones of public power is the use of eminent domain and the power of condemnation, and that's one significant component of it. So from that standpoint, it's a "may" piece of legislation if we choose to do so. And I'll just leave it at that for the time being. Can you put it in a context where I...? [LB561]

SENATOR HAAR: Sure, because, you know, I've talked to a number of major wind developers as well, and their main concern has been eminent domain. So I guess the question...and you've talked to some of the same people. Do you believe any large power...Florida Light and Electric, or whatever their name is, whatever, would come in and set up a wind farm if you didn't use that may...or if you wouldn't give up the right of eminent domain? [LB561]

TOM RICHARDS: Again, we're not giving up the use of eminent domain other than when we contract to let that go. And part of my discussion when we talked about LB561 was that that law is there for a reason, and we are protecting the infrastructure of what the ratepayers of Nebraska own already. And part of the reason why you're allowing investor-owned utilities in is to provide, if we do it with this component of buying the output of renewable energy projects, is because we have seen a need to buy some other renewable projects from them, because they get the tax credit. That's the model that we've chosen to use in Nebraska. At this point to say we're not...the public power districts don't have the incentives, they don't have the sales tax exemptions, and we're going to use this model to do it. So basically, we're getting those people into this (phone ringing), thought I turned it off (laughter). Bad, bad. And I almost touched the mike. We're using that model as a way to get people into the project, so we're allowing those investor-owned utilities which C-BEDs are, as a matter of fact, and they're locally owned, but they're a form of private money that we're using to develop wind energy in Nebraska. [LB561]

SENATOR HAAR: So if...again, when LB561 passes (phone ringing) (laughter)... [LB561]

SENATOR LANGEMEIER: That might be your staff giving you some advice here (laughter). [LB561]

SENATOR HAAR: We've heard this clever way of text messaging questions (laughter). But, again, with LB561, and if OPPD says that, yes, we waive the eminent domain, and this is, again, with a big wind developer, the only additional advantage then of using C-BED really is the sales tax exemption on equipment. [LB561]

TOM RICHARDS: For us, we're looking...our main goal is to purchase power that these people produce at the lowest rate possible. If that's a C-BED model, that's the way we will do it. If there are other models that work to get it to the lowest price possible, that's

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the way we'll do it as well. And there's nothing that precludes us from using other developers of wind energy. C-BED is just one model that is in that whole process. [LB561]

SENATOR HAAR: But, again, do you see any advantage to a large power company...of using C-BED other than the sales tax exemption on equipment once LB561 goes through? [LB561]

TOM RICHARDS: I'm continuing to have a hard time understanding how LB561...the condemnation authority and large...the only advantage to large producers of wind is that you get an economy of scale. When you're building bigger projects, and at some point, that will probably happen in Nebraska, because we're capped at 80 megawatts right now. And the reason why it's at 80 megawatts is because anything bigger than that would have to go to the Nebraska Power Review Board, and would have to be authorized under the least cost option model that Nebraska currently holds. So that's why you keep hearing people talking about 80 megawatts, because it's 80 megawatts and below that does not have to go to the Power Review Board for authority. At some point, you're going to see larger-scale wind developments if you choose to go forward with more wind energy in Nebraska. That number is just an artificial one at this point to say, this is the way we bypass that regulatory hurdle at this point. [LB561]

SENATOR HAAR: By the way, that's going to...that's a committee priority as well, that bill. [LB561]

TOM RICHARDS: That's correct, to study that or LB561. Is that what you're saying? [LB561]

SENATOR HAAR: No, to change that Power Review Board requirement. [LB561]

TOM RICHARDS: We're going to study it this interim, that's correct. [LB561]

SENATOR HAAR: Thank you. [LB561]

SENATOR LANGEMEIER: Senator Dubas. [LB561]

SENATOR DUBAS: Thank you, Senator Langemeier. Every step of the way, since we've been talking about wind energy, it's always been with the caveat that we cannot do anything to undermine public power in the state. It's just been...served us too well, and it's too valuable. And as we continue to venture farther and farther into this development and looking at things, that that becomes a concern. It's always at the top of the list when we're discussing things. So when you look at the amendment, AM769, do you see any perceived...any possibility of undermining public power through this amendment? [LB561]

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TOM RICHARDS: The debate about threats to public power started even with the creation of the legislation of C-BED. When you start using private money to do something that you've not done before, the old adage, the camel's nose under the tent. Is there a threat? Is there a possibility? It's a little bit more of a step into the tent. But if the goal is that you want to create more renewable energy in Nebraska and that's the model we're currently using, this is a way to get more of that energy, in OPPD's opinion. And that's why we're moving forward and supporting it at this point. [LB561]

SENATOR DUBAS: So does that cause OPPD concern that the camel's nose is getting farther and farther under the tent? [LB561]

TOM RICHARDS: Not with this current structure. Where the camel's nose under the tent gets further down the road is when...goes back to what Senator Haar was starting to raise. If you start giving away more eminent domain authority than the districts need to have occur, or you start trying to serve customers or you change some of the structures on the least cost options, it's down the road a little bit further where the camel's nose gets a little farther under the tent. We haven't seen that at this point. We're using the model that works best for us at this point. [LB561]

SENATOR DUBAS: So you're still feeling...you're comfortable... [LB561]

TOM RICHARDS: From our standpoint, I wouldn't be here from OPPD's perspective. I'm not just doing this on my own. They've reviewed it and said, this is a way if we're going to move towards that 400 megawatts of renewable energy that we need, this is one more tool that we could use. [LB561]

SENATOR DUBAS: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Mr. Richards, I have a question. I want to get us back to AM769. We're veering off of that. You talked about, by 2020 you want 10 percent of your energy from wind or is it renewables? [LB561]

TOM RICHARDS: It says renewable, but right now, the most cost effective one is wind. [LB561]

SENATOR LANGEMEIER: Okay. So what is your total production now? What is 10 percent? Can you give me a rough idea how many megawatts that is? [LB561]

TOM RICHARDS: Four hundred megawatts. [LB561]

SENATOR LANGEMEIER: Four hundred megawatts. [LB561]

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TOM RICHARDS: At approximately \$800 million. [LB561]

SENATOR LANGEMEIER: Okay. So you got to get 400 megawatts...80 megawatts at a time, and you got 11 years to do it. [LB561]

TOM RICHARDS: Currently, the way the law is structured, that's correct. [LB561]

SENATOR LANGEMEIER: Can you get there at the rate we're going now? I mean, is that physically even possible? (laughter) [LB561]

TOM RICHARDS: No. [LB561]

SENATOR LANGEMEIER: So we set up a goal that's unaccomplishable unless something frees the system up to make it work better. [LB561]

TOM RICHARDS: We're moving in that direction. [LB561]

SENATOR LANGEMEIER: Senator Haar has...no, Senator Schilz. [LB561]

SENATOR SCHILZ: Thank you. Back to Senator Dubas' questions sparked something in my mind. You know, obviously, public power has been great for the state of Nebraska, and public power has been put in place to make sure that the people of the state of Nebraska have the lowest cost energy that there is available. And then, I think it was you or somebody was mentioning economies of scale. So as I look at this, this amendment would allow us to get to certain economies of scale to actually help reduce the cost of what we're talking about, that wherein it would better protect public power than the current model we're on now. [LB561]

TOM RICHARDS: If we're going to...well,... [LB561]

SENATOR SCHILZ: Is that a correct statement? [LB561]

TOM RICHARDS: The first two pieces that you said about larger scale and lower cost, I would agree with that component of what you just said. [LB561]

SENATOR SCHILZ: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Other questions? Seeing none, Mr. Richards... [LB561]

TOM RICHARDS: My apologies for the phone, sir. I shut it off twice so I must be hitting the wrong...(laughter). [LB561]

SENATOR LANGEMEIER: We'll talk about that later (laughter). You're summoned

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tomorrow if it's later. Further testimony in support. Any other testimony in support for proponents? Seeing none, do we have...oh, you bet. Come on up. Don't hesitate. We don't want to skip over you, so welcome. [LB561]

DARREL HAYEK: Welcome. I'm Darrel Hayek, D-a-r-r-e-l H-a-y-e-k. I'm the vice chair of the Saline County Wind Association. Right now, the C-BED model does not affect us. We're doing a 400 megawatt privately funded, but this...reading the bill or the amendment the way it looks to us, is that it helps leverage the money that the private individuals in this state can use. And so we're for it right now. [LB561]

SENATOR LANGEMEIER: Thank you. So you're saying that you think if you can finance it, it may help your 400 megawatt project. [LB561]

DARREL HAYEK: Not the 400...additional ones. [LB561]

SENATOR LANGEMEIER: Additional. Okay. Are there further questions? Senator Haar. [LB561]

SENATOR HAAR: Are you familiar with the Minnesota flip model? [LB561]

DARREL HAYEK: Somewhat. [LB561]

SENATOR HAAR: Okay. Well, just as you go through this, be sure you look at that, because it is possible through multiple small investments to actually own the turbines as well as the revenues. [LB561]

DARREL HAYEK: But what I've seen, the small investor doesn't get any chance on the PPA, so if it's structured where the electricity is paid for with a large amount up front in the first ten years, and a smaller per kilowatt in the back ten years, it could be detrimental to you. [LB561]

SENATOR HAAR: Well, that would be a matter of how you work the contract, sir. [LB561]

DARREL HAYEK: Yes. [LB561]

SENATOR LANGEMEIER: Other questions? Seeing none, thank you very much for your testimony. Is there any other further testimony in support? Okay, I do have a letter from Kurt Yost with the Nebraska Independent Bankers in support. I have a letter from David Brown, Greater Omaha Chamber of Commerce. And I have one from Lyndsy Jenness from Bloomfield, Nebraska, a letter of support. Seeing no more in support, we'll move on to those in opposition. And Senator Dierks, we do give you the benefit. Okay. Mr. Hansen, welcome. And he has some handouts. And we have a page that has joined

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us, Justin Escamilla from Scottsbluff, Nebraska, is here to help us at this point. Welcome. Welcome, John. (See also Exhibits 5, 6, and 7.) [LB561]

JOHN HANSEN: (Exhibit 8) Mr. Chairman, members of the committee, for the record, my name is John K. Hansen, J-o-h-n Hansen, H-a-n-s-e-n. I'm the president of Nebraska Farmers Union, appearing before you today as our organization's president and also our lobbyist. In the amount of time that I have, Mr. Chairman, I'd like to try to get right at the handouts that I have passed out. They are all on point and instructive to the issues that we're talking about here today. I think a good place to start is to remind us that one of the primary benefits and one of the primary stated goals and one of the primary objectives of the C-BED structure was to maximize rural economic development benefits to rural Nebraska while also diversifying the electric generation portfolio while also protecting the integrity of the public power system. It was a unique way to use a longstanding industry financing structure that has been used not only in wind, but has been used in other sectors of the economy to leverage dollars in order to be able to help folks who are short on available cash become owners. We use it in low-income housing; we use it in other sectors of the economy. This is not an unknown or obscure financing tool. It is...when we talk about the Minnesota flip, in particular, it has been used in industry and continues to be used by commercial and private sector developers as well. I would also point out that the public power entity in Nebraska has served us very well, but they also have some rural development, economic development responsibilities. And I put the cite in there, the 70-625.01, so we're not just buying electricity here. We also have some combined other responsibilities as we develop our portfolio. We're also supposed to be doing this so that we also help do rural economic development in other general areas. We've done this specifically for ethanol and other things. And public power has done a good job, and, if anything, we need to perhaps update 70-625.01 to make sure that economic development is also a part of the wind buying decision. So as we look at the request from the folks from Tenaska, let's go, first of all, to the handout that has the Elkhorn Ridge wind farm initial investment, Tenaska addition, Edison Mission Group version versus the Minnesota flip version. So, there were several different development models on the table for the folks from Tenaska. The one that they chose out of using all the information available in the public sector, the \$140 million project, is they chose to up front come up with the capital for \$46,200,000. Now that's a lot of money. But that's the way they decided to do it. So as we look at what happened here, as some of the different options, if they had used the Minnesota flip instead of \$46.2 million, they could have come up with \$1.4 million if they used an equity financing structure. If they had used half lending and half equity which a lot of C-BED projects do, they could have come up with \$700,000. So the issue on the table today for the committee is, do we really need to lower the amount of rural economic development benefits for a C-BED project? Is that really necessary? And I would remind the committee that when we did the sales tax exemption for C-BED, we did it on the basis that it was a trade-off. We're going to provide a sales tax exemption, and we're going to provide additional rural economic development benefits that are going to help grow rural



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economic development and tax revenues at the local, the state, and the national level. And that was the trade-off, that was the bargain, and that what we're really talking about here today is whether or not we keep the existing standard or whether we lower it. And I would suggest you, based on all the data and the additional materials in my handouts that we do not need to lower it. Thank you, Mr. Chairman. [LB561]

SENATOR LANGEMEIER: Very good. Now I know there will be questions. Senator Haar. [LB561]

SENATOR HAAR: First of all, would you agree that nowhere in the C-BED legislation does it talk about 33 percent ownership? [LB561]

JOHN HANSEN: The C-BED law sets out the list of qualified owners, and lists five different basic sets of qualified owners: Nebraska individuals, Nebraska-based nonprofits, Nebraska LLCs made up of Nebraska individuals, and tribes, and also public power. Those are the qualified owners on one side, and on the other side, one of the criteria...the performance criteria, is that a minimum of 33 percent of the revenue from the power purchase agreement needs to go to qualified owners, and that 33 percent based on the Nebraska Department of Revenue Rules and Guidelines would include not only the revenue from the power purchase agreement, but it would also include the amount of lease payments that local folks get from personal property in the first five years of the project. And it also includes...well, those are the three--the revenue from the power purchase agreement. Add that up along with the lease payments to the local landowners and the local taxes have to equal at least 33 percent of the power purchase agreement over the 20-year period of the power purchase agreement itself. [LB561]

SENATOR HAAR: Okay. So it's the revenue that's dictated in the law, not the ownership. I mean, it does say at least one or more qualified owners, each owning no more than 15 percent. But it's...the thing here is the revenue stream. [LB561]

JOHN HANSEN: Yes. [LB561]

SENATOR HAAR: Okay. [LB561]

JOHN HANSEN: Yes. [LB561]

SENATOR HAAR: That was...part of the purpose behind this amendment is to say that a project like this, a large project can be developed so that the electricity can be cheaper using the amendment than the regular C-BED. Do you agree with that? [LB561]

JOHN HANSEN: No, I... [LB561]

SENATOR HAAR: And why not? [LB561]

JOHN HANSEN: Well, because it doesn't make any difference whether your...C-BED and the development model we use or C-BED and the development model they did, involves so much borrowed money and so much equity and so much financing one way or the other. In the case of our project, the Crofton Hills project, we certainly are working with a lot more borrowed money than the Bloomfield project, and we don't have any problem meeting the 33 percent. So to us, the only real issue is, is the standard higher or lower relative to how much economic development benefit you get relative to the 33 percent of the revenue. There's a lot of difference between 33 percent of gross and 33 percent of gross minus all of the financing costs. Big difference. [LB561]

SENATOR HAAR: And that's basically what stays in the community. [LB561]

JOHN HANSEN: Well, that makes sure that a significant portion of the benefits of wind development, actually, do stay in the community. I mean, that's the whole point of the thing. I mean, we're obviously trying to...I'm the president of a farm organization. Our job is to maximize rural economic development benefits, and that's through...primarily through ownership. And so we're trying to maximize the amount of local and state tax revenues. The overwhelming majority, and if you look at the handout, the overwhelming majority of benefits in wind development from a job standpoint is where the manufacturing is located which is why it's critical in the state of Nebraska that we recruit manufacturers. But the primary indicator, relative to economic development, is ownership. And so trying to keep as much ownership in the state is the battle over how much benefit do we get? And so, the less ownership we have, the less benefit we get. So because we're a public power state, we have this unique opportunity to maximize our economic development benefits unlike any other state in the country has ever done so far. [LB561]

SENATOR HAAR: Did you get my handout, this thing called...two-sided thing? [LB561]

JOHN HANSEN: Yes, I did. [LB561]

SENATOR HAAR: Okay. Well, I checked this out with Dan Juhl who's sort of the architect of this in Minnesota, and he agreed that it was accurate. When you look at the 1 percent from qualified owners, which, in most cases, would mean the local people then, does that have to come from just one owner, or do you...how is that happening in Minnesota and so on? I mean, do we have groups of five, ten people, or what? [LB561]

JOHN HANSEN: You're passing the hat with a whole group of folks of 1 percent. So there's a significant difference, as you look at these charts, how much money you're trying to raise, and if you're looking at passing the hat with 1 percent, the amount of money that a local investor needs to come up with is a very marginal amount of money.

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Certainly, he has family members, he has other folks that they can join with, and so however, you know, what they can do. In the case of our experiences, the problem is now trying to find investors here. The problem is trying to allocate the amount of investors you have for the project. [LB561]

SENATOR HAAR: Okay. So I took like Tenaska's \$140 million project cost for Elkhorn Ridge, and half of that has to come from the Minnesota flip from equity in this particular model. That would mean 1 percent of that or \$700,000 would have to come from the qualified owners. But that's different than a third of the project coming from qualified owners. [LB561]

JOHN HANSEN: Well, in the case of a Minnesota flip financing, there's two different ways to provide the capital, and one is to use all equity and the other is to use about half equity and half borrowed money. And so if you're using equity, by the IRS law, you're going to need to put up 1 percent of the money from the local qualified owners. And so if you're going to use half borrowed money and half equity, you put up a half a percent of the local qualified owners. And so that's how you get the very significant difference in economic outcome is because with a very small amount of money folks are able to be owners. At the end of ten years they're able to retire the debt on the project and then make a substantial amount of money. And the handout that you have, documents the difference between just getting a lease payment and getting a lease payment...or just being a...we look at 1 megawatt in the handout that we have here where you're looking at a lease payment. So in the example that we gave, you get \$3,636 for the first 11 years of the project. You get \$5,000 in lease payments for the second half or the last nine years of the project. And so as you look at the difference in the first years, which is the thin years for a Minnesota flip financing model, in the pro forma that the committee will have copies of when Gale Lush comes up to testify, which is kind of the standard one we've been using, is \$12,737, compared to \$3,636, or \$109,000 per year, \$323 compared to \$5,000. So when you look at it over the life of the project, you're looking at the difference between a local folk out there getting \$1,124,017 versus \$85,000 in lease payments. Well, you don't...you know, even my banker could figure out that's more money. I mean that's a better deal. And I'll be glad to work with the Nebraska bankers and explain how it is we can help make folks in rural Nebraska a bunch more money. [LB561]

SENATOR LANGEMEIER: You're time is up on that question. Senator Haar. [LB561]

SENATOR HAAR: Okay. Now in my...again on my...the Minnesota flip, which I think everybody got a copy, it says 49 percent, and I'm using that model where 50 percent equity, 50 percent debt. Forty-nine percent from an equity partner, and I used John Deere. Are there other companies out there than John Deere who are doing this? [LB561]

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JOHN HANSEN: Yes, there are. There are other companies. The number of partners has shrunk. There's the economy and the profitability, and the economy has shrunk and so the total number of folks needing federal income tax offsets has gone down. And as the economy recovers, there will be more back into the hunt. But there was a substantial number of equity partners. And right now we also have other options that work, including the new stimulus money with the investment tax credit, which reduces the need for an equity partner which was mentioned earlier. [LB561]

SENATOR HAAR: Okay. And then I guess finally my question--and I'm trying to understand this--why, again, if LB561 goes through, which gives the utilities the ability to waive eminent domain--and I know you're not a big fan of that part but I think it's going to go through--and if that happens, why would anybody not use C-BED as amended, because the added advantage is you get the sales tax exemption on equipment? [LB561]

JOHN HANSEN: Well, I think that's the case. And from our perspective, it goes back on the bargain that we made where you get certain advantages from a development model by using C-BED, but in exchange you should provide the benefits. And so if you're going to get the sales tax abatement benefit to use a developer, you ought to provide a corresponding amount of economic development benefit. And so this is, from our perspective, an argument about whether or not the state of Nebraska gets treated more or less well and fairly in that bargain. [LB561]

SENATOR HAAR: So you feel it's fair for C-BEDs to get special... [LB561]

JOHN HANSEN: They do by virtue of the fact that all of the data that we have, all of the measure, including the National Renewable Energy Lab data which is also in the handout, clearly documents there is a substantially greater economic benefit that comes with local ownership. And the only question is, how many times more value is there? It's not a matter of if, it's just a matter of how much. It's very substantial. [LB561]

SENATOR LANGEMEIER: Senator Schilz. Oh, okay. Senator Dubas gets to go first. [LB561]

SENATOR DUBAS: Okay. Back and forth. Thank you, Senator Langemeier. Thank you, John. Did the Crofton Hills project have any trouble coming up with qualified owners to participate? [LB561]

JOHN HANSEN: No. That has never been our...that's...I hear that question often, and the answer for us is, no, absolutely not. [LB561]

SENATOR DUBAS: Okay. The C-BED model, do you think it's better suited for smaller projects, larger projects, or can it be across the board? [LB561]

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JOHN HANSEN: I think it could be across the board. I think you can use them for lots of different kinds of size projects, and, you know, I don't...I...they have been historically used for smaller projects in Minnesota, but there's certainly no reason why you can't use them for larger projects. [LB561]

SENATOR DUBAS: Well, as the project would get larger, thus requiring more money, would it become more difficult to come up with those qualified investors for the more...the smaller individual investors? [LB561]

JOHN HANSEN: From a wind development standpoint, I will tell you where the bulk of the opposition is going to come from wind projects. It's going to be your neighbor who, doggone it, wanted a turbine on his ground and didn't get one. I mean, that's just the way it is. I mean, that is where the bulk of the opposition for these wind projects come. It is from the neighbors who wanted to be a part of the project and couldn't. So C-BED, from a development standpoint, is a great way for everybody in the neighborhood to be able to participate in a wind project whether they get a turbine on their land or not. And so when you look at the data that I passed out earlier, it's pretty clear that you really do have the opportunity to get substantial benefits by being...and in fact, substantially greater benefits by being an investor in a project than if you just had the least payment alone. So as a way of trying to salve up the opposition in a community, as long as everybody is getting a piece of the action, they're all going to be very much for this, and it eliminates a lot of the NIMBY issues that wind development in other states has already run into, in my opinion. [LB561]

SENATOR DUBAS: What's the size of the Crofton Hills project? [LB561]

JOHN HANSEN: Forty-two megawatts. [LB561]

SENATOR DUBAS: Can you tell me what the status of that project is? [LB561]

JOHN HANSEN: We are scheduled to be up and running by the end of 2010, and we are at the point right now where we are simply evaluating the option of the 30 percent money up-front. It's a 20-year business deal. We want to make sure, as we look at the time value of money and what they expect the capacity of the plant is and all of those things, that we're making a business decision right now over what is the best way to finance our project, and things are moving along on schedule. [LB561]

SENATOR DUBAS: I'm not remembering the time frame exactly, but it seems to me like the project at Bloomfield got up and running in a fairly short amount of time. Is there a reason why it's taking longer for the Crofton project to get...? [LB561]

JOHN HANSEN: Well, in terms of the treatment, we're getting into kind of...I always

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have this problem based on confidentiality agreements, but I think I could say that...it would be fairer to say that the other project had a bunch of turbines already in hand, they were looking to get in the ground in a hurry. And I think it's not a bridge of that confidentiality to say that we were asked if it was okay to move ahead of our project with power purchase agreements and other considerations so that they could move forward with construction, first, because they were obviously in a position where they needed to get them in the ground before the production tax credit ran out at the end of the year, which it was scheduled to do. And I would just note for the record that they did not meet their construction deadline either, by the time they were up and running. So it was a good thing the production tax credit was extended or they would have had some substantial problems. [LB561]

SENATOR DUBAS: So the Crofton Hills project, it's on target? [LB561]

JOHN HANSEN: Yes. [LB561]

SENATOR DUBAS: The resources you're making...the financial resources that you need are in place and you're moving forward. [LB561]

JOHN HANSEN: Yes. [LB561]

SENATOR DUBAS: Thank you. [LB561]

SENATOR LANGEMEIER: Senator Schilz. [LB561]

SENATOR SCHILZ: Thank you, Senator Langemeier. Mr. Hansen, thanks for coming in today. As we go through this, obviously you're involved in the Crofton Hills project, correct? [LB561]

JOHN HANSEN: The Nebraska Farmers Union is one of the nonprofits. Our foundation is one of the nonprofits. So we're in it up to our neck. [LB561]

SENATOR SCHILZ: (Laugh) As anybody finds themselves when they step into something like this, I'm sure. [LB561]

JOHN HANSEN: Yes. [LB561]

SENATOR SCHILZ: And you had mentioned that you're trying to figure out exactly how to finance it. I think that was one of your statements. [LB561]

JOHN HANSEN: We're looking at financing options at this point, yes. [LB561]

SENATOR SCHILZ: Right. The amendment here would give you one of those

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opportunities, wouldn't it? [LB561]

JOHN HANSEN: This amendment, Senator, in my opinion, has nothing to do with whether you can borrow money or not--this as a project. [LB561]

SENATOR SCHILZ: Okay. [LB561]

JOHN HANSEN: This has only to do with whether the amount of revenue that is required to go to qualified owners is higher or lower. [LB561]

SENATOR SCHILZ: Okay. Can you explain where that actually comes from in the amendment? [LB561]

JOHN HANSEN: Well, the amendment reduces the requirement, the threshold requirement for the total amount of revenue from the power purchase agreement of 33 percent. That...of that revenue needs to go to qualified owners. And so it would reduce that threshold from 33 percent to 33 percent minus the financing costs for the project, which would reduce the amount of revenue then required. But as far as from my standpoint in putting together and looking at and evaluating development models and pro formas and financing arrangements, it doesn't have anything to do with our project. [LB561]

SENATOR SCHILZ: Right. Let me ask you this. Let's back up to that statement before. When...let's make sure that I'm not getting confused here. It would be the project under the amendment that would be able to finance, right? So those revenues, so to speak, or the return on investment that would come back, could still be 33 percent of what's going on as long as the whole project is borrowing the money. Is that correct? [LB561]

JOHN HANSEN: If I'm understanding your question, I think that's correct and I would just say that right now we're working with borrowed money or equity. And so we can do that now with the 33 percent, and, in fact, in Minnesota the original C-BED bill was 51 percent requirement, and we lowered it to 33 so that we would have plenty of room to be able to meet that performance requirement... [LB561]

SENATOR SCHILZ: To make that work. [LB561]

JOHN HANSEN: ...so we've already lowered it from 51 to 33. And by including the local lease payments and the taxes, then that's what we call the operational schlock. [LB561]

SENATOR SCHILZ: Schlock. Is that a defined term? [LB561]

JOHN HANSEN: Room for error in case your...the particulars in your pro forma get out of alignment... [LB561]

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SENATOR SCHILZ: Sure. [LB561]

JOHN HANSEN: ...on a percentage basis, which could come just because your project had a higher capacity factor, for example. [LB561]

SENATOR SCHILZ: Sure, for whatever reason. [LB561]

JOHN HANSEN: Sure. [LB561]

SENATOR SCHILZ: Yeah, that part I understand. Let's talk a little bit about opportunity costs. How much...and I'm...I don't know this for sure. What kind of return on investment does a wind project bring back today or on average as you've seen it? Obviously, I understand that there's some...this would be kind of a guess, but. [LB561]

JOHN HANSEN: Well, it would be more than a guess. There's... [LB561]

SENATOR SCHILZ: Yeah. Well, what is your prospectus saying for...? [LB561]

JOHN HANSEN: And that's information I absolutely... [LB561]

SENATOR SCHILZ: You can't say. [LB561]

JOHN HANSEN: I know where the line is and I know that's way over the line. I can't...what I would tell you that the rate of return for a lender, for example, is pretty much standard industry rate of return, so whatever the going rate for interest is. The rate of return for an equity partner usually runs 1 to 2 percent, depending on how tight the market is and kind of the dynamics of the marketplace. And so there's some equity partners, who, of course, would take as much you would give them, but usually that is about a 1-2 percent differential between equity partners...because the equity partners are getting a higher rate of return. [LB561]

SENATOR SCHILZ: Sure. [LB561]

JOHN HANSEN: They're taking a little more risk than the lender is... [LB561]

SENATOR SCHILZ: Right. Absolutely. [LB561]

JOHN HANSEN: ...in that way. In the project...and, you know, so I would just draw your attention to the handout that I gave you. I didn't do a percentage return but it's...this is the high end. And so when you look at the wind development models, there is a huge amount of difference in the rate of return. But the one thing that is a constant is that the primary indicator is ownership in terms of economic development methods. [LB561]



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SENATOR SCHILZ: Sure. Yeah. And all through here with C-BED, we've talked about local investors. On the C-BED project, the Elkhorn Ridge project, how many of those are actually local investors that live on the land? [LB561]

JOHN HANSEN: In our case, it would be...and we haven't finalized things because we're still evaluating, but based on what we know today, it would be our assumption that every one of our landowners will also be investors. [LB561]

SENATOR SCHILZ: Yeah. On the Elkhorn Ridge project? [LB561]

JOHN HANSEN: On the Crofton Hills projects. [LB561]

SENATOR SCHILZ: On the Elkhorn Ridge project, how many of those are local investors? [LB561]

JOHN HANSEN: The person before me who is a proponent from Tenaska testified on that, and... [LB561]

SENATOR SCHILZ: And maybe you don't know. I... [LB561]

JOHN HANSEN: I mean, he...I mean, his...he should be the one who answers that. I pretty well know the answer to that question, but that's really not appropriate for me to answer. [LB561]

SENATOR SCHILZ: Okay, I suppose. [LB561]

SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: Okay. We...the think that the banks testified for this amendment. Does this amendment give more opportunity for participation by local banks, in your opinion? [LB561]

JOHN HANSEN: No. It doesn't change any of the basics or any of the fundamentals at all. This is just all about how much the rate...what the requirements are to the qualified owners. [LB561]

SENATOR HAAR: Okay. And it came up a little earlier that maybe this project was taking a little longer. And that, just to clarify that, that's not because you're having trouble finding money, but deciding how to put together the details or... [LB561]

JOHN HANSEN: No. I mean, from our standpoint, we have agreed because we were willing to have a 2010 construction goal, and the other party in this area--and we'll be

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sharing a substation with them--had, and it was, I think, pretty well out in the open. I don't think it was any secret that they had a bunch of turbines that they had sitting, burning a hole in their pocket from another project that blew up elsewhere, and so they were in a hurry to get them in the ground. And so we said, okay, that makes perfectly good sense. If you want to go ahead of us, that's fine. And that was the reason that we weren't, you know, in terms of...we stepped back while the negotiations went forward with NPPD to let them go first. [LB561]

SENATOR HAAR: We also heard earlier that the opinion that more local ownership by more people could involve more risk for those people in terms of maintenance and other things like that. How do you see that issue? [LB561]

JOHN HANSEN: It's not accurate to portray it in that way. I mean, local investors are not out there greasing turbines. We'd have to pick people for very different reasons rather than just the ability to be an investor or want to be an investor. We'd have to start looking at their physical abilities to climb a turbine. No. People are hired to service these projects and that's their...that's all built into the pro forma and that's part of the project costs, and you have professional management who manages them regardless of whether they're C-BED or whether they're not, or private. I mean, that doesn't change. The payments to landowners doesn't really change. The management structure doesn't change. None of those things change. [LB561]

SENATOR HAAR: But what if a turbine becomes useless after five years and it hasn't been paid for or something like that? [LB561]

JOHN HANSEN: Well, it's the same issue with any kind of a development project. And in this case with C-BED as we've structured it and as we use it, we help share the risks, and so, you know, we're going to get that turbine back up and running. And we'll have all of the instruments in place that you can possibly use relative to warranty agreements, performance agreements, all of the other things. Part of the bottom line goes into having a fund for just those situations, and that's all a part of a good pro forma. [LB561]

SENATOR HAAR: Okay. [LB561]

SENATOR LANGEMEIER: Senator Fischer. [LB561]

SENATOR FISCHER: Thank you, Chairman Langemeier. We're not addressing the amendment at all so I'm not going to address it now either. Some of your comments...I'm very confused by some of your comments. You've...you said that, you know, you stepped aside so the Elkhorn Ridge project could move forward and...it's my understanding NPPD can negotiate a number of these at the same time, right? [LB561]

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JOHN HANSEN: Yep. [LB561]

SENATOR FISCHER: But your project was ready to go first, then? That's what I think I heard you said but you stepped aside? [LB561]

JOHN HANSEN: In 2005, Nebraska Public Power District invited us to bring them a C-BED project so that we could see whether we could do this without changing the law or not. So we already had hired a developer. And all of us, and I want to...it is not just Farmers Union. It's American Corn Growers Foundation, the whole group, and we we'd already done this. So we were already a long ways down the track in terms of having looked at the site, gathered data, all of that stuff, and so we were a long ways. And so we needed to come back to the Legislature in 2007 because we couldn't get past the eminent domain issue. That was the primary sticker. So we had done that, and so then in 2007, in May, NPPD put out a request for proposals. We responded to it. [LB561]

SENATOR FISCHER: Which just--if I can interrupt just a minute. [LB561]

JOHN HANSEN: Yep. [LB561]

SENATOR FISCHER: You got by the eminent domain issue by creating C-BED. [LB561]

JOHN HANSEN: C-BED allowed public power. Our initial assessment was, frankly, is that public power could voluntarily set aside eminent domain when a contract was in place. The legal beagles who looked at it and researched it, both our team and their team looked at it and said you can't voluntarily set aside statutorily derived authorities, and if you go to court, 60-40 percent, you'll lose, so. [LB561]

SENATOR FISCHER: So did we create C-BED to get rid of eminent domain or for rural economic development or for both... [LB561]

JOHN HANSEN: Both. [LB561]

SENATOR FISCHER: ...for any number of reasons? [LB561]

JOHN HANSEN: At least both of those. [LB561]

SENATOR FISCHER: Okay. [LB561]

JOHN HANSEN: It did both of those things. And then going back to your question, so we responded to the RFP. We were a part of the cut so we were reduced from ten proposals down to three that were accepted. And then as the negotiations for the power purchase agreement and the time frames for when it is we were supposed to have

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those completed continued to slide by, it was pretty obvious that the time and attention was not on our project and that the other project was ahead. And we said okay. But when you do that you also give up turbines you already...I mean, you either use or lose at a certain point. So we had to go back in the turbine pool. We had to do some of those things. And it made more sense to us to have a 2010 construction time rather...because in the interest of just trying to help be neighborly, in part, these other folks already were sitting there with a bunch of turbines they already owned, so. [LB561]

SENATOR FISCHER: So you have the financing now and you have the leases or the easements on land and you're ready to go. [LB561]

JOHN HANSEN: Yes. Yep, we are looking at the way we finance our project right now, because we anticipated that we were going to get a stimulus package financing structure. [LB561]

SENATOR FISCHER: So you don't have the financing right now. [LB561]

JOHN HANSEN: Well, we are looking at the financing and we are in negotiations right now, and part of the negotiations is we did not want to lock ourselves into a 20-year deal and then have buyer's regret three weeks after we signed the deal when a better deal came along on a 20-year contract, because it's a 20-year business deal. And so the new... [LB561]

SENATOR FISCHER: Are you using the Minnesota flip? We hear a lot about Minnesota flip. [LB561]

JOHN HANSEN: Yes. Yep, yep. [LB561]

SENATOR FISCHER: What...and again when I ask these questions, if they're too personal or getting into your business you certainly don't have to answer them. But did you base that on another project out there? I haven't gotten my question answered when I visit with people about this. I say, what's a project that's used that, and nobody has ever told me one. Is there one that's used the Minnesota flip? [LB561]

JOHN HANSEN: Yes. And in the handout that I gave you with Midwest, for example, and Edison Mission, all those highlighted projects that are in the Edison Mission executive summary that I handed out are all community wind projects, and most of them used Minnesota flip financing, and they've used it with Edison Mission. So... [LB561]

SENATOR FISCHER: But now to get back to the amendment... [LB561]

JOHN HANSEN: Yes. [LB561]

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SENATOR FISCHER: ...just one short question. Don't you think we should open that up so that there's another financing option available so we can expand this industry? I mean, if OPPD needs to get to 400 megawatts in a few years and I don't believe Minnesota is at that right now using C-BED, shouldn't we open that up? [LB561]

JOHN HANSEN: The issue of financing and whether you can use financing or not has nothing to do, in my opinion, with this amendment. And so if the 67 percent owner of this project has said that they could not do Minnesota flip financing with this to the Tenaska folks and meet the 33 percent requirement, all I can tell you is that their turbines were too high, their fixed operating was too high, their something was out of alignment, because if they couldn't combine the financing for the project and meet the 33 percent requirement, then somewhere in their pro forma and their costs, they were too high, because we had no problem doing that. And so I know what the numbers, the internal numbers are, and I'm just going...I mean, we had no problem using 99 percent financing money in any of the models we've ever looked at and hitting the 33 percent requirement. So lowering the 33 percent requirement doesn't change the financing. I mean, I don't see how it opens up financing. It just lowers the standard. [LB561]

SENATOR FISCHER: I can't believe you would find somebody to finance 99 percent of a project for only sixty-six and two-thirds percent return. I know my banker wouldn't be excited if I wanted to borrow money and do that. [LB561]

JOHN HANSEN: I would welcome to... [LB561]

SENATOR FISCHER: Now, my banker would probably like it if I could borrow 1 percent and get a third return, you know 33 percent return on a project, gross, not net, but I don't know you'd ever get investment the other way. [LB561]

JOHN HANSEN: What I said at the beginning is really the case and I had the same...Senator, I've had the same questions that you did. [LB561]

SENATOR FISCHER: From me, most of the time. [LB561]

JOHN HANSEN: I have gone to had...I have gone to school on Minnesota flip financing and I understand it and I became very comfortable with it as I looked at how it was used in other sectors of the economy; how it was routinely used in the wind sector. All Dan Juhl did is take all those things that he knew from working for large private sector wind developers all those years and use the same tools for folks of very average financial means so they could get to be owners of wind projects. So it's not a foreign financing tool. It's well-known, it's well-used, it's well-traveled, and it's standard practice in some areas, especially low-income housing. [LB561]

SENATOR FISCHER: Thank you. [LB561]

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JOHN HANSEN: Thank you, Senator. [LB561]

SENATOR LANGEMEIER: Senator Hansen. Senator...I always call you that. Mr. Hansen, thank you. Now that I have... [LB561]

JOHN HANSEN: I'm going to consider that a compliment. [LB561]

SENATOR LANGEMEIER: Actually I have a Senator Hansen in the body. That's why you get carried over to him. So I have a number of questions, and you gave us this handout about Edison Mission's ownership and to wind projects that are under the Minnesota flip, and there's five of them here. How many of them have flipped? [LB561]

JOHN HANSEN: Um. [LB561]

SENATOR LANGEMEIER: Let me back up. In Minnesota, I know exactly how many there are in Minnesota because we did some research. Of the 120 megawatts that are in Minnesota, how many of them have flipped? [LB561]

JOHN HANSEN: I don't...I don't know. [LB561]

SENATOR LANGEMEIER: Or past ten years? [LB561]

JOHN HANSEN: I don't know. [LB561]

SENATOR LANGEMEIER: Okay. [LB561]

JOHN HANSEN: I know that in...and Gale Lush may be able to answer these in more detail because he's spent more time with Dan Juhl who will testify later, but I know that Minnesota flip financing was used in some of these projects. [LB561]

SENATOR LANGEMEIER: I'm not arguing that it was used. I understand that. But I don't...to my knowledge, none of them have reached this ten-year point where they've flipped... [LB561]

JOHN HANSEN: Oh, I'm sorry... [LB561]

SENATOR LANGEMEIER: ...so does it really work? [LB561]

JOHN HANSEN: ...so that have used the financing model. Right, so that they've got past that. Right. [LB561]

SENATOR LANGEMEIER: Now I'm going to ask you another question. You've seen this

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handout that I've gotten lots of copies of, and I do appreciate it. In this model where you talk about 1 percent ownership and you're basically getting 1 percent return for the first ten years and then it flips after ten years and you get full ownership for the next 20 and that should balance out the 33 percent for the life of the project, because that's what C-BED says. You have to have 33 percent for the life of the project. [LB561]

JOHN HANSEN: Exactly. Yes, yep. [LB561]

SENATOR LANGEMEIER: Not in any given one year, but over the life of the project, correct? [LB561]

JOHN HANSEN: Yes, sir. Yes, sir. [LB561]

SENATOR LANGEMEIER: So if I'm the investor that invests with you and here we're going along and I'm getting my 1 percent for ten years, which everything is hunky-dory, and my 99 percent owner is happy because he's, whoever you talked into doing that for 66 percent and two-thirds, is happy, and we get into year 12 and things go to hell in a handbasket. This project...these turbines are shot, they don't make parts for them, the technology is changing minute by minute. But now I'm the farmer and I just bought this project, because now I own it, year 12; it's all mine. But we can't produce wind. I understand that with Nebraska Public Power and their contracts, I don't owe them anything to continue to sell them wind so I don't have a liability there, except here come Mr. Ewald to my door to audit me, and he says, well, you're not producing power anymore; your average of 33 percent, you haven't paid that over the first ten years because you've only paid 1 percent; by golly, since you're not producing wind, you now, in your model, you owe \$700,000 to the state of Nebraska, plus penalties, plus interest, plus everything else. I just put my farmers in a world of hurt... [LB561]

JOHN HANSEN: And, Senator, the... [LB561]

SENATOR LANGEMEIER: ...unless the turbines work and can produce power for 20 years. But you're only putting a million dollars away in this example for this one turbine, which started at a cost of \$9 million to make it work. I think the risk is just ungodly if somebody bought into this. [LB561]

JOHN HANSEN: Well, thank you for the opportunity to explain why it is that you use LLCs. And so you have a master LLC, which is one level of limited liability. And the total amount of liability is, that LLC is then owned by all of the investors who have moved enough assets or moved enough money over to make an investment with that LLC, and that LLC limits their liability. And so that LLC, the amount of liability that you're going to be liable for is the amount of assets in that LLC. And so you're not putting your farm at risk, you're not...this is...you're not putting the rest of your nonperforming 401(k) at risk. You're not doing...you know, your IRA is not at risk. The amount in that...you've isolated

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the risk through the use of the LLC and you've done it twice in the model that I'm familiar with, and so you've limited that liability. But I would also tell you that, boy, as a owner I have a vested interest in making sure that sucker works because that's where I'm going to get the bulk of my benefit for those years, and that's as it should be. And NPPD or OPPD or whoever buys the power from me, they're going to want that power in the out-years because every year this contract goes forward, the price, the relative price of that power to them gets more and more favorable. So there's a huge advantage in that, and so that's why we dropped down, in the performers that I'm familiar with, a substantial amount of dollars year-by-year when you do have higher amounts. That is in the bottom line so that when you get to the point where you have mechanical problems or those kinds of things, you certainly have...you've built up a cache of money to deal with that and you also, based on the amount of margin that you have at that point, because you've eliminated all of your capital, up-front capital costs, you now have, clearly, the capital to be able to fix stuff. [LB561]

SENATOR LANGEMEIER: I appreciate the answer. But if at this point, where I'm the owner, my 99 percent money guys are gone because I own it, and we've got to fix these things, I as the LLC have to come up with a lot of money. Now you brought up another good point which I liked to hear, and I appreciate this and this has been fascinating. I've really appreciated learning about C-BED over the last two weeks. As a state policy person, I'm out here to set state policy. Now I have concerns that I have a Department of Revenue that I am charging them with auditing this mechanism, and they're going to come out in these out-years and audit to see if we really got 33 percent. But I also, through somehow in statute, allowed you--and I'm using you as a very vague term--this LLC... [LB561]

JOHN HANSEN: I won't take it personally. [LB561]

SENATOR LANGEMEIER: None of this is personal. This LLC that you've created to defraud the ability for me to recoup taxes when you didn't follow, potentially didn't follow what you've set up for in the beginning. So why do I even have a Department of Revenue go audit it, if you're just going to have a limited liability that I can't collect from anyway, so what's the point? [LB561]

JOHN HANSEN: Well... [LB561]

SENATOR LANGEMEIER: And now I'm off the amendment, so... [LB561]

JOHN HANSEN: I'd be more than glad to engage in some, or the enforcement of the sales tax provisions by the Nebraska Revenue Department, but I don't think you want me to go there today. [LB561]

SENATOR LANGEMEIER: No. We're going to have that discussion later. With that...



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[LB561]

JOHN HANSEN: We did. Senator, I would say that my organization...you know, we have done an awful lot of research and an awful lot of investigation, and we came back last year and we worked with the Nebraska Department of Revenue--Senator Preister carried the bill--to come and to make sure that the Revenue Department absolutely had all of the statutory authority that it needed and all of the details that it needed of the financial structure of the organization to be able to make sure that it was set up properly and that it performed as per the bargain, and to make sure that they had the authority, not just for their normal standard kind of sales tax abatement three-year authority, but through the full 20-year period of the C-BED project plus three years of additional authority to make sure that it was as it should be. And so as far as we're concerned, we've done everything we can possibly do to strengthen the enforcement standards and do it in good faith. [LB561]

SENATOR LANGEMEIER: So if...and I'm aware of that we gave them 20 years plus three, so a 23-year look-back for a statute of limitations. But yet they can only look back as far as the depth of the pockets of the LLC. So if we want to truly hold that up, should we not allow them to go deeper than the LLC, back to the owners of the LLC? If I create an LLC that has no money, who cares what the Department of Revenue is going to do to me? [LB561]

JOHN HANSEN: That's one of the original issues we raised when we created LLCs. I'm just saying it exists. Everybody else uses it. It's standard business practice and so we've tried to be flexible and use appropriate business practice and structure. [LB561]

SENATOR LANGEMEIER: I understand. I understand. From sitting on the Revenue Committee, I understand. Are there any other questions? Senator Carlson. [LB561]

SENATOR CARLSON: Senator Langemeier. And John, I'm sorry I had a conference call so I've missed a lot of this, but let me try and clarify something. This is an amendment to LB561. Now if we disregard the amendment, you're also opposed to LB561 by itself. [LB561]

JOHN HANSEN: We're...yes, we are fearful of some of what we think are the long-term implications of LB561. [LB561]

SENATOR CARLSON: And with the amendment, you're even more opposed to LB561. [LB561]

JOHN HANSEN: In our view, the amendment itself is hurtful to the intent of LB629 relative to its economic development benefits. [LB561]

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SENATOR CARLSON: Without the amendment, LB561 allows private companies to come into the state, negotiate eminent domain, and make an investment. But you are against that. [LB561]

JOHN HANSEN: Well... [LB561]

SENATOR CARLSON: And I...excuse me, go ahead. [LB561]

JOHN HANSEN: Well, I mean, we covered that in the LB561 testimony. We feel that the long-term implications are that large wind developers who are also private sector utilities are going to come into the state, set up shop, and then after it's too late they're going to encroach and undermine the integrity of the public power system. And we are one of the original supporters and initiators of public power and are...continue to champion its benefits and virtues, and our state is extremely well-served by it. And so we're very mindful of the need to be proactively protective of this enormous public asset we have in Nebraska called public power. [LB561]

SENATOR CARLSON: And you, again, without the amendment, you're against LB561. But if LB561 became law and the amendment is not part of it, then you're afraid that that's going to...there won't be enough interest in C-BEDs. [LB561]

JOHN HANSEN: Well, this is about...it's really the question about whose money you're going to put the...whose pocket you're going to put the money in. So if I'm a private sector developer and want to be an owner and get the primary benefits of wind development, I'm sure going to want to put the money in my pocket instead of Joe Farmer's pocket. And so, you know, they're going to...the conventional private sector-owned project which we've used in other states, which is the primary model, is the one that makes them the most money. So the C-BED option helps use private sector incentives but it certainly provides the opportunity for more rural economic development benefits, and that's what all the data shows than the private sector model. And the way it does that is it reduces the amount of profits that go in their pockets. So if I'm a large private sector developer, and these guys are all about making money, why would I share my profits with local folks if I didn't have to? It wouldn't be in my economic interest to do it. In fact, I'd come in and play dumb and explain how it is they can't get there from here. [LB561]

SENATOR CARLSON: Thank you. [LB561]

SENATOR LANGEMEIER: Senator Cook. [LB561]

SENATOR COOK: Thank you, Senator Langemeier. So it sounds as though you're thinking that a Tenaska-affiliated person would kind of maximize those relationships, and, what, do all of the wind energy development and not leaving any opportunity for

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smaller farmers to do the exact same thing under the current statute or under using the Minnesota flip model? I'm trying to, I guess, tease out what I thought I heard from the last bit of your comment about playing dumb. [LB561]

JOHN HANSEN: Well, if I were a large wind developer and the option before me was for me to own as much of the project as possible and keep as much of the profits as possible, or to share those with local folks, I would not be wanting to share. And so in the case of... [LB561]

SENATOR COOK: Okay. So you would choose the initial partner to be one of somebody that kind of looks like a partner but really isn't a local partner, is that what you're implying? [LB561]

JOHN HANSEN: There's C-BED models and there's C-BED models, and so this gets very complicated. But I will tell you that in our case all of the owners of our project... 100 percent of the owners of our project are qualified owners. So when we're talking about the revenue stream from the project, it's going 100 percent to qualified owners. They're all Nebraska citizens. And so in the case of the other project, it's pretty clear from what's in the press that Edison Mission owns 67 percent of that project and Tenaska folks own 33 percent. I mean, if I were looking at it from an economic development standpoint, I would, as Tenaska, I would be wanting to be the equity partner so that they could get the economic benefits of being the equity partner for the project. And I would be saying, if you want qualified owners, you know, use the Minnesota flip so that not only do our top-end corporate executives have the chance to do it, but everybody in the company gets to do it. In fact, all the local landowners get to do it, too, because now you're spreading the economic investment opportunity in a much more affordable way over a much larger amount of ground, and you're keeping more benefits in Nebraska. So you have this competing interest in terms of what the state gets and wants versus what the company gets and wants. And I've been around so long I understand the difference between the two. (Laugh) [LB561]

SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: So why would these big Florida Electric and Light, or whatever, come in and build something? Why would they even mess with C-BED, even if it's amended? [LB561]

JOHN HANSEN: The only reason, to me, left if this amendment were adopted would be to get the sales tax abatement. And to me that's not a good bargain because we have shipped, you know, way too many of the benefits out of the state without keeping as many benefits in the state. And to me, it's a balance between...the sales tax abatement, you ought to earn it. You want the advantages; you ought to provide the benefits. I mean, it's a trade-off. [LB561]

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SENATOR HAAR: Now, the sales tax abatement or exemption, is that on the sale of the electricity or on the initial equipment? [LB561]

JOHN HANSEN: It's the capital...it's the physical property, yeah. [LB561]

SENATOR HAAR: To begin with, it's up front. [LB561]

JOHN HANSEN: Yes. Yep. [LB561]

SENATOR HAAR: Also, I wanted to thank you for coming in today because I know you've had a death in the family and have to get back to that, so thank you very much. [LB561]

JOHN HANSEN: And thank you, Senator Haar. [LB561]

SENATOR LANGEMEIER: I think the whole committee wishes your family condolences on that regard. We wish you the best tomorrow. [LB561]

JOHN HANSEN: Thank you. [LB561]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB561]

JOHN HANSEN: And thank you, Mr. Chairman and members of the committee. As always, it's a pleasure. [LB561]

SENATOR LANGEMEIER: Senator Dierks, welcome to the committee. For the audience's benefit, Senator Dierks, as a senator, doesn't get the time light. So with that, go ahead. [LB561]

SENATOR DIERKS: Good. Well, that's good. This chair is a lot more comfortable than that one I just got out of, Senator. Thank you, Senator Langemeier and members of the Natural Resources Committee. I'm Senator Cap Dierks. That's spelled C-a-p D-i-e-r-k-s. I represent the 40th Legislative District in the Nebraska Legislature, and I appear in opposition to this amendment to LB561. I introduced the original C-BED legislation, LB629, during the 2007 Legislature. It was passed on Final Reading by a vote of 49-0. That was only two years ago. Senators, the success of C-BED legislation is dependent on several things, not the least of which is your patience with the process. We also have to be patient with those public power companies who have to provide the power grid network and then buy the electricity produced by the wind turbines. And I have to ask you to stand fast on the intent of the original legislation regarding the eminent domain provisions and the financial provisions established by C-BED. There are very large, very

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wealthy corporate energy producers in this nation, and other nations, as well, that see an excellent opportunity to come to Nebraska and make huge profits harvesting wind energy. The whole problem with this is that these corporations will take these huge profits away from Nebraska. With C-BED, the profits stay in Nebraska and provide us with tremendous economic development. These energy-producing corporations have already established a presence in Nebraska and have already hired lobbyists to pursue their efforts to change the funding methods and eminent domain provisions of C-BED. These corporations have gone to many areas in Nebraska and held community meetings extolling the importance of wind power. Their purpose is to persuade landowners to sell property rights. Two years ago, during the debate on C-BED, Attorney General Jon Bruning issued a warning to all Nebraskans to be cautious of offers to sell their property rights. And I might mention that Senator Dubas had a press release that did the exact same thing. The bottom line is that the C-BED legislation is without equal among wind energy producers. Any legislation to make changes in C-BED is counter to the economic benefits provided. There is absolutely no shortage of qualified owners for the C-BED proposals. None. As soon as the power grids are available they can be filled with Nebraska qualified owners. There is simply no need to change the existing statute. There is no urgent need to make this change. Quite frankly, this amendment should probably have been introduced during the first ten days of the session as a bill, which is the proper way to handle the matter. Let's include this topic in the Natural Resources Committee planned study on wind energy during the interim and then talk about changes that may or may not be needed. I'm going to close fairly quickly, Senator Langemeier. One thing I have heard about is what happens when the turbines come apart after 10 or 11 years, or 12. When we started this process, the warranty on those turbines was ten years. Today the warranty is 20 years. So we have a much better investment with that process. I want to leave with a quote from two presidents, President Abraham Lincoln and President Dwight Eisenhower, and I feel they're both appropriate. President Lincoln said, "I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. Corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed." Eisenhower said in his Inaugural Address, a people who provide that their privileges should be stronger than their principles will soon lose both. With that I think I will close and answer any questions you might have. [LB561]

SENATOR LANGEMEIER: Are there any questions? Senator Haar. [LB561]

SENATOR HAAR: So Senator Dierks sits right next to me so I have to be careful with my question. [LB561]

SENATOR DIERKS: Yeah. I'm a mean guy. [LB561]

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SENATOR HAAR: Why should C-BEDs, in the form they currently exist, be given special privilege? Because that's what I see that this amendment takes away some of that special privilege of C-BED. Why should they be? [LB561]

SENATOR DIERKS: The main thing, I think, is that we are providing, with C-BED, economic development opportunity for our state, especially for the rural part of our state. That...when corporate America takes that wind out of here, that economic development is gone. It's no longer here. That's the whole thrust of this thing, I think. The whole thrust of C-BED was to provide economic development in the rural part of our state. So we allow anybody that's a Nebraska native to be involved, I mean, whether you live in Omaha or whether you live in Ewing, Nebraska. But the results are the money that comes in after the flip stays with the qualified owner; it doesn't leave the country with a corporation. That's the whole purpose of it. I'm somewhat selfish about that issue. [LB561]

SENATOR LANGEMEIER: Senator Dubas. [LB561]

SENATOR DUBAS: Thank you, Senator Langemeier. Thank you, Senator Dierks. We heard one of our very first testifiers, a landowner who seemed to be quite satisfied with just being in a lease agreement with the developer. And I've had other landowners approach me, too, saying I don't want the hassle of going through the money; I don't want the responsibility down the road; I'm perfectly satisfied with just giving them some of my land to lease and taking in some rent payments with no responsibilities on top of that. So how do you respond to that type of a comment? [LB561]

SENATOR DIERKS: Well, it's an opportunity for the landowner if they want to accept that opportunity. But I still say that the process, the way the structure of the tower that's put up and the model that's put on it should remain in the possession of a qualified owner when it's over with, and the money stays here. That qualified owner, he's out there needing to have land rights to buy. So the fellow that would like to sell his land rights, well, that's fine; that's another opportunity for him. I just caution those people that sell their land rights to be sure and have good legal counsel to know that they're not being taken advantage of. I've heard of some...you know, whenever these corporations go out in the country and have one of the meetings, and they're doing it, folks, every place across Nebraska, I started getting phone calls and I'll get a half-dozen phone calls from the same community within two days of each other. What are you waiting for? Why don't we have this? Where's NPPD? Where's OPPD? They all want this thing done yesterday. And that's why I said in my testimony, we need patience, not just with...well, we need patience not just with this committee and what we did with C-BED, we need patience with the people who are going to buy the energy. And I fear, too, like John Hansen mentioned a few minutes ago, for public power in this state. I'm a strong supporter of public power, always have been, always will be, and I hate to think that it could be weakened and that we could lose public power in this state. But I have a

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feeling that big money does strange things, and that's what I dislike about the amendment and that's what I dislike about the eminent domain law that was...that the amendment is attached to. I think we have an excellent opportunity to do great things, economically, for Nebraska with the original C-BED legislation and we don't need any changes. I'm very prejudiced. [LB561]

SENATOR DUBAS: Thank you, Senator. [LB561]

SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: And I would just like to again quote from a letter that we got originally from Tenaska, and just...I'm not sure you were...or have you been in the audience for the whole session? [LB561]

SENATOR DIERKS: Yes. [LB561]

SENATOR HAAR: Okay. The one saying community residents may or may not be suitable investors. How are going to become well-informed...how are they going to be well enough informed to make a sensible investment decision? What's your response to that? [LB561]

SENATOR DIERKS: Well, I think that the investors are well-informed. If someone else thinks they aren't, well, that's their opinion, but I think our investors are well-informed. I think that they know what they're getting into and they're anxious to get into it. You're getting a lot of this information from a lot of places. I think that this information that Senator Fischer found out about that there are no qualified owners that want to get involved, that's not true. There...we'll have plenty of projects available when the grid is available. When the grid is out there, in place, there will be all sorts of qualified investors and they will be individuals from ranches and farms around the state. [LB561]

SENATOR HAAR: So from a...you believe that farm people are able to make well-informed decisions about investment. [LB561]

SENATOR DIERKS: I certainly do. I consider myself a farm people and I think I can make the right decision. [LB561]

SENATOR LANGEMEIER: Senator Carlson. [LB561]

SENATOR CARLSON: Senator Langemeier. Senator Dierks, do you, in your opinion, is the Bloomfield project, at least in spirit, a violation of LB629? [LB561]

SENATOR DIERKS: You know, I guess I'm going to let someone else make that decision, Senator Carlson. I...it doesn't follow the same C-BED process that I think we

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established with the C-BED process. Now they've gone through the determinations with the Department of Revenue to make sure that they are C-BED, and I have some questions about that. [LB561]

SENATOR CARLSON: Okay. And another of your statements about the public power companies when they get the grid in place, that's their responsibility, correct? [LB561]

SENATOR DIERKS: Um-hum. [LB561]

SENATOR CARLSON: What's their incentive? Because this is where I'm struggling with it. They get the grid in place to buy power, which at this time is more expensive than what they're buying now...or what they are producing now. [LB561]

SENATOR DIERKS: Well, I'm not sure that's right, Senator Carlson. I'm not sure it's more expensive. The thing is all based...the contract that they signed with the qualified owner, that contract takes into consideration all of the expenses: the expense of putting up the grid, the expense of buying the electricity. That's all included in the contract. And evidently they're able to make it work, otherwise they wouldn't let the contract be out there. So I'm not sure that that's really accurate about the cost to them. And the reason I think that they're trying to do it is they need the extra electricity. They have times during the year when they have to import electricity and there are times that they'd like to not be able to do that. There's another thing you haven't talked an awful lot today but that's the net metering thing. That happens in Minnesota, and near as I call tell, everybody is happy with it. I introduced the net metering bill, I think maybe, oh, 12-13 years ago, maybe 14 years ago, and didn't have much success. Well, neither has anyone else since, but there is one out there this year, I think, that may be useful. It's a start. [LB561]

SENATOR CARLSON: Thank you. [LB561]

SENATOR DIERKS: Sure. [LB561]

SENATOR LANGEMEIER: Senator Dierks, I have one question. And first of all, thanks to Senator Haar, we do have a net metering bill this year and hopefully we can count on your support on the floor and we'll get that passed here in a few days. You talk about no shortage of investors, and I just want to clarify that. First of all, you're a supporter of the Minnesota flip model. [LB561]

SENATOR DIERKS: Absolutely. [LB561]

SENATOR LANGEMEIER: Okay. [LB561]

SENATOR DIERKS: I think that's essential for the process to work. [LB561]



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SENATOR LANGEMEIER: Okay. But however, our C-BED law only states that 33 percent of the gross revenue has to go to Nebraskans, so it doesn't favor any model. Okay. My question is, is to your statement there's no shortage of investors. Are you talking about the 1 percent owners or the 99 percent investors in this project, or all of them? [LB561]

SENATOR DIERKS: No, I'm talking about the 1 percent, the 1 percent owners. And I could probably even offer an opinion on the...those people that are going to be the tax equity people. There hasn't been a problem finding them. I think John Hansen mentioned a few of them, the names of them, so I don't know if that would be a problem. [LB561]

SENATOR LANGEMEIER: Okay. [LB561]

SENATOR DIERKS: Well, there's a need for people to take advantage of their tax credits, and corporate America needs that. But I don't know. Maybe things have changed a little bit since this recession we're in, but time will tell. [LB561]

SENATOR LANGEMEIER: I have never experienced needing a tax credit so I don't know. [LB561]

SENATOR DIERKS: Neither have I, but... [LB561]

SENATOR LANGEMEIER: At this \$12,000-a-year job. Senator Haar. [LB561]

SENATOR HAAR: Well, I'd just like to say that my bill that's probably going to get through this year is really based on the work that you have done. It's based on the work that Senator Dubas has done. It's because of folks like you and Kate Allen who is sitting over there, working for years and years, that some of these things are finally coming to fruition and I want to tell you that I know that. [LB561]

SENATOR DIERKS: Well, thank you. I've had the opportunity to present an amendment to it but I think someone else might do that. [LB561]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. [LB561]

SENATOR DIERKS: Thank you very much, folks. I appreciate the time you're spending and the length of the day and it's good of you. [LB561]

SENATOR LANGEMEIER: You bet. [LB561]

SENATOR DIERKS: You've asked good questions. [LB561]

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SENATOR LANGEMEIER: We're hoping we just don't get snowed in here before this is done. (Laughter) [LB561]

SENATOR DIERKS: Well, if you stay here until Sunday, you might. [LB561]

SENATOR LANGEMEIER: Further testimony in opposition to AM769. Come on up. Thanks for your patience at 3:30 today. [LB561]

JOHN DITTRICH: (Exhibit 9) It's been excellent...excellent dialogue. I've really enjoyed what's gone on so far. Good afternoon, Chairman Langemeier and Vice Chairman Dubas and the rest of the committee. I'm John Dittrich, J-o-h-n D-i-t-t-r-i-c-h. I'm here to oppose what I believe are very negative structural changes to the Rural Community-Based Energy Development Act which was passed unanimously by the Legislature in 2007. I'm going to deviate substantially from my written testimony which I've submitted, and try to shorten it up while answering some of the questions in my testimony that have come forward, perhaps. And then I would certainly request that after this shortened testimony, that you relay some of your same important questions to me. I think I could provide some other alternative good perspective on some of the questions you've already asked. I'm vice president of the Elkhorn Valley Schools' board of education and I'm the Wind for Schools representative for our school. Elkhorn Valley Schools in Madison County was the first school in Nebraska to partner with the U.S. Department of Energy's National Renewable Energy Laboratory in erection of a small wind turbine. We were then the first Nebraska school to develop curriculum for 4th through 12th grade that teaches our students about wind and renewable energy. I'm president and the principal organizer of the local Tilden-Meadow Grove Community Foundation. I'm also a farmer from Madison County, operating a large irrigated grain operation in partnership with my brother, Keith. Our farming operation is heavily dependent on electric irrigation well service. In addition, I'm a longtime leader in the American Corn Growers Association, Nebraska Farmers Union, and the Organization for Competitive Markets. I am cofounder of the coalition for a Prosperous America, a national coalition linking domestic manufacturing and agricultural stakeholders, including Nucor Steel of Nebraska. I am very knowledgeable on C-BED financing structures. Ownership by Nebraska...under C-BED, ownership by Nebraska stakeholders can be accomplished with a very modest 1 percent down payment of erection costs, utilizing outside equity investors and federal production tax credit and IRS depreciation allowances. This financing structure is the major driver of wind energy development nationwide. And I just read that the driver of 95 percent of the wind energy development across the country over the last two years. In addition, the new federal economic stimulus package offers grants of up to 30 percent of a wind project, which can also help average Nebraska residents to participate as owners with very modest cash outlays. This is done over an 11- to 20-year time span, utilizing power purchase agreements with NPPD or our other public power entities. I think it's important to note

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that under C-BED project, many landowners will choose leases but that does not preclude Nebraska investors that in that area to be and participate as owners in that project. The option is there for both and we well recognize that leaseholders will be part of C-BED projects. The current statute does what I just described while maintaining our public power system, which I strongly support and which has provided farmers and other Nebraska residents low-priced power for many years. I believe that the LB769 amendment will set the bar much lower for outside wind energy developers to qualify for the benefits of C-BED which include carefully tailored exemptions from eminent domain law, which maintains the Nebraska public power system. In my view, this weakening of the statute will result in much less incentive for wind energy developers and outside equity investors to work with Nebraska residents, rural investors, local nonprofits, and local banks. I also believe that changes to the C-BED bill are deliberately intended by some supporters lobbying the Legislature to slowly weaken our public power system and replace it with outside utility and Wall Street-financed structures. In short, I suspect that the changes incorporated in LB769 are a long-term to benefit Wall Street, to the detriment of Nebraska Main Street. I would additionally make the following points. LB629 does not prevent or slow wind farm development in Nebraska. Developers simply have to offer the options in the C-BED language. Finally, I believe that Nebraska's huge wind resources, over time, can be developed to a point that power can be sold out of state. Outside Wall Street investors and large utilities know this and, in my view, would like to move away from the public power system, increasing rates to Nebraska residents and profiting from the sale of our natural resources to out-of-state users. Conversely, under the C-BED structure and the maintenance of our public power system, excess capacity sold out of state of by NPPD and our public power entities could be used to buy down the rates of Nebraska ratepayers. It would be sad that if after moving down the path of LB561, the Legislature would, in the future, have to justify higher electricity rates to Nebraska residents, when many knew the opportunity existed to maintain current reasonable rates. I guess I didn't shorten it enough. I went through the red light. I apologize. Thanks for the opportunity. I welcome questions. [LB561]

SENATOR LANGEMEIER: You did great. Are there questions? No questions. You're going to get let off fairly easy. Seeing no questions, thank you very much for your testimony. [LB561]

JOHN DITTRICH: Okay, thanks. [LB561]

SENATOR LANGEMEIER: You did a great job. Further testimony in opposition. [LB561]

JOHN DITTRICH: I either did really bad or really good. [LB561]

SENATOR LANGEMEIER: ...of AM769. Welcome. [LB561]

WAYNE FROST: Senator Langemeier, the rest of the committee, I think, in general, I

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know most of the people in here from previous situations that I've been involved in. I'm living in Lincoln at this present time. I haven't adjusted to living in Lincoln very well. In fact, I go back out to the ranch probably every other weekend to try and help my brother-in-law tag calves and move cattle and things of that...by the way, Wayne Frost. [LB561]

SENATOR LANGEMEIER: I need to have you do your name first. [LB561]

WAYNE FROST: Yes. Wayne Frost, W-a-y-n-e F-r-o-s-t. [LB561]

SENATOR LANGEMEIER: Thank you. [LB561]

WAYNE FROST: Sorry about that. [LB561]

SENATOR LANGEMEIER: Go ahead. You were tagging calves. [LB561]

WAYNE FROST: Yeah, I'm tagging calves. But the fact is, is that's where I got involved with the wind energy business in the first place. We had a large...fairly large ranch operation out there and it was in an LLC situation. And we sold it because my sisters is in at California and Minnesota and wherever, thought maybe we should do that. I was running the operation and I got to be 78 years old and they decided maybe I couldn't run it no more; I should go relax. Well, I've been on an 8-month vacation now since I've been in Lincoln. I haven't enjoyed it as much as most people think you should, but I still do it. The thing that...as far as a rancher out there, I, when they first started talking about wind energy, I tried to get all of my neighbors and whatever to get organized because we were in a pretty good wind territory. And later on, NPPD went out just north of where our operation was and set up a wind station there to check the wind availability in that area. And it is very good in the area. And so wind power is one thing and they also added a power line there that can carry some juice, which some of the areas do not have. And it has been the limiting factor as far as Nebraska has been, as far as expansion of wind. NPPD and OPPD and those don't have the demand that they need to build more wind in the state all at one time, you know, to go in and do like California put in. I have a nephew that lives by a 400-tower wind farm. That's a lot of towers. They aren't as big as the ones we've got but they're there. The fact is, then I tried to get this organized. Those people became interested and now they're working toward getting that one out there where they have the...NPPD already has the tower in. Now then I went to the State Fair and I went to the Husker Harvest Days and went in the booth and talked and answered questions for all the people who were asking about wind power, and I wasn't no expert but you become a lot better expert when you sit around there and listen to all the things that are happening to your neighbors or the other areas in the state. At the State Fair I seen people come in and they say, well, I just leased my farm for wind energy, and there's was an awful lot of salesmen out there, selling wind leases just all over the state. There are many of them, came in and talked to me about it. And

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the guy would say, well, I...and I says, well, did you sign it when he come? Yeah, well, I did. I says, well, I can't do you any good about giving you advice. You already did the damage. One guy had \$1,000 on his farm for a 57-year lease and he got \$1,000, period. Not a year, not a month, not anything like that. That's all he got. But he says, well, I was able to take the family out to dinner, whatever, and he thought it was pretty good. The next guy would come in and in one area he got \$1,000 and then he had an opportunity to lease his farm, and the neighbor come in just shortly after that and he got \$4,000 for the same deal. So those guys are salesmen. And so we need to be considering about what we're doing by allowing these really large operations like...not a one of them was a Nebraska company that was doing the leasing, and they all give me a card and...as they came by the booth, and I had a whole stack like that of all the people basically were outside of Nebraska. So I think we've got to be very careful. NPPD and the power company, public power, is extremely important to this state. And don't let anybody come in here and start playing with it because those boys got money, they've got big lawyers and then they make statements like we can't understand what we should be thinking about when we're going to look into the wind power thing. There are good lawyers in Colorado, or wherever, that allow that to happen. Just go get them. That's all I have to offer. Many of the other things I was going to talk about have already been hashed over 15 times, and just I'm hoping that you're listening. That's all. Thank you very much. [LB561]

SENATOR LANGEMEIER: You did a very good job. Are there any questions? Senator Fischer. [LB561]

SENATOR FISCHER: Thank you, Chairman Langemeier. Nice to see you again, Mr. Frost. [LB561]

WAYNE FROST: Thank you. [LB561]

SENATOR FISCHER: Under our current law with C-BED, we can't prohibit someone from out of state or even from out of the country from coming in and investing in a C-BED project. [LB561]

WAYNE FROST: I agree with that, yes. [LB561]

SENATOR FISCHER: Okay. I just wanted to clarify that for you. [LB561]

WAYNE FROST: And the thing about that though, however, don't give them extra incentives that they can come in and take away our local people, and that's what I think this amendment is doing, is taking away some of the incentives to use what we locally can do without bringing in people from Spain and Italy and the other countries. You know, my time is up and I don't want to mess up with what you... [LB561]

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SENATOR LANGEMEIER: You get new time answering questions. [LB561]

WAYNE FROST: Okay. Well, you see, my family goes to Denmark. We come from Denmark. And they went over there this year, and 99 percent of one part of that country is already wind power, and that's where all our...to do...to get the wind turbines and whatever built in the United States, I think is extremely important, because they're shipping them from Denmark and going to end up at Duluth, Minnesota, and unloading them and shipping them into New Orleans and unloading them, and running them all the way up here from those areas, to get into our area. And so we don't have the turbines available, like John said, a little while ago, that we're ready to go as soon as we are ready to go. And I think that's going to be a problem. We've got to have NPPD and OPPD deciding they've got their thumb on it. Let me keep their thumb on it. Don't let somebody come in here and mess them up. That's what I think. [LB561]

SENATOR FISCHER: I'm sure our power guys out here are thrilled to have you say, let them keep their thumb on it. So that's...you made their weekend for them by saying that. [LB561]

WAYNE FROST: Well, I'd like to do that for somebody. [LB561]

SENATOR FISCHER: Well, thank you very much. [LB561]

WAYNE FROST: Thank you. [LB561]

SENATOR LANGEMEIER: Thank you very much for your testimony. Further testimony in opposition to AM769. Welcome. [LB561]

JERRY STODOLA: Thank you. My name is Jerry Stodola, J-e-r-r-y S-t-o-d-o-l-a. I'm here representing the Independent Cattlemen of Nebraska. I'm a retired meatpacking executive with ranching experience in the Sandhills of Nebraska, and now since I retired two years and 401(k) and IRAs aren't in too good a shape, I am an investor. I'm going to...I had a lot of things that have been said already, but I'll just make few points. First of all, delaying action on these amendments or asking for that is not indicating a weakness in our position, but rather that of keeping the rules consistent to facilitate these community associations to develop LLCs and some of those associations I'm involved with currently. As an instate investor, we can then the security invest in the state and keep the money in the state. We can be assured that investments in these LLCs will not be affected by out-of-state interests and large conglomerates buying these businesses in nontransparent packages. My career in the meat business was affected by buyouts of companies where benefit packages, plant closings, and company cultures were changed without recourse. I grew up on a farm in Dodge County, Nebraska. Graduated from Midland Lutheran College and fulfilled my military obligations. And at that point in time, limited opportunities for instate employment were available. As a result, I had to

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live and travel in other areas of the United States for most of my career. I want to invest in Nebraska-based business entities and keep the money here. As a resident investor in one or more LLCs made possible by the opportunities of C-BED legislation as it now stands, I would be able to achieve profitable results to pass on to my children. In addition, in my opinion, legislative efforts should be focused on the development of the grid to accelerate state goals for wind energy development, a once in a lifetime opportunity for future generations. So in summary, I want to reiterate, I am an investor and I will invest in Nebraska LLCs. In my opinion, when you're looking at the pro forma and other things I have checked on, it's a bird nest on the ground. I mean , it is, and it's something that might not benefit me at my age but it's something my children will benefit from. And I sure would like to see the money stay in the small communities. Three weeks ago I went to a wedding in DeWitt, Nebraska, on a Saturday afternoon. And I arrived early so I drove through the town, and it was very depressing driving around that huge manufacturing facility that's no longer in operation. I've been affected by conglomerates. The cattlemen in Nebraska have been affected by conglomerates. And this C-BED legislation was fantastic for keeping the money in the state. Thank you. [LB561]

SENATOR LANGEMEIER: You did a great job. Very good. Senator Haar has a question. [LB561]

SENATOR HAAR: Thank you. Now I wasn't clear from your testimony, are you actually doing some consulting work on C-BEDs or you're actually a participant? [LB561]

JERRY STODOLA: No, I'm involved with various association development. First of all, you develop the associations to get these people together, and then from that point on that's when you go into setting up the LLCs. So I'm involved in a couple of those. It's kind of committees on committees getting things started because a lot of people seem to be concerned that it's not going fast enough. My opinion, knowing people throughout the United States, getting equity partner investment, it's not going to be the problem. And individual investors, Senator Langemeier, I won't have to buy a house so that I can go borrow money on to invest in these, because I think it's going to be restrictive on how many people you can get in there because it is a good deal. [LB561]

SENATOR HAAR: In fact, when I started flow-charting this for myself to really understand it, it almost seems too good to be true. [LB561]

JERRY STODOLA: Yeah. Um-hum. And things too good to be true usually aren't. And, you know, there will be more due diligence done on this, I think, before, you know, even like Mr. Hansen and, you know, there's a lot of study and things go into this thing. You know, there's things concerning warranties, insurance, and all of these things, and some people are concerned, after 20 years what happens? Do the windmills stop? Things like that. There's a lot of due diligence. And even on the pro forma, as you go into

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development, it's like I was involved in large corporations and we went to make studies to build packing houses in certain parts of the country. You know, you do pro formas and then you do due diligence, and that will be the case with all of these. [LB561]

SENATOR HAAR: And you're convinced that it really makes sense to do this. [LB561]

JERRY STODOLA: Yes, sir. I wished I could have spent more time on Dan Juhl the other night over at East Campus because people like that, you know, who have lived it, you can get a lot of information from. But on the other hand, there's the legalities and then there's just the pure accounting. I really don't...you know, not being a legislator or anything familiar with amendments and laws, I really don't understand what this amendment is. I just question any changes to what I think is a terrific piece of legislation you passed two years ago. [LB561]

SENATOR HAAR: Well, really basically, I mean, instead of 33 percent of gross revenue stream goes to the qualified owner, it's 33 percent minus the debt services goes...that's the difference. That's the only difference here. [LB561]

JERRY STODOLA: Yeah, and that's money going out of the state. [LB561]

SENATOR HAAR: Yeah, yeah. [LB561]

JERRY STODOLA: We need to keep it here. [LB561]

SENATOR HAAR: Thank you very much. [LB561]

SENATOR LANGEMEIER: Seeing no other questions, thank you very much for your testimony. Further testimony in opposition to AM769. Don't hesitate. Come on up. There are seats up front if other people want to start moving up if they'd like to testify. Welcome to the committee. [LB561]

ROY ZACH: (Exhibit 10) Yes. Thank you. My name is Roy Zach, R-o-y Z-a-c-h and I can offer three different perspectives on wind energy, basically. One, as the son of a small farmer from Platte County, Nebraska; second, as a graduate student at UNO who is writing a thesis on wind energy and will defend that thesis next Thursday; and third, from former experience working for an out-of-state wind developer. First off, I think I'll start off as with the experience of the wind development company that I worked for from Midland, Texas, who actually has an office here in Lincoln in the Chamber building. I was a GIS technician for them and I basically made maps of people's property who may be interested or may have property good enough for the development of a wind farm. In regards to that, when I was offered the job, they flew me down to their headquarters in Midland, Texas. And one of the things that was first put in front of me was a five-year non-compete agreement. They unfortunately did not tell me about this five-year



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non-compete agreement until they flew me down there. And so I have about four years left on that non-compete agreement, which is kind of a shame because I put about three or four years' work into a thesis on wind energy and I'm not even sure if I can get involved in that line of work again for awhile. As a graduate student, of course, wind energy has been a very important topic to me, and some of the things that really concern me is who is going to profit from this. You know, of course, we have the federal production tax credit, and without that wind would not be economically feasible in Nebraska at this point as far as I can tell. Another thing that goes along with it is I kind of had some, I guess, character differences or personality differences with the leasing agents, particularly with the supervisor that came up from Midland, Texas. At one point we had to go down to Kansas to go pick him up because a state trooper had stopped him. He had an unpaid fee...unpaid speeding fine, apparently, or some sort of fine in the state of Kansas. So we had to go down and pick him up and he had to fly back to Midland. Well, what concerned me was what one of the leasing agents told me about his upbringing. He said that his father had told him, if you're not cheating, you're not trying, which concerned me a bit. I really didn't want that style of thinking rubbing off on the Lincoln leasing agents. And, you know, even one of the leasing agents in Lincoln said something to the effect of, well, you've got to know how to sign the leases; you have to be able to charm the old ladies and you had to look the old guys in the eyes and tell them how it's going to be. Now, being the son of a small farmer, being raised with a conscience and a concept of integrity and values, I really had great difficulty in trying to reconcile this with my personal beliefs. Eventually it ended up with me being terminated because of these character conflicts with the companies. But I will be happy to entertain any questions about wind energy and the economics and the environmental effects that you may have for me. As I said, I've got three or four years sticking in this of research. [LB561]

SENATOR LANGEMEIER: Very good. Senator Carlson. [LB561]

SENATOR CARLSON: Senator Langemeier. Thank you for your testimony. How is it you signed a contract and didn't know that was in it, the no compete? [LB561]

ROY ZACH: The no compete agreement? Like I said, I was interviewed in Lincoln, about a 15-minute interview. Then they called me up and they asked me if it would be all right for them to fly me down to their headquarters in Midland for my first week of training. They did not tell me about this five-year non-compete agreement prior to them flying me down. So beings that they paid for my trip down there, you know, I was kind of wondering, well, are they going to pay for my trip back if I don't sign this compete agreement? And you know, I'm a college student and I didn't have much money. There's no way I could have came back paying for myself. So, you know, I was in a tough position. I just...you know, I kind of regret signing it now but what do you do? [LB561]

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SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: During all of this testimony, there's been some sort of anti-corporate talk. But to me it's not...corporations aren't evil or not. They're corporations and some have bad policies and some have very good policies, obviously. But we're talking about the most benefits of developing wind energy...first of all, we want to develop it...we want to develop our energy, and the second one, we want to keep as much benefit in Nebraska as possible. Have you had a chance really to look at the C-BED model and how that affects Nebraska? [LB561]

ROY ZACH: I have looked at it to some degree. What concerns me in the current amendment is the language that apparently will give more money out of state or out of country, whatever the case may be. You will notice that there are no developers in Nebraska, and I'm not sure why that is. But in regards to the language of the current amendment, it does not consider certain negative externalities. And what I mean by that is that wind turbines, if you site them in the wrong place, will have negative...it will have detrimental affects on certain people's health. Now, this is something that has come up in recent years as the turbines have grown in size. We didn't have these problems with the small turbines, say under 1 megawatt nameplate capacity. There just wasn't much of an issue with those. But as we get into these 2 or 3 megawatt turbine capacities, there are certain amounts of light flicker or shadow flicker, vibro-acoustical noise, whether it be mechanical or aerodynamic noise, and there are low-frequency vibrations. It is very difficult to account for those costs in developing, you know, a financial model for a wind farm. Really you just can't do it until the wind farm is in place, because only certain people will be affected by wind turbines. These tend to be people who have, like, autism, seasickness, or balance problems and certain other health conditions. So what we have here, if we have somebody prone to low-frequency noises, well, then they're going to have to go to a doctor and get some medication to try to assist them with overcoming some of these symptoms. [LB561]

SENATOR HAAR: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Senator Fischer. [LB561]

SENATOR FISCHER: Thank you, Chairman Langemeier. Thank you, Mr. Zach. I just wanted to clarify, you said you were a grad student, did you say at UNO? [LB561]

ROY ZACH: Yes. [LB561]

SENATOR FISCHER: And are you working on your M.A., Ph.D.? [LB561]

ROY ZACH: It is a Master of Arts in geography. [LB561]

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SENATOR FISCHER: In geography, and you've chosen for your paper to do it on wind energy, is that correct? [LB561]

ROY ZACH: What I was looking at specifically was the economic and environmental feasibility of siting wind turbines within the Loup and the Cornhusker Public Power District service areas. [LB561]

SENATOR FISCHER: And when do you anticipate getting your degree? [LB561]

ROY ZACH: I should graduate in March pending the successful defense of the thesis. [LB561]

SENATOR FISCHER: Great. Congratulations. [LB561]

ROY ZACH: Thank you. [LB561]

SENATOR LANGEMEIER: Are there any other questions? Seeing none... [LB561]

ROY ZACH: If I might add something. Of course you represent different parts of the state. Some of your districts are much more prone to this legislation than others. Now with the information at hand and knowing that there is not adequate legislation in place to protect certain citizens that may be prone to the effects of wind turbines, it is something that you may want to consider and read into. I have a copy of the report, I guess, that addresses these concerns. I only have one. Like I said, I'm a grad student. I don't have much money and its a 137 page report, so if I should leave that with you, I don't know. [LB561]

SENATOR LANGEMEIER: If you'd like to share it with us, just leave it with us. We'll handle the copies. [LB561]

ROY ZACH: That's fine. Thank you. [LB561]

SENATOR LANGEMEIER: Or we'll pass it around, we'll make it available some way. Thank you very much for your testimony. Welcome to the Natural Resource Committee, late in the day. [LB561]

GALE LUSH: Better late than never. [LB561]

SENATOR LANGEMEIER: That's what I always say. [LB561]

GALE LUSH: (Exhibits 11 and 12) I have a few handouts here. Senator Langemeier, Chairman Langemeier, I should say, members of the Natural Resource Committee, my name is Gale Lush. G-a-l-e L-u-s-h. I'm here to oppose LB769. I oppose LB69 for

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several reasons and I'd like to talk about three things in particular. [LB561]

SENATOR LANGEMEIER: Gale, can I stop you for just a second. Who do you represent, yourself, or a group or... [LB561]

GALE LUSH: Oh, I'm a member of the board of Farmers Union and I am a farmer from Wilcox, Nebraska. [LB561]

SENATOR LANGEMEIER: Thank you. [LB561]

GALE LUSH: Sorry about that. But three of the things I'd like to talk about is that the amendment waters down the local return to the qualified owners and that basically C-BED, the reason other people can't use it as well is because C-BED was written with the Minnesota flip in mind. And if I could be so bold, I would like to give an example of what could have been done with the Tenaska Elkhorn project and how it could have been done with C-BED, use the Minnesota flip. I'd like you to take a look at this handout, the Minnesota flip. A lot of you have already seen it, and also like you to take a look at this little poster here. It's basically a little algebraic equation. PPA divided by three is greater than a PPA minus financing. And the financing, as you look on your handout, is principal, interest, and other financing costs. And we don't really know what other financing cost is but it's in the amendment, LB769. Now under C-BED, 33 percent of the gross revenues, or the payments, goes to the local owners, to the local return. And under this present amendment, you're going to subtract off financing. Under this little paper here, the gross revenue is about \$19,995,000. If you look down a little lower where you have...the financing number that's amortized over ten years, there's a number of \$6.4997 million. This is for the Minnesota flip model that I have here, and I'd like to go through that a little later and build some foundation. But basically, when you subtract that off you have a decrease in revenue to the local owners of about \$2 million, about 33 percent decrease. Now on this, on this Minnesota example we've got a total amount investment of \$9.1 million and 50 percent debt, you can do that, it's all right, 50 percent equity. And another attribute that makes this project viable is that you not only get revenue from the utility but you get a production tax credit that's worth almost \$2.5 million for this particular project and about...and then you get a depreciation deduction that's worth about \$3.2 million for this particular project. But...and then the 1 percent local ownership is about \$45,000. And then the tax investor has a investment of about \$4.51 million. But...so what we think this amendment actually decreases the return so we're opposed to it. And I also said that C-BED works best with Minnesota flip and the Minnesota flip is nothing particularly new. It was...I see my time is almost up, maybe... [LB561]

SENATOR LANGEMEIER: Finish that thought. [LB561]

GALE LUSH: Okay. The Minnesota flip is not something that just came out of

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Minnesota. It was created by developers who want to finance projects. And the way they do it they find an investor, a tax investor, and the developer put up 1 percent of the equity and the investor would put up the rest. And the investor would get all the tax attributes because the developer usually didn't have enough money to use them, just as a local farmer wouldn't have enough money to use \$2.5 million over 20 years. So that's where it came from, and the reason it became the Minnesota flip is because Dan Juhl took this model and stepped out as the...and put the local owners in the place of the developer so the local owners are the ones that will have to put it to 1 percent investment and so they're able to buy these large projects just like developers used to do. That's how they financed them. And so that is probably why...and that is how the Minnesota flip was created. Now, I got to the thought, but I'd like to go on the Elkhorn project and how we would have done it if we would have had the... [LB561]

SENATOR LANGEMEIER: Somebody might ask you a question on that. [LB561]

GALE LUSH: Okay. [LB561]

SENATOR LANGEMEIER: I want to thank you. I want to ask you a question now. On this, this pretty much summarizes this whole thing. [LB561]

GALE LUSH: Sure. [LB561]

SENATOR LANGEMEIER: I guess, I could have handed that out earlier, but yeah, that summarizes the whole thing. What would be wrong with amending this amendment? That's what we do, we amend things and make this financing portion that they want to push onto the project only be the locals' financing portion? That would make this portion greater than this portion. [LB561]

GALE LUSH: True. [LB561]

SENATOR LANGEMEIER: If we pushed where, and we're going to use Tenaska because they seem to be the focal point here. What if we only let their 33 percent of their financing go to the project level and not the 67 percent from...was it Edison? That would make this side greater than that side. [LB561]

GALE LUSH: Well, that's what we're...that is the fear. [LB561]

SENATOR LANGEMEIER: So you'd support that? [LB561]

GALE LUSH: No, I would not. Because as you could make that financing larger, and there's different ways that you can do with different accounting tricks, if you push out the...if you amortize the project over 20 years, that actually increases, doubles the interest that is incurred. So the return would actually go down more. The best, the best

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deal for the local owner is the PPA divided by three. Anytime you start subtracting things off of here, you decrease the return. [LB561]

SENATOR LANGEMEIER: But if I only allow the subtraction of the local owner, he makes a big benefit, then he gets a third. I'll let you take that home and ponder it because that's going to turn this equal sign around. [LB561]

GALE LUSH: I'm not...I'm not following that. [LB561]

SENATOR LANGEMEIER: Senator Schilz. [LB561]

SENATOR SCHILZ: Senator Langemeier, thank you. Sir, thanks for coming in today. And I've had some of the same questions or things that Senator Langemeier is talking about. And I guess what I'd like to ask you about are opportunity costs. If you put cash into a system, right, into something, you're taking that opportunity cost that that cash could... [LB561]

GALE LUSH: Sure. [LB561]

SENATOR SCHILZ: ...same thing with financing. So what we're talking about here, is we're talking about a decision that could be made at the time of doing this that says, hey, you know, for our business plan, this makes sense. For your business plan, it may not. But from what I understand is that, that would be a true statement, wouldn't it? [LB561]

GALE LUSH: Somewhat. [LB561]

SENATOR SCHILZ: Somewhat or...then we could each make our decisions as to what the best business plan is to move forward. [LB561]

GALE LUSH: I think I know where you're going but, of course, the other issue is we're also trying to look at what gets the most bang for the buck. [LB561]

SENATOR SCHILZ: Absolutely. [LB561]

GALE LUSH: And the most bang for the buck for the local people and for rural development... [LB561]

SENATOR SCHILZ: In your model. [LB561]

GALE LUSH: ...is our model. [LB561]

SENATOR SCHILZ: No, in your model. That's what you have is the best bang for your

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buck according to your philosophies and everything else is the Minnesota flip, right? Now, if there's somebody else that would want to come in and do it differently, say do a C-BED project, however it is, and then have that whole project borrow the money, how does that cause a problem? I'm stuck...I'm just, I'm having a heck of a time getting my mind on this. [LB561]

GALE LUSH: Well, the problem is you change the rules for everybody when you amended the original C-BED legislation. [LB561]

SENATOR SCHILZ: We're not amending the C-BED legislation, yeah. [LB561]

GALE LUSH: Well, you're changing LB561 and that's going to be incorporated into the original legislation. It's going to change the outcome. [LB561]

SENATOR SCHILZ: The only thing that I can see, and tell me if I'm wrong here, the only thing that I can see where you could run into a problem is that at the end, just like Senator Langemeier was saying before, you may not quite get to that 33 percent over time because of financing costs. Is that correct? Because I'm trying to figure this out. [LB561]

GALE LUSH: Well, see, Senator Schilz... [LB561]

SENATOR SCHILZ: Otherwise, if you've got that in there... [LB561]

GALE LUSH: It's already in the Minnesota flip. [LB561]

SENATOR SCHILZ: I understand. [LB561]

GALE LUSH: We pay all the financing costs off. [LB561]

SENATOR SCHILZ: But what I'm saying, what I'm saying in the amendment, in the amendment is the only problem that I can see with this and C-BED the way the law is written now, is that you wouldn't actually...that 33 percent or whatever that's supposed to come back would be less than that because of this. [LB561]

GALE LUSH: Sure. [LB561]

SENATOR SCHILZ: Now that we can also change if we need to. If we have to...now that would be getting into C-BED, that's for sure. [LB561]

GALE LUSH: Well, we think it is. [LB561]

SENATOR SCHILZ: Yeah, well, it's not yet but if we change that to make that fit, then

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would it bother you? Because that wouldn't blow up C-BED. Instead of 33 percent, we say, hey, it's 33 percent minus financing charges. [LB561]

GALE LUSH: Well, we think that is reducing the return for the local owners because when you...because the financing in our model is taken out in the first ten years. [LB561]

SENATOR SCHILZ: Right. [LB561]

GALE LUSH: And then the next ten years the project is nearly, is paid for and so most of the return goes back to the local owners. [LB561]

SENATOR SCHILZ: Right. [LB561]

GALE LUSH: And that's how we complete, that's how we build up the 33 percent return. [LB561]

SENATOR SCHILZ: Right. Understandable. But in some instances, let's say I want to get involved in a project and I can't come up with the cash even if...whether it's a, for whatever the reason the project can't come up with the complete cash, but through leveraging we can come up with all that. [LB561]

GALE LUSH: Well, actually the Minnesota flip is one of their premier leveraging vehicles. [LB561]

SENATOR SCHILZ: Okay. Let me, let me...okay. I'm talking around in circles here. Here's the central point and I'll ask this and then I'll be done because I've completely confused myself. (Laughter) As I sit here and look at it and it gets back to that fundamental question. Now, I'm off the amendment again and I apologize for that. As you say, the project is paid off. Where did the majority of that money go to in ten years? To the equity investor, right? [LB561]

GALE LUSH: Well, the equity investor has 99 percent of the tax attributes, 99 percent of all the cash from the... [LB561]

SENATOR SCHILZ: So basically, the benefit for the first ten years basically goes to those places. [LB561]

GALE LUSH: Of course, and they pay off, they pay off the debt. They pay off the interest and we don't have any questionable things like other financing costs because we know that up front. [LB561]

SENATOR SCHILZ: Except that you and I, or let's say we're in this together, you and I



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and everybody else are now at year 11 with basically no equity in our pockets but a billion dollar, millions, hundreds of millions of dollar business that's sitting there running that we now are required to take care of, is that correct? [LB561]

GALE LUSH: But if you have it paid for, that's a good thing. It's kind of like having a farm paid for. [LB561]

SENATOR SCHILZ: But not if you have three towers go down and...I mean, I know what my farm runs like cash flow and everything and I don't have millions of dollars to go replace it. [LB561]

GALE LUSH: Do you buy insurance to cover some of your losses? [LB561]

SENATOR SCHILZ: Absolutely. But still...I know what you're saying. [LB561]

GALE LUSH: Do you do other risk management? [LB561]

SENATOR SCHILZ: I try. Usually, it hits me the wrong way. [LB561]

GALE LUSH: That's already incorporated in the pro forma. [LB561]

SENATOR SCHILZ: Okay. So now my question is, and I'm trying to think of this because I've heard of certain scenarios like this before where investors come in, build all the investment and then in a certain amount of time they're gone leaving that investment with the landowners to try to take care of. And what I'll tell you is that...and I'm not necessarily opposed to this, but it's something that everyone should think about and everyone should have the opportunity to say yes or no. But I look at some of the, you know, some of the hog lot construction that went on where everybody said hey, look, they're going to build these and then all of a sudden 20 years later they moved out and you've got dilapidated buildings, you've got everything else and according to people that I've talked to, that's not such a good thing. And analogous or not, this somewhat kind of looks a little bit like that from the outside looking in. [LB561]

GALE LUSH: Sure. [LB561]

SENATOR SCHILZ: And I am...and that's...and I think that's part of the trouble why it's, why I'm having a tough time figuring this out. [LB561]

GALE LUSH: Well, there is a revenue procedure, 2007-65. It requires that the developer, or in this case the local investors, have a 1 percent interest. It also requests that the tax investor has a 5 percent interest through the whole period of the development. So the tax investor has a incentive to make sure things get done right. [LB561]

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SENATOR SCHILZ: Sure. And I'm totally coming out of this just saying that I'm trying to understand this. I understand what you're saying about the business model, make sure you have the insurance in place and things like that. I understand what you're saying. But I'm still trying to figure out how does amendment affects that. So thank you, though. [LB561]

SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: Well, I was at the meeting the other night with Dan Juhl at East Campus, and wasn't one of the points I was trying to recall that, as the result of Senator Schilz's comments. His comment was sort of if people in the community own it they're not going to build junk or they're not going to keep junk around. [LB561]

GALE LUSH: That's true. That's very true and you're not going to have the NIMBY problem either. If there's...you're not going to have people that come up and say, we don't like the looks of it if they own part of it. That's a problem in Kansas now. I've talked to developers who had death threats because they don't allow this type of an investment in Kansas, so nobody has a stake in it. So there's no reason to support it. When you have...when the local people own the industry that you're working with, the land...whether it's land, a feedlot, or a hog lot, they're going to be a little more circumspect. And even like a hog lot, it's not going to smell as bad if you own it as if you just live by it. And that's the same way with these turbines. They look a lot nicer when you own them than if you just have to live with them. [LB561]

SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: Well, what I'm trying to figure out about it is, again, I'm assuming that LB561 is going to pass, that we're going to get rid of...or that we're going to allow public utilities to waive eminent domain for projects, because otherwise no huge investor is going to come in, period. So if you take away the eminent domain roadblock, it would seem to me that just about, even the largest developers could go C-BED. All they'd have to do is have, you know, one or more qualified owners each owning no more than 15 percent and then they would get the sales tax exemption. I mean, it would seem to me every big developer would come in trying to use the C-BED simply to get that sales tax...I'm sorry, exception, and there is another bill actually which I cosigned. (Laugh) I think Senator Dubas did as well. This is Senator Nordquist's LB455, which would provide for renewable energy sales and use tax credits and exemptions for eligible entities. It didn't get out of the committee. Because what this thing would do is allow sales, that sales tax exemption no matter which...what size project or who is doing the project. Anybody who did a renewable...so it seems to me that with this amendment, that just everybody would come in under the new C-BED amendment then because the extra goody they get is the tax exemption. And I feel that if huge companies come into

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this state, they ought to pay their way, you know. [LB561]

GALE LUSH: Sure, I agree. [LB561]

SENATOR HAAR: Does that make sense at all? [LB561]

GALE LUSH: Yes. I think...well, the reason C-BED, one of the reasons C-BED was passed was for rural development, because NPPD has a statutory duty to do rural development and they've done some of that already through ethanol development. So that's an important issue. And the other issue was I think explained by Mr. Hansen when he said if that we ran into a roadblock that the public power utilities could not waive contractually a right they had constitutionally. And so they had to have the law changed and the law was changed so that only C-BEDs could partner up with the public utilities. And so I think if you open the door and allowed anybody in and they, they would try to find some way of gaming the system and appearing to be C-BEDs just to get the abatement from sales tax. And eventually the investment would be huge and it might even be a, might even be a some kind of a danger to public power if the economic power got too large, once you allowed that nose of the camel under the tent, which is what we feel LB561 and this amendment is doing. LB561 allows the camel to get his nose under the tent and this reduces the amount of money that the local people get. It's pretty...the higher the financing, the lower the return. As under the Minnesota flip, most of the pro formas, we have you always pay the debt in the first ten years. Everybody, just about anybody can have debt if the debt, if the market is proper. Debt has to be cheaper than what the equity is. If you can't make, if you can't...if your return is less than the cost of the debt, you don't want to do the deal anyway, but generally the debt is less, so almost anybody can borrow money. [LB561]

SENATOR LANGEMEIER: Senator Fischer. No. Senator Carlson, you have a question? [LB561]

SENATOR CARLSON: Thank you, Senator Langemeier. Gale, let's go to this sheet. I just have two questions. The \$12,737 estimated annual return, that's based on the \$45,500 investment, is that true? [LB561]

GALE LUSH: Yeah, and that's for 1 megawatt. That's actually, if you'd have to divide the \$45,000 investment by five to get the 1 megawatt. [LB561]

SENATOR CARLSON: Okay. [LB561]

GALE LUSH: So it's over 100 percent return. [LB561]

SENATOR CARLSON: And the \$109,323 is the same thing, years 12 through 20 for megawatt. [LB561]

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GALE LUSH: Yes, you'd have to divide the \$45,000 by five to get 1 megawatt. [LB561]

SENATOR CARLSON: Now you and I have had conversations and I admire your technical understanding of this. And I struggle with the idea, so where am I wrong that on paper this is a good deal. It's too good and the amendment turns it around and makes it not a good deal. It's too much of a flip the other way. [LB561]

GALE LUSH: Right. [LB561]

SENATOR CARLSON: So where am I wrong in saying this Minnesota example is probably too good a deal. [LB561]

GALE LUSH: Well, one of the reasons it appears to be a good deal is because the federal government is encouraging green energy, green clean energy. And one of the ways to do this is to have a federal tax, federal production tax credit that people are able to use to set against their taxes. And when you couple that with the fact that this is a new industry and we haven't matured to the point where we've reeled everything into...or capitalized everything into the turbines or the land or the leases or whatever. Some day when people get more educated on this, land leases could be very expensive. Also, when we were at the top of this last cycle, turbines got very expensive. So the reason it appears to be a good deal is probably because the federal government is encouraging people to invest in this because we need it. I think last year we exported \$700 billion worth of our dollars to the Middle East and other people in the world who, most of who don't really like us. And we need to start getting more of our energy from home, so. [LB561]

SENATOR CARLSON: Okay. One other question then. So looking at this and listening to what you said and the government thinks it's a good deal and they want to encourage this, but as the information we have in Minnesota, they've only developed 120 megawatts over quite a period of time... [LB561]

GALE LUSH: Sure. [LB561]

SENATOR CARLSON: ...with C-BEDS. [LB561]

GALE LUSH: Well, there really wasn't that much development at all except for some larger out-of-state entities. And I guess the reason Dan Juhl started C-BED was, or community-based projects, was rather than take all the money, he thought the people who lived where the wind was, who owned the land, who had to watch the towers every day, they should be the ones that profit from it. And I can't dispute that. And I think also you could add in, I think the people who live in Nebraska and who can invest in one of these wind farms, a C-BED wind farm, they should be the ones who get first chance and

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not an out of...not a TradeWind from, which is the third largest utility from Italy. I think the money should stay here or as much of it as possible, but we shouldn't turn down any money if we can use it to leverage our own profits in the state of Nebraska. So we don't discourage that. [LB561]

SENATOR CARLSON: I don't argue that, but where Minnesota has had access to this for several years, why isn't there more development? If we've got an 80 megawatt project right now, we get one more 80, we've got 160, we're ahead of Minnesota and they've been at it for several years. What's wrong up there? [LB561]

GALE LUSH: Well, nothing. Actually, Dan Juhl just went public. He's got 4 and 40 megawatts, I believe, on his wind...on his Web site that are in the process of being developed so it's going gangbusters. And of course, when he put in his first wind farm there really wasn't that much going on. And when he put in his first wind farm, the state of the art was a 600 or 650 kilowatt turbine. Now we're talking about 3 megawatt turbines. So things have progressed quite a bit. I don't even know if his farm has flipped yet. It may have flipped. I think it's going to flip this year because it takes ten years. That's a long time. So...but all his machines are still up and running, doing good. And if it flips this year, then he'll start receiving the back ten years of profits and which is the part you want to be in. [LB561]

SENATOR CARLSON: Thank you. [LB561]

SENATOR LANGEMEIER: Senator Haar. [LB561]

SENATOR HAAR: Correct me if I'm wrong, but I believe that Mr. Juhl said that in Minnesota now they're working on some legislation that would kind of incentivize smaller C-BED projects... [LB561]

GALE LUSH: Sure. [LB561]

SENATOR HAAR: ...because he said very often they work with...may be better because they're community owned with smaller turbines, not the 3 megawatt and so on. And we're all over the place with this discussion so one of the ideas, and Senator Langemeier had outlined that for me, is that perhaps there is a level of wind production for huge wind farms that really aren't appropriately C-BED, and then there's kind of this middle for community C-BED. And then, of course, there's small wind with net metering, and so on. But if that's the case, my concern would be for those very big projects that we don't give away this sales tax exemption. [LB561]

GALE LUSH: Right. Well that and you can have a large project and a lot of development with C-BEDs. There's nothing stopping that. When we show farmers or we show anybody how this works, most people want to invest, and so, in one way or the other.

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And I know Chairman Langemeier was talking about mortgaging his house but he really, under C-BED you can't take the whole project, the whole \$9 million project. You can only have 15 percent. We would hope that you would share with some of your friends and family, but 15 percent would still only be \$6,750 and you wouldn't have to mortgage your house to do that. That would help. Maybe you would as a state senator. (Laughter) [LB561]

SENATOR LANGEMEIER: I would. As a state senator, I would. [LB561]

GALE LUSH: And I always support higher raises for state senators. I always vote for that. (Laughter) [LB561]

SENATOR LANGEMEIER: Senator McCoy. [LB561]

SENATOR McCOY: Thank you, Chairman Langemeier, and thank you Mr. Lush for your testimony this afternoon. Unless I'm mistaken, I believe a comment you made earlier was the first time in all the testimony in the 3 hours and 30 some minutes we've here this afternoon, in all the testimony on the underlying LB561. And that comment was that the original C-BED, LB629 legislation was written with the Minnesota flip in mind. Elaborate, please. [LB561]

GALE LUSH: Well, C-BED was born in Minnesota and the people who legislated or passed C-BED in Minnesota also did the Minnesota flips, because most of those people were also, started out as developers. And as I already elaborated on, revenue procedure 2007-65, which is a safe harbor created by the IRS two years ago to help developers know what they could do and what they could not do. And basically what they set out was that one of the minimums was they have to have at least 1 percent of the equity, and then that the tax investor has to keep at least 5 percent ownership through the entire period of the project's life. But so, when we talk about Minnesota flip being the best deal, it's because this is how those guys made their money for all these years, whether they were in housing, housing uses a similar type of thing. And the wind up until two years ago, they were just doing it...they never had an actual written ruling like they do now. They were just doing it because the IRS allowed it. And there had been some private rulings and they seen how it worked and it worked fine. And finally last year, we got some revenue procedures that actually set out that safe harbor so we know what you can do and what you can't do and still stay on the right side with the IRS. [LB561]

SENATOR McCOY: I guess my next question would be to you, do you agree with Mr. Van Dyke's assessment earlier this afternoon that different models could coexist in harmony under the C-BED legislation? [LB561]

GALE LUSH: Well, it depends what the state policy is. If you...if the policy of the state is

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to encourage rural development, then I don't know how it would be better to keep C-BED the way it is because that is probably...because, in order to encourage rural development, you have to keep the amount of investment required to buy one of these wind farms low for the regular...for an average person. Of course, before us average people knew about it, developers were doing it all the time and nobody cared. They just didn't tell anybody about it. But Dan Juhl decided that, as I said before, that the people who own the land where the wind is, under the lines, and they may have fought those transmission lines that go through their property many years ago, but finally it's going to pay off. They should be the ones who profit from the wind farm. [LB561]

SENATOR McCOY: Thank you. [LB561]

SENATOR LANGEMEIER: Seeing no other comments, I want to make one statement. In my five years in the Legislature, I've learned to determine whether people support things or not. And I can tell, the body very much supports C-BED because in our world when you call it C-BED they're supporting it. When you call it by LB629, usually means they don't like it. So as you hear us on a day-to-day basis make reference to past legislation, if it's by the number it's not good, and if it's by a name it's usually good. So I don't think there's anybody here that wants to damage C-BED. So thank you very much for your testimony. [LB561]

GALE LUSH: Thank you. [LB561]

SENATOR LANGEMEIER: Further testimony in opposition to LB6...or excuse me, AM769. Welcome to the committee. [LB561]

GRAHAM CHRISTENSEN: (Exhibit 13) Thank you, Chairman. Thank you for having me here. Thank you, Natural Resources Committee for giving me the opportunity to speak. My name is Graham Christensen, G-r-a-h-a-m C-h-r-i-s-t-e-n-s-e-n, and I'm here to represent myself and the interests of Nebraska residents. I guess my interest...and I've been with the Farmers Union for a while too, and I've got a lot of background stuff on what's going on here. But I guess a lot of my interests, you know, now are stemming from a possible project that we'd like to take a look at in my home county, Burt County, Nebraska. And we're following this legislation very closely with the developer that I'm looking forward to working with to see if it goes through. And I guess, we are scared to death that if this stuff goes through, then the 33 percent that the investors, the Nebraska investors are supposed to bring back to the community is going to be paid to these third-party financing, in the form of debt financing payments, which is defined as principal, interest, and then there's that unknown I'm not quite sure what it is. And principal and interest on this project, that's a, that's a big deal. And, you know, we've kind of run some mock stuff in our office just to figure out, you know, how much that would potentially, you know, take out of the 33 percent. And, you know, it's quite a bit from our basic configurations. So this amendment, in my opinion, puts us in jeopardy.

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The handout that I passed out is just regarding LB561. We've been asked not to talk on that but that just shows TradeWind, one of the testifiers that appeared on the original LB561 hearing, largest investor in TradeWind is the third largest utility in the world, which would, as a son of an REA guy and a big, you know, proponent of public power, when these types of private sector...not private sector, but worldwide multinational utilities set up shop in Nebraska and one of public power's strongest things and power is eminent domain, letting them set up shop that potentially, you know, jeopardizes that. But back to the subject. As far as the financing goes, I really believe that under the Minnesota flip structure, the tools are already in place, and that anybody can really invest if you just start to think about it a little bit. You've seen the...you've all seen the pro forma and, you know, it breaks it down in a 5 megawatt project and you take that divided by five, because you have to have investors only investing a maximum of 15 percent. And so all five, 1 megawatt apiece would be the investors in that project, which breaks it down to \$9,000 on the pro forma. So if that's still not doable, one of the qualified owners is actually a Nebraska-formed LLC. So with that \$9,000 which you've already broken it down to, you know, myself, and Senator Schilz because you've been asking this a whole lot today, my brother and my dad...you know, my brother could put down \$10, I could put down \$1,000, dad could put down \$4,000 and you can put down whatever you want, we can form this LLC as a qualified owner and anyone can already afford to invest in this so why do we need to bring in financing. And then as for the risk, the project is paid, you know, halfway through so that's gone. I mean that's already done. The project's paid off. You know the complications come with the, now come with the meeting the 33 percent requirement by law, but that's what the limited liability LLCs are for, which people would know a lot more about than me, and John Hansen testified on. And, you know, just to kind of leave you with my last point, when Dan Juhl came down here and presented, one of the things that he said regarding Nebraska and public power was that, you know, you guys have a huge opportunity as actually being the public in this cooperative structure. So on top of locking in long-term rates where we can keep our rates a lot lower, you know, as time moves on as the costs of coal go up, now we can actually invest in these projects and bring more money to our communities. And one final thought, we should be focusing on building landowner wind farm associations to get the investors organized to build a setup potential for C-BED, because these landowner wind farm associations would go perfect, especially is you're talking, you know, in some of these areas where we want to have massive land and want to do big development projects such as Cherry County, where we're seriously talking about trying to get one of those things set up to give Cherry County the best opportunity. But those things give all the people involved, not just landowners the ability to be able to invest in these kind of projects. So I think that if we do this right and put our heads together, we just have one of the greatest opportunities that our state has been given. Thank you.  
[LB561]

SENATOR LANGEMEIER: Very good. Are there any questions for Mr. Christensen?  
Seeing none, Graham, they're going to let you off the hook. Thank you very much. You



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did a great job. Further testimony in opposition to AM769. Welcome to the committee, late in the day. (Laughter) [LB561]

DIANE SCHROEDER: (Exhibit 14) Thank you. Yes, it is late in the day. Getting tired. [LB561]

SENATOR LANGEMEIER: Welcome. [LB561]

DIANE SCHROEDER: I am Diane Schroeder, D-i-a-n-e S-c-h-r-o-e-d-e-r, and I am here to represent the Nebraska Environmental Action Coalition. The Nebraska Environmental Action Coalition would like to join the many other concerned organizations and citizens across the state of Nebraska to voice its opposition to LB561 and AM769. NEAC continually works for a sustainable quality of life for all Nebraskans and is a big supporter of renewable energy such as wind energy in our efforts. However, we believe this bill and amendment seriously jeopardize Nebraska residents' common interest. It seems that there is a lot of potential for the common Nebraskan to seek ownership in renewable energy opportunities. If we lose ownership in renewable energy, then we lose a huge opportunity for Nebraska. Wind energy is one of Nebraska's greatest natural resources, so why would we want to give our ownership over to huge multinational electric utilities or large private sector wind developers that don't care about our people or our land? We should value this opportunity as Nebraskans to lead by an example for other states to follow by managing and caring for our precious...managing and developing our precious natural resources such as wind. LB561 would appear to open up a large crack that would expose our valuable publicly owned power structure. Giving these multinational utilities the chance to negotiate the power of eminent domain is a big deal that would allow these utilities to make inroads in our state and potentially try to take stake in our infinitely valuable renewable energy commodities, as well as undermine our publicly owned power structure in years to come. AM769 gives up our, part of our 33 percent profits to additional financing that is not needed using the Minnesota flip structure. That means Nebraskans are less likely to have ownership in these projects, which not only facilitates the loss of millions of dollars from our state, but takes away our ability to care for, manage, and seek ownership of our resources. NEAC asks that you take all of this into consideration as Nebraska moves forward in becoming a leader in wind energy development. Please do not let the biggest economic development opportunity of our lifetimes slip away to big money when Nebraskans can take ownership in this natural resource like never before, while keeping the money in the hands of Nebraskans and producing clean energy that helps our country shake the stranglehold of our dependence on foreign countries for energy. And I'm just going to give you a copy and it has some, along with NEAC members there are some other people who have signed on. [LB561]

SENATOR LANGEMEIER: Great. Are there any questions? Seeing no questions, thank you very much for your testimony. You did a great job. [LB561]

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DIANE SCHROEDER: Thank you. Thank you. [LB561]

SENATOR LANGEMEIER: (Exhibit 15) Further testimony in opposition of AM769? Seeing none. I do have a, I do have one letter from an individual at Beatrice, Nebraska, Gretl Jantzen. It will be spelled right if I didn't say it right. Thank you very much for your letter of opposition. Are there anyone wishing to testify in a neutral position? Come on up. Now we're going to get to the nuts and bolts of it. How can we tax this operation? (Laughter) Welcome. [LB561]

DOUG EWALD: (Exhibits 16 and 17) Thank you, Chairman Langemeier, members of the Natural Resources Committee. My name is Doug Ewald, that's D-o-u-g E-w-a-l-d, tax commissioner of the Nebraska Department of Revenue. I appear before you today to provide neutral testimony on AM769, to LB561, and to briefly summarize the history behind community-based energy development projects, also known as C-BED, and the applicable sales tax exemption. In 2007, the Legislature created a sales tax exemption for purchases of certain personal property purchased and used in C-BED projects. The Department of Revenue is required to ensure that purchases made for each project qualify for the exemption. In order to qualify for the exemption, the project owner must file an application with the department. The application, and that's one of the handouts that's being passed around is the actual application itself, this application must be filed by the project owner and must include the following documentation: organization of the project; the power purchase agreement; the project pro forma, which is the revenue and expenses associated with the project; the articles of incorporation of the project; all operating agreements; a copy of any letters sent to property owners setting forth their investment opportunities, this is required under statute; and the last item is all subsequent amendments or changes to these documents over the life of the project. If the project meets the requirements set forth by the statute, the Department of Revenue will issue the qualified, the project owner a certificate of exemption. In addition, the department is authorized to examine the actual payments made in accordance with the gross power purchase agreements to determine that the required 33 percent distribution is met. If the department determines that the 33 percent requirement is not met, or will not be met, the department may recover the amount of sales tax that was previously exempted on purchases of property used at the project. The department may pursue the amount of sales tax due up to three years after the expiration of the power purchase agreement. An example earlier, 20-year power purchase agreement, we would have 23 years in that situation. The department would also note there are two different definitions of debt financing in AM769. Project owners on page 2, line 3, versus qualified owners on page 6, line 19. With that, that concludes my testimony. I look forward to answering any questions you might have. [LB561]

SENATOR LANGEMEIER: Thank you very much. Are there any questions? Senator Haar. [LB561]

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SENATOR HAAR: Yes. On the second page of your testimony here, "a copy of any letter sent to property owners setting forth their investment." So if you take the two different people we've heard testify today and one is where early on in the testimony somebody just leased out there land for a turbine. This letter wouldn't be required of them. It's only if they're an owner, is that correct? [LB561]

DOUG EWALD: That's correct. [LB561]

SENATOR HAAR: Okay. [LB561]

DOUG EWALD: But that doesn't mean...I guess we could as well if...request that as part of the process if we felt we needed more documentation, but it's not required. [LB561]

SENATOR HAAR: And where my questions is going I guess would be, so if somebody is going to lease land for a turbine under the C-BED, would they have to be informed of the various models like you could go, you know, one way to do it is the flip model, another way is to do the way the Tenaska did it, or doesn't that have to be part of the discussion at all? [LB561]

DOUG EWALD: I don't see in the statute anywhere where that is required to be in any discussion with any potential investor. [LB561]

SENATOR HAAR: Okay. Thank you. [LB561]

SENATOR LANGEMEIER: Any other questions? Mr. Ewald, I have a question for you in your neutral testimony and I'm going to spring this on to you because I just thought of it myself. It's new to me too so we'll make it up as we go. If in our current example, and I'm going to give you some numbers. If you'd got a pen you might want to write this down. If... [LB561]

SENATOR HAAR: There will be a test, yes? [LB561]

DOUG EWALD: I assume there will be. [LB561]

SENATOR LANGEMEIER: There will be no test at the end, as long as I'm right. Ask Ken. (Laughter) Okay, if the power purchase agreement, let's say it's \$100,000. Okay. And we split that with 33 percent, we're going to call them Tenaska. I hate pinning this to them all the time but I'm going to. The 33 percent owner in this is Tenaska. So they get \$33,000. And Edison, using the same model, Edison over here at 67 percent makes \$67,000. That's today's world. Okay. And the idea of the amendment is to push all the financing up under the \$100,000 and take it out and then do my split, so it would be less than 33 percent. I'm not arguing that. So if we were to reamend our amendment and

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take this same example where we have purchase power agreement of \$100,000, and Tenaska over here finances \$7,000 and plus the principal and interest, let's say it's \$10,000 total. And Edison over on the other side finances \$400,000 to the project. And don't try and figure this all out because the percentages probably won't work. I used even numbers so my brain would work here. If we allowed the, only the 33 percent that Tenaska, the Nebraska ownership, to deduct their \$10,000 interest and principal out of the \$100,000 first, Edison is on their own with their \$400,000 but we let our Nebraskans deduct \$10,000. So now we have \$90,000 which gives the 33 percent to Tenaska which would be \$29,700 plus the \$10,000 of debt service we allowed on their side, they come out with \$39,700. And Edison comes up with \$60,300. Can we, as a state, allow our Nebraskans to push their debt into the program and not the other side? [LB561]

DOUG EWALD: You make the policy. (Laughter) [LB561]

SENATOR LANGEMEIER: I like your answer. No test. No test. I think we can reamend this amendment to benefit the local interest and still accomplish the goal at the end of the day. [LB561]

DOUG EWALD: You have that available to you, yes. [LB561]

SENATOR LANGEMEIER: Thank you. Senator Haar. [LB561]

SENATOR HAAR: One of the things I came across in trying to understand just the current legislation is that some people believe that eventually the whole project has to be owned by a "qualified owner" as defined. But to me, it seems that that's not the case. Within the C-BED, the current C-BED legislation there's a qualified owner and a nonqualified owner. Does this make sense what I'm asking? Because in the first argument, if it all has to be owned by a Nebraska qualified owner, I don't see that in the legislation. Do you as you look at it? [LB561]

DOUG EWALD: I don't see that in the legislation and it's another one of those situations where the Department of Revenue is left to interpret in some cases. [LB561]

SENATOR HAAR: And how would you interpret that? [LB561]

DOUG EWALD: Well, the way I'd interpret that is that you're right the qualified owners and the qualified owner is a Nebraska resident or entity owned entirely by Nebraska residents or a local community. So in that situation by default, you have to get a third of the payments to them so ownership by default is at least a third Nebraskans. [LB561]

SENATOR HAAR: In terms of the revenue. [LB561]

DOUG EWALD: In terms of the revenue and I think maybe by default ownership as well.

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[LB561]

SENATOR HAAR: So that's where I get real confused because I'm not sure it's included. In other words, I think even if we do nothing to it, in some respects the C-BED legislation needs to be cleaned up because ownership...that topic of ownership really isn't addressed in any other way to say that no less than 15 percent. [LB561]

DOUG EWALD: Right. [LB561]

SENATOR HAAR: Yeah. Okay. [LB561]

SENATOR LANGEMEIER: Any other questions? Seeing none. Thank you very much for your testimony. [LB561]

DOUG EWALD: Thank you. [LB561]

SENATOR LANGEMEIER: And spending your day with us. (Laughter) Further testimony in a neutral capacity? Seeing none, I'm waiving closing. So with that, we conclude the hearing for the day and I'd like to thank everybody that sat through this and participated. We appreciate your being part of it. (See also Exhibit 18) [LB561]

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Chairperson

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Committee Clerk