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Revenue Committee
January 21, 2009

[LB164 LB165 LB166]

The Committee on Revenue met at 1:30 p.m. on Wednesday, January 21, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB164, LB165, and LB166. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Mike Friend; Galen Hadley; LeRoy Louden; Dennis Utter; and Tom White. Senators absent: None. []

SENATOR CORNETT: (Exhibit 1) Good afternoon, and welcome to Revenue. My name is Senator Cornett, and I'm Chairman of the committee. I'd first like to start by introducing members of the committee. To my right is Senator Greg Adams from New York, from New York, from York, pardon me (laugh). Senator Mike Friend has not joined us yet. We have a new senator, Senator Galen Hadley; Senator LeRoy Louden, who's new to the committee also; Senator Dennis Utter; and Senator Tom White will be joining us later. And I'd like to introduce the Vice Chair of the committee, Senator Cap Dierks; legal counsel, Shannon; research assistant, Bill Lock; and Erma will be the committee clerk today. Before we get started, I'd like to tell everyone to turn off their cell phones please, if not, please turn them to vibrate. The sign-in sheets for testifiers are on the tables by both doors, and you need to complete...these need to be completed by everyone wishing to testify. If you are testifying on more than one bill, you will need to submit a form for each bill. Please print your name and complete the form prior to coming up to testify. When you come up to testify, hand your testifier sheet to the committee clerk. There are also clipboards in the back of the room if you do not wish to testify, but would like to indicate your support or opposition to a bill. These sheets will be included on the official record. We will follow the agenda posted on the door. Introducers or representatives will present the bill, followed by proponents, opponents, and neutral testimony. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, state your name and spell it for the record. If you do not spell your name, I will stop you and have you do that so we can have a clear record. If you have handouts, please bring ten copies of each of those handouts for the committee and staff; if you only have an original, we will make copies. You can give those handouts to the pages, and our pages today are Rebecca Armstrong and Elsie Cook. And with that we'll begin the Revenue hearing. Good afternoon, members of the committee. My name is Abbie Cornett, and I'm here to introduce three bills on behalf of the Department of Revenue. The first bill is LB164, and with LB164 I have letters of support that I would like to enter in the record from the Lincoln Chamber. I'm going to explain all three bills right up front, and then we will have Doug Ewald from the Department of Revenue come up and explain, with Richard Baier, how these...what these bills do. The first bill, LB164, is to change provisions relating to the tax incentive programs; LB165 will change revenue laws; and the third will change provisions relating to property tax. These are department cleanup bills and Department of Revenue bills, and with that I'm going to have Doug Ewald and Richard Baier explain how these work. Thank you. []

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RICHARD BAIER: (Exhibit 2) Good afternoon, Senator Cornett and members of the committee. For the record, my name is Richard Baier; the last name is spelled B-a-i-e-r. Since 2004 I've had the pleasure of serving as the director for the Department of Economic Development for the state of Nebraska. I'm here today in cooperation with Tax Commissioner Doug Ewald to testify in support of LB164. We're going to do a little tag team today, so things are going to be a little different than maybe we've seen in the past, and Doug and I will take questions together and be able to provide you with a better understanding. My job is to outline why this legislation and its various components are important to our state's overall economic development effort, and also to offer support for extending a few current programs and eliminate sunsets on others. First, I'd like to address two sections in LB164 that extend the life of both the Ag Opportunities and Value-Added Partnerships Act, which is better known as Value-Added Ag Grants, as well as the Building Entrepreneurial Communities Act, and in our office it's otherwise known as BECA because it's such a mouthful to spit out. But, both of these grant programs are administered by the Rural Development Commission, of which many of the members are in the audience today with us. This commission falls under DED for administrative and budget oversight. These two programs were created in 2005 as part of the Nebraska Advantage Package to offer more comprehensive growth initiative focused on opportunities in both urban and rural areas and in small and large towns across our state. Both of these grant programs have been successful, and we believe that extending them until 2015 will provide rural areas of our state, in particular, the guidance and commitment needed to stimulate additional innovative projects and foster regional collaboration. Section 1, page 2, of LB164 extends the Value-Added Ag grant program. Since the inception of this program, 70 grants have been awarded impacting a total of 62 counties. These grants require a match from the recipients, making the combined investment within Nebraska to just over \$3 million for this program, with \$2.5 million of that coming from the state of Nebraska. The innovative projects supported through this program emphasize the use of new equipment, methodology, and products to enhance our strong agricultural economy. Section 13 on page 34 of the bill extends the second program, the BECA program, until 2015 also. This program is responsible for injecting over \$2 million into our rural Nebraska communities, of which \$770,000 has come from grant recipients. These funds have been used to assist rural communities with important things like business assistance, entrepreneurial training, leadership development, the creation of endowments, and more recently, new resident recruitment to our rural communities. In 2007, LB232 amended this program to lessen the cash match from 100 percent to either 50 percent or 25 percent, depending on the ability of the certain applicants to offer matching funds. That change has helped many of our communities pursue this grant; has led to increased demand and higher-quality projects. This program has impacted 91 communities in the 64 grants that have been awarded. LB164, switching gears, also proposes to eliminate the sunset provision for two of the six tiers of the Nebraska Advantage Act, as well as the sunset on the Research and Development Act and the

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Microenterprise Tax Credit program. Tiers 1 and 3 of the act in the R&D program are set to sunset on January 1, 2011. The Microenterprise Tax Credit expires one day before that, December 31, 2010. Since the Nebraska Advantage Act's inception on January 1, 2006, it has stimulated significant private sector capital investment and created new job opportunities in our diverse industries across the state. The program is responsible for the creation of over 15,000 new jobs in our state and over \$5.3 billion of new capital investment. Every corner of the state has seen success as a result of these programs, from Chadron to Falls City, and Omaha to Beaver City. Likewise, the R&D credits have helped increase private sector research across our state, and demand for the Microenterprise Program is so strong that the state routinely commits all available funds in a very short period. Whether the economy is strong or struggling, as it is now, companies look for efficient ways to manage their resources and innovative ideas to maximize their profits. Nebraska needs, now more than ever, to be vigilant of opportunities to expand and diversify our tax base. While I recognize the policy implications of removing program sunsets, I also know that current statutory sunsets make our program more difficult to market and sell outside of our state's borders. Existing companies look at expansion decisions. New companies and site consultants considering long-term investments, and entrepreneurs that covet a stable and supportive environment in which to do business, need stability, predictability, and dependability. It is important to note that it can easily take 6-18 months to secure an economic development relocation project once we've made initial contact. Likewise, many of our entrepreneurs take years to plan and implement their first ventures. The current program sunsets create doubt and uncertainty about Nebraska's long-term commitment to growth. At a time when unemployment is on the rise in our country and new questions linger daily about the health of our country's economy, now is not the time to create additional uncertainty within our business development programs. To sum it up, in 2005 when the Legislature crafted LB312, they included these sunset provisions to ensure that there was an exit strategy should Nebraska Advantage experience limited successes. I think, and I would think you would agree, that, judging by the numbers of success stories of LB312, the Nebraska Advantage, it has become very important to eliminate these sunsets to ensure that our development efforts move forward without speculation and uncertainty that currently exists in our environment. At this point, I would be happy to take questions, or I would be happy to turn it over to Commissioner Ewald and then take questions following that. [LB164]

SENATOR CORNETT: Why don't we go ahead and see if the committee has any questions for you? Senator White. [LB164]

SENATOR WHITE: I have a series of questions. First of all, the sunsets were put in place for reasons, so that, in fact, these would be reevaluated and determined whether or not they are a good investment. What, if any, studies have been done comparing the amount of new jobs, what they pay in tax revenues in these particular programs as opposed to other similar programs? [LB164]

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RICHARD BAIER: Sure. [LB164]

SENATOR WHITE: Have there been internal studies of those and, if so, have they been... [LB164]

RICHARD BAIER: We have looked at all of the different tiers. The one, probably, in light of the economy, that's seen least demand is the jobs-only tier. Just kind of where we've been since 2005, we've seen a slowing of the economy. The other tiers have seen significant investment, especially the one-in-ten tier. We'd be happy to show you the numbers; we didn't bring them with me today, Senator, but I'd make sure that you have them in terms of breakdown by tier: who's applying, who's not, and to show you the kinds of impacts that we're having. [LB164]

SENATOR WHITE: It's not so much who's applying or how much... [LB164]

RICHARD BAIER: Um-hum. [LB164]

SENATOR WHITE: ...it's how successful they have been at creating jobs... [LB164]

RICHARD BAIER: Sure. [LB164]

SENATOR WHITE: ...that paid livable wages... [LB164]

RICHARD BAIER: Sure. [LB164]

SENATOR WHITE: ...and generating additional sales tax, additional income tax... [LB164]

RICHARD BAIER: Absolutely. [LB164]

SENATOR WHITE: ...back from the gift. Have there been any studies showing the economic benefits back to the taxpayers from the state of Nebraska comparing these particular programs that you ask the sunsets to be removed on... [LB164]

RICHARD BAIER: Um-hum. [LB164]

SENATOR WHITE: ...compared to other available programs? Because if we can spend this money... [LB164]

RICHARD BAIER: Um-hum. [LB164]

SENATOR WHITE: ...in a better situation, get a better return, that's the point of a

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sunset. [LB164]

RICHARD BAIER: Sure. [LB164]

SENATOR WHITE: And I'm just curious whether or not there have been internal studies giving economic justification to these plans. [LB164]

RICHARD BAIER: Senator, the things that we look at...and I'm not sure what the other programs you are comparing them to, we do compare them to other states on a frequent basis to know kind of where we sit compared to other states, tier by tier. Again, we'd be happy to sit down and I can just walk through those with you. I don't have it with me, but we do that for a lot of our projects. I was on the phone this morning with our Northern Noble Energy Company trying to look at, where do our tiers fit in comparison to other states, to know what it looks like. [LB164]

SENATOR WHITE: And you do have that information... [LB164]

RICHARD BAIER: Yeah. [LB164]

SENATOR WHITE: ...and can make it available to the committee? [LB164]

RICHARD BAIER: Absolutely. [LB164]

SENATOR WHITE: The other thing then, is some we had last time started tying these to actual creation of jobs... [LB164]

RICHARD BAIER: Um-hum. [LB164]

SENATOR WHITE: And we also start putting clawback or recapture provisions in... [LB164]

RICHARD BAIER: Um-hum. [LB164]

SENATOR WHITE: In the plans that you ask for the sunsets to be lifted, do they have job...minimum job requirement... [LB164]

RICHARD BAIER: Yep. [LB164]

SENATOR WHITE: ...corrections, and do you have clawback as part of those... [LB164]

RICHARD BAIER: Yeah. [LB164]

SENATOR WHITE: ...plans that you're asking that the sunsets be lifted off? [LB164]

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RICHARD BAIER: I believe the clawbacks are in all the provisions, I'd have to go back and just make sure, but I'm sure that we've done that...actually, clawbacks have been part of our policy from a state perspective since 1987. We were one of the first states in the country to adopt what would politely be referred to as clawbacks; but what we call recapture provisions... [LB164]

SENATOR WHITE: And they're all...all these programs have those in place? [LB164]

RICHARD BAIER: I think so. Doug, in all the tiers? I'm just making sure on the data, but I'm sure that they do. [LB164]

SENATOR WHITE: And do all of them have some kind of component that they have to create secondary jobs? One of the original criticisms of the tax incentives were, we could have massive amounts of investment and no jobs. [LB164]

RICHARD BAIER: Right. [LB164]

SENATOR WHITE: And we wouldn't catch any property tax, we wouldn't get any sales tax. [LB164]

RICHARD BAIER: Right. [LB164]

SENATOR WHITE: And as a matter of fact, the first level of the Tax Advantage Act really did that pretty successfully; a lot of big investments were just investments without a lot of jobs. Do these require jobs and secondary economic activity? [LB164]

RICHARD BAIER: Right. Everything but Tier 5 would require minimum job creation levels. Tier 5 would be investment only and benefits would be significantly reduced under Tier 5; we would not pay out the kinds of benefits that you would see in the other tiers of the act. [LB164]

SENATOR WHITE: Now is Tier 5 being...are you asking that that sunset be taken off? [LB164]

RICHARD BAIER: Yeah, that would be one that was in there already...that was in there, yep. [LB164]

SENATOR WHITE: All right. And what's the annual cost on Tier 5 in lost revenue? [LB164]

RICHARD BAIER: I don't have those figures, Senator, I'd have to go look at the number of applications. And again, it depends on whether you look at it as lost revenue or if it's

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an issue of not capturing new growth as opposed to lost revenue. [LB164]

SENATOR WHITE: Okay. Thank you for your time, sir. [LB164]

RICHARD BAIER: Um-hum. [LB164]

SENATOR CORNETT: Seeing no further questions, thank you. [LB164]

DOUG EWALD: (Exhibit 3) Chairwoman Cornett, members of the Revenue Committee, my name is Doug Ewald, E-w-a-l-d. I'm the Tax Commissioner with the Nebraska Department of Revenue. And I guess before I start here, Senator, there is...Senator White, there is a brochure the Department of Economic Development puts out--I think it's in some of the stuff we're passing around here--that talks about the specific tiers and the required investment and employment. For example, in Tier 5, which Richard spoke to, that's the investment only, but you have to maintain employment; you cannot reduce your employment with respect to that particular tier. So there's a lot of data and detail out there on our Web site, or we're able to provide you with whatever you need. There's recapture in all the tiers if you don't maintain them, and that's one of the provisions you'll hear me talk about later on, is kind of a consistent recapture between the different incentives, but that's actually in another bill anyway, so. We do a significant amount of auditing with respect to all the incentive programs, and we have a...if recapture is appropriate, then the company can go into recapture, so, because they haven't maintained the minimum requirements to achieve benefits under the particular incentive program. As Richard alluded to, Nebraska is a little bit unique in it requires employment and investment, we're just not writing blank checks. Many states have done that in the past, so with respect to that we can get you more information. On my testimony that I've handed out here there's specific detail with respect to the different programs that Richard spoke about, and that's really in pages 2-5, and it talks about the different programs. Nebraska Advantage: the number of applications, total potential investment, total potential jobs created by year; the same thing for Nebraska Advantage Research and Development Act, Nebraska Advantage Microenterprise, that's the small business. So those...that's data that we thought was useful, that you might find some value in that I recall in prior years you asking...the committee asking for that, we having to provide it after the fact, so we thought we'd provide it to you up front this time around. To start my testimony, Section 2 specifically changes the time period in which credits are approved for the Nebraska Advantage Rural Development Act from a fiscal year to a calendar year. Why are we asking for this? It's really quite simple, most taxpayers are on a calendar year. And the current program...there's \$4 million available; there used to be \$3 million: Senator Dierks was largely responsible for that increase beginning in the 2009 year going from \$3 million to \$4 million. In that particular program, you can see we've had a significant number of applications, and investment, jobs, and the credits authorized under each of those programs. Programs started in fiscal year 2006/2007 and it got about halfway there to the total credits that were authorized, and the next two

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years maxed out with the credit, so it's been a popular program from that standpoint. Section 3 amends the Nebraska Advantage Act to allow employees working at military installations to be included with employees employed at a project if the employee's work is interdependent with the work performed at the project. Today, under Nebraska Advantage there's an exemption for teleworkers that are interdependent with the project that's going on; we're trying to give that same latitude to people working at military installations. Today, businesses are precluding from listing military installations as a place of business in their project; that is not a valid project location. So this would say okay, if you have somebody working there that's interdependent with what you're doing as a company, we're going to allow you to keep that employee, it has to be a W-2 employee, as someone who has a job you potentially created or brought to the project. Many of these people are required to be on site because of security reasons, they need to do their work at Offutt or wherever else it might be, so. This is not an expansion, it's really identification of the current day work force. Section 4 amends the definition of qualified businesses under Nebraska Advantage Act to help applicants better utilize, and the key here is utilize, the available benefits provided under the various incentive programs. And basically, today, businesses in which 80 percent or more of their sales are to the ultimate consumer do not qualify as a qualified business under the Nebraska Advantage Act. Nebraska Advantage specifically excludes retailers; we never wanted to incent retailers, and that does not change in this particular amendment. Basically the amendment says that: qualified business activity now includes businesses in which 75 percent or more of their revenue is derived from sales to people or businesses outside the state of Nebraska or to unrelated consumers. So if somebody's not going to set up a retail operation in an area if they don't plan on drawing from the area...this is the distribution, the wholesale companies, the catalog companies that would potentially, or do qualify today that make sales outside the state of Nebraska. So these are already qualified business. This 75 percent coincides with what we currently have there with respect to the sale of software and those type of services to ultimate consumers, so this here really allows companies to better utilize their benefits once they've earned them. Section 5 allows applicants to amend down to another tier if the project is consistent with the purpose of the act, and specifically, you can amend down today--you can't amend up. We ran into an issue last year...this relates specifically to Tier 6, this is Nebraska Super Advantage. If you recall, or those of you who were here last year, Tier 6 under Super Advantage, basically any business can qualify, other than retail. So there's no limitation on the type of business may qualify; the other tiers have specific qualifying businesses. So with respect to this amendment, we will allow people to amend down from a Tier 6 to a Tier 4 if that project meets the definition of the lower tier. And for example here, if we had a law firm: could qualify under Tier 6, but they're not a qualifying business under Tier 4, for example, so they would not be a qualifying business; wouldn't be consistent with the application or with the act, so in that particular situation they wouldn't be able to amend down. Companies usually aim high, and if they're unable to achieve certain levels this allows them to amend backwards; it seems, achieve some sort of level of benefits that are consistently enforced with respect to the

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act itself. They're not redefining the projects: they have an application on file; that application does not change, that project definition is out there. So you'd be able to amend from a Tier 6 to a Tier 5, a Tier 4, 3, or even 2. Section 6 does two things: number one, it stabilizes the investment index. In the last year we've seen a lot of crazy price fluctuations, with respect to gasoline, for one. Investments under Nebraska Advantage are indexed annually: Expected investment is based on the year of application and remains constant for the life of the project. Index is based upon fluctuations in commodity prices from month to month, and the index is sensitive to changes from one month to the next. What this would do is basically allow us to average the changing commodity prices over a 12-month period. So if you look at the little chart at the bottom of page 10, if you have that, you can see under Nebraska Advantage what the required investment was for 2008, and then 2009 based on when we did it with the one-month average in there--and you can see, like, Tier 5 would go from \$31 million to \$36 million. What we're proposing here is to allow us to reset those looking at a 12-month average for the past year, looking at a historical perspective, and use that to kind of average out any major swings that you might see over the last year; so really a 12-month average. Those investment levels would be reset accordingly as you see in the table there. Section 6 also deals with an index adjustment with a...specifically to Tier 6. Last year, we put Tier 6 in: its inflation adjustment goes to 2006. It's two years prior to when the law actually came into existence, so because of that you see some major leaps when you have to go back and index forward three years instead of one, to what that did to the index. So we're looking at an increase of...from \$100 million...\$10 million or \$100 million to \$12 million or \$122 million in 2009 if we don't go back and restate it based on 2008 forward. So it would go from...through \$10 million and \$102 million in that particular situation, so it allows us to, basically, establish the base based on when the project, or when the law, came into being. Section 7 corrects an error included in LB895 last year, Super Advantage, adopted during a 2008 Legislative session. We allowed employees to...or employers to earn credits against all employees hired after the base year. But we said you could only utilize them against those people that were the high-end, high salaries. Well, we give businesses a mechanism to earn them, but we didn't give them equal footing on how to utilize them. So what this does is basically it says, we're going to allow you everything; we're going to match up the earning with the utilization. So we have apples to apples; you can earn them against these employees, we're going to let you use them against these employees. So it was an oversight on our part, it wasn't intended in LB895. Any fiscal note was included in the prior year, in last year, because that was the intent of that particular legislation, and like I say, it was really a matching...to match the earned credits with the way...how a business is able to utilize them. Section 8 amends the Nebraska Advantage Act to include a uniform recapture provision between the different tiers, and with respect to that we have projects that are 7-year lives; we have projects that are 10-year lives; and currently the law says one-seventh. So if you have a...under Nebraska Advantage, for example, Super Advantage, you could have an issue where somebody qualifies in year one, they don't qualify for the rest so they would have

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nine-sevenths recapture. Well, the math doesn't work there, so we...they are asking for a uniformity with respect to recapture equal to whatever type of tier they fall under today, so where there's one-seventh, one-tenth...something along those lines. And Section 9 and Section 12, and now this will conclude my testimony, basically it prohibits interest payments today. We don't allow interest on any refunds, and basically what this would do, it would bring Nebraska Advantage Research and Development Act and the Nebraska Advantage Microenterprise Act in line with the other incentive programs we have that, basically, on any sales and use tax refund claim, the department where their state does not pay interest, we're required to turn these things over within 180 days so we don't pay interest in that particular situation. And this would match these two particular programs up with what the other programs are today. So with respect to that, I'd be more than happy to answer any questions you have. [LB164]

SENATOR CORNETT: Senator White. [LB164]

SENATOR WHITE: Commissioner, could you tell the committee what the fiscal impact is, on an annual basis, of the proposed changes? I mean, if we let the sunsets in place, how much more revenue would the state realize? As you know, we're in tougher economic times; we have a lot of people asking for new tax breaks. One of the things this committee is going to have to do for the rest of this year is to compare those requests to these requests, and in approving this, we're necessarily selecting the programs that we believe are in the best interest of the state. Not everybody here has a history of what these programs did, or what they cost, or what we get out of them. So what I'm asking is, as a starter, how much revenue do we give up in the years going forward if we get rid of or extend these sunset provisions? [LB164]

DOUG EWALD: Yes, Senator, and some of the tales...the best thing I can do here is probably refer to what we paid out on a...most recently here. For example, Nebraska Advantage...the Research and Development Act set to expire on January 1, 2011, it shows in 2008 approximately it was a \$2.2 million program; in 2007 it was only \$70,000. So more people have taken advantage of that. So to say that...if 2008 is our current benchmark, if you will, if the activity stays the same, that could be the potential cost on a go-forward basis if 2009 and future years are identical to what businesses are doing in...did in 2008. Now... [LB164]

SENATOR WHITE: Has your department put together, or can it put together, a brief memo saying, this is what it will cost in revenue if you do as we ask and extend the sunset; this is what we predict. Could you put that together? [LB164]

DOUG EWALD: Sure, we can do a projection on that based on the years after which these would sunset, or when they sunset. Absolutely, we can do that. Microenterprise Tax Program, it's a \$2 million or \$3 million program. Every year we've always filled that. It has not ever been utilized in its entirety. So that's what we have with respect to that,

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and the same thing with the Rural Development. The first year was \$1.5 million; \$3 million the next two years; this year, 2009, we're just getting into it here. I will say this with respect to the Microenterprise Program: we usually spend...that money is usually accounted for early on. It's usually gone on January 2. Not the case right now, not the case at all. So right now we've received 183 applications for a total requested credit of \$1.3 million. So last few years, January 2, we've been out of money, and maybe this is indicative of the current economy. [LB164]

SENATOR WHITE: But in total, this bill, we're probably looking at a \$6 million, \$7 million, \$8 million a year fiscal impact if we pass this right now. [LB164]

DOUG EWALD: Right. Beginning in years 2011 and there on out there is a cost to that, absolutely, but it's out there in those future years. [LB164]

SENATOR WHITE: Thank you for your answers, very much. [LB164]

DOUG EWALD: We can, if you'd like, we'll put something together for you if you'd like. [LB164]

SENATOR WHITE: I would appreciate that. [LB164]

DOUG EWALD: Okay. We can do that. [LB164]

SENATOR HADLEY: Senator Cornett, Commissioner Ewald, on page 3...I just...being new and everything I just have a quick question. We talk about potential jobs created and total potential investment in 2006, 2007, 2008. Are there any actual numbers? [LB164]

DOUG EWALD: Yes. [LB164]

SENATOR HADLEY: You know, when you use potential...I'm just curious where... [LB164]

DOUG EWALD: Um-hum. [LB164]

SENATOR HADLEY: ...you know, a couple, two or three years down the line... [LB164]

DOUG EWALD: Yes. [LB164]

SENATOR HADLEY: ...and we're still using potential... [LB164]

DOUG EWALD: Right, no, good question, Senator. And this is based on, when somebody files an application, they say we plan to invest X and hire Y... [LB164]

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SENATOR HADLEY: Um-hum. [LB164]

DOUG EWALD: ...that's their plan. And obviously, they have to meet the minimums for that particular tier in order to qualify. Now, we do an annual report to the Legislature, and that's on our Web site, we can get it to you if you'd like, but basically it says, okay, these are the applications that we received for investment and then this is what we approved in the last year, as well as this is what we recaptured in the last year. This is how much we paid in sales and use tax refunds. All that data is out there in aggregate on our Web site. If you would like, though, we can provide you with a copy of the report, though, we have a copy. [LB164]

SENATOR HADLEY: Okay. Just so I understand, you're saying that, for example, in 2006 the potential is 8,719 jobs, but it may not have been that. [LB164]

DOUG EWALD: Correct. Well, and you, what you have to realize here is that that's an application we received in 2006. Those jobs were going to occur over a period of time, up to seven years... [LB164]

SENATOR HADLEY: Um-hum. [LB164]

DOUG EWALD: ...in some instances. [LB164]

SENATOR HADLEY: Okay. [LB164]

DOUG EWALD: So there may be some that are partway there--gone up, gone down. There is an annual reporting requirement that's due to the department with respect to where they stand with their respective projects. [LB164]

SENATOR CORNETT: Seeing no further questions, thank you. [LB164]

DOUG EWALD: Thank you. [LB164]

SENATOR CORNETT: We will start with proponent testimony for LB164. [LB164]

RON SEDLACEK: (Exhibit 4) Good afternoon. My name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here today representing the Nebraska Chamber of Commerce and would be somewhat brief in my remarks. You've heard the technical explanations from those at the Department of Economic Development, as well as the Department of Revenue. We have, on our own, reviewed the legislation and we would lend our support and actually have a letter of support to pass along to the members of the committee on behalf of the Nebraska Chamber of Commerce. We support the concepts, particularly the clarifications, as well as the stability that would be provided with the passage of

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LB164. And I will also submit to the committee letters from...in support from the Greater Omaha Chamber of Commerce as well as the Nebraska Economic Developers Association. And with that, that will conclude my testimony. [LB164]

SENATOR CORNETT: Thank you, Mr. Sedlacek. Questions? Seeing none, thank you. [LB164]

RON SEDLACEK: Thank you. [LB164]

SENATOR CORNETT: Next proponent. [LB164]

KARL ELM SHAUSER: (Exhibit 5) Good afternoon. My name is Karl Elmshaeuser, K-a-r-l E-l-m-s-h-a-e-u-s-e-r. I represent the Rural Development Commission, which we probably have over a dozen different individuals from the Rural Development Commission here today. Chairman Cornett, I appreciate your opportunity for this, and committee members as well. I also have a copy of our annual report. Specifically, I'd like to speak on behalf of the BECA, Building Entrepreneurial Communities Act, and the Value-Added Ag Act. Having the opportunity of being on the commission, reviewing the applications...it is making a difference for us in our communities, having these tools available to these communities to exercise these programs, so we would request that you would reauthorize this bill. [LB164]

SENATOR CORNETT: Senator Adams. [LB164]

SENATOR ADAMS: You said that it's making a difference in rural communities. Can you give me an example of a community and the kind of business this assisted? [LB164]

KARL ELM SHAUSER: Okay, I'll give you an example. On the Building Entrepreneurial Communities Act, an example that some people may be familiar with is like the Norfolk area recruiters and their efforts in order to bring previous members from their high school and their community back into those communities who will fill those jobs, and several other communities have also tried to do the same thing on that end. On the Value-Added Ag, I'll give you a...recently I was privileged enough to attend an opening of...it's called Five Trails Winery in Paxton, Nebraska, where they took a downtown business, a building that was vacant, and it now has a commercial retail activity that's there producing their product. So it assists Paxton in multiple ways, as well as it's provided some income and some revenue. Recently, there were examples, too, of where they're going to take yucca plants and make a soap out of it, and recruiting businesses out of New York to actually manufacture it back in Nebraska. Those are the kinds of things that are making a difference for them. [LB164]

SENATOR ADAMS: Thank you. [LB164]

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SENATOR CORNETT: Seeing no further questions, thank you very much. [LB164]

KARL ELMSHAUSER: Thank you. [LB164]

SENATOR CORNETT: Are there any more proponents? We'll take testimony from opponents to the bill. Seeing none, neutral testimony? We'll close the hearing on LB164. I've already opened on LB165. Commissioner Ewald, would you be...kind enough to explain? [LB165]

SENATOR DIERKS: Whenever you're ready, Mr. Ewald. [LB165]

DOUG EWALD: (Exhibit 6) Vice Chair Dierks, members of the Revenue Committee, my name is Doug Ewald, E-w-a-l-d, Tax Commissioner for the Department of Revenue. I appear before you today in support as a proponent of LB165. LB165 does a number of things. I will...there's a lot of things in here, I will attempt to gloss over, or some of them we'll give you as much detail as you need, and will be available for questioning afterwards. But, in summary, it increases the maximum amount the department may be reimbursed for auditing of the Petroleum Release Remedial Action Fee; limits the tax liability for corporate officers to three years, currently it's four years, today, and we'll talk about that in more detail; mandate tax professionals to file tax returns electronically; make several changes to the Streamlined Sales and Use Tax Agreement; authorize the Tax Commissioner to provide the municipalities with additional sales tax information; clarifies the applicability of several sales tax exemptions; and change the date on which a protest becomes final to 30 days to conform with the Administrative Procedures Act. Section 1 increases the maximum amount the Department of Revenue may be reimbursed for costs associated with the administration of the Petroleum Release Remedial Action Fee. If that fee is imposed on the supplier, importer, or refiner who sells it and uses petroleum within the state of Nebraska, it's PRRF for short, it's used for environmental cleanup associated with leaking underground storage tanks. And basically, currently, the department is able to be reimbursed \$28,000 on an annual basis, and that has not been adjusted since 1990-1991 time period. This legislation would increase that maximum reimbursement to \$150,000. In the last year we spent approximately \$140,000 administering this fund. If you look at the \$150,000 divided by \$10.8 million, it's about a 1.4 percent administrative fee for administering this fund from that standpoint, so. Section 2 deals with corporate officer tax liability. It limits a responsible corporate officer's personal liability for a corporation's tax liability to three years following the department's notice of demand for payment. And what happens here? First of all, we go after the corporation, which has a three-year statute, and then if we are not successful with the corporation in that particular period of time, we can then go after the corporate officer for another three-year statute. So this basically tolls the first three years for the corporate officer: that's currently four. This matches three and three, so it kind of harmonizes to three years, both the corporation and the corporate

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officer liability, and we'd have three consecutive...or two consecutive three-year period points in time to try to recoup tax liability. Section 3 provides the Tax Commissioner authority to mandate electronic filing of tax returns prepared and filed by certain tax professionals for profit. First of all, it does not mandate a taxpayer file a tax return electronically, but it does require a tax professional who prepares and files on behalf of a taxpayer, for profit, to file electronically if they file more than 25 returns in any particular tax year. So they may file...prepare a return and give it to the tax preparer to file; that particular situation they would opt out. But if, where they do the nuts, the bolts, I mean, prepare it as well as file it on their behalf, and they're doing more than 25, we want to receive those on an electronic basis. This will begin being phased in, in 2010, in fact, we'll do a regulation hearing to get this thing brought up. But this was basically brought to us by the practitioners; they're prepared to do this. This is what the vast majority approve of us doing; they brought the issue. In the last year, 66 percent of individual tax returns were filed electronically with the Department of Revenue, and that's up 4 percent over the prior year. So our targets this year are something in excess of 70 percent; we think we can get to 80 percent. It's that last 20 percent that's going to be tough to get, and that's also what they're seeing at the federal level. And as a point of reference, 90 percent of all of our tax payments that we receive on behalf of the state are received electronically. With respect to the Streamlined Sales and Use Tax Agreement: beginning in 2000, state legislators, governors, tax administrators adopted, along with representatives of retail industry and the business community, began to develop simpler, more unified definitions and a system for sales and use taxation across the state...across the country. Streamlined Sales and Use Tax Agreement was the result. Nebraska began participating in 1999; became a full member in 2005. To date, we've collected just under \$27 million and received approximately \$18 million that was previously uncollected sales or use tax since October 2005. Currently, there are 22 member states, including Nebraska, and really what it does is it provides uniform definitions for different items across the country. So if you're a business doing...operating in many states and they adopt Streamline, you know what the rules are across all those states with respect to particular items. And with respect to this, we...Section 4 provides relief to a seller of a liability if, for failing to collect the sales tax, if we don't provide them the correct rate in a timely manner. So we're going to...if there's an error, and it's due to the Department of Revenue, we're going to hold the sellers harmless in this. And this isn't just online sellers, this is all sellers, so. Section 12 relieves purchasers of liability for penalty for failure to pay the correct amount of sales tax because of an error by the Department of Revenue here again. So once again, if somebody does something as a result of that information provided from the department, we're not going to hold them liable for any penalty, that's on us. Sections 5 and 10 conform several telecommunication definitions to the Streamlined Sales and Use Tax Agreement and remove other outdated definitions. Removes old telecommunications definitions; add definitions to conform with Streamlined; does not change tax ability whatsoever with respect to any telecommunication services. And there's a chart on page 8 that kind of says what the old language is, and, for example, local exchange

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telephone service is now called ancillary services. That's what they voted on, it's streamlined. An example of that: call forwarding, call waiting, those type of things. So, brings the definitions up to current time, and basically, national telecoms participated in this. We've met with the Nebraska telecoms; I believe they understand and support what we're doing here. We had a meeting with them on last Friday. Section 7 under Streamlined matches the sourcing requirements for the ancillary telecommunications services to the Streamlined Sales and Use Tax Agreement. And it doesn't change which services are taxed, it doesn't change the rate at which they're taxed, and it basically deals with the sourcing of where the items are taxed. So if you have a land line, land lines are in the ground, we're going to source it where they're physically at. We're also aware of a technical correction raised by the industry with respect to this on some prepaid calling service, prepaid wireless calling service, so we'll have some amendments to that, be working with committee counsel, some very, very technical stuff that we're not going to get into here today. Section 6 clarifies certain sales made on online auctions that would qualify for an occasional sale exemption. Today, for example, this is kind of unique...if somebody has a garage sale, you hold it for three days, anything there is exempt. This basically would make online auctions comparable to that. Today there's no exemption for online auctions so we would allow them the same latitude as we give today to garage sales. Seems a little crazy here, but we get questions on this. Enforcement, how do you enforce it? We usually get complaints; we have to do follow-up work. We really rely on voluntary compliance from people out there, so. But really, kind of a clarification or broadening of the occasional sales rule from the garage sale model to the online sales model. Section 8 clarifies the sales tax exemption for mobility enhancing equipment. The exemption currently requires a prescription and eligibility under the Nebraska Medical Assistance Act. However, mobility enhancing equipment is not eligible for coverage under Nebraska Medical Assistance Act. So basically, what this legislation would do would remove the eligibility requirement under the medical assistance program. So basically, it's exempt if you get a prescription for it is what we're saying here. You may ask why there's not a fiscal note. We never intended to write this out of the program, and honestly, this has been our audit practice. We've always thought that this was exempt, so as long as you get a prescription for it, it's going to be an exempt item. Section 9 clarifies the sales tax exemption for purchases made by nonprofit organizations to more accurately identify exactly what facilities, activities, and services are exempt under current law. We've had a lot of discussion with respect to this issue with the industry and some of the representatives. Today, exemptions are limited to: licensed activities under the Health Care Facility Licensure Act, or activities licensed or certified by the Department of Health and Human Services. The exemption does not apply to uses that are not otherwise certified or licensed by DHHS. That's specifically what we do. We strike a lot of old language, bring it up to the current, what it is today, what the current practices are out there in the industry. It's a clarification: only those licensed or certified and exempted under statute are exempt. Puts everything in one list. They can go to one location, they can find this stuff. Organizations that provide multiple levels of care, facilities can split.

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They do centralized purchasing; they can split that stuff today between what's going to a taxable facility or what's going to an exempt. Any reasonable allocation is acceptable to us. And that's the way we performed our audits when we run into those particular situations. Section 11 authorizes the Tax Commissioner to provide municipalities with additional sales tax information. Currently, today, I can only provide information to a municipality...basically a list of businesses licensed to collect sales tax in that respective municipality. Last year, I got a laundry list of municipalities that request, give us a list. Well, you give them the list, there's no additional data with it, so it's really not of any value to them. It doesn't aid them in their budgeting process whatsoever, so what we're saying here is if a municipality would adopt the same confidentiality requirements that we have within the Department of Revenue, we would be able to provide them with more information that would hopefully allow them to do better planning and budgeting for their local budgets. Section 13 changes the date in which a tax protest becomes final to 30 days to conform with the Administrative Procedure Act. Last year, we married up a lot of our provisions; there were some with 30 days, some at 60, some at 90; we took them all to 30. When we took the Administrative Procedure Act to 30...to 60 days, we had no authority to do that. So this basically takes it back to what's in the Administrative Procedure Act of when a protest actually becomes final; makes it 30 days. It really just corrects an error to conform to our current appeal process. Amendments: we have three amendments. The first amendment is with respect to the Beginning Farmer Tax Credit Act. In 2008, LB1027 removed a residency requirement for asset owners within the Beginning Farmer Credit Act. The Department of Revenue has one seat in the Beginning Farmer Act Board, and last year this bill went through Ag, it didn't come through Revenue, so because of that, the linking language with respect to allow nonresidents to qualify this...we didn't see it, it was missed, and basically this would make a companion section within the income tax code to what's in Agriculture. So we would allow nonresidents filing a tax return who qualify under the Beginning Farmer to receive this credit. So that went through Ag last year, and that was their intent. That's the way it was drafted, but it wasn't...the linking language was not changed in the income tax statutes. The second amendment clarifies language included in Section 5, and this is the ancillary services, this is...we'll work with the local telecoms on this, really to provide clarity on how we order things that makes a little bit more sense when you actually look at the statute. So we basically reordered what was in there to make it a little more user-friendly and readable. And amendment 3 is really quite technical, and it corrects an incorrect statutory reference in a particular statute that we have. It refers income tax return for corporation...it currently refers to Section 6, it should refer to Section 7, so. Quite technical in nature. So with respect to that, I hopefully get your support for LB165, and we'd be happy to answer any questions you have. [LB165]

SENATOR CORNETT: Senator Utter. [LB165]

SENATOR UTTER: Commissioner, with respect to occasional sales and the online auctions, does that refer to local online auctions or is that...is eBay and that type of

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activity included in this? [LB165]

DOUG EWALD: It would be any online auction, whether it be local or eBay. [LB165]

SENATOR UTTER: And the exemption that is allowed for occasional sales, that's just to individuals? [LB165]

DOUG EWALD: That's...it's for garage sales. I don't know if it's just individuals; usually individuals are the ones who are going to have a garage sale. This refers to, I think, three concurrent days with respect to that, so. [LB165]

SENATOR UTTER: So it wouldn't necessarily exclude a business who would... [LB165]

DOUG EWALD: No, I guess it would be... [LB165]

SENATOR UTTER: ...clean out his offices with a three-day garage sale, then... [LB165]

DOUG EWALD: Right. [LB165]

SENATOR UTTER: ...that normally wasn't in the retail business. [LB165]

DOUG EWALD: I'm not...I mean, most of the people are...I don't know how many businesses are doing online auctions, selling stuff like you see on eBay, I don't know that. But I can get some further clarification if it's just individual or businesses. [LB165]

SENATOR CORNETT: My question actually refers to the same section. When you talk about online auction, what is the difference between online auction and online sales, like Craigslist, where you don't actually bid against anyone--someone posts the price? And those are businesses that are selling services and/or goods, sometimes, online, and individuals. [LB165]

DOUG EWALD: Right. I guess an auction...it puts a particular...it's open for a particular period of time and they take the highest bid. Craigslist is...they put it out there, this is the price. [LB165]

SENATOR CORNETT: And are they paying taxes? Do we have any tax requirements for online sales for individuals like that? [LB165]

DOUG EWALD: Well, there's a use tax component that if you buy something online...today, the statute says... [LB165]

SENATOR CORNETT: You're supposed to. [LB165]

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DOUG EWALD: ...whether it's Craigslist or whatever, you're supposed to self-report that. It's the honor system today. [LB165]

SENATOR CORNETT: Yes, Senator Hadley. [LB165]

SENATOR HADLEY: Senator Cornett, Commissioner Ewald, I have a question on the administrative costs of the Petroleum Release Remedial Action Fee, and I guess that it's a two-part question. The first, I assume the reason for the increase is based on the fact that your actual departmental costs of administering the fee have gone up, so this is...basically, you're asking that the department be reimbursed for costs for administering this fee, to basically make the department whole... [LB165]

DOUG EWALD: That's correct. [LB165]

SENATOR HADLEY: ...for this. [LB165]

DOUG EWALD: We did a detailed study this last year--we were asked to do that--about how much time and people...because we are allowed to get reimbursed up to \$28,000...we have their...people have to charge their actual time to that in order to get to that point in time, so there's very detailed recordkeeping that goes into the actual hours by what type of...what professional and what their salary is, or rate, you know, pay, from that standpoint. So there's a detailed study and analysis behind that. [LB165]

SENATOR HADLEY: Okay. The second part of my question is, is kind of cutting my teeth in a municipality where we would get beat up a lot where we would not have increases in...rate increases, and then we suddenly come in...you know, we wouldn't have water increases for ten years and then suddenly we come in with a 78 percent increase in the water rates. I guess I'm just a little concerned that from 1990 to 1991 we go from \$28,000 to \$140,000, and I understand why, but I hope there aren't a lot of other fees like this sitting there that we haven't looked at from 1990 that we're going to be walking in...I know everybody's looking for revenue now. I think we need to make sure we adjust these on a reasonable basis so the payer of the fee doesn't get hit with huge increases. [LB165]

DOUG EWALD: Right, I understand exactly what you're saying. And I can't speak for why this hasn't been indexed or something since that point in time. It was really brought in to us with an audit by the Auditor of Public Accounts and the amount of time we're spending with that particular program. And I'm not aware of any other programs we have comparable to this within the Department of Revenue. [LB165]

SENATOR HADLEY: Okay. Well, I would just encourage you... [LB165]

DOUG EWALD: Yeah, yeah. [LB165]

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SENATOR HADLEY: ...to be sure that we don't have other ones sitting around that we're...because I think... [LB165]

DOUG EWALD: Exactly. Because that's, I mean, that's obviously sizeable. [LB165]

SENATOR HADLEY: And I think it works both ways. Where we have...we're expecting someone to do our work out in the private sector, we need to reimburse them for the time and effort they're doing like we expect to be reimbursed ourselves. [LB165]

DOUG EWALD: Exactly, yes. [LB165]

SENATOR CORNETT: Senator Louden. [LB165]

SENATOR LOUDEN: Yes, thank you, Senator Cornett. Mr. Ewald, what is the Petroleum Release Remedial Action Fee? What do you mean by that? It was \$28,000, now you're going to need \$150,000 to work that; what is it you do in there? [LB165]

DOUG EWALD: Well, we basically go in and make sure that when we do an audit to make sure that all the suppliers, the importers, whoever that fee is imposed on, they are paying it correctly, billing it correctly...and we collect those fees and then it goes into that Remedial Action Fee. So this is the normal auditing process, I guess, with respect to that particular fee. It's a component of the motor fuel...or additional fee from that...I think it's one-tenth or something a gallon... [LB165]

SENATOR LOUDEN: It's a tenth of a gallon for the leaking underground storage tanks is what it's for, is that right? [LB165]

DOUG EWALD: Correct, that's correct. [LB165]

SENATOR LOUDEN: I didn't know that there were that many left around any more to do that with. [LB165]

DOUG EWALD: Well, it's interesting that...you know, we collect, what did it say, \$10.8 million in 2007, and it's my understanding that that was all spent in remediation. [LB165]

SENATOR LOUDEN: Okay, because whenever you talk to DEQ, why they...yeah, they've got tanks out there but nobody is doing much about it and I was wondering when we add another \$150,000 onto that, what...will that be that much less get done... [LB165]

DOUG EWALD: Well, yeah, I don't... [LB165]

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SENATOR LOUDEN: ...and does it actually cost you that much to monitor all that?
[LB165]

DOUG EWALD: Well, according to the detailed...the statements that basically detail the time which has been audited by the Auditor of Public Accounts, yes, that's what...how much time we spend administering this program. [LB165]

SENATOR LOUDEN: In other words, this tenth of a cent that we're charging on gasoline, that would be \$150,000 of that's going to the Department of Revenue just for administration. [LB165]

DOUG EWALD: That's correct. That would be the case. [LB165]

SENATOR LOUDEN: Okay, thank you. [LB165]

SENATOR CORNETT: Senator Friend has just joined us. Senator White. [LB165]

SENATOR WHITE: On the statute of limitations for individual liability on the corporations, how does that compare to the feds and what they do? Do you know? Are we congruent with what they're at, or higher or...? [LB165]

DOUG EWALD: I believe we're congruent with what they're at, yes. And that's kind of...we were out of sync there. [LB165]

SENATOR WHITE: Okay, so this puts us...and I can see that principle, that you're done with them, you're done with us. [LB165]

DOUG EWALD: Right, and it tolls the statute for the individual and allows us to go get them after three years, or whatever. [LB165]

SENATOR WHITE: Would you make sure, if we're different than the feds, I would be concerned. If we're just doing the same, then I can see that as (Inaudible). [LB165]

DOUG EWALD: I believe that to be the case, but I'll make it a point to double check that. [LB165]

SENATOR WHITE: Thank you. [LB165]

SENATOR CORNETT: Seeing no further questions, thank you, Mr. Ewald. [LB165]

DOUG EWALD: Thank you. [LB165]

SENATOR CORNETT: We'll now hear proponents for LB165. Seeing none, are there

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opponents for LB165? Is there anyone here to testify in a neutral capacity? [LB165]

ANDY POLLOCK: (Exhibits 7, 8) Good afternoon, Chairwoman Cornett and members of the Revenue Committee. My name is Andy Pollock, the last name is spelled P-o-l-l-o-c-k, and I'm here representing the Friends of Nebraska Nonprofit Hospitals as their registered lobbyist; and I'd give you the acronym for that, but it's harder to say than the full name of the organization. Our concern about LB165 is fairly simple, and I'll keep this as brief as I can, and I think it's a matter that we can work out with some discussions with the department. And I've already had some discussions with Commissioner Ewald, and we will work with Senator Cornett as the introducer as well. Basically, like I said, I represent a group of nonprofit hospitals. The concern that we have deals with Section 9, and it has to do with the sales tax exemption as it would affect nonprofit clinics that are owned by nonprofit hospitals. Let me read to you, just real briefly, the five lines of the Section 9 that we're concerned about, and they appear, if you want to read along, on page 37, lines 14-18. It says: the exemptions in this subsection, which have to do with nonprofit entities, are limited to purchases made for use at the facility or at the portion of the facility that is licensed under the Health Care Facility Licensure Act or use in the exempt healthcare activities or services licensed under that same act. That's the only portion of this bill and the only portion of this section, that we have concerns about, and I'll tell you why. The nonprofit clinics that we represent total in number about 46. They're owned by nonprofit hospitals across the state. They are not licensed under the Health Care Facility Licensure Act that's referenced in that section, nor are their activities licensed under that act. They are licensed under the physicians that operate those clinics, and they are certified by the federal government, so they don't fall under that particular exemption. Those clinics, also, are not exempt unless they happen to be owned by two or more nonprofit hospitals, under the current law. And I want to talk just a minute about the handouts that I've given you. We have...our association has asked senators to introduce two bills that seek to make these nonprofit clinics exempt--and I won't go into detail about those bills, I know that's not the purpose of this hearing, but I will tell you briefly that LB420, which was introduced by Senator Hadley, would remove that two-hospital requirement; it would allow for a clinic that is owned by one hospital, nonprofit hospital, to be exempt. There was a similar bill introduced last year. It would simply remove that two-hospital requirement, and none of the 46 clinics that I speak of are owned by two hospitals; they're all owned by one facility, so technically they are not exempt. LB460, introduced by Senator Friend--I'm glad that you're here so I could not talk behind your back about your activities, Senator Friend--it would allow a similar exemption in a less direct way. It would require...or allow for purchases by a nonprofit hospital, that are used either at that hospital or a nonprofit clinic, to retain their sales tax exemption. So basically what that bill would do is not give a direct exemption, but instead incentivizes central purchasing, cost savings for patients, and do so by allowing central purchasing and use...redistribution of those purchased goods, under the nonprofit exemption, at nonprofit clinics that those hospitals solely own and control. Our concern is that this

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portion of LB165, which I have read, would be inconsistent with either of those two bills, and in my conversation with Commissioner Ewald, their department agrees with that. What I would submit to you is that this is something that we can talk about, we can see where all three of these bills go. I wouldn't expect passage of both LB420 and LB460, but one of those we would certainly hope that you would advance; and at some point it may be necessary to sit down, roll up our sleeves, and talk with the department about how we harmonize LB165 and either one of those bills. And we'll be glad to do that, and I'll pursue that after the hearing on this particular bill. That's all I have unless any of you have any questions. [LB165]

SENATOR CORNETT: Seeing none, thank you. [LB165]

ANDY POLLOCK: Okay, thank you. [LB165]

SENATOR CORNETT: Is there anyone else who wishes to speak in a neutral testimony? Are there any more opponents? Any neutral testimony? That closes the hearing on LB165, and we will now open the hearing on LB166. [LB165]

RUTH SORENSEN: (Exhibits 9, 10) Good afternoon, Chairperson Cornett and members of the Revenue Committee. I am Ruth Sorensen, that's S-o-r-e-n-s-e-n, and I'm the Property Tax Administrator for the state of Nebraska, and appear before you today in support of LB166. There's a number of purposes for LB166, and mostly it's just to clean it up...clean up some of the statutory language that exists. It also allows for the ability to hold the certification examination for assessors when the office of county assessor becomes vacant. If it becomes vacant and there's no other individual in the county that is certified to hold the position, this will open up the window for us to hold that exam. It also allows us the...it also eliminates the need to file multiple copies of the valuation protest form, which currently is required to be filed in triplicate. And then it also would remove all the obsolete language with reference to recapture valuation. I have two handouts: one is being handed out to you is that my testimony, and I'm going to go through the bill section by section, if you would bear with me here. Section 1: this is going to amend Nebraska Statute 13-508, and this is just to create consistency with 13-509 regarding the certified valuations of the political subdivisions for budget purposes. Currently, in 13-508 it refers to "final adjusted" value is to be set and certify the levy when, in fact, it's "certified taxable" value that is found in 13-509. So this is just making it consistent with the statute to which it refers. Section 2 addresses Section 13-509, and this will set July 31 as the last date that annexation by a political subdivision will be considered by a county assessor for valuation certification that's required to be completed each year on or before August 20. Currently, there's no statutory language to prevent a subdivision from annexing territory, and this has happened to...recently, all the way up to levy date, which is October 15. And when this happens in the counties, this creates hardships and can cause errors with the county assessor, because if it's right before levy date and they're annexing property, the

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assessor has the burden of recertifying their values to get that territory annexed in for levy setting purposes. Section 3 is going to deal with the Board of Educational Lands and Funds, and that is Section 72-258.03. This will allow the Property Tax Administrator to determine the factor necessary to adjust agricultural school lands that are for sale and adjust it to actual value. When the assessment level for agricultural land and horticultural land was changed from 80 percent to 75 percent a few years ago, the factor that's found in Section 72-258.03 was not adjusted to allow for that change. The proposed language that we have introduced into LB166 is generic language so in the event, in the future, there are any changes to the assessment level of agricultural land or horticultural land, this statute will not have to be adjusted. It's the generic language and removes the actual factor that was spelled out previously. Then you'll see that there are ten sections within the bill that addresses the repeal of the recapture valuation of agricultural land, and this is being repealed pursuant to LB166, same bill number, but in 2007. In Section 5 of LB166, we are amending Nebraska Statute 77-421 to allow the Property Tax Administrator to hold an assessor certification examination if the office of the county assessor becomes vacant and there's no other individual in the county that is authorized or certified to hold the position. Currently, the examination is administered four times a year; it's administered in February, May, August, and November. And if the office is to become vacant, the county board can request in writing that an examination for assessor certification be held, and the Property Tax Administrator will have ten days to determine whether there's a need for that examination to be held. We have had circumstances in Nebraska in a couple of counties this year in which the office for the county assessor has become vacant and there's been no other individual in the county that holds the assessor certification. And if we were able to administer this examination more frequently for cause shown, or vacant office, this would relieve some of the anxiety that the county has to go through when their office is vacant. Sections 6 and 7 of the bill basically just amends 77-680 and 77-801 to be consistent with other statutory language within the department in which the Tax Commissioner prescribes the forms. When the Department of Property Assessment and Taxation was merged into the Department of Revenue, these two statutes were overlooked to be corrected to have the Tax Commissioner prescribe the forms. Section 14 amends 77-1501 to allow the county assessor to appoint a designee to attend meetings of the county board of equalization when the county assessor is unable to attend. Currently, in 77-1501, county clerks and county treasurers can appoint designees to attend the applicable meetings of the county board of equalization, but this authorization was not extended to county assessors, and we are proposing that the language be extended to grant that same authority to county assessors. Section 15 amends 77-1502, again to eliminate the requirement of the triplicate filing of the real property valuation protest form. This way if it's able to be filed just in single copy, it can promote online filings or online completion of the form for submission to the counties. Section 17 before you...there is a bill that's going to be proposed that will be offered that will strike the language from Section 17 of this bill. Section 18 amends Section 77-1775 to be consistent with language found in 77-1736.06 which requires the Property Tax Administrator to certify the amount of a

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refund claim filed by a taxpayer on centrally assessed property. Currently, the Tax Commissioner both approves and certifies; the language will be changed to have the Tax Commissioner approve, and the Property Tax Administrator certify the amount of the refund claim upon the approval of the Tax Commissioner. Section 19 amends 77-3523 to remove obsolete language for the distribution of the homestead exemption revenues that are received by the county treasurer. Currently, the distribution of homestead exemption revenues is based on the actual amount requested by the county, and the reference to the sales assessment ratio in the statute is no longer applicable. Counties are disbursed the full amount that is requested under the homestead exemption. And at this time, there was a handout which is an amendment that the Department of Revenue is offering. The proposed amendment will accomplish two things. First of all, it will delete redundant language that's found in Section 4 of the bill, which relates to 77-201. With the elimination of recapture valuation, the language that was left in subsection 3 was redundant with language found in 77-201(2). And it will also...this amendment also strikes the language that's found in Section 17 of this bill. I request the adoption of the amendment to LB166 as submitted by the Department of Revenue, and with that, I can take any of the questions that you may have. [LB166]

SENATOR CORNETT: Senator Louden. [LB166]

SENATOR LOUDEN: Yes, I...it doesn't have that much to do with some of the work you're doing here, but on page 19 and 20 in this bill here, I think, what...77-1371 and comparable sales, and there is that list of comparable sales there. Do you still use those? [LB166]

RUTH SORENSEN: Are comparable sales still used? [LB166]

SENATOR LOUDEN: Yeah. [LB166]

RUTH SORENSEN: Yes. [LB166]

SENATOR LOUDEN: And like some of these, are any of these used to, I guess, throw out some of those comparable sales? Like some of these here...isn't there one on here where it was within a mile of property or something like that? That it would affect the sale price or parcels less than 40 acres? Do you use any of that information anymore? [LB166]

RUTH SORENSEN: Well, it's used county by county, depending on what's happening in the county. They do use this statute when they are looking at the comparable sales. [LB166]

SENATOR LOUDEN: Is the counties the one that do that or does the State Property Tax Administrator decide whether or not the counties can use that? [LB166]

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RUTH SORENSEN: Well, the county assessor will use the sales to set the values in their counties. And what we do for measurement purposes is we look at the sales, the qualified sales, and use the qualified sales and whether they're an out lie or not. [LB166]

SENATOR LOUDEN: Okay. I was...been told by some of our county assessors that they can't use these comparable sales analyses...comparable sales anymore, and I was wondering if that was true or not, or where you come down on that now, or whether they're still allowed to use those if...to use some of those sales as a comparable sales analysis? [LB166]

RUTH SORENSEN: Well, the language is still here in statute. I would want to talk with you further as to the fact pattern and what scenario that assessor is encountering as to why he or she is not able to use these factors. [LB166]

SENATOR LOUDEN: Okay, thank you. [LB166]

SENATOR CORNETT: Senator Hadley. [LB166]

SENATOR HADLEY: Senator Cornett, thank you. I guess I have more of a procedural question. Are these kinds of things, things that the department does, do you go through it and look at specific areas to kind of come in to make what I would call housekeeping type of changes, or is it an ongoing process? I guess more of a...just an idea of how we come about that we have certain changes and we don't have other changes, and such as that. I should have asked the Commissioner, but I wasn't smart enough to figure it out at that time, so. (Laughter) [LB166]

RUTH SORENSEN: Senator, through time we are called with certain situations throughout the counties for property assessment purposes. And when we attend Nebraska Association of County Official meetings, or meet with county assessors, registrar of deeds, county clerks...they request changes because they are the ones that are working out in the field and they see where there's some inconsistencies. And also, as we are going through, and there's changes that are introduced by the Legislature, we'll see what effect it may have on the process that we have within our agency, and then we would have to make the proposed statutory language change to enact those laws. [LB166]

SENATOR CORNETT: Seeing no further questions, thank you. [LB166]

RUTH SORENSEN: Thank you. [LB166]

SENATOR CORNETT: We will open testimony for proponents. [LB166]

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BETH BAZYN FERRELL: Good afternoon, Chairperson Cornett, members of the committee. For the record my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. We are appearing here in support of all of the provisions of this bill, but we would like to specifically note the provisions in Section 2 which deal with the date for when an annexed property is considered as part of the value of a particular subdivision. That issue was brought to our board by county assessors. That was selected as a priority for us to pursue with a July 1 as opposed to a July 31 date. When we saw that this was going to be part of the cleanup bill, we elected not to pursue it, but we just wanted to be on record as specifically noting our support of that section. Be happy to take questions. [LB166]

SENATOR CORNETT: Seeing none, thank you. Is there anyone else here to testify as a proponent? Opponent? Is there anyone here to testify in a neutral capacity? That closes the hearing on LB166 and closes our hearings for the day. [LB166]

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Disposition of Bills:

LB164 - Placed on General File with amendments.
LB165 - Placed on General File with amendments.
LB166 - Placed on General File with amendments.

Chairperson

Committee Clerk