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Revenue Committee
January 28, 2009

[LB26 LB218]

The Committee on Revenue met at 1:30 p.m. on Wednesday, January 28, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB26, and LB218. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Mike Friend; Galen Hadley; LeRoy Loudon; Dennis Utter; and Tom White. Senators absent: None. [LB26]

SENATOR CORNETT: We're going to go ahead and begin, and wait for the other senators to join us. I am Senator Abbie Cornett from Bellevue; joining us shortly will be our Vice Chair, Senator Dierks from Ewing; to his left is Senator Greg Adams from York; Senator Hadley from Kearney; Bill Lock, the research analyst, will be joining us momentarily; Erma James is committee clerk. To my far right is Senator Utter from Hastings; Senator LeRoy Loudon from Ellsworth; Senator Tom White will be joining us from Omaha; and Senator Mike Friend from Omaha. And to my immediate right is legal counsel, Shannon Anderson. And our pages today are Rebecca Armstrong and Elsie Cook. Before we begin the hearing, I would appreciate it if you could turn off your cell phones or put them on vibrate. For testifiers, there are forms by both of the doors that need to be completed before you testify. Bring them up and hand them to the committee clerk. There are also clipboards in the back of the room for you to sign in if you do not wish to testify but do wish to indicate your support or opposition to a bill. These sheets will be included in the official record. We will follow the agenda posted on the door. First, we will have the introducer introduce the bill; then we will have proponent testimony, opponent testimony, and neutral testimony. Only the introducer will have the opportunity for closing remarks. If you have handouts, please bring ten copies of those for the whole committee. If you do not have copies made, the pages can do that for you and circulate them to the committee. Also, due to the length of some of the hearings we've been having, I would appreciate it if the testifiers try to keep their testimony from being redundant. We're very happy to hear what you have to say but if someone has said that before you, just be happy to say "me too." With that we'll begin the hearing on LB26. [LB26]

SENATOR FRIEND: Thank you, Madame Chair and members of the Revenue Committee. For the record, my name is Mike Friend, M-i-k-e F-r-i-e-n-d, and I represent District 10, Northwest Omaha. I'm here to introduce LB26 on behalf of the city of Omaha. Last year I introduced a similar bill, it was actually LB989, but its scope was limited to metropolitan class cities. There's only one, and it happens to be Omaha. Based on the feedback last year, LB26 now applies to cities of all classes and villages, not just metropolitan class. LB26 allows special assessment liens made by cities to gain equal standing for tax foreclosure purposes, which generally levy real estate taxes in the communities. Examples of special assessments made by municipalities include building demolitions, weed cleanup, and litter cleanup. In 2007, the Nebraska Supreme Court issued a ruling which forbids a municipality's special assessment lien on real

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property to run with the land. Any assessment on title placed after a tax sale certificate lien and before its foreclosure proceeding is filed...is extinguished if there is not enough money from the sheriff's sale to pay off the delinquent taxes and the special assessment. I've been informed that the Supreme Court's ruling in this case alone meant that the loss, or meant that a loss of \$232,000 in special assessment lien funds last year for the city of Omaha; that's what it resulted in. Prior to that Supreme Court ruling in 2007, special assessment liens would not be extinguished if the foreclosure sale proceeds were insufficient to pay off all of the back taxes and delinquent assessment lien. The purchaser at a sheriff's sale would either pay the assessment in full to release the lien, or purchase the property subject to the special assessment lien. In the event that a sheriff's sale does not provide complete payment of both the unpaid taxes and any special assessment, LB26 allows delinquent special assessment liens to remain in place and run with the land until paid. By allowing the city to recover these lien amounts, the taxpayers will be better served, we feel, with a fund to accomplish additional demolition and cleanup. And with that I would ask...I do have an amendment, and I believe we got it from the Metro Omaha, or at least through communication with the Metro Omaha Builders Association, that, it's my understanding, repairs or deals with a little bit of language. I can elaborate a little more on that in the closing, but I don't even know what the concerns were--I have to be honest with you on that. But I think that that would be all I'd have at this point. Thank you, Madame Chair. [LB26]

SENATOR CORNETT: Any questions from the committee? Senator Louden. [LB26]

SENATOR LOUDEN: Yeah, Senator Friend...by doing this, then, whenever there's a sheriff's sale on property now, you buy that property in these smaller towns, you know, then that takes care of most of the tax liens on there. Is that correct? Or do you still have to pay the taxes if you buy property on a tax lien? Because my understanding...a lot of these towns will get that property back in for what they have taxes against it, so if somebody don't (inaudible)... [LB26]

SENATOR FRIEND: Well, that would be my understanding too, but I don't know what the issue that Omaha...and I think that there are some folks from Omaha that can explain what they see as the difference. But that would have been my understanding too. I don't exactly...I think there are folks behind me that can tell you exactly where they ran into... [LB26]

SENATOR LOUDEN: Okay, because if there's a mechanic's lien on that property and it's sold at sheriff's sale, I think the mechanic's lien is gone too, unless you refile it or something like that, isn't it? I mean, once something is sold as sheriff's sale, that pretty well cleans the slate. [LB26]

SENATOR FRIEND: Supposed to be. [LB26]

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SENATOR LOUDEN: And now with this here, it won't clean the slate. It'll put those special assessment liens right back...it will always be on there. Is that what this bill does? [LB26]

SENATOR FRIEND: That would be my understanding. [LB26]

SENATOR LOUDEN: I'm wondering then, will some of this property in some of these towns that are dying, you might say, will that property ever be sold then? Because if there's any kind of special assessment lien against it, who would want to even touch it? So it just sits there and grows weeds. [LB26]

SENATOR FRIEND: Well, that's a...I mean, and that's why, I think, originally, last year, that it was limited to metropolitan class cities; why the language was limited, yeah. [LB26]

SENATOR LOUDEN: Yeah, and I agree. I think that was a good place for it. This is what I'm concerned is this includes every little nook and cranny and village and town all over the state of Nebraska. [LB26]

SENATOR FRIEND: The language has been changed to do that, correct. [LB26]

SENATOR LOUDEN: Okay, thank you. [LB26]

SENATOR FRIEND: Um-hum. [LB26]

SENATOR CORNETT: Senator Adams. [LB26]

SENATOR ADAMS: I think that the problem that you're describing and trying to counter here, is probably a statewide, regardless of the size of municipality. Would...and maybe this is not the question for you, Senator, but someone else here. If it was a very small community, and they could barely recover anything on the value of the lot, I'm assuming that community could go to the courthouse and pull its lien off that property, if the city had a sidewalk lien, or a cleanup lien, or a paving lien against an assessment. And they realized it was encumbering the sale of property; that unless that was out of there, they're never going to sell that piece of property. [LB26]

SENATOR FRIEND: And I'm trying to come up with...and you may be a little more familiar with that process than I am. I'm trying to come up with an example of a situation where exactly that's occurred, but I don't, you know, I can't think of one. [LB26]

SENATOR ADAMS: Yeah, I can't either, but okay. I'll see if somebody else might be able to answer it. [LB26]

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SENATOR CORNETT: Senator Utter. [LB26]

SENATOR UTTER: Senator Friend, assuming that the city doesn't come to the sheriff's sale and bid the property back in for the amount of the taxes that are due, because they don't want that property that does have a special assessment on it, and that special assessment lien then remains. Does it, or does it not? [LB26]

SENATOR FRIEND: Well, I think it does. [LB26]

SENATOR UTTER: And so then we're really talking about placing special assessments, maybe in front of tax liens. Or are we not; am I looking at this wrong? [LB26]

SENATOR FRIEND: Well, if you look on page 3 of the green copy which...you'll have to forgive me for a second, because I'm trying to make sure the amendment doesn't actually change that language. The amendment's irrelevant at this particular point. The answer to your question is that would be my read as well, but I would actually like the attorney from Omaha to answer that question too. [LB26]

SENATOR UTTER: We'll pursue that later. Thank you. [LB26]

SENATOR FRIEND: That would be my thought. [LB26]

SENATOR UTTER: Thank you. [LB26]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you, Senator Friend. [LB26]

SENATOR FRIEND: Thank you, Senator. [LB26]

SENATOR CORNETT: Proponents. [LB26]

PAUL KRATZ: My name is Paul Kratz, K-r-a-t-z. I'm the city attorney for the city of Omaha. I don't want to repeat everything Senator Friend said. We agree with him and he explained it well. I do want to clear up maybe one little misconception that has occurred in some of the questions. Our problem is, we see the problem from the time you have the tax sale to the time of redemption, which is a two-year period of time. It's during that period of time where, at least in Omaha, the city ends up picking up weeds and litter, or cutting grass, or even demolishing a dilapidated building. And that's when we put the assessment on. It's that assessment that is now being foreclosed out because of the Supreme Court decision, and that's what we're trying to reverse. As Senator Friend mentioned, it's in the tune of about \$250,000 a year with the city of Omaha. We've created kind of a revolving fund so as we demolish, as we do weed and litter, clean up...the money we get from these assessments then come back into that

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fund to...I guess, reenergize the program. I hope that explains some of the issues. Senator Utter, I believe you had a question. I kind of forgot what it was; maybe I've explained it. [LB26]

SENATOR UTTER: Well, I was just trying to perceive a situation where there was a sheriff's sale, a tax sale, and the city did not...and I'm in the small communities; I think that happens quite often, that the city doesn't automatically go and protect the amount of those taxes: the city taxes, county taxes, school taxes, the whole ball of wax. That those...they didn't show up at the auction; the property didn't bring enough to satisfy the taxes. Is it my understanding that, from this bill, that liens for special assessments remains, even though the sale did not bring enough to satisfy the taxes? [LB26]

PAUL KRATZ: And I believe that's correct. You're talking about a situation where a lien, a special assessment, would be placed before the tax sale, as opposed to the two years later on with the redemption. [LB26]

SENATOR UTTER: Absolutely, yes. [LB26]

PAUL KRATZ: Yeah, and I think that would still remain. And our concern's more in the middle, but I think the application is the same. And let me mention, at least up in Omaha, we notice that about, during this two-year period of time, about three-fourths of the tax sales are redeemed by the existing land owner. And during that period of time we've cleaned up, we've taken care of the building, so I'm going to put some value into the land; and I guess this is an effort or a way for us to get some of that value back. A lot of the people who do buy the tax certificates are investors and will simply sit on it until somebody redeems it, and earn--I think it's 14 percent interest--so it's...I guess I don't feel too much for those individuals. With that I'm open for any questions. [LB26]

SENATOR CORNETT: What would you say the average amount of these liens are? [LB26]

PAUL KRATZ: The weeds and litter: they're going to be \$50-\$100, something like that. Demolitions will be in the thousands: \$2,000, \$3,000, \$4,000. I think when we tore down the old Muse theatre several years ago, that demolition was about \$40,000 or \$50,000. So it varies quite a bit. [LB26]

SENATOR CORNETT: Could these liens potentially make those properties unattractive for purchase? [LB26]

PAUL KRATZ: I believe not, and at least we haven't seen that. Because as I mentioned earlier, it's usually investors trying to earn a quick 14 percent with eventual redemption that are buying these tax certificates. Developers do not come in and buy these properties because they're kind of scattered around--there's a lot here and a lot there,

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and that's not what a developer does. What happens, again, at least up in Omaha, a lot of those will then go to land utilization committee, if nobody does buy them. At that point, a lot of times the city will buy it from the land utilization commission... [LB26]

SENATOR CORNETT: And then? [LB26]

PAUL KRATZ: ...and then we'll develop it in some manner. [LB26]

SENATOR CORNETT: So basically, this could be used as a...you're looking at it as a development tool. [LB26]

PAUL KRATZ: Definitely. We use it as a development tool. [LB26]

SENATOR CORNETT: But could it also be looked at that you're making properties unaccessible so then the city can use those properties to develop? [LB26]

PAUL KRATZ: That doesn't seem to be the experience. We don't see anybody coming in and buying those properties, or wanting to buy the properties, except for that...for the investment purpose of it. And then we don't see the subsequent development. If it does go through foreclosure, it just sits there. [LB26]

SENATOR CORNETT: Thank you. [LB26]

SENATOR WHITE: Senator Adams asked the question. As a city attorney, can you waive this lien if you have a buyer? Can you negotiate the lien, drop the price? [LB26]

PAUL KRATZ: We can and we have, yes. [LB26]

SENATOR WHITE: Thank you. [LB26]

SENATOR CORNETT: Seeing no further questions, thank you. [LB26]

PAUL KRATZ: Thank you. [LB26]

SENATOR CORNETT: Next proponent. [LB26]

LYNN REX: Senator Cornett, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities, and we do support this bill. Our concern is not just with cities the size of Omaha, but also with smaller communities. Because as Paul Kratz has noted, when you have this property, what happens many times is that folks walk away from it; many times it becomes a public nuisance; and there are folks in the municipality that want it cleaned up, and somebody has to pay for that. And so as a consequence, we think that this is really a way to make sure that there

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is, in fact, parity. And I think that's really all we're asking for. If you look at language, for example, on page 11, it basically just says, "The lien shall be in parity with the tax lien of general, state, county, city, village, municipal, or school taxes." We do think that's quite appropriate, because, while this property is, for all intents and purposes, abandoned; it is the city that is the weed-cutting entity; it is the city that has to tear down the buildings because the public is upset that kids are going there, and there are rats running around, or whatever the case may be. So we do think that the option here is that the lien, if they can't afford to pay for it at that time, the lien runs with the property. And in essence, the experience that our city administrators tell us from across the state is not unlike what Paul Kratz told you, which is the overwhelming percentage of these properties are, in fact, redeemed within that two-year right of redemption period by the actual owners. And so they've benefitted from this. They haven't cleaned it up themselves; they haven't taken care of it themselves; but the city has done that. In other words, all the other taxpayers have taken care of that. I'd be happy to respond to any questions that you might have. [LB26]

SENATOR CORNETT: Senator White. [LB26]

SENATOR WHITE: Ms. Rex. [LB26]

LYNN REX: Yes. [LB26]

SENATOR WHITE: I understand you've read the section that says it's in parity. But it reminds me of George Orwell's 1984 where all pigs are equals, but some pigs are more equal than others. Because in fact, the statute says that these are superior to, and that will be the operative point, no sale of such--if you look at page 2, line 11: no sale of such property to enforce any general, state, county, city, village, municipal, or school tax or other liens shall extinguish the perpetual lien of such special assessment. What that means is, you can claim they're all on parity, but in fact, these occupy a higher rung on the ladder. So I appreciate that for one basis, we want to claim they're all the same, but in reality we're saying they are not; that these have a higher status and cannot be foreclosed by a lower lien. That's the reality of the bill. Now I don't have a problem with that, but it is important that we have a little truth in advertising. [LB26]

LYNN REX: I do think that...and your point's well taken, Senator...I do think that it's important, though, to note that this property is getting police protection, fire protection, anything that's needed by that municipality during the time that it's sitting there. [LB26]

SENATOR WHITE: Well, and I don't dispute that, Ms. Rex. I'd also indicate to you that tearing down an abandoned, rat-infested building will enhance the property taxes of the people around them, not to mention saving them. And the problem is that this does, the way it's done now, will inhibit that. So I support it. But let's be real clear here; this is a higher-level priority and we're going to say the cities need to get rid of these bad

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properties, or clean them up, and we're going to try to protect them. But that's what we're doing. [LB26]

LYNN REX: Yeah; your point's well taken. [LB26]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you, Ms. Rex. [LB26]

LYNN REX: Thank you, Senator. [LB26]

SENATOR CORNETT: Next proponent. [LB26]

BRIAN DOYLE: (Exhibit 1) Madame Chair, Brian Doyle, B-r-i-a-n D-o-y-l-e. I'm here today on behalf of the Eastern Nebraska Development Council. Senator Friend mentioned an amendment--it should be being passed around to you now. First, ENDC is an association, essentially, of developers, builders, engineers, attorneys who represent developers, essentially in the Omaha metropolitan area. Today, basically what we're asking for is if this bill's extended to include cities, not only of the metropolitan class but of other classes also, we're asking that sanitary and improvement districts be treated the same. SIDs levy special assessments when the property is initially developed. Those special assessments are going to pay for streets, sewers, that other sort of public infrastructure. We'd like to see that those special assessments be in parity with general real estate taxes. My concern is that a party could come in and, say a developer failed to pay their real estate taxes, a party could come in, acquire lots for the tax assessment, and then wipe out the special assessment which would be of a severe detriment to the sanitary and improvement district. We're just asking to be treated essentially the same as the other cities and villages and to add in SIDs as one of the municipalities that is part of this. [LB26]

SENATOR CORNETT: Any questions from the committee? Senator White. [LB26]

SENATOR WHITE: SIDs haven't ever had that same status before, have they? I mean, this is...would be a massive expansion of their rights, wouldn't it? [LB26]

BRIAN DOYLE: Right now, what it would prevent is an SID that levies a special assessment...say the developer goes bankrupt, for instance. Those lots are typically valued at \$500. You could go and acquire the tax lien for minimal sums of money and then the SID, which eventually becomes part of the city of Omaha or the city of Bellevue, would...it would foreclose out their special assessment which is...in effect goes to pay for that public infrastructure. [LB26]

SENATOR WHITE: But that's been the law for decades in this state, isn't it? I mean, the Nebraska Supreme Court recently flipped this, but up until that time that's just how was

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for SIDs, correct? [LB26]

BRIAN DOYLE: That's correct. [LB26]

SENATOR WHITE: Okay, so this would be a major expansion. Instead of simply being a small bill to address a nuisance assessments, you now want to expand this into a major effort to protect SIDs and improve their position in the case of bankruptcy or other foreclosures than you ever enjoyed before. Am I fair? [LB26]

BRIAN DOYLE: I think that's fair. [LB26]

SENATOR WHITE: Thank you. [LB26]

SENATOR CORNETT: Any other questions from the committee? Seeing none, thank you. [LB26]

BRIAN DOYLE: Thank you. [LB26]

SENATOR CORNETT: Are there any further proponents? Opponents? [LB26]

BETH BAZYN FERRELL: Good afternoon, Senator 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 in opposition to the bill as written. We've not seen the amendment, so I won't address those. We do understand and recognize that there is a problem collecting these special assessments. But what we have issue with is the way that this bill addresses it in terms of parity. For most of the last century, 77-208, which is the section that says that real estate liens have priority over other kinds of encumbrances or liens; that has really addressed the issue of securing funds for the general functions of government. It's broad based and it addresses funds that are levied for county, city, schools...the greater forms of government. In contrast, special assessments are typically narrower in scope. In many cases, they deal with just a very specific parcel, as in the testimony that you've heard earlier about litter pickup and that type of thing. Or they may deal with something a bit larger in scope, but still not broad for the entire populous. For example, they may be dealing with curbing, or guttering, or water, sewer, that type of thing; but it's smaller in scope than a broad tax. So the policy question really is, is it better to...or is it appropriate and equitable to have a special assessment be on the same level, or as Senator White indicated in this case, perhaps a higher level than the taxes that are levied for the general populous and to support the general function of government? We believe that the general taxes, general property taxes, should be at a higher tier than special assessments. I'd be happy to try and answer questions. [LB26]

SENATOR CORNETT: Senator Louden. [LB26]

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SENATOR LOUDEN: I guess I would ask again: this bill covers all...when it says all cities or whatever, it covers every little town and metropolitan...the whole system across the state of Nebraska, is that correct? [LB26]

BETH BAZYN FERRELL: That's the way I understand it. [LB26]

SENATOR LOUDEN: Okay, thanks. [LB26]

BETH BAZYN FERRELL: Um-hum. [LB26]

SENATOR CORNETT: Senator White. [LB26]

SENATOR WHITE: If we're concerned about protecting the general property tax values, which would be, I think, your organization's primary concern, don't you agree that defunding the city, which has responsibility to get rid of problem...either weedy lots, or getting rid of abandoned crack houses in Omaha, rat-infested places in other towns...helps protect your property base? And if that's true, why shouldn't they get paid back? I mean, they're actually expending money. They're not asking the schools saying, look, this house right here is dragging down an entire neighborhood; it's costing you all money in tax receipts. You guys all chip in according to your tax basis, and we'll knock that building down, and we'll improve the values for everybody. They don't ask you to do that; they just do it. But now you're making it more difficult for them to even get paid back. [LB26]

BETH BAZYN FERRELL: That's correct. I think there's a distinction, maybe, that needs to be drawn between the kind of special assessments that are levied for cleaning up the building, as opposed to ones for paving. And maybe that's a distinction that needs to be drawn. Certainly want to get everything back on the tax roll, but maybe it needs to be approached in a little bit different manner. [LB26]

SENATOR WHITE: Well, but you can't, when you get into those areas...and I think you're right, but for example, you have a broken-up sidewalk, and it's a mess and a bad lot. They fix the sidewalk, they assess the property, they've mown the weeds; now the neighborhood's more valuable, your people are happy. I mean, would it be better if the city has a right to bill back against tax receipts, all in proportion to share, all of the entities, for what they spent? It's kind of like you want your cake, but you don't want to pay for it. [LB26]

BETH BAZYN FERRELL: And I think that's something that we could, maybe, work through with respect to this. Because we do want everything to come back on the tax rolls. [LB26]

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SENATOR WHITE: Sure, and I appreciate it's an interesting problem. Thank you.
[LB26]

SENATOR CORNETT: Senator Adams. [LB26]

SENATOR ADAMS: I don't want to be repetitive, but along those same lines, that's...you opened it up...I'm struggling a bit with saying that the special assessment for the paving district, or the water, or the sewer shouldn't be on, literally, the same parity level as the general property tax. Because if those special assessments don't get paid, the residents, the property tax payers of that community, are going to pick up the tab. So I do see them as equal. I guess I don't quite understand your argument. [LB26]

BETH BAZYN FERRELL: I think some of it goes back to...also to...like the sheriff's sale and the comments that were made earlier; sort of, where does that fall? We do want everything to come back on the tax roll as much as we can. We just want to make sure that everything...that the county share of taxes are paid, the city share, the schools...the things that are general levies; make sure that those are paid, too. [LB26]

SENATOR CORNETT: Senator Utter. [LB26]

SENATOR UTTER: Senator Cornett, thank you. Would you agree that if something were done, for example, that put special assessments on equal footing, not necessarily a superior footing, to all of...I'm afraid that the special assessments have been elevated to a superior footing. To an equal footing and the piece of the...then in my mind, when the piece of property sold at the sheriff's sale, why, everybody would get their proportionate share of whatever that sale price would be, and the new owner gets his clear title. Unless somebody steps in to protect that property. [LB26]

BETH BAZYN FERRELL: And I think that concept is more palatable; we just want to be sure that one is not elevated unintentionally. [LB26]

SENATOR WHITE: In following on... [LB26]

SENATOR CORNETT: Senator White [LB26]

SENATOR WHITE: ...Senator Utter's question: now you're assuming you've got a troubled neighborhood--it needs new sidewalks, it needs new streets. You've got two nonpaying houses on it that either need to be torn down or something. Why on earth would I stick that money into that neighborhood knowing I'm not going to get it back? I'm not going to get the money back to mow the weeds; I'm not going to get on the one out of ten, I mean, five cents on the dollar or ten cents on the dollar. Why do I knock that building down? Why do I improve that sidewalk? Why do I pave the street in an impoverished area, if my investment's gone for sure? And so it's one thing to say yeah,

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they're on the same basis, but that's...everybody gets to sit down and eat but they only get stuck with the bill. So is that reasonable? Or do you, are you going to discourage the investment in our small towns and neighborhoods to knock down problem buildings and improve the infrastructure? [LB26]

BETH BAZYN FERRELL: Well, that's a fair question. And counties get involved in that too. We get calls in our office about, what do we do? It's gone through the tax sale process, now we've gone through foreclosure, no one's bid on it, now what? [LB26]

SENATOR WHITE: Well, thank you. [LB26]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you for your testimony. Are there any other opponents? Is anyone here to testify in a neutral capacity? Senator Friend, you're recognized to close. [LB26]

SENATOR FRIEND: I wasn't going to--I think those were some pretty good discussion here, and I appreciate that. Obviously, when Paul Kratz and Jack Cheloha approached me, they have...and Paul, in particular, has a very good understanding of the problem that Omaha's having to deal with right now. And I think that if there are problems, or if there are concerns about this language which brings opposition and things like that, I think I'd like to get the opportunity to work through that. And maybe we can do that. All I'd say is, obviously, Paul has mentioned to me, too, that if those things need to be dealt with he'd be more than happy to work with the committee members as well, and committee counsel, to get something palatable. So anyway, that's all I have. [LB26]

SENATOR CORNETT: Any questions from the committee? Senator Louden. [LB26]

SENATOR LOUDEN: Yes, one last question, Senator Friend. Is this a case where these are, what would you say...dilapidated properties? Or are these...is there something coming down the pike that these are houses that were built in developments and people were walking off and leaving them or something like that? And then when they're sold, there are special assessments against them and they're trying to recover that? Where are we talking about? Are we just talking about junk houses, or are we talking about fairly modern buildings that somebody has walked off and left? [LB26]

SENATOR FRIEND: Well, I think the former, percentagewise. The way that this problem has been explained to me, by Mr. Kratz and others in Omaha, is that the former would be true: the junk houses, things like that. Now that doesn't mean that there aren't instances of the other, but the percentages I don't know, Senator Louden. That's data that, I mean, I'm sure that there's data out there, and there's information we can figure out. We can almost nail down exactly what those... [LB26]

SENATOR LOUDEN: Well, when you watch TV sometimes in the early mornings...I

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don't know if you're up that early, Mike, but they tell you on there you can go and buy a house for \$500 someplace, you know, and all that kind of stuff; and they bought this big beautiful house for \$1,000. Well, you know, there was a whole bunch of problems in there, and that's what I'm wondering: is this something that the cities are coming around so that they can recover some of those tax liens that's against them, and these people can't come in there and buy these properties at, you know, cutthroat prices? And I'm wondering if, this way, they're trying to get it so they can recover some of that? [LB26]

SENATOR FRIEND: Well, and...that's a fairly skeptical view on it, but there's a reality associated...I mean, I don't think that that would be the case. I mean, I've never...I'd like to be a little more...I mean, I don't think that that's one of the major factors. [LB218]

SENATOR LOUDEN: Okay, thank you. [LB26]

SENATOR FRIEND: Sure. [LB26]

SENATOR CORNETT: Senator Utter. [LB26]

SENATOR UTTER: Just one more question, just to make sure I understand, Senator Friend. Am I to understand that we're really talking about two classes of special assessments? I have to admit that in my experience of special assessment, I guess I'm most familiar with is the special assessments that are made for infrastructure improvements: streets, sidewalks, those type of things. Primarily in new developments, but also in my experience, in streets that have already been developed, and then at a later date are petitioned to be paved, and the sidewalks put in, and not necessarily part of an SID. Are they going to be in a different class? Those assessments are going to be in a different class? [LB26]

SENATOR FRIEND: Well, that's...I don't think...if I understand the question, I think what you're asking...I don't think there's anything in this bill that does that. I don't think we're trying to create another class...I'm not sure I follow. You asked if there were two separate classes of special assessments. I don't see that in this language. I don't see where we're trying to classify in providing definitions to create that classification. If it's somewhere else, I don't know where it is. [LB26]

SENATOR UTTER: In your understanding, how would that...how would the special assessments fall? Infrastructure improvements: streets, sidewalks; how would they be handled differently in the sheriff's sale situation than the property improvement assessments? [LB26]

SENATOR FRIEND: Well, I think the same as Senator White pointed out on page 2; the language is right there. I mean, you're putting them in the same...the intent was to put them in the same category, on lines 9-14, as general, state, county, city, village,

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municipal, or school taxes and no sale of such property to enforce any...maybe I don't understand the question. [LB26]

SENATOR UTTER: Maybe I don't either. (Laughter) [LB26]

SENATOR FRIEND: No, I guess I...I think I know where you're going with this but, I mean, he asked...Senator White asked a question earlier, and I guess I'm assuming that you're saying you think, based on some of the discussion here, that we're creating another class, and this is going to put it in a different category as the general, state, county, city, village, municipal, or school taxes in regard to special assessments? [LB26]

SENATOR UTTER: And then special assessments that may already exist against that property that typically are paid off over a period of years; what happens to them in that foreclosure sale? [LB26]

SENATOR FRIEND: I don't know. I mean, what happens to them now? [LB26]

SENATOR UTTER: Well, it seems to me like they remain a...particularly the ones that are delinquent... [LB26]

SENATOR FRIEND: They're a problem now, just...well...I don't...(laugh). It goes to the question he asked earlier. Maybe you guys are on the same page. I'm not sure I have a good answer for that. [LB26]

SENATOR UTTER: Well, hopefully somebody will help me with that before we... [LB26]

SENATOR CORNETT: Senator White. [LB26]

SENATOR WHITE: I'm not certain, but where I think we're at is, historically, special assessments were treated as not being on the same level, and in parity is confusing. You would put them in the same class, but if you had a sheriff's sale, a special assessment would survive. In other words, they'd get...if you collected ten cents on the dollar, they'd get 10 percent of their...just pro rata, as it were. But they kept their lien anyway. So you could have a sheriff's sale, the person who bought it, bought it subject to the special assessments. They got their 10 percent: schools, property...everybody was gone except them, and the owner still had to deal with them. And the Supreme Court changed that; I think Mr. Kratz could probably correct me--three years ago, I think, or thereabouts, and said, no, no, they're in the same class so they're all gone. [LB26]

SENATOR FRIEND: The decision was 2007. [LB26]

SENATOR WHITE: 2007. And so, then what has occurred is, the burr under Omaha's

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saddle, and other cities is, why on earth do we put money in to get rid of these troubled buildings? When they're really looking at it on that level is, why would we get rid of these troubled buildings, put this money in here, when we're doing it for the benefit of all these tax entities...we're improving everything and we're not getting our money back, and we've got financial problems. But I think you raise a point now, because the SIDs came in; the way it's drafted it may, in fact, now, raise back the status of sewer, improvement, loans, and other things, and there may be an unintended consequence. Now I can't tell you as how those were treated in the old days, under the old Supreme Court Opinion, I don't know. [LB26]

SENATOR FRIEND: But that is the amendment. That's not the green copy of the bill. [LB26]

SENATOR CORNETT: I was going to say that is the amendment. [LB26]

SENATOR WHITE: That's the amendment. But the green copy, right now, would arguably give...the amendment just gives that to the SIDs. The green copy, right now, may, in fact, give that to the cities now. So if you have a new sewer bond, if you have a new paving; that may not be extinguished, arguably, when you have a sheriff's sale. [LB26]

SENATOR CORNETT: Senator Friend, did you wish to respond? [LB26]

SENATOR FRIEND: Well, we can talk about it... [LB26]

SENATOR CORNETT: I was going to say we can discuss this in exec session; I think it's probably more appropriate. Any more questions? Seeing none, thank you, Senator Friend. [LB26]

SENATOR FRIEND: Thank you. [LB26]

SENATOR DIERKS: Senator Cornett to introduce LB218. Senator Cornett. [LB218]

SENATOR CORNETT: (Exhibit 2) Thank you, Senator Dierks and members of the Revenue Committee. My name is Senator Abbie Cornett, from the 45th Legislative District. LB218 is a result of the Revenue Committee and the Appropriations Committee interim study. The study focused on the current state aid program for counties and the state's jail cost reimbursement program. The bill which resulted and is offered today phases out the current jail cost reimbursement program and two other county aid programs. In place of these aid programs, the bill offers a single aid program with a single approach for the distribution of funds. The bill is drafted in a way which allows the Legislature to budget an amount of aid which could vary from just over \$10 million to over \$17 million in state aid in this upcoming fiscal year. Distribution of the aid to

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counties is based on each county's share of the statewide valuation. This will create a formula which grows along with the growth of the statewide taxable value. The Legislature will also be able to increase the growth of this program by adjusting the formula found in this bill. Senator Heidemann had a bill in another committee to introduce, but wanted me to express his support of this bill as a work between the Revenue Committee and the Appropriations Committee. For the members that have not been in the Legislature before, jail reimbursement has been an ongoing problem for the counties. What we did in this bill, along with the help of the counties, was look at a way for a more dependable funding stream than what they currently have. I do have a letter, that I'd like to introduce into the record, from the city of Lincoln that highlights a point that we overlooked and we will be working to correct. [LB218]

SENATOR DIERKS: Questions for Senator Cornett. I guess not. Thank you, Senator. First proponent, please. [LB218]

LARRY DIX: Senator Dierks, members of the committee; for the record, my name is Larry Dix. I'm the executive director of the Nebraska Association of County Officials, appearing in front of you today in support of LB218. Typically, I try to keep my testimony quite brief and pretty matter of fact, but today I would ask your indulgence as I try to lay out a little bit of the history, some of the groundwork that went into this bill, and the potential for this legislation. Certainly I want to thank Senator Cornett for introducing this bill and her willingness to work with us; and Senator Heidemann for working together to try to come up with a solution to state aid to counties--not only for today, but as we look into the future. In 1998, I think it was '98, legislation was passed in the form of jail reimbursement. And along with that was something...and this is certainly primarily for the senators who weren't here before...in addition to that, something called county property tax relief. And at that point in time, jail reimbursement was targeted for the largest counties, the ones that typically would house prisoners and state prisoners. County property tax relief was targeted for the smallest of counties--ones that may not have a jail; ones that statistically, probably, the crime level was so low that the opportunity for them to house or to have a state prisoner was very, very minimal. And at that point in time, I think I remember that about 80-some counties participated in the county property tax relief portion of it. The other 12 or 13 immediately, probably, fell into the class of getting money just from jail reimbursement. And there were a few counties that could potentially get some money from both of the programs. In fiscal year 2000-2001, at that point in time, jail reimbursement was funded at \$6.8 million, and county property tax relief was funded at \$6 million. State aid to counties, which is a third component of aid, was funded at \$7.93 million, okay? And what we're looking at today, in this bill, is taking those three funding sources and sort of rolling them together, for reasons that I'll describe later. The following year, in 2001-02, is when we started to see some of the economic downturn--just the very, very, very beginnings of it. At that point in time, those three programs were funded at \$17 million, so...historically. Today, if we take those three programs and add the total funding together, it's at \$10.375 million. So

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you can see a decline in the last 8 or 9 years for state aid to counties of, in essence, about \$10 million--just a little shy of \$10 million. Right now, there is \$3.91 million in the jail reimbursement; there is \$1.5 million in county property tax relief; and then state aids to counties is funded at about \$4.4965 million, which comes up with the \$10.3 million. It's important to note that through that period of time, county property tax was actually zeroed out for four years: there were four years period of time where there was no money in county property tax relief, so. Discussions about jail reimbursement really have been going on in the proper level of funding, and the daily rate, the daily reimbursement...those discussions probably have been going on since about the time that the bill was passed. And each year, or every other year, at least, we have debate on the floor of the Legislature. Right now, jail reimbursement is to a point where if you house a prisoner in the first or second quarter, you're probably going to get some money back. But if you house a prisoner in the third or fourth quarter, you're going to get zero back. Which, quite honestly, causes some consternation to a number of counties because there is this up and down. And they're doing everything right. I would tell you the larger counties, of size, a Douglas, a Lancaster, a Sarpy...a number of those...Hall County: they typically are sort of a little bit more, you know, a level fashion. But I would tell you Hall County over the last four years, from year to year, has seen as much as an \$80,000 swing from one year to another. And it's all depending on what months...part of the year they house them in. Last year, Senator Cornett introduced a bill to remove the cap of \$3.9 million so we could get away from that upper level, and to see if we could move forward with Appropriations Committee to get more money into the jail reimbursement because of the first and second quarter issue. That bill got out on the floor. We started debating it late in the session--really ran out of time; we knew that we weren't going to get to the finish line on it. And at that point in time, there was sort of a discussion that said, okay, we need to study this. We really need to take a look at it. And there was talk of an interim study, which was completed. But as you can see, jail reimbursement, county property tax relief...we've got a long history. We've got a ten-year discussion, almost, that's going on. After the interim study, the NACO board looked at this, because jail reimbursement is a pretty passionate issue when you talk to county officials. The NACO board felt that it was probably time, as an organization...we stepped up and said, let's at least examine a new direction. And so that happened, really, last October--shortly after the interim study was released. They felt...we heard from a number of folks. At one point in time, I think there was even a comment made by a senator that said, whenever jail reimbursement's debated on the floor of the Legislature it's a toxic debate. And so we know that there's a lot of discussion on that. I don't want to dwell in the past, but...that's past. But I wanted to give the background for the new senators, just so you sort of have an understanding of how far we've gone. The new bill is about new direction, policy change for county aid. The proposal brought for you today is a culmination of many discussions, and is the beginning of a new direction for a funding policy for counties. Any time you make a change in the funding mechanism for something like that, we understand there's always going to be winners and losers. If we were simply going to take a different funding mechanism and guarantee everybody

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get the exact same amount of money, you would say, well, why do we do that? I know that when we look at this, we may have some counties that oppose this at certain levels of funding, but would support it at other levels of funding. It's always typically about the money, and we understand that. But we do want to step forward and say, here's an idea that we brought forward. We want to have good consideration of that. This was brought, certainly in good faith, by NACO; certainly on behalf of an idea that came about. And again, we appreciate Senator Cornett and Heidemann's time on this, because we appreciate the leadership in moving this idea forward. This idea has been discussed with the Governor; we've discussed it with Speaker Flood; we've talked to numerous other senators about it, and one of the premises of this came from a discussion that I had with the Governor over two years ago. And he asked, at that point in time, is there a way that we can come up with a simple formula to look at combining the three components of state aid to counties? Those being jail reimbursement, county property tax, and state aid to counties. In an effort to move forward with this...I believe a number of senators have an interest in it, just based on the previous history of jail reimbursement. The premise for this legislation came from a thought that if we could target state aid to offset a cent and a half to two cents of levying in each county. This would provide property tax relief. This was the basic premise that Senator Cornett, Senator Heidemann, and myself met with. Out of that meeting came the idea that we establish a range; that range being .075 cents and 1.25 cents, so that Appropriations had some latitude within that. In addition, each county would receive a base of \$30,000. I'm here to tell you I don't believe there's any magic in the \$30,000 number. The number may best be \$20,000; it may best be \$40,000. We selected \$30,000--sort of middle range. That's where that came from. I believe that number does give us some flexibility in future years. It does give the Legislature some flexibility. Human nature and counties are going to have a compensatory desire to look and compare where they were at in the past year. That's always what we come up against. No one wants to receive less than they did the year before; that's understandable. I understand that too. And if there was this huge pot of money, we could probably guarantee that nobody would receive less than we did the year before. But given today's economic standards, I think that we can't just simply throw more and more money at it to simply hold people harmless. And we understand that. We also understand that this is tied to valuation, and there is the possibility that valuation could go down. We're willing to assume that risk. This bill will and is a work in progress; probably will continue. If the Appropriations Committee would elect only to fund it at the .075, I would tell you we would have a number of counties that said I don't think I can accept that. If we can move that forward within that range, and I've had a number of serious discussions with Senator Heidemann just specifically about that, I think we can come to a compromise. When we move that forward and how far, I think is our jobs as representing our counties. That will determine where we're at: how many counties support; how many counties feel that they may have a loss that they can accept. The advantages of this shift in policy are that the revenue stream will be consistent from year to year, and allow the counties to utilize this revenue stream in the budgeting process. Today in the budgeting process, depending on when we may or

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may not house our prisoners, that stream will go up or down. It is also dependent if we have a Legislature that wants to fund county property tax relief. It could go from \$1.5 million to zero in one year. And we've seen that happen. So, in addition to the reliable source, we believe it will be stable; and most importantly, it will factor in a small growth allowance from year to year. This proposal is only intended to affect the three funding components: state aid, jail reimbursement, county property tax relief. I do not know if this would be considered innovative thinking, but I believe it does show that NACO and the counties are willing to further the partnership with state government. We realize that jail reimbursement, county property tax relief...the county property tax relief discussion over the previous years does not paint any of us in a very good light to the public. Therefore, it's our interest to work together that we can bring forth a new policy that addresses state funding to county government. With that I'll try to answer any questions that you'll have on this bill. [LB218]

SENATOR CORNETT: Senator Adams. [LB218]

SENATOR ADAMS: Being an education guy, I'm new to formulas so I have some questions. You started out at .075, what was the top end of that? [LB218]

LARRY DIX: 1.25, or... [LB218]

SENATOR CORNETT: .125. [LB218]

LARRY DIX: .125. [LB218]

SENATOR ADAMS: Okay, okay. [LB218]

LARRY DIX: That came out of a discussion that Senator Cornett and I had with Senator Heidemann. Everybody, of course, wants it as high as we can. I think Senator Heidemann, in all fairness, from an Appropriations position said, we certainly have to be able to sort of have a floor. I think Senator Cornett made a good suggestion...or, he wanted to have a ceiling center; Cornett made the suggestion that well, we need to have a floor. In the discussion, we sort of slotted this .075-.125. [LB218]

SENATOR ADAMS: May I... [LB218]

SENATOR CORNETT: Yes. [LB218]

SENATOR ADAMS: ...continue? The next question, the...I'm going to start with that \$30,000 base number and then follow up with another one. You indicated that the \$30,000 was kind of an arbitrary beginning point. Is it based on costs, or is it just truly a number out of the hat? [LB218]

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LARRY DIX: The \$30,000...there's a little justification to it. When you looked at over the years and different things that we identified with in our organization, knowing that the dynamics in the state of Nebraska...we go from so, so small to very large. And when I say that, we go from an Arthur County to a Douglas County; and the disparity is so drastic from one end of the spectrum to the other that, many times, within our organization, we look at establishing a base amount to sort of give a floor, because in all reality, the valuation growth over the years in Arthur County...they're not going to really gain too awful much incremental funding year after year. That \$30,000 is sort of the midpoint for those smallest, probably 50 or 60 counties. [LB218]

SENATOR ADAMS: Okay. The growth allowance you talked about: have you determined the percentage there? [LB218]

LARRY DIX: The growth allowance, historically...if you go back almost 20 years in time...and I'm obtaining some of this information from Fiscal: I work real close with Tom Bergquist and I've also worked very, very close with Bill Lock. I think, historically, we have seen on an average, over probably about 10 or 15 years, about a 5 percent growth in valuation. [LB218]

SENATOR ADAMS: So would you apply the growth allowance to the base, the foundation, or do you apply it to the total appropriation? What... [LB218]

LARRY DIX: The growth would be that the valuation would increase that much each year so it would be to the base to start with, then you would take away the \$30,000 from each county, and then the remainder would be prorationally divided among the 93 counties. [LB218]

SENATOR ADAMS: Have you had an opportunity to run these numbers and model them to see what things are going to look like? [LB218]

LARRY DIX: Yes, yes, we have. [LB218]

SENATOR ADAMS: Can we see those, or... [LB218]

LARRY DIX: Absolutely. [LB218]

SENATOR ADAMS: I don't need them right now, but... [LB218]

LARRY DIX: Right. We have done them. I believe Tom Bergquist has done those, but absolutely; I have absolutely no problem with that. [LB218]

SENATOR CORNETT: Senator White. [LB218]

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SENATOR WHITE: Thank you. Mr. Dix, first of all, I was at the hearing before this came out and this was proposed, and a number of county officials strongly stated--actually the vast majority--would much prefer that their bills for the jail just be paid, to any kind of new formula that can have different vagaries. Isn't that correct? You were at that hearing. [LB218]

LARRY DIX: That is correct. [LB218]

SENATOR WHITE: They overwhelmingly just want the state to pay their bills, correct? [LB218]

LARRY DIX: That is correct. [LB218]

SENATOR WHITE: And now we find ourselves in another formula, the funding of which will be uncertain; the administration of which will be difficult; and the outcome of which will be problematic. Is that correct? [LB218]

LARRY DIX: That is correct. [LB218]

SENATOR WHITE: And then we also have the issue of, this is supposed to drive assistance for what can be for a small county catastrophic costs when housing a prisoner or multiple prisoners for a long period of time, and that gets layered on top of the cost of defense and prosecution. And these can be real back breakers for counties. Is that correct? [LB218]

LARRY DIX: Um-hum. [LB218]

SENATOR WHITE: Is...am I right? [LB218]

LARRY DIX: Yes, um-hum, yes, it is. [LB218]

SENATOR WHITE: And yet this formula makes no account for the fact that some small county may have the misfortune to become the home of a meth lab, and another county may go 100 years and never see any kind of prisoner need. Is that correct? [LB218]

LARRY DIX: Um-hum. [LB218]

SENATOR WHITE: Is that a yes? [LB218]

LARRY DIX: That's a yes. [LB218]

SENATOR WHITE: Okay, and then we have the situation then, that even if we put this in place...let's pick a county, and I don't want to pick on any particular one, but let's pick

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Loup County...has a mass murder; they have seven or eight people in jail. They can be devastated, financially, for years to come, despite this, and not get meaningful relief from the state for what all's their problem. And all this would be unnecessary if we in the state just paid our bills. Correct? [LB218]

LARRY DIX: Senator White, I would agree with you. [LB218]

SENATOR WHITE: Why on earth don't we just pay our bills? [LB218]

LARRY DIX: I can't answer that question. (Laughter) I would...I share, you don't know how much I share your frustration. We have come to this point because I think we have felt...we have beat our head against the wall for a ten-year period of time to try everything we know how, to get jail reimbursement fully funded. Senator Cornett has introduced bills; we've had numerous senators over the years introduce bills. We've tried to remove the cap--we have had absolutely no success from that. We have...I think it's a fair statement that, I don't...I believe the Governor does not like the jail reimbursement program, based on the fact of conversations I've had with him and saying, can we come up with a different formula? And when we looked at it, we felt we can go through that exercise year after year, which we have, with no success. And so we thought, let's throw out another idea. Maybe it's not the best idea; it's an idea. [LB218]

SENATOR CORNETT: Mr. Dix, just a couple questions on how to maybe clarify how this came about. While it is very true that, what Senator White said about having to house seven or eight prisoners...the state has never fully compensated counties for jail reimbursement. It has always been capped, correct? [LB218]

LARRY DIX: Yeah. [LB218]

SENATOR CORNETT: At a dollar amount. Or at least in the past multiple years. [LB218]

LARRY DIX: In recent...when jail reimbursement... [LB218]

SENATOR CORNETT: And I know we went back in and lowered that... [LB218]

LARRY DIX: Yeah. [LB218]

SENATOR CORNETT: ...and with the promise that we'd come back and raise it, and we did not. I have got all the transcripts from years prior. [LB218]

LARRY DIX: You've got all the transcripts, you've got that exactly right. I...the only...one small clarification I would make. [LB218]

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SENATOR CORNETT: Um-hum. [LB218]

LARRY DIX: The first year jail reimbursement was put out there, when it was first put out there, I think the first year you could argue that it was fully funded, because the first year there was ample money there, but not everybody was accustomed to getting the reports and everything in... [LB218]

SENATOR CORNETT: So it wasn't utilized. [LB218]

LARRY DIX: ...so there...it was not utilized. So somebody could make the argument that it was fully funded that year. [LB218]

SENATOR CORNETT: What year was that? [LB218]

LARRY DIX: That would have been the year that we had the six...I believe that would have been in fiscal year...right around the 2000-2001. I think that's when. [LB218]

SENATOR CORNETT: Okay. And out of our discussions that have led us to this point, and with the Appropriations Committee, Senator Heidemann wanted to look at state aid to counties as a whole, because it wasn't just in jail reimbursement that the state wasn't necessarily funding counties at the level that they had promised, that they were required to, and that even in the jail reimbursement there were winners and losers. [LB218]

LARRY DIX: That is correct. There are...the two components that typically go hand in hand is the county property tax relief and the jail reimbursement. And the county property tax relief, at one point in time, as I'd mentioned, it was at about \$6 million-\$6.5 million to 80-some counties. And it went from there to zero, and now back up to \$1.5 million. And now that it's back up to \$1.5 million, there are caveats attached to that so that those 80 counties don't share in that \$1.5 million; it's now probably about 40 counties. So there's sort of a tier of counties in the middle that very often do not participate in jail reimbursement or county property tax relief--do not participate in either one of the programs. And that is one of the concerns that Senator Heidemann expressed. [LB218]

SENATOR CORNETT: And it was from that concern that we looked for a more predictable way of funding counties, both from the state perspective and from the county perspective. And just to follow up on that, I understand the way the bill is currently drafted, that the metropolitan areas are at a significant disadvantage under this. But we have been discussing that and working on amendments to address that issue. [LB218]

LARRY DIX: Yeah. If, when we look at the valuation, and Senator Adams I know you'll

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love to dig into the valuation formula when we get into it, but in the state of Nebraska, Douglas County carries about 26 percent of the valuation. So when you start to, sort of, massage or work with those numbers, if you place some money out there, Douglas County will probably obtain 26 percent of that revenue. Over time, as I mentioned before, there is a better growth mechanism, probably, for the larger counties because of growth evaluation than there is for the Arthur County. I think that certainly is a given. When we look at the funding of this, and we look and we make the assumption that it is only funded at the .075 amount, Douglas County, Lancaster County...significantly impacted. If we move negatively impacted, okay? If we move that as we move that funding up to close to a cent, Douglas County, Lancaster County, significantly, positively impacted. So the discussion point really is within the range. It's still within the range. [LB218]

SENATOR CORNETT: And that floor that we set at that meeting: wasn't that somewhat of an arbitrary number at that point, because we did not know what that hold harmless floor would be at that time. Is that correct? [LB218]

LARRY DIX: That's right. The floor, the .075, in essence what that does is say no increase to the \$10.3 million. That floor is currently the floor as it exists today. That's where the .075 came from. As we move that up, as I mentioned before, the counties with valuation are positively impacted as we move within that range. [LB218]

SENATOR CORNETT: Senator Hadley. [LB218]

SENATOR HADLEY: Mr. Dix, for new people: philosophically, why is the state involved with paying for prisoners? Secondly, philosophically, is the state not paying it's share because there is a philosophical problem of paying the share, or is it just because we don't feel we have the money to pay the share? [LB218]

LARRY DIX: I think we went back in statutes and probably found in the '50s there was reimbursement for the state housing prisoners. I mean, that historically has been there years and years and years. When we get to the current jail reimbursement, at the time, there was debate on the floor of when a prisoner becomes a "state prisoner"; a lot of debate. And many times you look at what a statute says, and you say, well, I don't see that way; but you go back to the legislative intent. And the legislative intent of that bill came about from a discussion with Senator Peterson from North Platte, and Senator Chambers from Omaha. And the intent was, when someone has been arrested: housed in a county jail; goes through the legal process; is determined to have committed a crime that is elevated to a state prisoner level; the reimbursement goes back to the time when the person was originally housed in the jail. Senator Chambers asked the question, you mean to tell me we are going to compensate...we are going to pay from the time the person was put in jail to when they are moved to a state facility, if they are charged with a state crime. Senator Peterson said, yes, that is the intent. That question

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was asked on General File, Select File, and I believe on Final Reading. And that intent is there. But today, as time has moved forward, there are people that have reinterpreted it and said, well, we should only be paying from the time that the final decision, the final judgment is made until they're moved to a state prison or to the state pen. But the legislative intent, in our belief, clearly states that. So that's where some of that philosophical reason boils down to. The other philosophical...and I don't know if it's philosophical or it's money. When we came into the period of time in the early 2000, 2001, 2002, the state...obviously, the revenues were down; they were down all over the country. The state came to us and said, we've got a problem. We've got a problem with state revenue. Can we look to reduce some of the...what we allocate for county property tax and jail reimbursement to counties to help us through this budget crisis, and once we're out of it, great: we'll make things whole. Well, what happened was we said, we're partners, we'll do that; bad decision on our part. Not that it probably would have made any difference at the end of the day, but we made that decision and here we are today. It's interesting to me to think that in the year 2000 we had \$20,000 of state aid going to counties, allocated to counties. And today we're at \$10,000. There probably are not too many other governmental entities that would walk in here and say, fund us at our 2000 level. [LB218]

SENATOR CORNETT: Senator White. [LB218]

SENATOR WHITE: Thank you, Mr. Dix. A couple of questions: First of all, giving what we're now talking about, the debate on funding for jail reimbursement's gone. We're no longer talking about jail reimbursement in any way. This is just an occasion to talk about a new program or expand a program for county aid. [LB218]

LARRY DIX: Correct. [LB218]

SENATOR WHITE: And does that mean the county will forevermore not ask for any kind of reimbursement for jail? Say if we have a county that goes bankrupt, or nearly bankrupt, because of a mass murder, we're not going to hear about how the state has to come in and help them anymore. Is that the county's position? Because what you're saying is, we're giving up the argument that the state should just pay its bills for the prisoners it's charged with. Are you really ready to give that up? [LB218]

LARRY DIX: I think there are two questions there, but I want to make sure. If the county is giving up the request to house those prisoners, which is what jail reimbursement's about, is one thing. The other question I think is there, is to help us defend and bring them to justice. [LB218]

SENATOR WHITE: No, I'm asking a more broad, simple question. You think you're going to get more money if you ask in a different way, okay. So now I'm questioning: are you, as a representative of the counties, going to make the statement that counties are

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going to give up any future claims at all for jail reimbursement? That's off the table; we're not going to hear about that anymore because you've got this new program. And if that's yes, the question I have is, the same committee that has regularly denied paying the bills that are fully due and owing--and by the way, which overwhelmingly hurt rural counties, because Omaha and Lincoln have enough prisoners, about the same (inaudible) all year long; you're going to trust that same committee now to fund this program. And they're going to fund it at a level that won't just nail just Douglas and Sarpy County. [LB218]

LARRY DIX: Very fair question, very fair question. And I think it's like anything else that we look at legislatively. I think if we could have all our bills say, we're going to pass a bill and we're never going to ask about it again, that would be one thing. But I don't think that's probably how any legislation is ever drafted. It's always an idea; we may not see an idea for 10 or 15 years, but the idea may come back at some point in time. [LB218]

SENATOR WHITE: So then this jail reimbursement's just a stocking horse to get more money on a different program? [LB218]

LARRY DIX: I don't see it that. I see it's a good faith effort, brought by the counties, just because of the very nature of the debate, year after year, on jail reimbursement. [LB218]

SENATOR WHITE: And a final question. The way the counties will be paid is based on valuation, which means if there's built-in bias towards agricultural land of 25 percent, then there will be a built-in bias in the distribution of these monies on the order of 25 percent, correct? [LB218]

LARRY DIX: That is correct, right. [LB218]

SENATOR WHITE: So it's doubly bad for urban areas and cities, correct? [LB218]

LARRY DIX: That is...the numbers that are built in, I mean, statistically, that's a statistical statement that I could not disagree with. [LB218]

SENATOR WHITE: Thank you, Mr. Dix, for your courtesy. [LB218]

LARRY DIX: Thank you. [LB218]

SENATOR CORNETT: Mr. Dix, is the reason that we put that floor in place so the Appropriations Committee could not drop below that point when it came to Appropriations, since they have not funded jail reimbursement? Wasn't that the exact intent? When Lavon and I were sitting down and he wanted the ceiling and I wanted the floor? [LB218]

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LARRY DIX: When we had that discussion, that was the intent. So that there was that, no matter what, that level of funding would be there, legislatively, for year after year after year. [LB218]

SENATOR CORNETT: What...sorry, Senator White. Senator Utter. [LB218]

SENATOR UTTER: As I've listened to county sheriffs and the commissioners in our counties, this jail reimbursement thing has been a real burr under their saddles for a long, long time. I wanted to understand the distribution as it has been in the past. Has the (inaudible) and then we've appropriated X number of dollars for jail reimbursement back to the counties, and then as the counties have billed that, we pay it; and when we hit the top, why then, we don't pay it any longer; and then the counties are expected to eat any claims that they may have from that day forward? Is that the way it's been done? [LB218]

LARRY DIX: I think you're right in the premise. There's been an amount appropriated through the Legislature. On a quarterly basis, in essence, counties can file claims as they come up. And once they've filed the claim and they are found to be a valid claim, then they start saying, okay, here's the amount of money that goes to County A, to County B, to County C, based on those claims. And what is happening right now, today, is that somewhere about the middle of the second quarter, the appropriated amount--the \$3.9 million--simply is gone; there's no more money. So the counties continue to send the claim in, which we've asked them to do, knowing that there's going to be no more money. But we've only asked them to do that to try to determine what the proper funding level would be. And what happens in that scenario at Douglas County, they are going to have people housed in those first three, four, five months; in Antelope County...may or may not. So that is where some of that disparity...but that is the process. [LB218]

SENATOR UTTER: And is it also true that some of the counties have said, this has gone on so long now that we're just not going to go through the paperwork of filling out these claims, because we know we're not going to get paid anyway? [LB218]

LARRY DIX: The counties receive a letter, again, sometime in that second quarter they'll receive a letter that says, we're out of money. Now, you can continue to file the claims if you want to, or you don't have to. And I would tell you, some counties...the frustration level...they have said, why bother? We know there's no money, why go through the exercise? We have requested that they continue to send...file those claims simply so we have an understanding of the proper funding threshold. [LB218]

SENATOR UTTER: One final question, if I may, is that under this new plan, it appears to me that there will be no incentive whatsoever for the state to ever move some of

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those prisoners out of the county jail. [LB218]

LARRY DIX: I think that's part of the judicial proceedings. [LB218]

SENATOR CORNETT: No. [LB218]

SENATOR UTTER: No? [LB218]

SENATOR CORNETT: No. [LB218]

SENATOR UTTER: That's a good point. [LB218]

SENATOR CORNETT: I'm sorry, I seem to have a serious frog in my throat. Have you reviewed the Governor's budget this year? [LB218]

LARRY DIX: Yes, I did. [LB218]

SENATOR CORNETT: What is appropriated, currently, for jail reimbursement? [LB218]

LARRY DIX: Currently appropriated for jail reimbursements is the 3.9, the cap. Currently appropriated for county property tax relief is the 1.5; and state aid, I think, remained the same. And I did visit with the Governor specifically about that, to let him know that we were working on a bill to bring this forward...not knowing, not asking, nor trying to say, what would happen if we weren't? So, but that is my understanding, that today those funding levels are in place. [LB218]

SENATOR CORNETT: Senator Hadley. [LB218]

SENATOR HADLEY: Just a quick question and a follow-up to Senator Utter's question. In my talking with the county officials from my area, and the sheriffs, this really is...this...I mean, you can't talk to Sheriff Miller in Buffalo County more than five minutes until he brings this up; that he's out of money the last half a year. So it is a serious problem. Secondly, to follow up again on what Senator Utter was talking about; I would hope if we don't, somehow, use the Judicial System to determine who should pay for the jail costs, that we charge someone with a state crime so that we can make sure that the state pays the jail cost. Whereas if we charge them with a local crime, we pay the jail costs. So I would hope that justice is blind as far as... [LB218]

SENATOR CORNETT: I can speak from personal experience. I've been told to charge somebody with a state crime rather than a local crime. [LB218]

SENATOR HADLEY: Because obviously, if they do that, the state... [LB218]

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LARRY DIX: And that's part of all the partnership that, I believe...of course, I'm the eternal optimist and think that we live in this perfect world, and maybe we don't; but that we have this partnership, that we do work together on these issues. [LB218]

SENATOR HADLEY: Could I follow up with just one other question? When Senator White was talking about the catastrophe, you know, that really...I know this is a problem for counties when they do have the heinous crime that just nearly bankrupts them. Maybe we need some kind of catastrophe insurance type of system that says, you know, if you do have these type of things for a small county someplace, that there is someplace that they can go to get some help; that we don't just sit there and say, I'm sorry, we signed a bill last year, and you're dead in the water. You got to declare bankruptcy because you have these six criminals that you're trying to deal with. [LB218]

SENATOR WHITE: One of the other things that I have a deep concern with is, this money just goes to a county board. And doesn't mean it's going to go to the sheriff, one nickel. They may just decide, boy, we'd much rather have a new road grader. And then that leaves the sheriff in even worse place than he is now, trying to balance his budget. That worries me. I mean, if it's about jail reimbursement, it seems to me we need to stand up and do what's right and pay our bills. And I agree, and one of the ways we can start helping small counties is when they have a big meth lab bust or they have any other kinds of problems--and by the way, that happens a lot more on I-80 now, because you're getting drug busts in any county--that the state buckle up and pay their bills, and we don't dodge them by trying to put some band-aid on and pretend we're doing something when we're not. I mean, those sheriffs may never see a nickel of this extra money. [LB218]

LARRY DIX: Senator White, I appreciate those comments. And I've got to tell you, we represent sheriffs; we represent clerks; we represent all that group. I think what you're seeing is the frustration of exactly your statement. If the state would be appropriating the proper amount of money, I've got to tell you, I don't think we would be here today. But we've gone through this exercise every year since I've been executive director, to try to get the proper level of funding and have never been successful. And it's one of those things that...maybe we should try for another ten years, and do the same thing. I don't know the answer to that. But I've got to tell you, what we've done for the past ten years hasn't worked too awful well, outside of those first two years when the program first got started. [LB218]

SENATOR WHITE: How much money would be necessary to fully fund jail reimbursement? [LB218]

LARRY DIX: I think if you would...you get into two discussions: fully funding at \$30.00 a day, or fully funding at the cost of the... [LB218]

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SENATOR WHITE: At \$30.00... [LB218]

LARRY DIX: ...okay. [LB218]

SENATOR WHITE: ...because we're shopping for Fords here. [LB218]

LARRY DIX: I think we seriously have to double what we started with at that \$6 million, so it's probably \$12 million in the jail reimbursement. [LB218]

SENATOR CORNETT: Senator Louden. [LB218]

SENATOR LOUDEN: Yeah...yes, this has been a issue for a long time, and especially up here in Sheridan County because our jail is at capacity nearly every day of the week. And I am...agree with Senator White and the rest of them that this state should pay the bill; but my observation has been they usually don't. And when I look at this here, and that money will, the way I understand it, will be divided up on the total valuation of a county compared to the rest of the valuation of the state, or something like that. So how do you do this? Because there could be some counties that have a high valuation and not that many people going in and out of their jails, and some of these other counties have a lower valuation and...I mean, Rushville, up there, they're next to the reservation there, and like I say, they're pretty near capacity every day of the week. And this has always been their problem because Terry Robbins has told me they're out of money by July or so--somewhere along in there, and from then on. So how is this...is this going to be divided up according to the valuation of the county? And is that...are we going to be...are some of those counties going to be any better off than they are now? They still won't get enough money to cover their jail expense. [LB218]

LARRY DIX: I would tell you, when we came to this point in the discussion, we said we've got to have some idea. We've got to come up with a new idea, at least to have a committee look at, and possibly the full Legislature look at. This bill would divide it based on valuation. It does not...there is not a factor in there based on number of prisoners in the jail. I would tell you, if the Revenue Committee would say, we want to look at a formula that says it's based on jail population, and we take all these other, you know, some of the other factors...we're open. We're very open to that discussion. But we felt that, from an organization and from counties, we can't continually come here and say, okay, we need more money. We have to come here with, maybe, some idea. And I would tell you, we're not tied to this particular idea. We're tied to somehow assisting and moving forward with state aid to counties. And if...if, Senator Louden, you had an idea that would put together something from a formula that would tie to housing, we would probably do cartwheels saying, let's look at it. That's what we want to do. That's why we wanted to get some bill introduced, so we could have this dialogue. [LB218]

SENATOR LOUDEN: Because I... [LB218]

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SENATOR DIERKS: Senator White. [LB218]

SENATOR LOUDEN: Yeah, I wanted to make one more comment on this. We've went through this one system for quite a while, and it seems like kind of a shell game, you know; they say, well, we've got so much money we'll pay you. So now what do we come up with? We're moving the shells around a little bit, and we'll see if you can pick out the one again. And I really...I guess I'm at a loss to know whether or not we're going to come out, in some of these counties, any further ahead than what we are now. [LB218]

LARRY DIX: Yeah. [LB218]

SENATOR LOUDEN: And I agree: if we're going to pay for jail expense, let's pay for jail expense. And anything less than that is, to me, is just a shell game. Thank you. [LB218]

SENATOR DIERKS: Senator White, please. [LB218]

SENATOR WHITE: Mr. Dix, if we could put in, through this committee, that state aid to counties shall be full reimbursement for allowable jail at \$30.00 a day; and we put an estimate amount, and that if that estimated amount is exceeded in a given year that the counties that had their days denied would have first claim on the following year's allowance; and that came through this committee rather than Appropriations...is that the kind of thing that might interest your constituents? [LB218]

LARRY DIX: I believe we're interested in anybody's idea in moving this forward. As I said before, I don't think what we see today...we're not claiming this is perfect. It's an idea. It is something that we wanted to get on the table so we could further the discussion, only because of the frustration that we've had. [LB218]

SENATOR CORNETT: Senator Friend. [LB218]

SENATOR FRIEND: Thank you, Madame Chair. Mr. Dix, give me an example: a county runs out of money, and we have heard it four times here during this discussion. A county runs out of money halfway through the year...where do they go to get the money to incarcerate...I mean, what's the norm? [LB218]

LARRY DIX: Okay, and I'm not so sure it's a fair thing to say the county runs out of money. They run out of jail reimbursement money that comes back from the state. [LB218]

SENATOR FRIEND: Okay. [LB218]

LARRY DIX: The county has probably budgeted...we've established our budget based

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on the fact that we know we're going to get some jail reimbursement money back. So it isn't like, when the money runs out for jail reimbursement then we've got to stop the whole process; we continue it. It just comes from General Fund property tax dollars. [LB218]

SENATOR FRIEND: Okay. Counties don't write criminal code; they can't. [LB218]

LARRY DIX: Cannot. [LB218]

SENATOR FRIEND: Okay. The state writes criminal code. Look, I'm just playing devil's advocate here. I mean, I think that the reason this has been difficult over the years is because some folks, and correct me if I'm wrong, I mean, if there's an actual question here...the reason this has been difficult is because we're saying, as a society, does it really matter where this person's incarcerated? If we're afraid of him or her, she or he...they're going to be incarcerated. And what does society...what do they care who pays for it? The person breaks a state law, the person breaks a federal law...I don't know the answer to this. Maybe Senator White and other people on this committee know...how many people are serving sentences in Tecumseh or Lincoln that have violated federal law? And the question is, are they getting reimbursed by the federal government? I can think of dozens...I can go down and find hundreds of instances where the federal government doesn't pay us for what we do. So the thing is, I'm not telling you, live with it; I mean, I see that there's a problem and we talked about it before, off the record. But I'm saying now, based on my time here, I know why it's been so difficult, and I think you do too. Am I wrong by saying there are points on both sides of this argument? [LB218]

LARRY DIX: If I go back and look... [LB218]

SENATOR FRIEND: What I'm saying is that the state...let me ask it in a different way. The state doesn't...I mean, we're oversimplifying a pretty complicated thing, as far as I'm concerned. The state doesn't pay its bill...the state doesn't pay all kinds of bills; Senator Loudon brought that up. I mean, he's right; but we as a society turn around and say, it doesn't really matter, somebody's going to pay for it. Somebody breaks state law...we have a variety of ways to incarcerate the people that we're afraid of, and I think it's oversimplifying the subject matter by just saying...and I appreciate the fact that you come in here and say, look, we've come up with an idea; a formula. I'm not sure I agree with it, but we can, you know...those discussions will continue. I know, I guess my point is, that you've been banging your head on a wall, because I've seen it the last six years. But I also know why it hasn't been fully reimbursed. And I've heard the arguments as to why it wouldn't be. So, anyway... [LB218]

LARRY DIX: To respond to that one would, I think, have to back to the 1998 debate and look at why jail reimbursement and county property tax relief...why those programs were

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initially started. And it was to provide property tax relief. The debate on that, the floor debate, is just filled with property tax debate discussions: how do we move money back to a county to take the burden off of property tax? And so, that's where the premise... [LB218]

SENATOR FRIEND: Mr. Dix, but...one final point, and correct me if I'm wrong...if a particular county said, you know what? We're getting out of the business of jailing our criminals because we can't afford it. The state is jerking us around. Do you think that a hardened criminal's not going to be incarcerated when a decision like that is made at a local level? [LB218]

LARRY DIX: I don't think we have the authority to get out of the business. [LB218]

SENATOR FRIEND: Why? What if you can't afford it? What if the money's not there? That goes back to the original question that I asked: how do you incarcerate the criminals if you're not getting reimbursed? You're taking the money from property taxes, and you're incarcerating those criminals because they broke state law. I don't think it's as simple as we're making it out to be or it would have been solved six years ago. It would have been solved before I even got here, correct? [LB218]

LARRY DIX: That's a fair statement, yep. [LB218]

SENATOR FRIEND: Thanks; thank you. [LB218]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you, Mr. Dix. [LB218]

LARRY DIX: Thank you. [LB218]

SENATOR CORNETT: Next proponent. Good afternoon. [LB218]

STEVE WALKER: Good afternoon. Steve Walker, fiscal administrator for Douglas County. A couple of things I wanted to point out: Douglas County would support this bill if it was funded correctly. At the present time, Douglas County, the Douglas County board has not taken a formal position on this bill. We're not opposed to changing the method of distributing state aid to counties that has been, is being currently utilized. But Douglas County does have some concerns with LB218 as it's presently drafted. On the previous state aid formulas, Douglas County received approximately \$3.1 million to \$3.2 million per year. That aid reflects the fact that Douglas County houses upwards of 50 percent of the prisoners in...state prisoners that are held in county jails. As was previously stated, the replacement for jail reimbursement, LB218, as it currently reads provides for minimum and maximum appropriations. The amount of state aid for Douglas County under LB218 could be as low as \$1.9 million, if the minimum amount is

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authorized by...in an appropriation. This would represent approximately a \$1.2 million decline in state aid revenue for Douglas County. So we assume there will be some changes in the distribution formula before it's finally considered. So that's where we're at at this time. [LB218]

SENATOR CORNETT: If we adjust that level to the appropriate level for Lancaster and Douglas County, do you see some type...do you see that some type of formula, such as this, would be more dependable and more reliable for the counties than what you have now? That was what the intent was, because it's piecemeal around the state in regards to how counties receive funding. [LB218]

STEVE WALKER: The positive aspect of LB218 is there's growth allowed, so there can be increases as time goes on. If we had our wishes, obviously, the jail reimbursement would be fully funded and we'd be much better... [LB218]

SENATOR CORNETT: Fully funded at 100 percent. [LB218]

STEVE WALKER: Much better off, correct, but... [LB218]

SENATOR CORNETT: Senator Hadley. [LB218]

SENATOR HADLEY: Yes, just a quick question. It was asked earlier: the way this is written now, it would be up to Douglas County to determine how they're going to spend that money then, right? Because it would come to you as a dollar amount, because we're rolling the three different items into one, so if you opted not to use it for jail, you certainly could...that would be your decision; or the county board's decision. [LB218]

STEVE WALKER: It would be treated the same as our jail reimbursement now. It goes into our county General Fund which supports many functions within that General Fund, our correctional facility being one of those. So you could...it probably wouldn't be specifically earmarked as a revenue generated by corrections, but the money would still go in the General Fund to support overall operations. [LB218]

SENATOR HADLEY: But right now, when we give jail funds, they go to the counties as the jail reimbursement fund? [LB218]

STEVE WALKER: That's right; it's not a separate fund. It's still a part of our overall General Fund, but corrections is part of that. [LB218]

SENATOR HADLEY: Okay. [LB218]

SENATOR CORNETT: Senator White. [LB218]

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SENATOR WHITE: And this may not be a question that's appropriate for you, but how on earth does this committee commit appropriations to fund a minimum amount? I mean we have jail reimbursement standard that we've stated, and it's never been fully funded in years. Why do you think this is more reliable than that? Because I don't think we can bind the Legislature going forward on funding. [LB218]

STEVE WALKER: I guess our hopes would be that the minimum level is at such that... [LB218]

SENATOR WHITE: That we keep our word better on that than we have on paying you your bill? [LB218]

STEVE WALKER: (Laugh) That would be the hope, yes. [LB218]

SENATOR WHITE: Okay. You must be with Mr. Dix, an optimist... (Laughter) [LB218]

SENATOR CORNETT: Any further questions? Seeing none, thank you. [LB218]

STEVE WALKER: Thank you. [LB218]

SENATOR CORNETT: Are there any further proponents? [LB218]

GORDON KISSEL: Senator Cornett, members of the Revenue Committee, my name is Gordon Kissel, K-i-s-s-e-l, here today as a registered lobbyist for Lancaster County. Me too. (Laughter) Or all that you've said is where we are coming from too. (Laughter) [LB218]

SENATOR CORNETT: Are there any further proponents? Opponents? [LB218]

WILLIAM McLARTY: (Exhibit 3) Thank you. First of all, my name is McLarty, William I. M-c-L-a-r-t-y, and I'm a Dakota County Commissioner. First of all, I want to apologize to you, Senator, and your committee: I had the wrong committee that I addressed the letter to. I sent it to Appropriations instead of Finance, so please forgive me. I hope it's the only error and the only thing I can try to excuse is that it was late at night when I wrote this, so I looked at the wrong... [LB218]

SENATOR CORNETT: We were working on...the Appropriations and Revenue was working on it together, so it's fine. [LB218]

WILLIAM McLARTY: All right. Thank you very much. The first thing I would like to do is point out the graphs so that you understand the graph in the back part, which is the attachment. The first column is all the counties, and then the second one is the...what I have...the information was given to me by the Nebraska Association of County

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Officials--lists all the counties based upon their property value. And you can see that in descending order. In totalling that, you come up with the figure in the next column which is the state. This is...what I have then is the state property value, so if you take the county and the state, then you get what the percentage is. And that's the next column. The next column is the base, and as I understand LB218, that every county will receive \$30,000 base pay. So I take that as a base pay. Then the factor figure, based upon LB218, states that no county would receive more than .125 of the remaining money; and no county would receive less than .0075 of the remaining funds, after you have paid out the \$30,000. So taking the front balance then, after you have paid everybody \$30,000, is \$1,110,000. So when you take that factor against the remaining amount, then the prorate column shows the amount of money that you receive after the \$30,000. The final column shows what each county would receive under this program as I understand it. If you'll go down to the yellow line, you'll see Dakota County. Dakota County would receive \$38,880. And if I could direct your attention to the last page, and if you'll notice where, at the bottom, it says Dakota county, 2008 income from jail appropriation fund was \$120,705. If I take the amount that I'm going to receive under this plan, that would be \$38,880, or it's a loss of \$81,825. So you can see...that kind of shows you the chart; you can look at it at your leisure. I'll go back to my letter now. The purpose of this communication is to point out the flaw in LB218 as it relates to the jail reimbursement program. The major flaw in LB218 is an across the board reimbursement and in no way is related to the cost of housing prisoners. LB218 will provide a base pay of \$30,000 to each of the 93 counties at a cost...the total amount would be \$2,790,000. If we assume that the cap on the jail reimbursement program is set as it is previously, at \$3.9 million, then the balance of the fund would be \$1,110,000. The remaining balance would then be divided between the counties based upon the property value of the county as relates to the state property value. By using this data provided by the Nebraska Association of County Officials for the year of 2007, we can determine the ratio for each. Dakota County would have a ratio factor of .0083. Applying this factor against the remaining funds, Dakota County would receive \$8,325 for a total of \$38,880. The cap on the jail reimbursement fund has routinely been depleted in the first six months of the fiscal year. During the recent fiscal year, Dakota County received \$120,705; and under LB218, the county would only receive \$38,880. This would be a loss of \$81,625 for boarding prisoners in the Dakota County jail. According to the information from the Nebraska Jail Standards, there are 24 counties that do not have county jails. Under LB218, these counties would receive \$38,325 to house prisoners that they do not have. Loss of funds from the jail reimbursement fund would cause the counties to make up the loss with an increase in property tax. This action would create a financial burden on counties that have jails and currently are boarding prisoners. The daily rate of \$30.00 does not cover the operating cost for an inmate. The daily cost in Dakota County is currently \$50.00 a day. Our county citizens currently pick up the \$20.00 a day daily cost and six months we'll receive nothing. The question is, should the jail reimbursement fund support the boarding of prisoners, or be a subsidy to all counties? It is the opinion of the Dakota County Board of Commissioners that the

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funding should remain as previously established under state law. It would be of great assistance if the Nebraska State Legislature would increase the cap on the jail reimbursement fund to cover more of the cost of boarding prisoners. However, we understand the economy and the need to maintain a balanced budget. The Dakota County Board of Commissioners would suggest that the Appropriations Committee would indefinitely postpone LB218 and encourage a new bill that would aid the counties better in boarding prisoners in the state of Nebraska, and find a different method to subsidize counties. Questions, please? [LB218]

SENATOR CORNETT: Senator Adams. [LB218]

SENATOR ADAMS: Do you know off the top of your head, right now, how much county aid does Dakota County receive? Not jail reimbursement, county aid. [LB218]

WILLIAM McLARTY: I'm sorry, sir, that I don't know. I was unable to get that, and the reason for that is when I was working on this the courthouse was closed and I couldn't get a hold of a treasurer. [LB218]

SENATOR ADAMS: Okay, thank you. [LB218]

SENATOR UTTER: These figures are based on \$3,900,000. As I'm looking at this proposal, the total pot that's going to be divided is going to be somewhere between \$10,493,000 and \$17,488,000. Am I looking at that wrong? [LB218]

WILLIAM McLARTY: Are you looking at the total to cover the reimbursement and everything? [LB218]

SENATOR UTTER: Yes, sir. [LB218]

WILLIAM McLARTY: Those figures I didn't have, sir, and I was mostly interested in just one part of it. So it is skewed in that area that I'm only looking at--jail reimbursement. [LB218]

SENATOR CORNETT: Sir, you do understand this bill eliminates jail reimbursement and just looks at relief or aid to counties as a whole, so that would include the money that you're already receiving for aid to counties, not just jail reimbursement. [LB218]

WILLIAM McLARTY: I'm only looking at jail reimbursement. I'm not looking at the total thing because I didn't have those figures. [LB218]

SENATOR CORNETT: So you couldn't tell, really, what that total number...how you gain or lose under this formula is; you're only looking at the jail reimbursement part? [LB218]

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WILLIAM McLARTY: I am only looking at jail reimbursement, yes, because I didn't know what the county receives and what the state pays out in each of those other funds, so I couldn't do that. [LB218]

SENATOR CORNETT: I have the total numbers for everyone for later. [LB218]

SENATOR UTTER: I do have one further question. In the counties that do not have a jail, 24 counties I think it was, that you referred to. [LB218]

WILLIAM McLARTY: That's correct. [LB218]

SENATOR UTTER: But do occasionally have prisoners...have to take them to a surrounding county for housing them. [LB218]

WILLIAM McLARTY: You're right. [LB218]

SENATOR UTTER: And they have to reimburse those counties, do they not, for the costs, or some type of cost? [LB218]

WILLIAM McLARTY: If they would have a prisoner, they would take him to a county that has a jail, and they would have to pay that county that jail amount. Or whatever was the established agreement. In our case... [LB218]

SENATOR UTTER: So there is a cost to those counties that don't have jails. [LB218]

WILLIAM McLARTY: That's correct. The question is, how many prisoners do they have, sir? I don't know. [LB218]

SENATOR UTTER: Well, I don't know either. [LB218]

SENATOR WHITE: Do they have the same philosophy on paying their bills that the state does on ours? (Laughter) [LB218]

WILLIAM McLARTY: I'm sorry (inaudible). [LB218]

SENATOR WHITE: Did the counties always pay their bills? [LB218]

WILLIAM McLARTY: We have so far. But if we continue losing money, we probably would have a problem. [LB218]

SENATOR HADLEY: Senator Cornett. [LB218]

SENATOR CORNETT: Senator Hadley. [LB218]

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SENATOR HADLEY: I have just a couple of quick questions. Senator Utter, at times, it's not only counties that do not have jails, but counties whose jails are full. Because I know Buffalo County, at times, we send our prisoners to North Platte and such as that because they have capacity. You know, sir, it seems to me that what we have here is that we've got...we know there's a cost to be paid to house prisoners. And so we're just arguing, or talking, discussing about who's going to pay it? Is it going to be at the local level, the counties, or is it going to be at the state level? And I think we need to, when we get around to discussing it in exec session, I think it's very important that we talk about, you know, from a philosophical standpoint, what's the best way to see...that maximizes the holding down of costs in housing prisoners, and doing it the best way. So it...to me, that's what the...I think the question earlier...we've got to house them. I mean, it isn't a question of saying, we're full, so go away--there's no room at the inn so we can't charge you today. We're going to charge you, somebody's got to pay the bill so we've got to figure out...and I guess I do have problems with our whole system anymore, because the federal government loves to send down unfunded mandates to the state; the state, we love to send down unfunded mandates to the counties and the cities. [LB218]

WILLIAM McLARTY: If I may, I would elaborate on that. We have to make it up in property tax; we have to raise our levy. We are also forced with, under a lid placed by the Nebraska State Legislature, that we can only raise our lid to a certain degree. So there's a, I want to say a buffer on both sides: we can't go high and when we can't pay, we can't get the money; we're going to be between a rock and a hard place in almost every county. [LB218]

SENATOR CORNETT: Senator Friend, I think was before you, Senator White. Senator Friend...White. [LB218]

SENATOR WHITE: The quality on holding down costs, I mean to really bring a point to how unfair this is, the state sets Jail Standards. I mean, you don't control what you feed your people; those are statewide standards that set really what you have to pay... [LB218]

WILLIAM McLARTY: That's correct. [LB218]

SENATOR WHITE: ...to maintain them. So we're telling you how to house them, and we're telling you you have to house them, and we're telling you it's not our problem when it comes time to pay them. [LB218]

WILLIAM McLARTY: I didn't...I can't follow you, Senator, I'm sorry. [LB218]

SENATOR WHITE: Okay, well, when you have your...do you work with your jail?

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[LB218]

WILLIAM McLARTY: Yes, sir. [LB218]

SENATOR WHITE: The Jail Standards aren't set by you guys, it's set by the state, correct? [LB218]

WILLIAM McLARTY: That's correct. [LB218]

SENATOR WHITE: Okay, thank you. [LB218]

SENATOR CORNETT: Any further questions? Seeing none, thank you. [LB218]

WILLIAM McLARTY: Thank you very much for your time. [LB218]

LYNN REX: (Exhibit 4) Senator Cornett, members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. And I'd first like to say that we are not in opposition to any provisions relating to the counties. We are not here to address that issue. We're here to address the provisions of this measure that relate to municipalities, and would respectfully suggest that this bill not include any factors in terms of changing our municipal formulas, woe though they may be. With that I would like to, as soon as we get those out, the blue sheets...if you just hand out with the blue sheets everything's already collated. Thank you very much. First of all, what I would like to say is that state aid to municipalities, if you look on page 6 of this bill; page 6, lines 18-20, what you'll note is it says, the current language in the law in Chapter 77-27, 136 on page 6, lines 18-20 says: the Legislature shall appropriate \$17,900,000 to state aid to municipalities. And I would like to just, very briefly, give you a little bit of background on this. And I need to kind of wait until the pages get this information out, but I think it's important to know how this number came into play and a little bit on the background of how state aid itself came into play. And I'm just going to go ahead and start with, first of all, LB518. If you go back and look at LB518, which passed in 1977, and I'm not going to spend a lot of time on this but I do want to highlight just a few things for you. In yellow, what you're going to see is that this is the bill that put in place a huge shift over to property taxes for cities, counties, schools, villages, NRDs, and any local political subdivision. And, at the time that these negotiations were ongoing in 1977, to basically give very legitimate exemptions for livestock, farm equipment, and business inventory, the cities, counties, and schools, and others were told that there would not be a shift over to property taxes. And at the time, quite frankly, I was just starting with the League on a full-time basis, and I sat in on those meetings to take notes. And I will you tell you that at that time Senator DeCamp, Senator Loran Schmit, and other senators that were there said, look, our purpose here in working with the agricultural interests as well as others, is that we need to do something on these unfair taxes. And so we want to provide exemptions for livestock, business equipment, and business inventory--farm

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equipment, I'm sorry, and business inventory. And in order to do that, we're going to provide you a dollar-for-dollar reimbursement so that there will be no shift on property taxes. Because the then-director of the League of Nebraska Municipalities was Dave Chambers and he and others, Justin King who was then lobbying for the School Boards Association, and there were other lobbies in the room as well, said our concern is there will be a huge shift over to property taxes if the state of Nebraska does not provide funding. And in fact what was created, if you look in the bottom, it's page 1 of LB518...page 1 of the slip law, at the very bottom, the very bottom line, this created the Personal Property Tax Relief Fund--that's highlighted in yellow. That Personal Property Tax Relief Fund was basically in place, and the idea was that would be a dollar-for-dollar reimbursement, when it was first introduced. Governor Exon then indicated that there was no way the state could afford it, and they put a \$70 million cap on that, right from the get go. Within a matter of two years, the League hired the Bureau of Business Research at the University of Nebraska to do a study to see just within a short period of time how much money had already been shifted over to property taxes. And at that time, the number was over 250 million; not in valuation, in actual dollars lost to local governments, i.e. shifted over to property taxes because of that \$70 million cap. In deference to Governor Exon, the reality was the state of Nebraska didn't have that money, and so he basically said, he wasn't part of those negotiations and he made sure that there was a cap in place. If you turn then to your second handout, which is LB816 in 1982, you will note that in Section 3 of the bill, which I've highlighted in yellow for you, the \$17.9 million for aid to municipalities--and this is where it began for us--the way that this came about was because after years of litigating, the Nebraska Supreme Court said you cannot have a frozen class. Because what the Legislature tried to do in good faith was say, we're going to send it back to you proportionately, based on the amount that you lost in tax valuation. But the Nebraska Supreme Court said that's a frozen class; it's unconstitutional; you cannot do that. At which point Senator DeCamp and others said, okay, we're just going to call that state aid then. We're not going to call it the Personal Property Tax Relief Fund; we're not going to call it the governmental subdivision fund anymore; we're going to merge those, and now we're calling it state aid to municipalities. This was intended as a reimbursement for tax-based loss due to those exemptions. And if you look to the next sheet--and I'm not going to bore you with each and every element of this next phase, dealing with cuts and all of our municipal aid programs, our three municipal aid programs--but you will note that in 1991 that was, in fact, the only year that the \$17.9 million was fully funded. And as the Legislature looked at various cuts...as you look at the title of Recent Cuts to Three Municipal Aid Programs, you'll note that every time the Legislature was facing fiscal crises, which has happened, we understand that; municipalities, counties, schools, everybody's asked to take our "fair share", and when times got better, we would get that reinstated. I'd just like to highlight for you what some of those cuts were, and you'll note this in the sheet entitled Recent Cuts to Three Municipal Aid Programs. You'll see that in Aid to Municipalities in 2002-03 it was a 25 percent cut; 2003-04, 14 percent; 2004-05, 14 percent. In MIRF, you'll note that the first year there was no cut; an 83 percent cut, though, in 2003-04;

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and in FY2004-05, an 83 percent cut. In terms of our Municipal Equalization Fund, which is really mainly intended for those small municipalities, but also the larger cities do get some of that, you'll note that they took a 57 percent cut in FY2002-03; an 86.5 percent cut in 2003-04; and an 83.5 percent cut also, in 2004-05. And the totals for those programs you'll see at the bottom of that sheet. Turning to the next page, you're just going to see the specifics, and we've outlined for you what the laws were and what the amounts were item by item. Going to the last sheet, you'll see that, right now, if you look at the...in our line item, which is...we're under the State Treasurer's office, and we're program 120...on Aid to Municipalities it is \$11,257,193. And it has remained that amount in FY2005-06, 2006-07, 2007-08, and 2008-09. And you'll also note that in terms of the MIRF program, and this is the last sheet of one of the other programs, that there was a zero percent cut for Lincoln on one side of it, but that's because they had bonded their MIRF, the Municipal Infrastructure Redevelopment Fund, funds. And as a consequence...that's one of the reasons why we do have concerns here today...we do hope that all the language relative to municipalities would stay the same. We do realize that the \$17.9 million is there. We realize we haven't had it fully funded since 1991, but we'd still like to have it in the statute because we are hopeful that the economy at some point will turn around and the Legislature will be able to fund this. I would also refer you to page 8. You'll note that it is basically striking language dealing with the \$520,000 that in FY2008-09, if you look on page 8, line 5 it indicates that through FY2003-04 through FY2008-09 that the amount to aid to municipalities will be increased by \$520,000. That's only because that's the amount that was previously the MIRF funds for Lincoln that need to go into this. And we understand that this is something that we'll be dealing with the Appropriations Committee about and talking to them to make that a combination on the Appropriations Committee side. But we would just respectfully ask that as the committee decides to work on this bill that you would just strike those provisions relating to any changes that you have put in this bill relating to municipalities. [LB218]

SENATOR CORNETT: Very quickly. You may not have been here for my opening, but... [LB218]

LYNN REX: I was not, I'm sorry. [LB218]

SENATOR CORNETT: Okay. I said that there was an unintended consequence to the municipalities... [LB218]

LYNN REX: Oh, thank you. [LB218]

SENATOR CORNETT: ...in the opening and we would be working on that. [LB218]

LYNN REX: Okay, thank you very much. [LB218]

SENATOR CORNETT: Secondly, when do MIRF funds expire? [LB218]

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LYNN REX: Those will be expiring, I believe, in 2010. [LB218]

SENATOR CORNETT: 2010. [LB218]

LYNN REX: 2010; I believe so, yeah. [LB218]

SENATOR CORNETT: 2010; so MIRF runs out then, correct? [LB218]

LYNN REX: And, well... [LB218]

SENATOR CORNETT: For Lincoln and Douglas. [LB218]

LYNN REX: It does, in fact, but one of the things that we are looking at doing is, in the future... [LB218]

SENATOR CORNETT: Reinstating MIRF? [LB218]

LYNN REX: Well, we're looking at putting together a program because of the infrastructure needs in the state. I mean, it's not just the state of Nebraska, it's behind in terms of trying to provide infrastructure needs across the state, for the state Department of Roads. We also have that all across the state for cities and villages. [LB218]

SENATOR CORNETT: But isn't MIRF only...currently, isn't it only available to Lincoln and Douglas County? [LB218]

LYNN REX: Oh, no. Well, no...I mean, right now it's basically been a reserve for Lincoln... [LB218]

SENATOR CORNETT: And a reserve for Douglas County. [LB218]

LYNN REX: ...only because of...not Douglas County. [LB218]

SENATOR CORNETT: Right, Douglas uses MIRF funds. [LB218]

LYNN REX: It's a municipal program, so I don't know how that would happen. [LB218]

SENATOR CORNETT: City of Omaha, yeah. I'm sorry, city of Omaha. Sorry. [LB218]

LYNN REX: But it's mainly just...it's only for Lincoln at the time, only because you'll note that they struck those funds, and the reason why they kept it in for the city of Lincoln was because Lincoln had bonded their funds, Senator. [LB218]

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SENATOR CORNETT: I was misunderstanding that the city of Omaha used MIRF funds also. [LB218]

LYNN REX: That's not my understanding... [LB218]

SENATOR CORNETT: Okay. [LB218]

LYNN REX: ...after the Legislature took that away. But we are coming in next year with a proposal for infrastructure programs again. [LB218]

SENATOR CORNETT: Okay. [LB218]

LYNN REX: But we would just respectfully suggest that we appreciate having even the language, Senator, on page 4: it talks about the appropriation of \$17.9 million. Even though we know that's not going to happen this year either, we'd like to have that left in the statutes. [LB218]

SENATOR CORNETT: Okay. [LB218]

LYNN REX: So these are funds that were all put in place to try to offset property tax increases across the state of Nebraska. I'd be happy to respond to any other questions you may have. I apologize for missing your opening. [LB218]

SENATOR CORNETT: That's quite all right. [LB218]

LYNN REX: Thank you. [LB218]

SENATOR CORNETT: Is there anyone else in opposition? Neutral? [LB218]

JACK CHELOHA: Good afternoon, Senator Cornett, members of the Revenue Committee. My name is Jack Cheloha; the last name is spelled C-h-e-l-o-h-a. I'm a registered lobbyist for the City of Omaha. I did not plan to testify, but then when the question came up I thought, what the heck? First of all, if I could start...we're sympathetic to the counties, especially on jail reimbursement. And the reason is this, from the City of Omaha's perspective: we have the largest law enforcement agency in the state. We arrest numerous people for various crimes; some of them could be violations of city ordinance, others could be state statutes, state crimes, sometimes even federal crimes if we work in harmony with federal agencies. As these people are arrested or incarcerated or if they serve time in jail, in particular under multiple crimes, whether it's city and state, we'll get a bill back, essentially from the county, where we pay for part of their jail cost. And so it's important for us, you know, the more that the county is reimbursed on a 100 percent level, it's helpful to our city and our budget, likewise. So for that reason, we're sympathetic to their cause. In the meantime, we're

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also sympathetic on the state aid arguments because we've had to do with less throughout the last decade or so as state aid has decreased. And it has never been put back up when we did get to the good times, and then once again, now we're back to the bad times. And so for those reasons, we'd like to work with your committee and Appropriations on state aid. Finally, to answer your question, when--I forget the year, but...state aid, I'm sorry...MIRF was only preserved for the city of Lincoln, of \$520,000, because they had officially bonded against it. And so we lessened the amount of state aid accordingly and specifically noted that Lincoln would receive less out of the state aid because they still retain MIRF, and so. Most cities at that time wanted to keep their state aid a little bit higher because it was money they could use for general purposes, whereas MIRF was specifically earmarked only for infrastructure and redevelopment, and so that's why some...only Lincoln wanted to preserve MIRF. So I'll try to answer any other questions you might have. [LB218]

SENATOR CORNETT: Senator Hadley. [LB218]

SENATOR HADLEY: I suppose after I'm around here awhile I can't use the excuse that I'm asking...I'm new, I have to ask questions. So the City of Omaha does not have its own jail? [LB218]

JACK CHELOHA: Correct. We used to, but we've recently just closed it down. [LB218]

SENATOR HADLEY: Okay. So Douglas County... [LB218]

JACK CHELOHA: We don't want to talk about that. (Laughter) [LB218]

SENATOR HADLEY: So Douglas County houses your...I didn't know that, but I was (inaudible)... [LB218]

JACK CHELOHA: Right, yeah. [LB218]

SENATOR HADLEY: Okay, but I assume that's...probably correct throughout the state of Nebraska, I don't whether it's Lincoln... [LB218]

JACK CHELOHA: I don't think there are a lot of municipal jails anymore. I couldn't tell you. But I know Omaha officially closed theirs, and for years we had been decreasing the use of it. Any other questions? [LB218]

SENATOR CORNETT: No. [LB218]

JACK CHELOHA: No. Okay. (Laugh) [LB218]

SENATOR CORNETT: A comment on the jail reimbursement between the city and the

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county and how well that's going. Is there anyone else in a neutral capacity? Seeing none, that closes the hearings for the day. [LB218]

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Disposition of Bills:

LB26 - Placed on General File with amendments.

LB218 - Placed on General File with amendments.

Chairperson

Committee Clerk