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Revenue Committee
February 06, 2009

[LB95 LB162 LB335 LB520]

The Committee on Revenue met at 1:30 p.m. on Friday, February 6, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB335, LB95, LB162, and LB520. Senators present: Abbie Cornett, Chairperson; Greg Adams; Mike Friend; Galen Hadley; LeRoy Loudon; Dennis Utter; and Tom White. Senators absent: Merton "Cap" Dierks, Vice Chairperson. [LB335]

SENATOR CORNETT: Good afternoon and welcome to the Revenue Committee. I am Senator Abbie Cornett from Bellevue; to my left is Senator Dierks, I do not know if he'll be joining us today; Senator Adams from York; Senator Hadley from Kearney. To my far right is Senator Utter from Hastings; Senator LeRoy Loudon from Ellsworth; Senator White will be joining us; and Senator Mike Friend is going to be opening on our first bill. Committee counsel is Shannon Anderson, to my right; research analyst is Bill Lock; and committee clerk is Erma James. Before we begin the committee hearings today could I please advise everyone to turn your cell phones to either off or vibrate. The sign-in sheet for testifiers are on the tables by both doors and need to be completed by everyone wishing to testify. If you are testifying on more than one bill, you need to submit a form for each bill. Please print and complete the form prior to coming up to testify, and when you come up to testify, please hand those forms to committee clerk, Erma James. There are also clipboards in the back of the room for you to sign in if you do not wish to testify but wish to indicate your support or opposition of the bill. These sheets will be included in the official record. We will follow the agenda posted on the door today. The introducer, followed by proponents, opponents, and then neutral testimony. Only the introducer will be allowed for closing remarks. As you begin your testimony, please state your name and spell it for the record. If you have handouts, please bring ten copies of each handout for members of the committee. If you do not have copies, the pages can make those copies for you. With that we begin the Revenue hearing on LB335. Senator Friend, you are recognized to open. [LB335]

SENATOR FRIEND: Thank you, Madam Chair, members of the Revenue Committee. My name is Mike Friend, M-i-k-e F-r-i-e-n-d. I represent the 10th Legislative District in northwest Omaha, and I'm here to introduce LB335 at the request of Governor Dave Heineman. Currently, Nebraska receives applications from employers for tax incentives under the Nebraska Advantage Act, the Nebraska Advantage Rural Development Act, and the Nebraska Advantage Research and Development Act, and the Nebraska Advantage Microenterprise Tax Credit Act. Parts of any tax incentive program are requirements and duties on the part of the tax payer. LB335 places a new duty on these companies that wish to take advantage of our tax incentives by requiring electronic verification of the legal status of their employees. Simply put, LB335 requires these companies to use an E-Verify system. E-Verify's a federal online system operated jointly by the Department of Homeland Security and the Social Security Administration. Employers are able to access this system voluntarily to verify the legal status to

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determine employment eligibility of newly-hired employees. The federal government charges no fees to access the information. I'd like to point out in the bill, in the green copy of the bill, as drafted on page 2, line 10, it may be construed to require an employer to verify the status of all Nebraska employees, including those already employed prior to the effective date of the bill. Therefore, I will be providing--and I don't have it now--I will be providing the committee with an amendment to clarify that the employer would be required to verify the status of all employees who are newly hired after the effective date of the bill. LB335 also places a requirement on the Tax Commissioner to exclude the hours worked and the compensation paid to employees not verified from the calculation for the tax incentives available under these programs. Requiring the use of E-Verify is one of the best tools that, I think, we as policy makers have available to us to help ensure that companies that receive our incentives obey our employment laws. Furthermore, I believe that a sentiment may exist in the public that some companies hire individuals without the authority to work in the United States, and LB335 increases the accountability of the companies in the incentive program to the public. Last year, immigration was a hot topic. There hasn't been much discussion about this, but I think that this provides...I know others have addressed this in the past, and I think it's a matter of consistency. I mean, we...I've...was involved in that immigration discussion to a certain degree last year, and I think this continues the discussion in a respectful and, hopefully, a fairly productive way as far as the continued dialogue goes. So that's why I'm here with this. I thought it was a--I say this a lot--I thought it was a common sense idea to push the discussion forward with an initiative of this nature. So I'd be happy to answer any questions. I know that there are folks behind me--some from, I believe, from the Nebraska Department of Revenue that can answer some more specific questions about the ideas. But that's all I had at the moment. [LB335]

SENATOR CORNETT: Thank you, Senator Friend. Senator Louden, you are recognized. [LB335]

SENATOR LOUDEN: Thank you, Senator Cornett. Senator Friend, this is just a...is for employers going to get some kind of tax deduction or something like that, I mean, it doesn't have anything to do about hiring any employees if they're not receiving some kind of a tax advantage or something like that, an incentive? [LB335]

SENATOR FRIEND: That's correct. [LB335]

SENATOR LOUDEN: This is the only place that it is for. [LB335]

SENATOR FRIEND: This particular bill, I mean, there might be other initiatives out there that people are going to deal with this subject, different subject matter that you're talking about, but yes, yes. [LB335]

SENATOR LOUDEN: Yeah, that's all this address. Okay, thank you. [LB335]

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SENATOR CORNETT: Senator Adams. [LB335]

SENATOR ADAMS: Thank you, Madam Chairwoman. Senator Friend, you've already started to describe this E-Verification process--the actual procedure--and I would just ask, is it a difficult thing for employers to do, or is this a matter of a phone call, is it a matter of a computer Web site, what's the process? [LB335]

SENATOR FRIEND: I received a brief demo last year on how...from Work Force Development on how some of this is done. And it seemed pretty straightforward to me, and it seemed to be Web based. The user interface was fairly understandable and seemed to me fairly easy to operate. Questions arose when I delivered the information to the Judiciary Committee last year as to how accurate it was. But that wasn't your question. I mean, I think that's a question that has been asked and answered quite a few times to the satisfaction of everyone that's been involved in the subject matter, I don't know. But to answer your question, the specific question you asked, I got a demo last year and I thought the interface was quite easy to walk your way through. And I think that there are companies out there utilizing the... [LB335]

SENATOR ADAMS: So it doesn't require anything special on the part of any employers? [LB335]

SENATOR FRIEND: Infrastructure or things...resources, things like that; I don't believe so. There may...there's probably some up front training and what that training would entail, I can't see that it would be a tremendous amount. That's my opinion, though. [LB335]

SENATOR ADAMS: So the punishment, if someone did have, would be that they'd lose the incentives. [LB335]

SENATOR FRIEND: There's a potential that they could lose some incentives. Now we also have talked in here...there's a little bit of a question there and it's my understanding that somebody's worried, for example, that if a company has 4,000 employees and they have one issue, they have one concern--they have an E-Verify concern--that they're going to lose all of their incentives, but I also understand that there may be more discussion on that and that there's a prorated fashion that you could need to deal with that subject matter without swinging the whole baseball bat at one of these corporations and punishing them to that degree. [LB335]

SENATOR ADAMS: Thank you. [LB335]

SENATOR FRIEND: A prorated effort. [LB335]

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SENATOR CORNETT: Senator Utter. [LB335]

SENATOR UTTER: Is there a cost...a cash cost to the employees for using the E-Verify system--to the employers for using the E-Verify system? [LB335]

SENATOR FRIEND: Good question. I think that came up last year and I don't remember what the answer was; I don't know. Web-based system? So I think it's a matter of maybe keying in and there might...in the future there might be, but I don't know that there is now. Senator Cornett is shaking her head vehemently, so. [LB335]

SENATOR CORNETT: Yep, no cost. [LB335]

SENATOR FRIEND: She had the answer that I did not. [LB335]

SENATOR CORNETT: I remember this discussion last year (laugh). Any further questions from the committee? Seeing none, thank you, Senator Friend. [LB335]

SENATOR FRIEND: Thank you. [LB335]

SENATOR CORNETT: May I see a show of hands for the number of proponents? Okay, thank you. First proponent. [LB335]

DOUG EWALD: (Exhibit 1) Chairwoman Cornett, members of the Revenue Committee, my name is Doug Ewald, D-o-u-g E-w-a-l-d. I'm the Nebraska Tax Commissioner in charge of the Nebraska Department of Revenue. I appear before you today as a proponent of LB335. LB335 would prohibit any tax incentive for an employer that fails to electronically verify the legal presence of new employees in this state under various Nebraska Advantage incentive programs, including Nebraska Advantage Act, Nebraska Advantage Microenterprise Tax Credit Act, Nebraska Advantage Rural Development Act, and the Nebraska Advantage Research and Development Act. LB335 would also prohibit the inclusion of hours or wages attributable to a new employee that does not have a legal presence in this state. For example, if an employer does not have adequate records to demonstrate legal presence of a new employee, that employee may not be included in any benefit calculation. Under LB335, the department will require an employer to demonstrate legal presence of an employee in two ways. First of all, it would be through an application attestation, and secondly, qualification and maintenance audits that are verified. In the application process under our tax incentives today, an applicant will be required in their application to attest to electronic verification of any new employee's legal presence in this state. The department will not mandate a specific verification system, but as you've heard today, we've talked about the E-Verify--that seems to be the most popular. E-Verify is a free system available to registered employers. To participate, an employer must register online and accept the electronic memorandum of understanding that details the responsibilities of the Social

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Security Administration, the Department of Homeland Security, and the employer. With respect to qualification and maintenance audits, the department will require an employer to demonstrate legal presence of all new employees in the state during a qualification or maintenance audit. A qualification audit: that is when an employer believes they have reached the requisite level of employment and investment required under the particular incentive program; they request an audit by the department to verify that they have met those minimums. So that's the qualification audit. Under the maintenance audit, the department verifies that the requisite levels of employment investment have been maintained for a particular period of time. If the qualification or maintenance audits determine that an employer is unable to demonstrate legal presence, the new employee would be excluded from any benefit calculation. This concludes my testimony on LB335; I'd be more than happy to answer any questions you might have. [LB335]

SENATOR CORNETT: Senator Hadley. [LB335]

SENATOR HADLEY: Senator Cornett, Director Ewald. How many employers use E-Verify now? Do you have any ideas? Is it widely used in the state, or do you envision that this will require more employers to use it? [LB335]

DOUG EWALD: I do not know that information. However, if you go to the Department of Homeland Security, this E-Verify system, one of the facts they actually put out here is that employers are registering with this program at the rate of over 1,000 per week. Now that's on a nationwide basis. But I don't have specific numbers to the state of Nebraska. [LB335]

SENATOR CORNETT: Senator Louden. [LB335]

SENATOR LOUDEN: Well, in this E-Verify, who's all in that? Say you're starting up a business or you was looking for some tax incentives and you hired an 18- or 19-year-old kid now. How do find out if he's...is he going to be in this E-Verify, or does he have to show up with a passport, or how do you check that out? [LB335]

DOUG EWALD: Well, it's going to be the same whether it's an 18- or 19-year-old or a 40- or 50-year-old, and the specific requirements...they're going to enter information--Social Security number, that type of stuff...they're going to verify that data against the Social Security Administration, the Department of Homeland Security, those type of things that will hopefully determine whether any person, regardless of age, is here legally. [LB335]

SENATOR LOUDEN: And that can all be done through a Social Security number? [LB335]

DOUG EWALD: It's that and some I-9s and some other stuff. I mean, that's all set up

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with the Department of Homeland Security. [LB335]

SENATOR LOUDEN: Well, what...I was just curious to find out how hard it would be for the average person to get a job, if someone puts in for these tax incentives, if this is going to make it a hardship for the average person to get a job, you know, in with this. [LB335]

DOUG EWALD: I guess I don't think it should be. It's probably another check mark on a list that goes to an HR representative at a particular company; that this is now a new, additional procedure in their verification process, potentially. [LB335]

SENATOR LOUDEN: Are we getting closer to a national ID system? Is that what we're doing? [LB335]

DOUG EWALD: I can't comment; I don't know, maybe. You could assume...I don't know. [LB335]

SENATOR LOUDEN: Okay, thank you. [LB335]

SENATOR CORNETT: Any further questions from committee? Seeing none, thank you, Commissioner Ewald. Next proponent. [LB335]

SUSAN SMITH: My name is Susan Smith, that's S-u-s-a-n S-m-i-t-h. I'm representing and speaking on behalf of Nebraskans Advisory Group. We fully support Senator Friend's bill, LB335. We would like to see existing employees included in being run through the E-Verification system. If, for some reason there's a legal reason why that can't be done, then we'd like to see the effective date of this bill go through as soon as possible. One of the things that we want to do is avoid an illegal alien hiring frenzy a year, or whatever time, before the bill actually goes into place so that those people are then considered existing employees and then will fall through the cracks and not be E-Verified. This bill is really important. And I can only refer to a Bear Sterns underground economy rising to the surface report, January 3, 2005, that speaks to the number of illegal aliens who are hired as individual contractors and they're issued 1099 forms. And the IRS unreported earnings report of April 2006, which the Treasury Inspector General did for the tax administration, will verify that the businesses who hire illegal aliens and hire them as independent contractors do not have to pay taxes on these people because then they're issued 1099s. So the company is making money by paying these illegal aliens less wages than you would maybe an American. They're not having to pay taxes so their profit margin goes way up. And then it also shows in this report that the number of 1099ers who do not file their 1099 tax forms are also not paying their tax forms. In fact, the IRS say that it accounts...it's attributable to over a trillion dollars a year across our country in unreported taxes. Now how that breaks down and applies to Nebraska, as far as our number of 1099ers, I guess you could take that

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from last years' and see how many of those actually...how many were issued 1099s, how many of them actually paid and filed. And that might give us an idea of how much revenue the state of Nebraska is missing out because illegal aliens have been hired instead of Americans because Americans do have Social Security numbers; we are trackable, we do have documentation. And so...and certainly I'm not saying that there are some who don't file their taxes and pay them, but this bill would go a long way to helping us increase our revenue, and during such an economic struggle right now I'd really like to see us do whatever we can, and this will certainly do that. And I appreciate your time and consideration. [LB335]

SENATOR CORNETT: Thank you very much. Are there any questions from the committee? Senator Adams. [LB335]

SENATOR ADAMS: Did you say that you're representing the Nebraska Advisory Group? [LB335]

SUSAN SMITH: Nebraskans Advisory Group, yes. [LB335]

SENATOR ADAMS: Can you tell me what that group is? [LB335]

SUSAN SMITH: Certainly. We're a group of citizens who are very concerned about illegal immigration and the impact that it has on our communities, on our state, on our country, on crime statistics, on job loss, on our medical field, medical identity theft, regular identity theft. And so we are very concerned and so we are a group of citizens, grass roots Americans, who pay attention to the issues going on in our state and we act on it by contacting and testifying at public hearings. [LB335]

SENATOR ADAMS: Okay, thank you. [LB335]

SENATOR CORNETT: Senator Hadley. [LB335]

SENATOR HADLEY: Thank you. I appreciate your coming in. I guess I just have...I'm trying to link the problem with 1099s, because this could be any employer. It could be to the advantage of any employer to hire a legal person and give them a 1099 because they don't have to report the taxes as that. Am I not correct that there is a pretty stiff penalty against an employer who issues a 1099 to a person who really is deemed an employee? [LB335]

SUSAN SMITH: I'm sorry, your question... [LB335]

SENATOR HADLEY: That there are very strict laws as to what defines an independent contractor, and if the employer violates this by saying that I'm an independent contractor where I'm really not, the employer is held liable for that breach of the law. [LB335]

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SUSAN SMITH: Okay, and that may be, but when you fill out your paperwork for a company as an independent contractor, you give them the same information--the same Social Security number, all that information--but what happens is that company does not have to act on it as you would a person getting a paycheck, because then the taxes are tracked, you match those taxes, and so on. So that's why this bill, having them run it through the E-Verify system, it may help that. [LB335]

SENATOR HADLEY: Okay. [LB335]

SUSAN SMITH: Did I answer your question? [LB335]

SENATOR HADLEY: Yes, yeah that's... [LB335]

SUSAN SMITH: I'm sorry. [LB335]

SENATOR HADLEY: No. [LB335]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you. May I see a show of hands for opponents to the bill? Okay. We'll begin opponent testimony. [LB335]

LAUREL MARSH: Good afternoon. My name is Laurel Marsh, spelled M-a-r-s-h, and I appear here today on behalf of ACLU Nebraska in opposition to LB335. And I don't think that I have spoken to the Revenue Committee previously on behalf of ACLU, so it's nice to be here. As I begin, I want to make one thing perfectly clear. ACLU's opposition is limited to the requirement to potentially electronically verify the legal presence of all employees as a condition of participation in one of the incentive programs. We don't endorse or oppose the incentive programs themselves. So that's the limit of our opposition. Our objections to this requirement are both practical and philosophical. On a practical level, we oppose LB335 because it usurps federal authority to set immigration policy. The United States, like every country, has the right to control who enters the country, to enforce the integrity of its borders, and to set immigration policy. This is not an area in which they should be creating a hodgepodge of different alternatives. The system voluntarily used by some employers to check an employee's status is E-Verify, and this is an electronic employment verification process that checks potential employees against their Social Security files. On November 12 of last year, I sat in on the interim study hearing for LR362. Several people discussed the use of E-Verify and whether or not this system produces reliable results. One speaker rated the accuracy rate at 70-80 percent; another said the results were accurate well into the 90th percentile. But right now, E-Verify is used only by a fraction of our nation's employers and the database, regardless of which percentage, is not error free. So the requirement will cause financial losses for both businesses and employees. Again, I can only use my

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self as an example. Being somewhat older, on an annual basis, I receive a summary statement from Social Security. And at least two times in the length of my working service there have been errors in the base data on that statement. So I guess if the base data on my statement could be incorrect, it's quite possible that the base data on the records of others could also be incorrect. Which brings me to my second and more philosophical point. LB335 creates a requirement for employers, but it does not create any due process protections for employees who are denied jobs because the system confuses them with somebody else. Invariably, DHS will confuse the files of people with similar names or use erroneous information, creating kind of a Nebraska-ized version of maybe a no-work list. And how will you recoup a lost chance or lost wages while you're trying to correct the paperwork? In addition to being bad for business, this law is bad for legally authorized workers. We believe it will lead to discrimination and have a disproportionate effect on workers who are perceived to be foreign. In conclusion, ACLU Nebraska asks the Revenue Committee to indefinitely postpone LB335. At a time of growing economic uncertainty, the last thing we need to do is to pass legislation that makes it more difficult for Nebraskans to work. [LB335]

SENATOR CORNETT: Questions from the committee? Senator Adams. [LB335]

SENATOR ADAMS: The point that you made about federal law, you're right. I'm sure you know far more about it than I do. I guess the question I have for you then, have there been any challenges to states using E-Verification on the basis that you make: that states would be, in a sense, trying to preempt federal law--which they can't do. [LB335]

LAUREL MARSH: There have been challenges. The one that comes directly into my mind was in Hazelton, Pennsylvania, and the use of a verification system for...there was a requirement placed on landlords to check the legal status of all potential tenants, and then this was found to be in conflict with our constitutional...the challenge that went to E-Verify...the community of Hazelton lost its ability to pass a local ordinance requiring the restriction, or placing the burden on landlords, because it was in conflict with the United States ability to set immigration policy. [LB335]

SENATOR ADAMS: A city ordinance was? [LB335]

LAUREL MARSH: Right. [LB335]

SENATOR ADAMS: Not state statute. [LB335]

LAUREL MARSH: That is correct. [LB335]

SENATOR ADAMS: Okay. [LB335]

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LAUREL MARSH: That's the one that leaps into my mind as we're visiting. [LB335]

SENATOR ADAMS: Thank you. [LB335]

SENATOR CORNETT: Oh, no, go ahead, Tom. Go ahead, Senator White. [LB335]

SENATOR WHITE: Thank you for coming. A couple of questions. If the law were amended to state that should an employee's name not show up on E-Verify as either a citizen or a legal resident with a Social Security number, would it solve part of the ACLU's problem if, at that point in time, the employer were then required to contact the Social Security Administration to verify that this employee had a valid Social Security number? [LB335]

LAUREL MARSH: I would want to think about that a little bit. I guess the first thing that's problematic is the requirement. Employers can and do use this system; it's voluntary, it's available, and it's free. But the requirement does not place a restriction on the employer or place them at a potential financial disadvantage. [LB335]

SENATOR WHITE: Well, you had mentioned that the lack of an appeal was the problem. [LB335]

LAUREL MARSH: Correct. [LB335]

SENATOR WHITE: And if we solve that, does that solve part of the problem? [LB335]

LAUREL MARSH: That would solve part of the problem. [LB335]

SENATOR WHITE: The other thing is, with the regard to constitutionality, there's a huge difference between a state saying, we're not going to allow our funds--in this case--to go to companies that are encouraging a violation of federal law. In other words, we're tying the use of our money to ensuring that you're in compliance with federal law from us trying to take the place of federal law. And constitutionally those are very distinct things, don't you agree? [LB335]

LAUREL MARSH: I still have a problem with...I understand what you are saying, and I still have a problem with the...it's kind of like an and we really mean it bill. Employers are already required to abide by federal laws, and... [LB335]

SENATOR WHITE: But they frequently don't, and many people would argue the federal government has advocated this because of lack of political wealth. I mean, would you argue, for example, because it'd be the same situation, the federal government has clearly preempted the field on many environmental regs. We could easily and constitutionally say if you're found in violation of the Clean Water Act, you're not going

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to get our money either. [LB335]

LAUREL MARSH: We could. [LB335]

SENATOR WHITE: Okay, well, what's the difference between that and immigration?
[LB335]

LAUREL MARSH: I think that one of the things is that violations of the Clean Air Act are not going to create discrimination...potentially create discrimination against individuals who are already in vulnerable positions. [LB335]

SENATOR WHITE: We already have a host, and I handle them; a host of discrimination laws to handle that. The whole EEOC, the whole array--National Origin, all those kind of things. If it turns out these are being selectively applied, there are remedies in place, are there not? [LB335]

LAUREL MARSH: There are remedies. They are not all constitutional liberty remedies; some of them are statutory remedies. [LB335]

SENATOR WHITE: That's true. [LB335]

LAUREL MARSH: I guess the other thing is rather than go down this track, I would hope that there would be two things done. First, on a state level, to put an incredible push behind the enforcement of those employment laws that already exist; and second, to put an incredible push towards asking the federal government to do its work and do its role. There are many times when the state...when the federal government will basically hand us the package as the state of Nebraska and say why don't you do it this way? But it's not really a request. It would be nice, maybe, to pass something back up and say, this is your piece--it's time to get it done. [LB335]

SENATOR WHITE: Thank you. [LB335]

SENATOR CORNETT: Ms. Marsh, a couple of questions. When you talked about the constitutionality of what we're looking at here and...what has the ACLU done about some of the laws enacted in some of the southwestern states that are far more draconian than this, and have any of those been found--and those are employment laws--have any of those found to be unconstitutional? Have you...in the process of lawsuits with those states? [LB335]

LAUREL MARSH: We are advocating in different states as we are seeking to advocate here. The organizational philosophy is the same. There is action being taken in several states, and I can get a little list and bring it back to you if that is useful. [LB335]

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SENATOR CORNETT: Have you had any decisions on that action at this time? [LB335]

LAUREL MARSH: None that come to my mind. [LB335]

SENATOR CORNETT: I guess after your last answer to Senator White's question, when you are talking about you would hope the federal government would step up... [LB335]

LAUREL MARSH: Um-hum; step up to the plate. [LB335]

SENATOR CORNETT: If you are saying that the laws that we are looking at are leading to discrimination on the state level, is the ACLU going to come into the federal government and say, the laws that you were looking at are discriminatory? [LB335]

LAUREL MARSH: There are some issues that we will maintain that stance on. If we were to have a national employment database, there are things that we would hope that database would...that it would allow an easy method for correction if there are mistakes that are found; that there are...I have a nice...I have a cheat sheet. [LB335]

SENATOR CORNETT: I guess my fear is, you're sitting here at the state level saying don't do anything, this is the feds responsibility, because what you're looking at is discriminatory; so then the states don't do anything and then you go to the feds and say exactly the same thing to them. [LB335]

LAUREL MARSH: When we go to the feds we will have a list that we try to...well, we want to make sure that the information that's gathered by the government is used for the purposes that it stated; we want to make sure that workers can access the information about themselves; and that there's an easy way to correct it if it is an error. We want to make sure that it's accurate and up-to-date; and that there are some specific remedies if corrections are not made. But we understand that the United States Government has the authority and the responsibility to limit who enters this country. [LB335]

SENATOR CORNETT: But you understood Senator White's point that, at least at this point, at the state level it seems like the federal government has, to a certain extent, abdicated that authority. [LB335]

LAUREL MARSH: I understand that; I understand his line of reasoning, that is correct. [LB335]

SENATOR CORNETT: Thank you. Senator Hadley, I believe you had a question. I mean Utter; I apologize. [LB335]

SENATOR UTTER: Thank you, Senator Cornett. I admit I've got some kind of old tired ears that listen slowly at times, but I would...I need to have you review with me again,

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just briefly if you will, how this discriminates against employees that are here legally. I have a little trouble with that concept. [LB335]

LAUREL MARSH: I think that it is possible that because someone appears visually different; they're a different race, that they're a different culture, that they have a different accent; and knowing that there is another step that needs to be jumped through, that it will be one of those things that just creates a hesitation to hire someone who might be otherwise well qualified. [LB335]

SENATOR UTTER: Thank you. I still have trouble with that concept. [LB335]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you Ms. Marsh. [LB335]

LAUREL MARSH: Thank you. [LB335]

SENATOR CORNETT: Are there any further opponents? [LB335]

REBECCA GONZALES: (Exhibit 2) Chairperson Cornett and committee members, my name is Rebecca Gonzalez, that's R-e-b-e-c-c-a G-o-n-z-a-l-e-s, and I'm testifying on behalf of Darcy Tromanhauser who is the director of Nebraska Appleseed's Immigrant Integration and Civic Participation Program. Nebraska Appleseed Center for Law in the Public Interest is a nonpartisan, nonprofit, public interest law firm dedicated to equal justice and full opportunity for all Nebraskans. We are here today to oppose LB335 which would require employers to electronically verify employees' immigration status in order to qualify for tax incentives under the Nebraska Advantage Act. There are very serious concerns with the E-Verify system that could affect all Nebraskans. Most importantly, E-Verify is a system based on the Social Security database. Asking all employers to use E-Verify could stress the Social Security system beyond capacity with serious implications for seniors and the disabled, as pointed out by the attached New York Times article that was handed out, I think, to you. Currently, only about 100,000 employers across the United States, of the approximately 7.4 million employers, voluntarily use the E-Verify system so the increased demand on Social Security resources could be vast. We should be very careful about rushing forward with plans that could have such deep, unintended consequences. We understand the impulse to require electronic verification, but there are other problems too. The system is rife with errors. It is very costly to the federal government, as well as costly and inefficient for employers and employees. As one example, Intel Corporation recently reported that almost 13 percent of workers run through E-Verify in 2008 could not be confirmed. All were eventually cleared as work authorized, but only after significant time, expense, and lost productivity to the employer. The system simply isn't ready for prime time, as five congressional hearings have pointed out. It is irresponsible to mandate the use of this system in the face of these costs and unintended consequences. I offer one personal

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example as to the accuracy of the system. A colleague of mine who came here from Mexico decades ago, and is a well-respected, nonprofit legal and community worker, recently was eagerly watching her son apply for jobs after his college graduation. Her son had become a U.S. citizen two years before. He was rejected by one employer who accused him of lying about his immigration status, since the E-Verify system indicated he was only a legal permanent resident, and not yet a citizen. Either way, he was authorized to work, but because the system was two years behind in updating his status, this employer thought he was being dishonest. I have no way of knowing how many other employers may have passed him over for the same reason without telling him. This is a system with significant direct costs and inaccuracies that will create additional costs and inefficiencies for businesses and employees without accomplishing its goal. We are attaching additional information about the inaccuracies and costs of E-Verify. If Nebraska Appleseed can be of any further assistance, please do not hesitate to contact us. Thank you. [LB335]

SENATOR CORNETT: Questions from the committee? Senator White. [LB335]

SENATOR WHITE: Ms. Gonzales, thank you for coming and testifying. If there is added, to this bill, a provision that should E-Verify indicate a person is not here as a legal resident or citizen and therefore not entitled to work, that the employer must then contact the Social Security to verify the information, would that alleviate some of your concerns? [LB335]

REBECCA GONZALES: I think one of the concerns that we have is the amount of time it would take that employer to verify through the Social Security system. Presently, as of February, for Social Security and disability claims, the Social Security system is waiting about...appeals are waiting about 500 days. [LB335]

SENATOR WHITE: That's completely different, and you know those are apples and oranges. A disability claim involves all kinds of factual findings, physicians reports... [LB335]

REBECCA GONZALES: Right. [LB335]

SENATOR WHITE: ...reviews...I mean, that's not equivalent to, does this person have a legal Social Security card or not? I mean, that's not the same. [LB335]

REBECCA GONZALES: There would still be a long...there still could be a long wait for that person to be... [LB335]

SENATOR WHITE: If that becomes a problem we can cross it then, but it won't be ready for prime time until we put it in prime time, will it? [LB335]

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REBECCA GONZALES: I'd hate to think that we would be putting something in prime time and waiting for it to become prime time, but... [LB335]

SENATOR WHITE: Ms. Gonzales, let me explain some of the concerns for me. In my business I do both...a lot of civil rights work, and I've had a number of people who were here illegally worked in--largely meat packing plants, but others who got injured and then were placed into the stark position by their employer saying if you file a suit for the rights that you're entitled to under the workers' compensation claim, we will report you to INS. And these are folks who then ended up taking almost nothing for their injuries, and I'm talking about loss of fingers; serious injuries. [LB335]

REBECCA GONZALES: Um-hum. [LB335]

SENATOR WHITE: And they do it because the next option is deportation. So please understand I'm very concerned about discrimination against workers, but I also recognize that unscrupulous employers have been brutalizing immigrant...illegally immigrated people here, and this law is to stop both of those abuses. Many of the folks here are so vulnerable, because they have no legal status. [LB335]

REBECCA GONZALES: And we would agree. [LB335]

SENATOR WHITE: And you know it too. [LB335]

REBECCA GONZALES: Yes, we do. [LB335]

SENATOR WHITE: I do not overstate, do I? [LB335]

REBECCA GONZALES: Um-hum; no, I don't think you do. [LB335]

SENATOR WHITE: Thank you, Ms. Gonzales. [LB335]

REBECCA GONZALES: Sure. Anybody else? [LB335]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you. [LB335]

REBECCA GONZALES: Thank you. [LB335]

SENATOR CORNETT: Are there any other opponents? Is there anyone here to testify in a neutral capacity? That closes the hearing on LB...I'm sorry, Senator Friend; you're recognized to close. [LB335]

SENATOR FRIEND: Thank you, Madam Chair. Briefly, thank you, members of the

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Revenue Committee. This doesn't usurp federal authority. In May, the feds are scheduled to require this for all contractors and subcontractors. The executive order was signed; whether that becomes overturned or not is another story. The feds are scheduled to use this. The accuracy of the results: I think arguments for inaccuracy are inconclusive at best. A requirement for...Nebraska has sovereignty in regard to the incentivization, I should say, of its corporations and the use of its tax code. Nebraska can also decide how these incentives are distributed. With our tax code we can do that; that's all this bill does. This is not criminal code we're dealing with here. And finally, I would just say that the requirement...the idea that this could end up being used as a tool to thwart employees from gathering gainful employment, I think, is far from the truth. I think what we're actually doing is protecting employees. I think we could...it could be argued that we could be protecting employees if it's used in an appropriate, deliberate, and in an effective manner. That's really all I had, thank you. [LB335]

SENATOR CORNETT: Senator Utter. [LB335]

SENATOR UTTER: Senator Friend, just one question before you leave. I'm not sure I understand the scope of the amendment that's going to be introduced. Could you review that just briefly? [LB335]

SENATOR FRIEND: Sure; quickly, the amendment would be for...to narrow the scope--to make sure that it's understood within the, not only the spirit, but the intent of the...the language of the law--that it's for newly-hired employees: it's not retroactive. [LB335]

SENATOR UTTER: In doing that, are we saying that if someone did have a group of illegal immigrants on the payroll we're not going to be concerned about that? [LB335]

SENATOR FRIEND: No, but I see where you're going. But I think what we're saying is this is what we can handle. I think we're saying we don't want to open up any resource problem that we can't handle as a state. I think that's what we're saying. [LB335]

SENATOR UTTER: Thank you. [LB335]

SENATOR FRIEND: Sure. [LB335]

SENATOR CORNETT: Thank you, Senator Friend. [LB335]

SENATOR FRIEND: You're welcome. [LB335]

SENATOR CORNETT: That closes the hearing on LB335. Senator Howard, you are recognized to open on LB95. [LB335]

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SENATOR HOWARD: Thank you, Chairperson Cornett and members of the Revenue Committee. For the record, I'm Senator Gwen Howard and I represent District 9. I appreciate this opportunity to bring LB95 to you for your consideration. The purpose of this bill is to ensure that business participants in the Nebraska Advantage Act are in compliance with existing statutes regulating the employment of individuals who migrate to the United States. The provisions of LB95 are simple. It requires participating employers to certify that they have not knowingly violated any federal immigration law by employing illegal immigrant workers to work in the United States during the five years prior to the application for participation in the Nebraska Advantage Act. The bill further requires a disallowance, or recapture, of all of the incentives set forth in the Nebraska Advantage Act to any tax payer who has knowingly violated any federal immigration law by employing undocumented immigrant employees unauthorized to work in the United States during the five years prior to application or participation in the Nebraska Advantage Act. Again, the sanctions would only apply to an employer convicted of these violations within the five years prior to their application to the Nebraska Advantage Act benefits. And I want to state up front that I don't fault anyone for wanting to provide a better life for themselves or their families, but I do recognize that the United States, and specifically the state of Nebraska, face social and economic challenges as a result of illegal immigration. I also recognize that the responsibility for these problems, and the solutions we use to address them, must be shared by individuals, employers, and the government. Just to give you an idea of the scope of the problem, a study published by the Pew Hispanic Center in March 2006 reported that an estimated undocumented immigration population in the United States ranged from 11.5-12 million individuals. An estimated 500,000 illegal entries into the United States occur each year. As we in the Legislature seek policy solutions to address these concerns, we must begin by asking employers to the table. Why employers, some might ask? The growing practice of hiring unauthorized workers has been referred to as a magnet for illegal immigration. According to the National Public Radio, 5 percent of the labor force in the United States is composed of unauthorized, illegal immigrants. Because a significant percentage of employers are willing to hire illegal immigrants for higher pay than they would typically receive in their former country, illegal immigrants have prime motivation to cross the borders. Many of the illegal immigrants are seeking higher pay to be able to support their families. While the wages that undocumented workers receive for the work they do here frequently undercuts the wages of the average legal U.S. worker with equal skills and experience, those wages are far more than what the worker would receive in their country of origin. The average American could not imagine the poverty that motivates these immigrants to resort to illegal activity and, in most cases, risk their personal safety to come to the United States. According to The World Bank, 17.6 percent of Mexico's population lives in what is defined as extreme poverty, while 30.1 percent live in moderate poverty, for a total poverty rate of nearly 50 percent. The average annual income per workers in Mexico is around 2,000 U.S. dollars, and the poorest 40 percent of the population only receive about 550 U.S. dollars annually. Even those of average means often fail to be able to meet their needs for basic living necessities. For people

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who are desperate, the quality of life in the United States alone is enticing, but when recruiters representing American companies actively solicit them from both sides of the border with promising offers of financial security for their families, the offer is too good for many to refuse. Unfortunately, those who would oppose this bill and others like it because they believe sanctions against the employers hurt the illegals who are employed in these companies are perhaps failing to see the big picture. In most cases, the benefits are much greater for the employers than they are for this vulnerable work force, and I think Senator White illustrated that perfectly. Illegal immigrants are commonly exploited by coworkers and even management in companies who violate immigration laws. I recently received a call from a constituent reporting grievous acts of physical violence and sexual abuse that she witnessed while working in a Nebraska business that employs illegal workers. This constituent alleged that when she, a U.S.-born white female, attempted to intervene, her life was threatened. She was warned there would be no witness because the individual she was defending had no voice--they would not risk deportation to report the abuse or collaborate her claim. She shared with my staff that the experience made her wonder what has happened to the American values she grew up being so proud of. Illegal immigration is hurting America and it is hurting Nebraskans, socially and economically, and it's time we get serious about addressing it. We have found a way to address the growing concerns about this issue without victimizing people who are seeking a better life. There must be accountability for business and for government as well, and I believe LB95 is a step in the right direction. I thank you for your time and for your attention, and I ask for your favorable consideration of this bill. This is the same bill that I brought to the committee last year and that was advanced to the floor and, unfortunately, being a short session the bill wasn't able to move any further than that. But I appreciate your consideration, thank you. There are people behind me that are anxious to share with you, and with your permission I'm going to waive closing and return to Health and Human Services and smoking issues. [LB95]

SENATOR CORNETT: Thank you, Senator Howard. Are there any questions from the committee? Seeing none, thank you. [LB95]

SENATOR HOWARD: Thank you. [LB95]

SENATOR CORNETT: May I see a show of hands for the number of people that are here to testify as proponents? We'll open the proponents' testimony. [LB95]

SUSAN SMITH: My name is Susan Smith, that's S-u-s-a-n S-m-i-t-h, and I'm here representing Nebraskans Advisory Group. We fully support Senator Howard's LB95. We would certainly like to see any company who is abusing our federal immigration laws, and possibly now our state law, in hiring illegal aliens and then not only do they get the windfall of not having to pay taxes on these individuals, they get a windfall by not paying them as much as they would have to Americans. And then also...and so for them to

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have to repay any tax incentives that they have received is certainly fair and reasonable. I agree with Senator Howard that this will help clamp down on the abuses that are going on towards the illegal aliens who are being hired. I think Agri Process who's in Postville, Iowa was the most grievous of them all--where they were bringing the illegal aliens in; they were paying...they were charging them for housing and the child labor laws and then so by the time they get their check it's really nothing, but it's still more than what they would have made in the country that they came from. And that's horrendous, too. There's another situation in a meat packing plant where a supervisor noticed some things not going right--policies not being...procedures not being followed out on the floor, and when she complained about it...she was threatened to be...I guess they have a bone-crushing machine, I don't know, but. So I think this will just really help bring this to a stop; instead of a flowing river, it might get it down to a trickling stream and that would be good. The IRS unreported earnings report showed that there were 15 million illegal aliens who held jobs. They based that number on a census report. Of those 15 million, 5 million are being paid cash under the table. And then who knows how many of those are using stolen American identities? So anything that our state can do...the federal government is acting...I think that they are just really overwhelmed. I think the problem has been ignored for so long and now we have a problem and I think they're just overburdened. And so for the state to reinforce what a federal government has already...what our federal immigration laws already dictate, I just don't see why we would have a problem doing that. And thank you for your time. [LB95]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. Is there any other proponent? Opponents? Any one in a neutral capacity? [LB95]

PETE McClymont: Madam Chair, members of the committee, I'm Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I'm here as vice president of Legislative Affairs for the Nebraska Cattlemen. First off, I wanted to say that what Senator Howard is doing here is a wonderful bill. We need to reward people that are doing things the right way. As Senator Ashford said last year in the immigration hearings in Judiciary, federal government has messed this up and we have to take a stand at some point. And so LB95 starts that process. The only thing I would offer up for the committee's consideration is one word: in page 3, line 11 and in page 7, line 6 is the word knowingly. We have members who have utilized the Nebraska Advantage Act. And if they have gone through the process, especially the scenario that Senator White talked about in LB335 testimony, and have done...E-Verify have done...made the calls to the Social Security system to verify somebody's legal status in this country, we just would offer up that, unfortunately, that's not 100 percent positive--an E-Verify checking of somebody--so some of the solutions you offered up earlier, Senator White, I would agree; I would conclude with those things, but from that standpoint I would just say if somebody's done their homework as an employer and everything checks out, we would hope that they wouldn't be held accountable for others' inability to do their job. [LB95]

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SENATOR CORNETT: Senator White. [LB95]

SENATOR WHITE: Thank you, Mr. McClymont. If we had a safe haven that showed an employer made these checks look good and show that he made his good faith effort, therefore they're immune from any adverse consequences, would that help you guys? [LB95]

PETE McClymont: Yes, sir. [LB95]

SENATOR WHITE: Okay, so if we had a some kind of a--I think they call them in the law a safe haven provision--do this and you're fine... [LB95]

PETE McClymont: Um-hum. [LB95]

SENATOR WHITE: ...that would help? [LB95]

PETE McClymont: Yes, sir. [LB95]

SENATOR WHITE: Okay. [LB95]

PETE McClymont: I would agree. [LB95]

SENATOR CORNETT: Thank you. [LB95]

PETE McClymont: Thank you. [LB95]

SENATOR CORNETT: Senator Howard waives closing. That closes the hearing on LB95. Senator White. [LB95]

SENATOR WHITE: We will now open the hearing on LB162. Senator Cornett will introduce the bill. [LB162]

SENATOR CORNETT: (Exhibit 3) Good afternoon, members of the Revenue Committee. For the record, my name is Abbie Cornett, and I represent the 45th Legislative District, and I'm here to introduce LB162. LB162 would simplify the contractor registration requirements for the purpose of the Revenue Act in the Contractor Registration Act. Currently, most contractors are required to register with both the Department of Labor and the Department of Revenue. LB162 would create a uniform definition of contractor and a single database of registered contractors for the purpose of the Revenue Act and the Contractor Registration Act. The registration process and database would be administered by the Department of Labor. LB162 would also allow the Department of Revenue and the Department of Labor to share information for the purpose of contractor registration. LB162 would transfer registration

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and fee requirements for nonresident contractors under the Nebraska Revised Statutes, Section 77-3101 and Section 77-3112 to the Contractor Registration Act. LB162 would eliminate the bonding requirement for nonregistered contractors. Mr. Albin from the Department of Labor will explain why that is...that bonding requirement is going to be removed. In preparing for the hearing today we found there was an error in the definition of contractor. I would like to present an amendment for...to the Committee for consideration. Also it has been brought to my attention that some language defining what a contractor is could apply to the realtors. The language is, "person who is providing or arranging for labor for such activities, either as an employee or as an independent contractor for any contractor or person." In talking with the Department of Labor and Revenue, it is not their, nor my intention, that this should apply...this language should apply to them. This language is currently in the Contractor Registration Act and has never been applied towards realtors by either department. I would thank you for your consideration of LB162, and I'd be happy to answer any questions. And there will be testifiers following me that can explain some of the technical details on why they're enacting or requesting some of these changes. [LB162]

SENATOR WHITE: Any questions? Seeing none, thank you, Senator. Next, first proponent, please. [LB162]

DOUG EWALD: (Exhibit 4) Senator White and members of the Revenue Committee, my name is Doug Ewald, D-o-u-g E-w-a-l-d, Tax Commissioner of the Nebraska Department of Revenue. I appear before you today in support of LB162. Today, construction contractors are required to register with both the Department of Labor and Department of Revenue when performing construction services in Nebraska. Each agency enforces different laws, has different registration requirements for different contractors, and also has different fee requirements. In addition, each agency maintains an online database of construction contractors and each database contains different information. Having two databases with different registration processes creates confusion for construction contractors and subcontractors, and results in administrative issues for both agencies. LB162 would simplify construction contractor registration requirements and eliminate the two different databases. LB162 would also create a single definition of "contractor" for purposes of the Contractor Registration Act and the Revenue Act. It also creates a centralized registration system for construction contractors; designates a single agency for fee remittance in association with the Contractor Registration Act and the Revenue Act; eliminates bonding requirements for nonresident contractors; allows the department to share information for purposes of administration of the database, but that does not include Social Security numbers. In particular, I will address the changes associated with the Revenue Act and nonresident contractor's law. Commissioner Lang will address the changes associated with the Contractor Registration Act. Last year we had LB1001. The Legislature adopted LB1001. It required contractors to withhold 5 percent of payments made to another contractor or person who is not an employee if the contractor maintains an office or

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transacts business in the state, and makes payments for construction services in the state. However, you can opt out of that by simply registering on the Revenue Contractor Database. The Revenue Contractor Database is an online database of contractors registered with the Department of Revenue that allows a contractor to determine whether it must withhold 5 percent of any payment to a subcontractor for purposes of the Revenue Act. The Revenue Contractor Database became operational in November of 2008. The 5 percent withholding requirement became effective January 1, 2009. As of February 1, 2009, the Revenue Contractor Database included over 12,000 contractors, the majority of which are already included in the Department of Labor Contractor Database. I have a couple of attachments there and one is a, a simple screen which shows a query of the word, of the company Smith in the city of Lincoln. So you put the name Smith in the city of Lincoln into the Revenue Contractor Database, boom, you get a listing of all the companies that have Smith in their name and you can find out, is the Smith that I'm doing business with, that's a subcontractor of mine, registered with the Department of Revenue. If they are, great. I don't have to withhold 5 percent. Since November of 2008, the database has been queried nearly 150,000 times, with over 27,000 hits between January 4th and January 10th. And there's a...the next page has a detailed listing of the page view counts of the Contractor Registration Database by week. Week 47 is the 47th week of last year and you can see the begin and end date, but almost 150,000 queries with respect to that database. I can tell you this right now, I don't know the dollar amount, but we've heard from a couple of contractors that they have withheld in a particular situation because their subcontractor was not registered in the database. Sections 77-3101 through 77-3112 of the Nebraska Revised Statutes currently require nonresident contractors to register with the Department of Revenue if the total contract price or compensation for a project received is more than \$10,000. Registration currently includes a \$25 fee for each nonresident contractor, so you have to register to become a contractor, and then a \$25 fee for each nonresident contract. So each time you have a new contract that's over \$10,000, you have to go on there and pay a \$25 fee. You also have to obtain a bond or other appropriate security to ensure that the state receives all taxes due under the Employment Security Law, and that's the unemployment taxes, and any other withholding required under the Nebraska Revenue Act. Under LB1001, nonresidents are also required to withhold on payments made to subcontractors as I discussed, one exception, if the payee contractor is in the Contractor Database. LB162 would require nonresident contractors to register with the Department of Revenue. They require nonresident contractors...I'm sorry, with the Department of Labor. Require nonresident contractors to remit fees to the Department of Labor, and eliminate the bonding requirement for nonresident contractors. And the reason for eliminating that is that the 5 percent withholding really makes this whole thing duplicative from that standpoint, so. A couple of the amendments. We have a unique situation here where we have a particular contract group that is defined differently for the Department of Revenue than it is for the Department of Labor, so. It exempts, one amendment exempts contracts only involved in the construction of water wells and installation of septic systems from an annual fee

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requirement under the Contractor Registration Act. That's the Department of Labor. It exempts them from that, this amendment. It does not exempt them from registering with the Department of Revenue. They're still required to register with the Department of Revenue. It also clarifies a statutory reference to the Contractor Registration Act, and really moves an exemption included within the legislation, so. That's my testimony. I'd be more than happy to address any questions. [LB162]

SENATOR WHITE: Any questions? Yes, sir. [LB162]

SENATOR UTTER: This fee is in no way intended to testify as to the legitimacy of any contractor? [LB162]

DOUG EWALD: No, it is not. No, not at all. [LB162]

SENATOR UTTER: Do you feel like that's clear to everybody? Just because they're registered doesn't necessarily make them a legitimate contractor. [LB162]

DOUG EWALD: That would be correct. I mean, there's other things that they need to do from a tax perspective or labor's perspective, so, this... [LB162]

SENATOR UTTER: Five percent basically does what? [LB162]

DOUG EWALD: The 5 percent withholding that was required on all payments after January 1, 2009, is really a mechanism to ensure that the state is getting some sort of withholding from that subcontractor if they haven't done their due diligence to register with the Department of Revenue with respect to our database. [LB162]

SENATOR UTTER: Thank you. [LB162]

SENATOR WHITE: Commissioner Ewald, thank you for coming to testify. Initially, this was really passed as a method of enforcing the tax laws in the state of Nebraska, is that correct? [LB162]

DOUG EWALD: Correct. Yes, sir. [LB162]

SENATOR WHITE: Now the database after it's unified, should this pass, will it be maintained by the Department of Revenue or the Department of Labor? [LB162]

DOUG EWALD: The database will be maintained by the Department of Labor. And it's kind of a government efficiency, one-stop shopping, if you will. The contractors can go there, they can pay their fees to register with the Department of Labor like they do today, and also register the appropriate for the Department of Revenue Act. [LB162]

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SENATOR WHITE: I see that as an efficiency. I have no problem with that. But as Commissioner of Revenue, are you satisfied that the database maintained by the Department of Labor will fulfill the original aim of this bill, which was to enforce the tax laws and collect the money that is due and owing to the people of Nebraska? [LB162]

DOUG EWALD: That is the intent, yes. And we will... [LB162]

SENATOR WHITE: And you're satisfied with that? [LB162]

DOUG EWALD: I am satisfied that we will do...that this meets that. We will continue that dialog with the Department of Labor, but I think...I'm satisfied that this does that. [LB162]

SENATOR WHITE: And I also note that the threshold for when a person has to register, and how they register, changes here. I think before they had to do an affidavit...register in all cases and then do an affidavit to exempt. Now it's...unless they make at least \$5,000 and/or pay someone over \$600, if I recall the book correctly. [LB162]

DOUG EWALD: Right. I would defer that to Cathy Lang, since that's a Department of Labor issue, I guess, if I could. [LB162]

SENATOR WHITE: Okay. The amounts didn't seem out of line to me but I wanted to know if they're, after you reviewed it, whether they're consistent with enforcing the tax laws. [LB162]

DOUG EWALD: I believe they're consistent in what we do, and what we look for. [LB162]

SENATOR WHITE: They're small enough that it's... [LB162]

DOUG EWALD: Yeah, they're small enough, exactly. [LB162]

SENATOR WHITE: Okay. And the bonding requirement, why is that redundant? I didn't really understand that. [LB162]

DOUG EWALD: Well, today we require nonresident contractors to post a bond. Very rarely, rarely, do we need to do something with that bond, so. This basically moves that over to a fee, as I understand, and removes that bonding requirement. But the dollars for, associated with that fee continue to go to the enforcement of people that don't do what they're supposed to do with respect to taxation. [LB162]

SENATOR WHITE: And then, so the members are clear, that bond never had anything to do with the quality of their work. It was only to ensure the payment of taxes. [LB162]

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DOUG EWALD: Absolutely not. Correct. It was there to ensure the appropriate payment of taxes with respect to their employees withholding. [LB162]

SENATOR WHITE: And so with all of that in consideration, you support this bill? [LB162]

DOUG EWALD: Yes, I do. [LB162]

SENATOR WHITE: Thank you, Commissioner. Any other questions? Thanks, sir. [LB162]

DOUG EWALD: Thank you. [LB162]

SENATOR WHITE: Next proponent. [LB162]

CATHERINE LANG: Senator White, and members of the Revenue Committee, my name is Catherine Lang, Catherine with a C, C-a-t-h-e-r-i-n-e, last name, Lang, and I'm the Commissioner of Labor for the state of Nebraska. I appear before you today in support of LB162. I thank Senator Cornett and her staff, and Doug Ewald and his staff, for the efforts made to bring LB162 before you today. The intent of LB162 is to create a single point for the requirements of contractors to register with the state of Nebraska. LB162 combines the requirements of the Department of Labor and the Department of Revenue into one registration process. Tax Commissioner Ewald has provided the details of the changes made by this bill, in particular, our attempt to create a common definition of the term "contractor." The Department of Labor will be the agency responsible for the contractor database. I pledge that our agency will harmonize both databases and assure that the best aspects of each database will be retained. I know that the efforts made by the Department of Revenue to develop their database were well received by the contractor community. We will make the same efforts as we implement LB162. The changes made to the statutes governing the contractor database are as follows: Section 2, subsections 2 and 3, harmonize the definition of contractor. Our intent is to use a single definition, but not require anyone who didn't pay a registration fee before LB162, to pay a registration fee after LB162, or who didn't have to register with one or both programs before LB162, to have to register after LB162. Our intent is to move the differences in the filing fees and etcetera, from the definition section to other sections so that we have a common definition for registration purposes even if not every contractor who is required to register, is also required to pay the fee. Section 4, subsection 1, specifically requires contractors to put their FEIN, their Federal Identification Number on the contractor filing. The FEIN will be our control measure so that somebody doesn't show up twice in the database under variations of the same name. Subsection 5 is added to transfer the sales tax election requirement from Revenue's database to our database. So we'll be getting all of that information in one filing and then behind the scenes, we'll pull the information and share it with the

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Department of Revenue so they will have all the information that they need. Section 5, subsection 1, clarifies that only the \$40 contractor registration at filing fee goes into our cash fund. And subsection 2 removes the affidavit requirement for contractors required to register but not pay the fee. Currently, only...the affidavit only applied to those contractors who had to apply because they were contractors but they didn't have to pay the fee. That's because they were paying less than \$3,000 or less to employees in a year. And just so you know, of the 8,200, well, excuse me, of the 9,865 contractors that are registered, 8,236 have fee paid; 1,629 are exempt from paying the fee. I want to thank you for the opportunity to testify in support of LB162. I urge your support of the bill, and advancing it from the committee. And I'd be happy to answer any questions that you may have. [LB162]

SENATOR WHITE: Any questions? Yes, sir. [LB162]

SENATOR UTTER: Thank you, Senator White. I have two or three questions. I'm curious as to why there was a requirement for a duplicate registration in the original bill. Can you shed any light on that for me? [LB162]

CATHERINE LANG: Yes, I can, Senator Utter. Thank you for that question. Last year two bills were proceeding through the Legislature, both dealing with contractor databases, one changes made to the Department of Labor Contractor Database, which took it from application in three counties, Douglas, Sarpy, and Lancaster, to a statewide application. And then LB1001, which was creating the contractor database. And you've heard Senator White and Commissioner Ewald discuss the fact that they were trying to assure that contractors were registered and therefore, paying or being responsible for paying the appropriate taxes. As those were moving through the process, there...we knew of each others bills, and it was just that they were moving so fast through a short session that we weren't able to get together and combine them into one database at the time. And we pledged to everyone involved in the process last year that we would come forward this session to create a single database, and that's why we're here with LB162 today. [LB162]

SENATOR UTTER: My next question would be, that if this is truly a bill to assure the state that they're getting the appropriate revenues, I don't understand why it's not in the Department of Revenue, that the database is not in the Department of Revenue rather than the Department of Labor. [LB162]

CATHERINE LANG: The Department of Labor's database has existed for ten years so a lot of contractors are used to dealing with the database there, particularly, the contractors that are in the Douglas, Lancaster, and Sarpy area. This last year, all contractors had the experience of dealing with both databases. But all contractors, except for the few that I mentioned that were exempt from paying the fee, must pay the fee to the Department of Labor. The fee structure that's imposed on contractors that

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would otherwise need to be paying a fee to the Department of Revenue, the \$25 fee, is a much limited subset of that, and so it was determined that because of that fee structure that it would be...that we would manage the database with the Department of Labor, because we do collect the information for our purposes too. This is also to ensure the appropriate payment of unemployment taxes as well, so we are using this database. Both agencies are using the database to ensure that their respective taxes are being paid. So we will be providing the information to the Department of Revenue so that they can do their enforcement, and we will use the database in the way that we have been using it in the past to assure the enforcement of our tax laws. [LB162]

SENATOR UTTER: And the \$25 fee pays for putting the name in the database, or what's the use of the \$25? [LB162]

CATHERINE LANG: The \$25 is imposed only on the out-of-state contractors. And the \$40 fee is imposed on all contractors. So there's an... [LB162]

SENATOR UTTER: So does that mean an out-of-state contractor is then paying \$65? [LB162]

CATHERINE LANG: That is correct. [LB162]

SENATOR UTTER: And those fees are used for what purpose? [LB162]

CATHERINE LANG: The \$40 fees come into the Contractor Registration Act cash fund, which is a cash fund under the Department of Labor, and it's used to fund the improvements and enhancements to the database and our enforcement efforts. The \$25 will be split off, placed into the state general fund, and those funds then will be used to assist and provide resources to the Department of Revenue for their purposes. [LB162]

SENATOR UTTER: The...and I looked a little bit at this change in definition of contractors between the two bills, and I think it was alluded to earlier that there really was no change. But I do see a change, or what appears to me to be a change, unless it happens to be covered in the amendment that Senator Cornett had offered. For example, the one thing that I did notice, it doesn't include the...old amendment, or the old bill did not include the construction of water wells or installation of septic systems. It appears to me that the new definition includes them. I guess I'd like to have somebody tell me why they were excluded from the original and why they are included in the new one. [LB162]

CATHERINE LANG: They were not included in the original provision of the Department of Labor's statutory section because they were excluded as a specific exception. However, in the Department of Revenue definition they are contractors. They are

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deemed to be contractors. What we're doing in our bill, LB162 plus the amendment, is excepting them from the payment of the fee. [LB162]

SENATOR UTTER: Thank you. I guess I have no further questions. [LB162]

SENATOR WHITE: I have only one question, Ms. Lang. We'll be excluding about 12 percent of the registered contractors from the duty to register again, based on what I heard you say. Are you comfortable that that won't lead to abuses either in the failure to pay unemployment insurance or any kind of taxes, if we exclude that level? [LB162]

CATHERINE LANG: We don't believe so. However, I believe it is that they are still registered. They're just not paying a fee so it allows us to still... [LB162]

SENATOR WHITE: Well, if you get rid of the affidavit requirement, don't you also...do they still have to register? [LB162]

CATHERINE LANG: They still have to register. [LB162]

SENATOR WHITE: Okay. So the requirement that all contractors register remains in place. They just don't have to issue an affidavit that they're making under a certain amount of money or making fewer than \$5,000 or \$6,000 (inaudible) payments. [LB162]

CATHERINE LANG: That is correct. [LB162]

SENATOR WHITE: Okay. Thank you. [LB162]

CATHERINE LANG: Part of the reason for removing that just to be clear on the record, is we do want to move to as possible, as entirely as possible, an electronic process on this. And so to remove the requirement for the affidavit will expedite that. [LB162]

SENATOR WHITE: And it will make it much more affordable to administer the whole program? [LB162]

CATHERINE LANG: Exactly. [LB162]

SENATOR WHITE: Any idea on the savings between the Department of Revenue and your department by consolidating into one database? I know it's going to be a lot easier for the contractors and that's a good reason on itself, but I assume there will be savings as well in government. [LB162]

CATHERINE LANG: You know, I don't know absolutely. It does put all of the responsibility in one agency for maintaining a database. So I suppose that would be the area where the savings would occur, is just the enhancements and programming to the

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database. [LB162]

SENATOR WHITE: And then your agency gets the fee? [LB162]

CATHERINE LANG: That is correct. To help offset that, yes. [LB162]

SENATOR WHITE: Okay. Thank you. [LB162]

CATHERINE LANG: Okay, thank you. [LB162]

SENATOR WHITE: Anything else? Next proponent. [LB162]

CATHERINE LANG: Thank you. [LB162]

SENATOR WHITE: Any proponents? All right. Any opponents? [LB162]

SUSAN SMITH: My name is Susan Smith, S-u-s-a-n S-m-i-t-h, and I'm representing Nebraskans Advisory Group. Committee members, if you will give me some leniency, I didn't have a lot of time to look over this bill and some of the language went over my head. There's only one section does...and I fully support anything that our State Revenue Department can do to streamline things and make it run more efficiently and collect all those taxes owed. My only concern was Section 48-2107. Number 1, which was waiving the \$40 fee for each application or renewal, and that pertains to a contractor who is self-employed and does not pay more than \$3,000 annually to employ other persons in the business. You know, \$40 isn't going to break the bank, and if they aren't already paying another fee by registering with one of the other departments, then I just don't see why they can't come up with \$40 to pay that fee and help get our state going. It's a small amount. Okay, but my real concern here is number 2 under that section. And it's the deletion of some of the language. A contractor shall not be required to pay the fee, and this part is deleted, if the application contains an affidavit which shows that the contractor is self-employed and does...okay, which shows, and then it goes on, the contractor is self-employed and does not pay more than \$3,000 annually to employ other persons in the business. This next section is deleted. The affidavit shall contain that they are not going to have to submit, the affidavit shall contain a statement that the contractor is self-employed and a list of all employees employed on the date of the application and in the 12-month period prior to such date and the date of the employment of each employee. Here is my concern with that. And we've had a couple of examples of that with the last windstorm where we had these, the roofing repairs in residential areas are paid, no repairs, and these contractors were hired to come out. They had subcontractors who came out. The entire group did not speak English. There was a minimal damage to the drainage system from bringing materials back and forth. When the neighbor went next door to ask if the company they used, used the E-Verify system or checked documentation, he was met with about seven Hispanic individuals

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who, oh, came around him, apparently could not speak English or choose to act like they did not know English. When I drove by this business...they contacted me. I drove by this business. I had my digital camera, I have pictures, and in the parking lot there's two trucks. There's one with Arizona state license plates and one from Texas with plates. I want to know if my next door neighbor is having work done and they are using contractors or subcontractors, I want to know that if anything happens to my property or my nieces and nephews who might be over playing out in the yard, anything happens, I want to know that there is something where we can go back and find out who was working on that job or for that company. I want to be able to hold someone responsible. And if it's an American, then that certainly can be chased and the police can make their case. If it's an illegal alien that has been hired, who is being paid cash, who is using identify theft to get that job, or being brought in from another state, and when that job is done, they leave, I have no recourse. So...and again, I'll have to leave it to you to decide if that is what that is...that putting that language back in would mean. I just want a little bit of security in my own neighborhood, and that was my only concern with it. [LB162]

SENATOR WHITE: Thank you for your testimony, ma'am. Any questions? I see none, thank you. [LB162]

LEE ORTON: Senator White, and members of the Revenue Committee, my name is Lee Orton, L-e-e, last name, O-r-t-o-n. I represent here today the Nebraska Well Drillers Association and the Nebraska Onsite Wastewater Association. Let me answer Senator Utter's earlier question, if I might. The reason we are exempted from the existing law is, because in working with Senator Synowiecki and others a year ago when this legislation was adopted, it was understood that both of those professions are already licensed and required to comply with licensing standards with other agencies of the state of Nebraska. With the water well industry it's the Department of Health and Human Services, and with the Onsite Wastewater Association it is the Department of Environmental Quality. Both of those industry professions pay substantial licensing fees now to the state of Nebraska. And it was a concern to them, obviously, number one, that they would not be required to pay additional fees to the state just to register themselves in another document database when they already exist in these other two agencies database. I understand a lot of what has been discussed here today about needing to have good lists of all of the contractors in business. But we're still concerned about the slippery slope that may be here if we get too far along in this process. There is, in fact, a bill in another committee that's been introduced this year, the number of which escapes me right now. But it's in Business and Labor that proposes to create an examination process for people who are under this Contractor Registration Act. Our contractors in the water well industry and the onsite industry already take examinations to maintain their licenses. They are required to comply with continuing education requirements to maintain those licenses. We don't need another step in that direction. So we're still concerned about the changes that have been proposed here, because all the changes do at this point is to exempt us from paying the fee. I think there's maybe

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some need, perhaps, to consider bringing the databases from the two...or agencies that already register and license these people into the central system. But I don't see us having to comply with a completely different set of statutes, and therefore, we're still opposed to the legislation as it's been drafted, and to the amendments, which we were only just given this morning, having not had much chance to look at those. We'd be more than happy to work with the introducer, Senator Cornett, and with this committee to try to resolve any of these problems. But we think licensing and registration for each of these professions is enough when we do it once, not twice. I thank you. I'd... [LB162]

SENATOR WHITE: Thank you for your testimony. Do you have any questions, any members of the committee? Seeing none, thank you, sir. [LB162]

LEE ORTON: Thank you. [LB162]

SENATOR WHITE: Any other opponents? Seeing no opponents, any neutral testimony? Seeing no neutral testimony, that closes the hearing. Oh, on LB162, I'm sorry, Senator Cornett, do you wish to close? Senator Cornett waives closing, and that does close the hearing on LB162. Senator Hadley, you're up next. [LB162]

SENATOR FRIEND: Okay, Senator Hadley, you are recognized to open on LB520. [LB520]

SENATOR HADLEY: Thank you, Senator Friend. It is kind of a week of maiden voyages. I spoke on the floor for the first time; now I'm presenting a bill for the first time, so I appreciate the opportunity to be here. My name is Galen Hadley, that's spelled G-a-l-e-n H-a-d-l-e-y. I represent the 37th District in the great state of Nebraska. LB520 is introduced to allow a refundable income tax credit for donations to perpetual conservation easements by the owner of Nebraska real property. In order to qualify for the refundable credit, the perpetual easement must be donated to the state, political subdivisions, or charitable organizations and two, for the purpose of preserving natural areas, agricultural land, open space, wildlife habitat, watersheds, forest land, view sheds, cultural sites, and historic areas. Basically, the idea behind this is to try to encourage and stimulate the giving of easements for conservation areas. The applications would be given to the Department of Agriculture. They do have a letter where they're concerned on the ability to handle it, but we would certainly work through to see which department might be the most appropriate department to handle the applications. We do have a limit, both in the amount that a person could get in the credit--which is \$50,000 a year or \$250,000 over 5 years, and a \$5 million total credit for the easements, or for the refundable tax credits. And if there are more, we will set up a system that we would prioritize the applications to give it to the best ideas. With that I would...I do have a number of people who are wanting to testify who can give you more in depth on the actual details of the bill, but I would say I think it is a good bill and it's a bill that does combine agriculture, conservationists, recreation, and it also...the state of

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Nebraska in working in this area. So if you have any questions, I'd answer them. If not, I would turn it over to the people who have the more in-depth details. [LB520]

SENATOR CORNETT: Seeing no questions, Senator Hadley; thank you. [LB520]

SENATOR HADLEY: Thank you. [LB520]

SENATOR CORNETT: First proponent. Can I see a show of hands of how many proponents there are? Okay. I would ask that you limit your testimony and not be repetitive. We'd love to hear new ideas, but "me too" works also. [LB520]

JOHN THORBURN: (Exhibit 5) Thank you, Madam Chairman, Senators. I'm John Thorburn, I'm the manager of Tri-Basin Natural Resources District in Holdrege. I'd like to testify in support of LB520 on behalf of Tri-Basin NRD and the Nebraska Association of Resources Districts. Platte River Basin NRDs are working in cooperation with the Nebraska Department of Natural Resources to protect groundwater and surface water supplies for future generations. We will utilize a variety of methods to achieve this goal. We will lease surface water rights, construct intentional groundwater recharge projects, even provide incentives to landowners to plant crops that consume less irrigation water than field corn, such as winter wheat. If we need to, we will also regulate water use to achieve these objectives, but we prefer voluntary compliance measures when possible. Another way in which we can and do work with landowners to voluntarily reduce groundwater use is to provide incentives to permanently discontinue irrigation. Some landowners in the Platte Valley have already entered into agreements that include permanent conservation easements which prohibit irrigation of parcels of land. These willing seller-willing buyer agreements are more effective and less expensive than regulating a broader class of landowners as a means to reduce groundwater depletions. Reducing the need for regulation of groundwater users is not the only motivation for NRDs to use conservation easements. Tri-Basin NRD has entered into three conservation easements with private landowners on behalf of Ducks Unlimited and the Wetlands America Trust to restore rainwater basin wetlands in our district. One of the clauses in these easements prohibits landowners from altering the natural drainage patterns of a property in such a way that they would harm or interfere with the function of wetlands on their property. Conservation easements are an important tool that natural resources districts use for restoration and preservation of wildlife habitat as well as for protection of water resources. Any incentives that we can provide landowners to encourage them to enter into conservation easements are, therefore, useful and helpful to us. For these reasons, Tri-Basin NRD and the Nebraska Association of Resources Districts support LB520. The only change that we ask you to consider making to this bill would be to make the proposed income tax more generous than 15 percent--even up to 100 percent, because any landowner who donates all or part of the value of a piece of property to an NRD is sacrificing personal gain for the perpetual benefit of their community and the state as a whole. Thank you. I'd be willing to answer any questions

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you may have. [LB520]

SENATOR CORNETT: Seeing none, thank you. [LB520]

JOHN THORBURN: Thank you, Senator. [LB520]

SENATOR CORNETT: Next proponent. [LB520]

DAVE SANDS: (Exhibit 6, 7) Good afternoon, Senator Cornett, members of the committee. My name is Dave Sands, S-a-n-d-s, and I'm executive director of The Nebraska Land Trust, and I've also been asked to submit written testimony for the Izaak Walton League, which is being passed around. All too often, it seems that natural resource issues are entangled with conflict, which makes win-win solutions hard to find. LB520's a rare exception. By promoting the use of voluntary land preservation agreements, known as conservation easements, there are no winners and losers because there is no battle. And at the end of the day, land, water resources are preserved forever, providing a variety of public benefits that help us all. As you may know, three previous bills have proposed the concept of a state tax credit for the donation of conservation easements, because similar laws have proven to be an excellent investment in at least 11 states. This is because significant public benefits accrue from the preservation of agricultural, historical, and natural resources on private land. However, unlike previous bills, this legislation would make the tax credits available to a much broader spectrum of landowners throughout the state to achieve a greater variety of conservation purposes. For example, the credits could be used in water-short areas as an incentive for the voluntary retirement of irrigated acres. Unlike other retirement programs, these acres could still be used for agricultural purposes such as dry land farming or grazing. The tax credits would also serve as an incentive to preserve watersheds, flood plains, and water quality by maintaining permanent, natural buffers next to rivers and streams. Wildlife habitat would be preserved as well, benefitting game and non-game species alike. Sometimes conservation easements can even be used to buffer public lands from encroaching development which can adversely affect hunting or scenic views. Agriculture's another value commonly preserved in conservation easements. The loss of agricultural land is certainly not a problem statewide, but in landscapes like the Niobrara, Pine Ridge, or the Lower Platte Valley, the continuation of agriculture is not a given, which can change the fabric of the community and the economy. Recently, a rancher in the Pine Ridge who wanted to preserve his land for agriculture informed me that he had three new neighbors--one each from Colorado, California, and Florida--none of which allowed cows on their land. Economic development also benefits from the preservation of natural amenities, which can play a significant role in attracting new business and families to our state while providing a reason for our young people to stay. This is especially true when amenities are preserved near urban areas like the Lower Platte River or the Wildcat Hills. These tax credits are also an excellent long-term economic investment as the public receives a

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variety of important benefits for a fraction of the conservation easement's value, and this investment continues to pay dividends year after year. In the course of debate on this bill, you may hear that we should not encourage voluntary agreements that tie the hands of future landowners. However, when land is developed that is also an irreversible decision future generations must live with. A conservation easement is the flip side of this same property right for landowners who prefer permanent conservation over permanent development. As one rancher put it, the conservation easement I set up goes with this ranch; that's how I want it to be. My heirs want to do something different, they can get to work and buy their own land to do it. You may also hear that conservation easements will harm the county tax base, even though I have yet to see one instance where property taxes were lowered due to an easement. In most cases, easements are protecting lands that are already valued as agricultural land for tax purposes, and since these lands remain in agriculture there is no change in valuation. It should also be noted that cities and counties have the right, under state law, to reject conservation easements if they are contrary to an identified public works project or their comprehensive plan, providing a measure of local control. While there's a federal income tax deduction for the donation of conservation easements in recognition of their public benefits, the federal deduction is most useful to people with high incomes, which generally excludes those in agriculture. This is why Colorado and Virginia allow for the transfer of their tax credits, so that any landowner can have the option of obtaining cash, which is often more meaningful to agricultural landowners than a tax credit. In LB520, the refundable credit achieves this same purpose. By the same token, Colorado is not a perfect model, but we can benefit from their experience and LB520 does so in a number of places. For example, there are tighter controls on nonprofit organizations that hold easements, requiring them to document annual monitoring and name another organization or agency as a backup easement holder in case the nonprofit ceased to exist. Appraisals are another area where tight requirements are in order, so the bill requires that appraisals meet the most stringent federal standard. State oversight is also built into the legislation through the Department of Agriculture, who will form a ranking committee to ensure that the very best easements receive the credits if the annual \$5 million cap is exceeded. At year end, the Governor and the Legislature would receive a report detailing the use of these credits, the conservation values preserved, the public benefits that resulted, and the number of acres protected. The bottom line is that LB520 is intended to promote permanent protection of valuable agricultural, historical, and natural resources which provide a host of public benefits through a voluntary incentive-based program that avoids conflict and regulation while providing a win-win, public-private approach to conservation. We hope that you will support this approach by advancing LB520. Thank you. I'd be happy to answer any questions. [LB520]

SENATOR CORNETT: Senator Adams. [LB520]

SENATOR ADAMS: You made a statement in your testimony that intrigues me. You said that if there was this easement it would not prohibit a municipality, for instance,

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from running a water or sewer line. Is that...did I hear you right? [LB520]

DAVE SANDS: Yes, you did. [LB520]

SENATOR ADAMS: Under Nebraska law, would it prohibit annexation? [LB520]

DAVE SANDS: No. [LB520]

SENATOR ADAMS: It would not. [LB520]

DAVE SANDS: It would not prohibit annexation. [LB520]

SENATOR ADAMS: Okay. [LB520]

SENATOR CORNETT: Seeing no further questions, thank you. [LB520]

DAVE SANDS: Thank you. [LB520]

STEVE DONOVAN: (Exhibit 8) Madam Chair and members of the Revenue Committee, my name is Steve Donovan, I'm from St. Paul, Nebraska; S-t-e-v-e D-o-n-o-v-a-n. I am the manager of conservation programs for Ducks Unlimited for the state of Nebraska, and I am also on the board of the Nebraska League of Conservation Voters, and I'm here today on behalf of both organizations providing testimony in favor of LB520. Conservation easements are a wonderful tool that are often used to protect important natural resources, including wildlife habitat and productive farmlands. Ducks Unlimited works with private landowners in many parts of the country protecting important wildlife habitats, including here in Nebraska. We hold four conservation easements in the state: three along the Platte River and one in the Rainwater Basin. These four easements have protected over 2,600 acres of important wildlife habitat, farmland, and ranchland. LB520 proposes to create a state income tax credit for qualifying donations of perpetual conservation easements. We believe this legislation offers a great opportunity to increase the rate at which conservation easements are secured on private lands. Ducks Unlimited and most other conservation organizations ask private landowners to pay for certain costs that are associated with the donation of conservation easements. Generally, that includes the appraisal, a baseline documentation report, and a contribution to the endowment fund for that respective organization to pay for any future costs associated with the protection of that easement. Landowners are asked to pay for those expenses out of their pocket, and what we have found if we can provide a modest financial incentive to landowners in those situations, it really helps increase the rate at which we are able to secure conservation easements. There has been and will be testimony about the benefits of conservation easements. It's late on a Friday afternoon; I will not dwell on that, but I would rather restrict my testimony to one very important aspect of this proposed legislation, and that is the fiscal cost to the state of Nebraska.

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As proposed, this bill would cost a maximum of \$5 million a year in the form of decreased state income tax revenues. In these tough economic times, obviously any proposal that would decrease revenue needs to be very closely scrutinized. The fiscal note that is attached to this legislation, however, does not fully address the economic aspects of the bill. Donated conservation easements can, and would, and have been used to provide very positive revenue aspects that help offset the decrease in revenues associated with the reduced income taxes. And I would like to take a moment to illustrate a few actual examples of this aspect of conservation easements. There are several grant programs that exist that provide federal dollars to protect and restore natural resources, particularly wildlife habitats. Many of these programs require a cost share from a nonfederal source. Securing nonfederal dollars is very difficult, however, the donated value of conservation easements can be used to satisfy the nonfederal matching requirements of these programs. The federal dollars that are then secured from the grants are used to fund habitat restoration and enhancement projects which support jobs, supports the local economy, and increases tax revenues. In one example, DU was able to secure two donated conservation easements on the Platte River near Paxton. The donated value from those easements was used to provide the nonfederal match to secure a \$1 million federal grant authorized under the North American Wetlands Conservation Act. The grant dollars are, right now, being used to hire local contractors to complete a series of wetland restoration enhancement projects along the river, which again, is supporting local jobs, supporting the local economy, and generating tax revenues. Just yesterday, a Ducks Unlimited biologist met with the landowner outside of North Platte. He is aware of those two projects and he is very interested in putting his one-mile stretch of the Platte River in a conservation easement. The conversation always includes the expectation that the landowner pay for those costs associated with the appraisal, the baseline documentation report, and an endowment. And the landowner said that it will all come down to a matter of dollars and cents: if he can donate this easement without a lot of out-of-pocket expenses, he very much wants to move forward. We explained that, under current law, there is a federal income tax deduction available to him, and he made it clear that once he has all the dollars and cents in front of him, if he can do this without a lot of out-of-pocket expenses, he will do it. And if this happens, then we will be able to use that donated easement, again, as the match to secure yet another Federal Wetlands Grant that we would then use on that stretch of the Platte River--restoring and enhancing wetlands, supporting jobs, supporting the economy, and generating more tax revenues. In the second example I want to mention, Ducks Unlimited actually owns a property in Kearney County, outside of Minden. We donated a perpetual conservation easement on this property to the Tri-Basin Natural Resource District. It is one of the projects that Mr. Thorburn mentioned earlier. Under the terms of the easement, we agreed to voluntarily quit irrigating 140 acres of ground, which was very important to Tri-Basin because of their overall desire to decrease the use of groundwater in that county. That is yet another example of the benefits of conservation easements. We were able to use the value of that donated easement to secure a \$750,000 Federal Wetlands Grant. The first

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thing we did with that money was to buy a \$160,000 4-wheel drive Case tractor from the local dealer. We plan on using that tractor to support a bunch of wetland management work that we are planning. I vividly remember looking through the existing state sales tax exemption laws, trying to determine whether or not the purchase of our tractor would qualify as an exemption, and I think I came to the correct determination in that it did not, because our tractor was not going to be primarily used for the production of agricultural crops but rather to support wetland management work. And therefore, we did pay approximately \$10,000 in state sales tax on the purchase of a \$160,000 tractor using entirely federal grant dollars. We have since hired five local farmers to be our part-time tractor operators, to operate this tractor, generating income taxes, fuel taxes, and other positive revenue aspects. And we are spending the balance of that \$750,000 grant completing a series of wetland enhancement and restoration projects in the Rainwater Basin; again, hiring local contractors, generating taxes, supporting jobs and the economy. With regards to the particular property that we own, I think--in case the question is in your mind, I want to mention that our ultimate plan for that property is to sell it to a private buyer. Under the terms of the easement, the new buyer will be allowed certain uses, including haying, grazing, and recreational uses. It will stay on the tax rolls and not be taken off the tax rolls; that question often comes up with regards to easements or ownership of lands by a conservation organization. Protecting and enhancing our precious, most important natural resources through conservation easements is a very worthwhile endeavor. These natural resources are enjoyed by all Nebraskans and help make this state a wonderful place to live. Whether we are in good economic times or not, as the case may be, we believe we owe it to future generations of Nebraskans to protect these important resources so that they may enjoy the same opportunities and privileges and qualities of life that we enjoy today. I want to personally thank Senator Hadley for sponsoring this legislation, and I encourage all the members of the Revenue Committee to support LB520. And with that I'd be happy to answer any questions. [LB520]

SENATOR CORNETT: Senator Utter. [LB520]

SENATOR UTTER: Mr. Donovan, the fact that there's a federal tax deduction, a charitable deduction, will help that individual that donates that easement on his federal taxes. Does that not also translate to an additional state tax deduction, right now, that'll also help that individual with his state taxes? [LB520]

STEVE DONOVAN: It does, and that is one of the reasons why, in discussing this, we were looking at a 15 percent rate, because there is already a benefit under state income tax rules; and we want to increase that benefit or that incentive, but we don't want to overly increase it. Although I would like to mention I do agree with Mr. Thorburn's earlier comment that in the case where landowners might voluntarily give up irrigation rights on lands, that incentive probably needs to be higher in that situation, to encourage people to give up irrigation rights. But in many other cases, we believe this 15 percent rate

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would be adequate to incentivize sufficiently this type of conservation easement work.
[LB520]

SENATOR CORNETT: Seeing no further questions, thank you. [LB520]

STEVE DONOVAN: Thank you. [LB520]

SENATOR CORNETT: Next proponent. [LB520]

JAREL VINDUSKA: Senator Cornett, members of the Revenue Committee, my name is Jarel Vinduska. My family farms over by... [LB520]

SENATOR CORNETT: Sir, could you spell your last name for the record? [LB520]

JAREL VINDUSKA: First name's J-a-r-e-l, Vinduska's spelled V-i-n-d-u-s-k-a. [LB520]

SENATOR CORNETT: Thank you; sorry to interrupt you. [LB520]

JAREL VINDUSKA: I should've known better. I came here today to kind of give a...I'm in support of LB520, and I thought maybe a real-life example might be useful to why I support it and why I think you should support it too. I realize a big part of your job as the Revenue Committee is to preserve revenue for the state, especially in tough economic times, so if you're going to provide a tax credit I think you need to scrutinize that what is the tax payer getting for that money that's foregone for in that credit. And I think in this case it's a worthy cause and it's a worthy use of the tax system to promote good land stewardship. An example I'd like to give is our farm adjoins Schramm State Park. If you've ever eaten in, like, Mahoney Lodge and you look down river, those beautiful hills you see on the Cass County and ours on the Sarpy County side, arguably probably one of the most beautiful areas of the state and right smack dab in the middle between the state's biggest population centers, those hills are under-the-gun extreme development pressure because of the close proximity to so many people, and I think it'd be a great benefit to the people of the state if some of that land was preserved as conservation easements. Our family's quite interested in doing that, and a lot of our neighbors are long-term owners of the land--some of them for several generations--and they would like to see the land preserved in agriculture or wildlife habitat the way it is too. But unfortunately...fortunately, some people might think...the land is also very valuable and a lot of the landowners, that's their main asset in life. So to donate it, generally, is quite a substantial financial loss. We had another farm adjoining Schramm State Park recently sell for a little over \$15,000 an acre, and if there was a conservation easement put on it I don't know how much less on the market it would sell for that, but it would probably be a fairly substantial loss, so. So the landowner would probably give up quite a bit, so any incentive that the state could provide would be helpful toward, you know, inducing people that are inclined that way anyway to go that way. For instance, our

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farm, a lot of it should have never been farmed; it's too rough of land to have row crops on, and so we've been putting it...I've been working for the last 22 years putting it back into native vegetation. And you know, it takes many, many years to establish native prairie and you'll never succeed in a lifetime--it takes hundreds of years and a lot of work. You take one plant, for example, like compass plant: you plant that and it might not bloom for 17 years for the very first time. So it's a long-term project. So when you work that long term, you're not inclined to be too happy with the idea of it being chopped up into little tiny pieces and covered with pavement and roofs. And like, as I say, if people are inclined that way and you can give a little incentive to make it work, the people of the state, in perpetuity, will benefit from it. And always when people go between Omaha and Lincoln and look up the Platte Valley, if some of that land still looks the way it does now, it'd be a legacy that'd be worth leaving for people, so. Do you have any questions? [LB520]

SENATOR CORNETT: Seeing none, thank you for coming. Next proponent. [LB520]

DAVID A. ELLINGSON: (Exhibit 9) Good afternoon, Senator Cornett, members of the committee. My name is Dave Ellingson, I'm a CPA. My name is spelled E-l-l-i-n-g-s-o-n. I actively work with clients that are interested in granting conservation easements. I practice as a CPA here in Nebraska. I'm also a landowner; I'm also in the process of granting a conservation easement myself. I've prepared a schedule that I'd like to review with you today that demonstrates the actual impact of a conservation easement using a specific example. If you would indulge me to go through this example: if you take a conservation easement donation deduction valued at \$500,000, there is a state income tax benefit--you're correct, Senator--of \$35,000 that passes through because of Nebraska's piggyback tax system. So that passes through from the federal return. What is being proposed under LB520 is an additional 15 percent Nebraska income tax credit that would be refundable. The refundable tax credit would be, then, subject in the subsequent year to the Nebraska income tax rate which is 7 percent, roughly, so that would be a reduction of the actual benefit to the owner. So the net of those two is actually \$70,000. So overall, the value of the donated conservation easement is reduced by the tax benefits and the direct cost being \$105,000, resulting in an uncompensated value of the donation equal to \$395,000. As Mr. Donovan mentioned, there are federal matching funds available, so assuming that there's a dollar-for-dollar match on this easement of \$500,000, you have a total net benefit of this conservation easement donation of \$895,000. If you value that grant to the Nebraska economy using standard economic multipliers--and we're using multipliers here of three to seven times the dollar benefit because of the multiplying effect of the dollars available--and then tax those dollars available, you actually realize added state and local tax revenues; either in the form of property taxes, sales taxes, or income taxes in a range of \$105,000 to \$245,000 arising from the granting of this easement. And it's contrasted to a direct cost, really, of the \$70,000 which is all that would be the additional cost of the granting of the easements under this program. So actually, this is not a program that would cost and

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result in a reduction of tax revenues, it would actually add to the tax revenues. Any questions? [LB520]

SENATOR CORNETT: Seeing none, thank you. Next proponent. [LB520]

DAVID A. ELLINGSON: Thank you. [LB520]

JOSEPH SATROM: (Exhibit 10) Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Joseph Satrom, S-a-t-r-o-m, and I am public policy director for the Great Plains region of Ducks Unlimited. And I'm here today to really very quickly do two things: I want to share with you a resource. As you consider this, you might find this State Conservation Tax Credit Impacts and Analysis informative, and if you're wondering why we are interested in a credit, I would refer you to page...let's see, I'm missing the page number...page 11. You can see the graph that illustrates what a credit did for the state of Virginia: the lower, early years of use of just donated conservation easements and then they established the credit--conservation easement activity increased about threefold. I would also like to refer you to the back of the book, page 32, which outlines for you the various program state tax credits that exist in a dozen other states. I worked in Iowa last year in support of an easement tax credit that they established there. I've worked in Colorado with theirs and their efforts to improve their tax credit in recent years. It's a tremendous tool for conservation, and I'm really humbled to listen to a landowner talk about the kind of commitments landowners will make to this kind of a program. In conclusion, I want to say that 20 years ago today I was chairing the state tax committee in North Dakota--the state senate tax committee--and it's really refreshing to come back to a legislature. It's actually only the second or third time I've appeared in a state legislature before. I spent 10 years in the North Dakota senate, most of that time chairing the tax committee, and enjoyed it immensely; and have a sense from listening yesterday and today the substantial pressure that's on you folks as you look at such a tight budget. And I don't want you to be sympathetic to me, but I want to say that the 1980s were all that way in North Dakota. We dealt with deficits every single session I was in, and I know that it's not easy and I really empathize with the challenge. I also want you to know that as I look back on some of the things I'm proudest of and the deceased, highly regarded Supreme Court Justice, Earl Warren, said: everything I did that was good I caught hell for. Giving credits has a way of really turning on incentives for Americans. The fact is, credits work, and that's why you're seeing a lot of them, I suspect. And I want to encourage you to look at this one as something to invest a little bit in and see how it works for Nebraska. This is a remarkable ag state. The new farm bill passed in 2008 created a two-year continued window for further incentives to agricultural landowners to use conservation easements. There was extensive debate in the farm bill deliberations about the loss of prime farm land; losses of land in places like Nebraska, so. This is a very good idea--I can't say more than the people who have presented. It's an idea that's now tested in some really aggressive states and some really modest states, frankly, in terms of state policy, and I

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encourage you to look favorably on it. Thank you. [LB520]

SENATOR CORNETT: Thank you. Any questions from the committee? Seeing none, thank you. Next proponent. Are there any further proponents? Are there any opponents to the bill? Is there anyone here to testify in a neutral capacity? [LB520]

PETE McCLYMONT: Madam Chair, members of the committee, I'm Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t, here as vice president of legislative affairs for the Nebraska Cattlemen. Here in a neutral capacity because our membership's philosophy is that some view easements as a very, very positive tool and use them very much so, then we have other members that wouldn't share that same opinion, so. We do not have policy, but we do have many members that recognize the value of easements. We proudly serve as voting board members on the Nebraska Land Trust and the Sandhills Task Force, two noted conservation groups, and so LB520 goes a long way toward helping those that do utilize conservation easements. Happy to answer any questions. [LB520]

SENATOR CORNETT: Seeing none, thank you. [LB520]

PETE McCLYMONT: Thanks. [LB520]

SENATOR CORNETT: Is there anyone else in the neutral capacity? Senator Hadley, you are recognized to close. [LB520]

SENATOR HADLEY: I'll waive closing. [LB520]

SENATOR CORNETT: Thank you. I seem to have you and Senator Utter mixed up today. [LB520]

SENATOR HADLEY: Well, I can help you; I'm the bigger one. (Laughter) [LB520]

SENATOR CORNETT: That closes the hearings for today. [LB520]

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Disposition of Bills:

LB95 - Indefinitely postponed.
LB162 - Placed on General File with amendments.
LB335 - Placed on General File.
LB520 - Held in committee.

Chairperson

Committee Clerk