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Revenue Committee
February 19, 2009

[LB420 LB460 LB480 LB485]

The Committee on Revenue met at 1:30 p.m. on Thursday, February 19, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB480, LB420, LB460, and LB485. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Mike Friend; Galen Hadley; LeRoy Louden; Dennis Utter; and Tom White. Senators absent: None. [LB480]

SENATOR CORNETT: Good afternoon, and welcome to Revenue. I am Senator Abbie Cornett from Bellevue; to my left is Senator Cap Dierks from Ewing; to his left is Senator Greg Adams from York; and Senator Hadley from Kearney. Research analyst is Bill Lock; and committee clerk is Erma James. To my far right is Senator Utter from Hastings; Senator LeRoy Louden from Ellsworth; Senator Tom White from Omaha and Senator Mike Friend from Omaha will be joining us shortly. To my right is legal counsel Shannon Anderson. The pages today are Rebecca Armstrong and Elsie Cook. Before we start the hearings today, I would please advise everyone to turn their cell phones either to off or to vibrate. Sign-in sheets for the testifiers are by both of the back doors. You need to complete those forms if you wish to testify, and hand those in to committee clerk when you come up to testify. We'd appreciate it if you'd please print on those forms, and fill them out, again, completely before coming up to testify. When you do come up, hand them in to Erma. There are also clipboards at the back of the room. If you wish to sign in but do not wish to testify, you may do that and indicate either your support, opposition, or neutral testimony to the bill so it can be entered in the official record. We will follow the agenda posted on the door today. First, the introducer of the bill, followed by proponents, opponents, and neutral testimony. Only the introducer will be allowed closing remarks. As you begin your testimony, please state your full name and spell it for the record. If you have handouts, please provide the committee and staff with ten copies of that. If you did not make copies of it, the pages can do that for you. With that we'll begin the Revenue Committee hearing, and Senator Dierks, you are recognized to open on LB480. [LB480]

SENATOR DIERKS: Thank you, Chairwoman Cornett, members of the Revenue Committee. My name is Senator Cap Dierks; that's spelled C-a-p D-i-e-r-k-s, and I represent District 40. I'm here today to introduce LB480. LB480 would amend current law regarding the restricted fund lid and levy limits. It also amends levy limits for municipalities and counties. The restricted fund lid for political subdivisions, other than school districts, is amended in three ways. One is to change the definition of allowable growth; the second is to change the definition of capital improvements; and the third is exempt funds in excess of those budgeted to pay for any drug prevention or drug enforcement costs. The allowable growth change would give political subdivisions the opportunity to increase their lids by the amount of growth and taxable valuation due to improvements to real property as a result of construction or annexation. Current law only allows increases in the lid for growth over 2.5 percent. The definition of capital

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

improvements for the restricted fund lid is amended. This change would allow purchases of equipment with a useful life of more than five years to be outside of the restricted fund lid. This was the definition of capital improvement when the lid was first proposed in 1996. Section 13-520 would be amended to exempt from the lid restricted funds budget to pay for any drug prevention or drug enforcement costs in excess of the amount budgeted for such costs for fiscal year 2008-2009. LB480 applies the same definition of capital improvements to the levy law governing municipalities and counties. This bill would amend Section 77-3442, which sets the levy limits for municipalities and counties, to provide that the maximum levy limit for counties, cities, and villages shall not include any funds budgeted for capital improvements under the new definition and lid law. LB480 also excludes funds budgeted to pay for any drug prevention or drug enforcement costs in excess of the amount budgeted for such costs for fiscal year 2008-2009 for the levy limits imposed by this section. With that I'll conclude my testimony and try to answer any questions you might have. [LB480]

SENATOR CORNETT: Thank you, Senator Dierks. Are there any questions from the committee? Seeing none, thank you. [LB480]

SENATOR DIERKS: You bet. [LB480]

SENATOR CORNETT: With that we'll open up the hearing for proponents. [LB480]

GARY KRUMLAND: Senator Cornett, members of the committee. My name is Gary Krumland; it's spelled K-r-u-m-l-a-n-d, appearing on behalf of the League of Municipalities in support of LB480. First of all, I want to thank Senator Dierks for introducing this bill. As most of you know and have dealt with--a couple of you have dealt with--the Legislature imposed a budget lid on sources of revenue for local governments, and this is other than schools--they have their own lid. In 1996 it basically says that a local government can only increase its budget by a base limitation, which is 2.5 percent, plus an additional 1 percent with a supermajority vote of the people. So there is a limit on the budget. At the same time, there's also a limit on the amount that a local government (inaudible) except for the schools, like cities, counties, natural resource districts can levy from the property taxes. Municipalities, cities, and villages are limited to 45 cents per \$100 of valuation, and then they can do an additional 5 cents if they use it to support interlocal cooperation agreements. So there's two limitations, right now, on local governments and how they can deal with the budget, and it's causing some problems for local governments just in the lack of flexibility. As Senator Dierks mentioned, LB480 makes some minor changes in the lid and the levy. For the lid, it changes the definition of allowable growth. Right now, the definition of allowable growth in the lid says that a city--I'll use that example--can increase its budget by the amount of growth in new construction--growth in property tax valuation for new construction or annexation. So it's not just an increase in valuation, it has to be new construction. But you can only take the allowable growth that is over 2.5 percent, so if a city grows by 2

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

percent because of new construction, they're not allowed to increase their lid to take care of any new expenses that the new construction or annexation takes care of. What LB480 would do is simply allow these governments to take, as part of the lid increase, the amount of any growth relating to new construction and annexation. The second definition has to do with capital improvements. Right now, capital improvements are exempt from the lid and the levy limits, but capital improvements are defined as, basically, improvements to the real estate. When the lid was first imposed in 1996, capital improvements also were defined as equipment with a useful life of more than five years, and so what LB480 would do is restore that original definition so that, in addition to having an exemption for capital improvements for real estate, it would also include capital improvements with useful lives over five years. And then the third change has to do with law enforcement and funds budgeted to pay for drug prevention and drug enforcement tools. This is a reaction to some recent decisions made by the federal government to stop funding what is called Byrne funds. These are funds that were sent to the states and local governments to fight drugs and to use for drug enforcement. And in Nebraska, they were used by cities and counties in the state to create task forces to work to fight drugs, and those funds are ending so we were thinking that one way to replace them is to allow cities and counties to increase their budgets to take care of this. On just as a side note, there seems to be some restoration of some of the Byrne funds in some of the stimulus packages, so that may be taken care of that way, but I don't have enough definition on that...or information on that. There are about 530 cities and villages in Nebraska. Probably over 250 of them are already at the levy limit so they cannot increase their property tax asking, unless there's a valuation increase, and that is not happening. So they are really handcuffed right now in the amount of money they can raise to pay for services. There's also a big concern that in today's economy that the valuation of taxable property is going to decrease, and if you're already at the limits, if the valuation decreases that decreases the amount of revenue that would be available to pay for the funds. We think that there should be some more flexibility. We think that these are decisions that local elected officials should make, and we would like...ask that they be given more flexibility through the passage of LB480 and we would ask that you would advance the bill. I'd be happy to answer any questions. [LB480]

SENATOR CORNETT: Senator Hadley. [LB480]

SENATOR HADLEY: Senator Cornett. Mr. Krumland, in just kind of a nutshell, I've always wondered why did in...you said 1996? Is that...? [LB480]

GARY KRUMLAND: Yeah. [LB480]

SENATOR HADLEY: What was the reasoning behind the Legislature getting involved in spending limits and levy limits? [LB480]

GARY KRUMLAND: I think it was in reaction to some statewide petitions to put limits on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

state government and there was concern expressed about property taxes at the time. So it was what the state's reaction to some of those things that were happening at the time. [LB480]

SENATOR HADLEY: Okay. [LB480]

SENATOR CORNETT: Senator Adams. [LB480]

SENATOR ADAMS: Thank you, Senator Cornett. Gary, so if I understand correctly, right now a city has an expenditure lid of 2.5 percent plus any growth over and above that 2.5 percent. [LB480]

GARY KRUMLAND: Yeah. [LB480]

SENATOR ADAMS: Okay. And in effect, what you would be asking for here is the 2.5 percent plus the... [LB480]

GARY KRUMLAND: Yeah, for example, if the valuation of the city grew by say, for example, 1 percent because of new construction or because they annex property... [LB480]

SENATOR ADAMS: Right. [LB480]

GARY KRUMLAND: ...they would be able to increase their budget lid... [LB480]

SENATOR ADAMS: Their spending authority by... [LB480]

GARY KRUMLAND: Yeah, by... [LB480]

SENATOR ADAMS: 2.5 percent. [LB480]

GARY KRUMLAND: Plus the 1 percent. [LB480]

SENATOR ADAMS: Plus the valuation. [LB480]

GARY KRUMLAND: Yeah, and the argument is is that 2.5 percent is...at one time it was up to the Revenue Committee to adjust that based on inflation and other factors--cost of living. I think over the years it was just...ended up being 2.5 percent. So that usually just takes care of those sorts of costs that a city has to deal with, or a local government has to deal with, you know: cost in health insurance and those sorts of things. If you actually are increasing the city by annexation or because you have new construction, the city also has to provide services to them, so the 2.5 percent takes care of inflation but it doesn't necessarily take care of...give additional revenue to take care of new services

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

that you may have to provide because of the new construction. [LB480]

SENATOR ADAMS: So, if I might, so you grow the 2.5 percent but you've just annexed X amount of area--residential, new residential development... [LB480]

GARY KRUMLAND: Um-hum. [LB480]

SENATOR ADAMS: So what you're saying here is there's an additional cost to maybe moving a fire station out to that area... [LB480]

GARY KRUMLAND: Um-hum. [LB480]

SENATOR ADAMS: ...or hiring two more officers to cover that. Is that what I understand? [LB480]

GARY KRUMLAND: Yes, that would be it. Because there... [LB480]

SENATOR ADAMS: And the 2.5 percent is covering your normal budgetary, inflationary growth... [LB480]

GARY KRUMLAND: Um-hum. [LB480]

SENATOR ADAMS: ...but it hasn't taken care of the new area out here. [LB480]

GARY KRUMLAND: That's correct. [LB480]

SENATOR ADAMS: Okay. [LB480]

GARY KRUMLAND: And if a requirement for a city, if they do annex a territory, is within a year they have to be providing the same services to that area as they do to the rest of the city. [LB480]

SENATOR CORNETT: Senator Utter. [LB480]

SENATOR UTTER: Thank you, Senator Cornett. Mr. Krumland, when the city annexes a new piece of property... [LB480]

GARY KRUMLAND: Um-hum. [LB480]

SENATOR UTTER: ...they're going to receive all of the property taxes from that new piece of property. [LB480]

GARY KRUMLAND: Right. [LB480]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

SENATOR UTTER: Plus the 2.5 percent for that year, right? [LB480]

GARY KRUMLAND: They receive, well, they receive property taxes, but that doesn't necessarily mean they have the authority to spend the money, because there's a lid under the state law on the amount that you can budget from a revenue source--several revenue sources, including property taxes. So even if your revenue would increase, that doesn't necessarily mean you have the budget authority to spend that. [LB480]

SENATOR UTTER: So what happens to that revenue? [LB480]

GARY KRUMLAND: Generally, what would happen is the..it would either go in reserves or, for example, if the city could...would then lower the property tax. [LB480]

SENATOR UTTER: So given the political reality of our situation today, is this the first time this bill's been before this committee? [LB480]

GARY KRUMLAND: No. It's...we've had different versions of it. [LB480]

SENATOR UTTER: You've been here before with different versions? [LB480]

GARY KRUMLAND: Yeah, but, I mean, I know there's a...I don't know of very many, if any, local government officials who are really pushing to raise property taxes. I mean, that's the control you're going to have. But there are situation... [LB480]

SENATOR UTTER: What do you feel like the political reality of this type of legislation is this year? [LB480]

GARY KRUMLAND: Well, I mean, on one hand you could argue because of the economy we don't want to raise things, but on the other hand, because of what's happening in the economy that is causing greater problems for local governments and less flexibility for how they can deal with the problems that they're having to deal with. So we're just basically asking to give the local officials more flexibility so they can deal with them. I mean, they're the ones who make decisions and bear the consequences if the citizens don't like it. [LB480]

SENATOR CORNETT: Mr. Krumland, I partially disagree with, when you say bear the consequences if the citizens don't agree with, because everyone thinks that property taxes are a state issue, not necessarily a local issue. [LB480]

GARY KRUMLAND: I understand that, and I know this Legislature gets complaints, but the... [LB480]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

SENATOR CORNETT: When you said that when they annex a new area... [LB480]

GARY KRUMLAND: Um-hum. [LB480]

SENATOR CORNETT: ...and they get all that new tax revenue from that area that, because of the budget limitations they are unable to spend that, and then it can go into the reserve. Wouldn't it work just to remove or change the budget limits and not increase the levy authority if you have that additional money coming in and currently you're not able to spend it under the budget limitations? [LB480]

GARY KRUMLAND: That would work... [LB480]

SENATOR CORNETT: Because you're asking us to give you the authority to raise taxes. [LB480]

GARY KRUMLAND: We're dealing with, probably, two groups of cities. [LB480]

SENATOR CORNETT: Correct. [LB480]

GARY KRUMLAND: Cities that are growing and annexing, and they're generally...their levies are generally quite a bit below the 45 cents, so they have some flexibility on the levy, so keeping the levy the same wouldn't affect them. Their problem is they're running up against the budget lid. But you also have a lot of smaller cities and villages who aren't growing at all who are, right now, up against the...and then they get their main source of revenue as property taxes but they're up to 45 cents right now so they're not able to increase their revenue and their property tax isn't bringing any increased revenue. [LB480]

SENATOR CORNETT: But basically, you have two separate issues here, then. [LB480]

GARY KRUMLAND: Yeah, I mean, there are two different...yeah. [LB480]

SENATOR CORNETT: And if it was the will of the Legislature to address the budget issue--limitation issue--but not allow for increasing property taxes? [LB480]

GARY KRUMLAND: It would help some of the cities, so I mean, we would appreciate that. [LB480]

SENATOR CORNETT: Thank you. Senator Adams. [LB480]

SENATOR ADAMS: Following up on Senator Cornett's line of questioning then, Gary, those two classes of cities you talked about, you might also divide them again by those with local option sales tax and those that don't have, because this isn't necessarily all

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

about property tax. [LB480]

GARY KRUMLAND: No. [LB480]

SENATOR ADAMS: I mean, you may have cities--typically the ones that are growing--they probably also have local option sales tax but they can't spend it. [LB480]

GARY KRUMLAND: Right, and they have, probably, lower limits so they're not anywhere near, or at least they're not bucking up against the levy limit, so. [LB480]

SENATOR ADAMS: Thank you. [LB480]

GARY KRUMLAND: Yeah, there are, I think, 160 cities that have the local option sales tax out of the 530. [LB480]

SENATOR ADAMS: And those are restricted funds, just like property tax. [LB480]

GARY KRUMLAND: Yeah, those are restricted too, yeah. [LB480]

SENATOR ADAMS: Right. [LB480]

SENATOR CORNETT: Seeing no further questions, thank you, Mr. Krumland. Next proponent. [LB480]

RANDY GATES: (Exhibit 1) Good afternoon. I'm Randy Gates, R-a-n-d-y G-a-t-e-s, and I'm finance officer with the city of Norfolk. Have been for 26 years, so I've been working with this thing ever since it was implemented in 1996, 1997. So I might be able to answer some of the questions you had from a practitioner's standpoint and talk about some of the problems it causes us...maybe I'll kind of jump in to try and answer some of the questions that were asked earlier. If you have an increase in your valuation because you annexed an area or just there's been a lot of new construction...and it would be one of those two types of situations. It wouldn't be just because housing inflation's going up high like it had been recently--you don't get that, you just get the real growth in your valuation due to new construction and annexation, that type of thing. What happens in that case is you're going to...if you annexed a new area you're going to get that additional property tax off of that new area. You're going to have to reduce your property tax or some other restricted fund, and usually it's property tax we're talking about because that's what we have the ability to really go in and monkey around with. Our sales tax rates remain pretty much constant. You can't change those except in half-percent increments, so you're going to...what you're...and your CHAF stays constant from what you get from the state. So all you really got to monkey around with is your property tax. So what you're going to do is you're going to go in and decrease your levy rate so your restricted funds don't grow above that 3.5 percent you get with a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

supermajority. So you're going in and you're decreasing your levy rate, decreasing the actual property tax you're taking in, so you're not getting the full benefit of the property tax on that area you annexed because you're having to reduce your levy rate. Taxpayers like that when they get their tax bill, but that means you don't have the revenues you need to provide the services through that additional area that you annexed, or for that additional growth you got in some other way. So that's what really happens when you've got that additional amount of revenue. And the same thing with sales tax. Sales taxes and property taxes are the two big revenue sources we got that are under this lid, or the two big tax sources we have under this lid. And they work pretty much the same way. If you can keep your levy rate the same, you're going to get the benefit of the growth you get because of that annexation or your increased shopping areas as new people move into the community. But you can't do that under the lid. You're going to have to go in...you're not going to change your sales tax, even if you get a bunch of new taxable sales. What you're going to have to do to stay under that lid is lower your property tax rate, so it causes real problems. And that's what I'm here to talk about. I'm not here to talk about the other two parts of the bill, I'm here just to talk about...I support the other parts of the bill. What I'm most interested in--what I've been interested in for a long time--and if any of you are looking at the handout that I passed out, that's dated 2002. I said I've been around a long time; I've been fighting this for a long time, and the problems we had in 2002 with this thing are the problems we still have today, and problems we'll have in the future if this isn't changed. I guess you can say we're kind of lucky. Since this went into place we haven't had a lot of growth because we had a packing plant close--if you want to consider that lucky. I mean, it's allowed us to live under the lid without a huge amount of problems, but traditionally, Norfolk's grown. If you go back to 1900 and look at all the decennial census numbers, we've grown about 1.8 percent a year on average. If you don't want to back that far, if you want to go back to 1970, we've grown about 1.2 percent on average. And I'm talking population, not assessed valuation. But growth is growth and how you measure it in LB480 is through assessed valuation. But that should take...your population growth should factor into that assessed valuation because people have got to have a place to live; they're going to build new houses so you're going to get that. But...now let me talk about a spreadsheet I got on that memo I passed out. And let me make a general statement: I think, in general, and I don't know if the committee members will agree with this, but I think in general, it's been my experience if you want to keep your service levels the same and you're growing, you're going to have to have increased revenues for that growth. If you want to keep your service levels the same when there's inflation--and there almost always is inflation--maybe there won't be here these next couple of years because we're having an unusual economic situation, but a rule of thumb I learned back in college, about 30 years ago, was inflation averages about 3 percent. If you take a long period of time, you go back and look at it, that's what you're going to find out--even though there's peaks and valleys in it, it averages about 3 percent. If you've got inflation averaging about 3 percent and you don't let revenues grow for that, you're going to have to cut services back. But anyway, I tried to get at that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

with this spreadsheet I have here. I had two hypothetical cities: City A that isn't growing. And that, maybe, is a pretty common city in Nebraska. Nebraska hasn't experienced a lot of growth. A lot of cities aren't growing a lot. And City B is a city that's...it's growing. Maybe you'd say that's the lucky city, but if they're having to live under this lid, they're probably the unlucky city. And I'm sure what happens in the restricted funds authority, I'm assuming they start out with a million dollars of restricted funds authority in year one. They get 2.5 percent automatically, plus 1 percent with a supermajority vote, so they can increase their revenues at 3.5 percent. If that old rule of thumb were to apply those five years, inflation would have averaged 3 percent, they're actually coming out ahead of the game. This has allowed them to increase their restricted funds more than they really would have needed to keep service levels the same. And there's this simplistic illustration of 3 percent inflation and no growth. You've got a city that is growing, which I hope Norfolk will be here in the future, and which we traditionally have in the past--they're not in such a good situation. In this case I said they were...this is a high-growth city; they're growing at 4 percent. Inflation's at 3 percent. They need to grow those restricted funds at 7 percent to keep their service level where it is. They have not been able to do it in this simplified illustration, to the tune of being a cumulative \$350,000 in the hole at the end of five years. And if they start out with a million dollars in restricted funds, and they should have grown those to keep up with both inflation and growth up to about \$1.4 million--under the lid they're only able to grow them about \$1.2 million. They're going to be hurting. They're not going to be able to provide the services they used to provide. And I've talked about this before; it doesn't seem to get anywheres. As Gary mentioned, we've been here pounding away at this before. Maybe...let me talk about something simple: cars and lawn mowers. If you...because I don't think this is really going to hurt the citizens. If we do this, I don't think our citizens are going to be hurt. Their tax rates are going to stay the same. Their sales tax rate's going to stay the same and their property tax rate's going to stay the same. Say you had a citizen who, ten years ago bought a car and it cost him \$10,000. And you live in a city that has a 1 percent city sales tax rate. That citizen, when he buys that car, has got to pay the city 1 percent of \$10,000, or \$100. City gets that and they need to buy goods and services with that, and maybe that hundred dollars, in this simplistic illustration, goes to buy a lawn mower. They need a simple push lawn mower trim up around their parks. So the sales tax off of that \$10,000 vehicle ten years ago buys them a simple push lawn mower. If...now you go out and buy that \$10,000 car, through that rule of thumb of 3 percent inflation compounded over 10 years, it's going to get you about a 40 percent increase in the cost of that car. So you're going to pay \$14,000 to get that same type of car you paid \$10,000 for 10 years ago. The city's going to have their same 1 percent sales tax rate--that's going to generate them \$140. And you take that \$140 and go out and buy them a lawn mower, that lawn mower ain't going to cost them \$100 like it did 10 years ago, it's going to cost them \$140 too. So even though the citizen is paying more dollars...is paying the same real dollars he did 10 years ago. The city's got the same purchasing power. We can still take that sales tax the citizen paid and buy us a push lawn mower to trim up around the parks. If we don't let our revenues increase

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

because of that inflation, the city can't do that. They've got \$140, but they're going to have to go out and reduce their property taxes by that extra \$40 so net is \$100. They're not going to be able to buy that lawn mower. So weeds aren't going to get mowed up and trimmed around the parks. They're going to start growing; your parks aren't going to look as nice as they did. Citizen services decline. They decline because you can't keep up with both growth and inflation. And the same way if the city would've annexed a new area--we talked about annexation earlier. If those citizens come into town and they're paying...they're now in your city, they buy that car, they're going to have to pay city sales tax now because they're in city limits. And all these citizens out there are buying cars so they pay additional city sales tax which we get. If you don't let that grow with inflation and the new population you got in that annexed area, you're going to have to decrease your property tax rate to stay under that lid. So maybe you need a new park now in that part of town because you annexed a big area of town that doesn't have a park there--you need a new park. Well, you might be able to acquire that park by being outside of some of the lid and levy limit exceptions for capital improvements--I think Gary mentioned that. But you're not going to be able to maintain that park; you can't buy the mowers to mow it. So you're...I consider this lid law, the way it is right now, anti-growth. And it probably hasn't hurt a lot of cities since it's been in effect because there hasn't been a lot of growth in Nebraska. And in Norfolk's particular case, with the packing plant closing, we haven't seen a lot of growth. But I hope it doesn't stay that way and when we start seeing growth, this type of measure will hurt us. And then I talked about sales tax but it's the same with property tax. You leave your...the cities could leave their levy rate the same and capture that new...capture inflation and capture the new growth. If you annex a new area, you leave your levy rate the same, those people in that new area are paying additional property tax but the city can now spend it. It doesn't hurt the people that were in the existing portion of the city because their levy rate stays the same. Now they will pay more dollars as their house value increases, and I've heard conflicting arguments on whether or not houses, long term, increase more or less than the general inflation rate. I think they increase about the general inflation rate if you look back long term. So that house in this rule of thumb example's going to be increasing 3 percent a year. You will pay 3 percent more a year in property tax if you leave your levy rate the same, because the house that was \$100,000 last year is \$103,000 next year, and so on. But the purchasing power of that money is the same. What the citizen's paying in real dollars is the same, and what the city can buy with that property tax is the same--buy the same lawn mower that we did the year before with it. So in my mind, it's something that we really need to do for the areas that are growing--they need this. If they're not growing they don't need it, but they won't get it because they won't have that growth. It won't be there. They won't be able to take advantage of increase in tax rates or increase in their revenues because the growth isn't there under the lid law. All LB480 does is remove that 2.5 percent that we don't get...the first 2.5 percent of growth we don't get now. It removes that and gives us all our growth, and we need all our growth if we're going to keep services the same. Or the poor parks are going to have weeds growing up around there; well, we couldn't get our little push

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

lawn mower because we don't have it anymore because we couldn't afford to buy it. And that's what this bill does. And that's why I support this bill. That's why I've supported similar bills in the past, and I hope that LB480--at least that part of LB480--passes. And I'd be glad to answer any questions. [LB480]

SENATOR CORNETT: Senator Hadley. [LB480]

SENATOR HADLEY: Thank you, Senator Cornett. Thank you, sir. If I'm understanding it, there's a problem with the lid and with the spending limits, right? The amount that you can spend; is that correct? [LB480]

RANDY GATES: Under the lid, and I...it isn't that you can collect the money and not spend it, you can't collect the money. I mean, you'll collect the sales tax because that automatically happens. If you annex a new area, you'll collect the property tax on that new area because that somewhat automatically happens. But take the sales tax example. You're going to have to lower your property tax rate so you stay under the lid in total on restricted funds. The two big tax revenues most cities have that are under this restricted funds lid are sales tax and property tax. State highway allocation fund money's thrown into that, and there used to be MIRF, Municipal Infrastructure Redevelopment Fund, monies were in there and I've got a list of them. But the big ones are the sales tax and the property tax. So it isn't that you'll collect the revenue and not be able to spend it, you won't be able to collect it. You might collect that additional sales tax, which you may have to lower your property tax rate. I said that's the one you can monkey around with--you can't monkey around with your sales tax rate and adjust that by a little bit amount of money. You can't affect CHAF directly, you can't affect state aid directly--what you can affect, what you can monkey around with is that levy rate. And that's what you've got to do. You've got to go in there and change that levy rate so your total restricted funds don't exceed the lid. [LB480]

SENATOR HADLEY: Just so I understand this, so if we pass this the...we would be increasing the levy limit so that...I guess what I'm getting at is what Senator Utter, I think, was talking about is, are we going to be allowing the cities to raise people's taxes? [LB480]

RANDY GATES: You're not going to change the levy limit. You're going to change the lid on restricted funds, which is separate from the levy limit. And most of your larger cities aren't bumping up against that levy limit. The few that are growing are bumping up against the lid. And when the lid first went into effect, we were bumping up against it. And then we had a packing plant close and it hasn't been a real problem for us now. But you will not be changing the levy limits if you just change that part that deals with taking that 2.5 percent...right now it says you get growth in excess of 2.5 percent--this would strike that so you get your growth; so you get all of your growth. And what would be the effect of that is levy rates should stay the same, sales tax rates should stay the same.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

The actual dollars collected will go up because of inflation. Growth wouldn't affect that because as the city grows and we have more people annexed, through more people moving into town, they're buying more cars: that doesn't affect the amount of cars I buy. So as a citizen, the new people in town don't affect the amount of sales tax I pay, they don't affect the amount of property tax I pay, but the city will then be able to leave that levy rate the same instead of having to squish it down to keep the total restricted funds under the lid. So instead of having to squish that levy rate down as you get growth, we'll leave it the same. If you have \$100,000 house today and there's a total of \$2 of property tax you've got to pay on that, you'll be paying \$2,000. If everybody gets to leave their levy rate the same and there's a 3 percent inflation, your valuation goes up to \$103,000 next year. You'll be paying \$2 on \$103,000. Instead of paying \$2,000, you'll be paying \$2,060 or something like that, if I have my math right. But that \$2,060 will buy the governmental entities the same stuff, the same lawn mowers that \$2,000 would have bought the year before because of inflation. So in real dollars, inflation-adjusted dollars, your property tax will not go up. [LB480]

SENATOR HADLEY: I just want to be sure...you used the word should, you know, that the levy should not go up. What I don't want to do is to go out and pass this and I walk into Kearney and they say, okay, my city levy limit went up because you... [LB480]

RANDY GATES: I used a simplified example, and there's a lot of variables out there. If a city sales tax goes down--the economy's bad, the sales tax may go down--cities would be able to increase their property tax more and still stay under the lid because their sales tax went down. So...but if they had growth and assessed valuation, they could increase it more than they would without this because this would...so there's a lot of factors that's come into play. But they would have been able to increase that property tax anyway They can increase it a little more because they can take advantage of growth. [LB480]

SENATOR CORNETT: Senator Utter. [LB480]

SENATOR UTTER: Thank you, Senator Cornett. Mr. Gates, the sense I'm getting is is that you're telling me that the law that is currently in place, it's an anti-annexation...that there are not advantages to annexing. [LB480]

RANDY GATES: Yes, I consider it to be anti-growth. [LB480]

SENATOR UTTER: Would there not be a lot of people that think that's good? [LB480]

RANDY GATES: Maybe, but...I didn't come prepared to debate annexation. I'm saying if you do annex those areas, you need to be able to increase your revenues to service the people in those areas. And if you go other than through annexation, just people building within your existing city limits--new houses, new shops, new industry--you need to be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

able to service those industries, service those homes, and service those shops and you need to be able to grow your revenue to do that. [LB480]

SENATOR UTTER: But it seems to me, as I remember annexation happening in our city, and I read the newspapers and as it happens in other places, annexation's kind of a mixed bag. Some folks think it's great and some folks think it's not so great, and then I can, not too long ago, it seems to me like it came to mind that when the big city annexes the little city there's an awful lot of folks don't feel real good about that either. And it seems to me like changing this law might encourage that type of action by a city as opposed to actually improving any type of a situation. Is that true or am I on the wrong track here? [LB480]

RANDY GATES: Senator, I didn't come here to debate annexation but I can speak from Norfolk's experience. I can't speak from Omaha's experience or some other cities--I think maybe there's somebody here that can after I'm done, but. Norfolk has not normally annexed somebody that doesn't want to be annexed. Most of the annexation we do is because people want to be in the city limits and they come to us and say, please annex us. And we get annexations about every year--sometimes multiple annexations. And they are almost always because people come in and say we want to be annexed. The few times...one time I can think of, we had somebody that wanted in and there was somebody that didn't want in between the city and them, so in that case we probably annexed somebody that didn't want to be in. But that is the exception, not the rule, in Norfolk. And I can't talk about Omaha or other cities, I don't...but maybe there will be somebody talking to... [LB480]

SENATOR UTTER: You're politically very astute. Thank you. [LB480]

RANDY GATES: Yes, Senator. [LB480]

SENATOR CORNETT: Wouldn't it be fair to say that a city shouldn't necessarily be annexing if they can't afford to take over the services, knowing what their budget constraints are, rather than raise the lid? [LB480]

RANDY GATES: I think that's very fair. You've got to provide services. [LB480]

SENATOR CORNETT: But you have to be prepared to provide those services and you shouldn't be annexing unless you can provide those services. [LB480]

RANDY GATES: I agree. [LB480]

SENATOR CORNETT: Rather than going outside of your lid. [LB480]

RANDY GATES: I guess in that...if you look at it that way, this bill probably does allow

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

cities to annex things that they wouldn't want to annex otherwise, because... [LB480]

SENATOR CORNETT: Or maybe shouldn't annex. Fiscally; I'm not talking about whether people want to be annexed or not, but fiscally speaking, this allows them to grab something that maybe they're not prepared to take financially. [LB480]

RANDY GATES: If the city could increase their revenue to absorb that growth--and I'm not talking about raising our tax rates, just keeping our tax rates the same--to provide services to that area, it shouldn't be a problem. If you've got to lower your tax rates because you annexed an area, which I think is what would be the case now, you're lowering your revenue--you're lowering your tax rates so you're not able to collect the amount of revenue from that area that you're already collecting from similarly situated citizens that are in your existing community now. [LB480]

SENATOR CORNETT: For how long would you have to lower that rate though? [LB480]

RANDY GATES: Forever, the way the lid works, because... [LB480]

SENATOR CORNETT: But when you're up against... [LB480]

RANDY GATES: I mean...under the lid law if you want to...say you've got a carryover and the lid law provides for carryovers. [LB480]

SENATOR CORNETT: Correct. [LB480]

RANDY GATES: And Norfolk right now has a carryover because we haven't had growth. When our sales tax grows we bump up against the lid; it hasn't been growing so we've got a carryover now. So we could go out and annex somebody and lower our levy rates and we could...say that caused us to lower our revenues \$300,000 less than what it should have been if we'd have left our levy rates the same. In other words, charged the new citizens the same as we had been charging our old citizens. That \$300,000 takes a bite out of our \$2 million carryover this year. If we go along next year and don't reduce rates, that \$300,000 is still there and we'll take another \$300,000 bite out of our carryover next year, and another \$300,000 bite out of our carryover the year after that. So it won't be too many years before our carryover's all used up. So that's why I say the effects of this are forever. [LB480]

SENATOR CORNETT: Seeing no further questions, thank you. [LB480]

RANDY GATES: Thank you. [LB480]

SENATOR CORNETT: Next proponent. [LB480]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

BETH BAZYN FERRELL: Good afternoon, Chairman Cornett, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm the assistant legal counsel with the Nebraska Association of County Officials. Although counties don't have the same issues with annexation and local option sales taxes that cities do, we do have the same concerns about having some flexibility within our budgets and levy limits. We also believe that this bill would benefit counties just by giving us another tool for those counties that do have some availability within their budgets and levy limits and have some growth. I'd be happy to try and answer questions. [LB480]

SENATOR CORNETT: Senator Adams. [LB480]

SENATOR ADAMS: Help me out. I think, when it comes to cities, I can understand having to hire an extra police officer, take fire services to a newly-annexed area, hence that inflationary cost outstrips the expenditure allowance that we have. So give me an example of where a county would be put in the same position. [LB480]

BETH BAZYN FERRELL: It's a little bit different but, for example, if there's maybe an ethanol plant that comes in and there needs to be an improvement to a road--that sort of thing--maybe more of an infrastructure as opposed to law enforcement, although there certainly could be some law enforcement issues related to that. [LB480]

SENATOR ADAMS: Okay, that makes sense. Thank you. [LB480]

SENATOR CORNETT: Seeing no further questions, thank you. Next proponent. Are there any further proponents? Opponents to the bill? [LB480]

CRAIG HEAD: (Exhibit 2) Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Craig Head, that's C-r-a-i-g H-e-a-d, and I'm the assistant director of government relations for the Nebraska Farm Bureau Federation, here on behalf of the organization in opposition to LB480. I just start off by saying that our opposition to the bill stems from some long standing member-adopted policy that we have that supports trying to find ways to reduce the property tax burden here in Nebraska, and our concern with LB480 is it takes us in a different direction by trying to relax the budget and levy lids that were put in place by the Legislature so many years ago to try and get property taxes under control. We've been in front of this committee numbers of times in the past to talk about these issues and really from two standpoints. One, we have general concerns about property taxes, but two, we feel very strongly that our members, many of them in rural areas, do pay a disproportionate amount of property taxes. In some cases they're picking up 60-70 percent of the local property tax burden. So for those reasons, when we see bills that come before us that try and have some impact on property taxes we're very concerned. Just a couple things specific to the bill: I do have a handout that I would pass out that would just...basically what it

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

shows...I'll have that passed around, but basically what it shows, it's a piece that was put out by the Nebraska Department of Revenue Property Tax Assessment Division and it just shows you the total net local property...excuse me, it shows you the total property valuation in taxes and the taxes levied by local governments and also state aid. And as you'll see when you get hold of this sheet, the pink line shows the continued increase in property taxes levied since 1992 to today. And again, you'll see every year it's jumping about 5 percent every year. So we're just concerned about the total growth in property taxes for our members and their interests, so with that I conclude my testimony. [LB480]

SENATOR CORNETT: Senator Adams. [LB480]

SENATOR ADAMS: I understand and I share with you your group's obvious concern about the overall property tax. I guess what I'm wondering here, hypothetically, if counties were cut out of this picture and it does not include schools, TEOSA sets the growth limitation as it is... [LB480]

CRAIG HEAD: Right. [LB480]

SENATOR ADAMS: ...then from the ag perspective, what happens inside of municipal limits in terms of property taxes shouldn't have much impact, should it? [LB480]

CRAIG HEAD: From that standpoint we do have some members, obviously, that live in town that do pay property taxes, obviously. So from that standpoint we'd have some concerns. We've raised this issue with our membership before and the comment that's always made back to us is we just want to see property taxes controlled in the state. And so I understand what you're saying, and... [LB480]

SENATOR ADAMS: Okay. [LB480]

CRAIG HEAD: ...so I would be glad to visit about it, but that's just the underlying concern. [LB480]

SENATOR CORNETT: Seeing no further questions, thank you. [LB480]

CRAIG HEAD: Yes, thank you. [LB480]

SENATOR CORNETT: Next opponent. Anyone in a neutral capacity? Senator Dierks? Senator Dierks waives closing. That closes the hearing on LB480. Will one of the pages...Senator Hadley isn't over there, is he? Never mind, I was looking down one. Senator Hadley, you're recognized to open on LB420. I had him mixed up with someone else. [LB480]

SENATOR HADLEY: Senator Cornett, members of the committee, my name is Galen

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

Hadley; that's spelled G-a-l-e-n H-a-d-l-e-y. I represent the wonderful citizens of the 37th District in Nebraska. LB420: I think it's an important bill because in rural Nebraska, clinics are very, very important. And most of the time we do not have the ability to have clinics that are owned by physicians and such as that that the larger cities have. So LB420 would exempt purchases by nonprofit health clinics owned by nonprofit hospitals from sales tax. Current sales tax law exempts nonprofit clinics only if they're owned by two or more nonprofit hospitals. The two-hospital requirement was established in the 1980's when Nebraska had Certificate of Need Statutes which have been repealed. The two-hospital requirement no longer has a rational policy basis. It is obsolete and leads to higher cost for medical profit. LB420 removes the two-hospital requirement. LB420 still requires that at least one nonprofit hospital own a nonprofit clinic in order for the clinic to be exempt from sales taxes. 46 nonprofit clinics would be covered by the exemptions created by LB420. All 46 are owned by one nonprofit hospital. No nonprofit clinics are owned by two hospitals. LB420 would create access to affordable healthcare throughout the state. It will also remove an inequity created by current law. Currently, nonprofit clinics that are community owned are exempt from sales taxes. This is unfair to communities in which a nonprofit hospital owns a nonprofit clinic which is subject to sales taxes. There's no rational basis for this inequity. With that we have a number of people wanting to talk in favor and such as that, or I'd be willing to answer any questions. [LB420]

SENATOR CORNETT: Senator Louden. [LB420]

SENATOR LOUDEN: Yes, Senator Hadley, can you give me an example of some of these facilities that are paying sales tax and what are they paying it on? [LB420]

SENATOR HADLEY: I do have...at least I thought I had a list of some examples of some of the ones that might be paying this. [LB420]

SENATOR LOUDEN: Yeah, that are paying it. [LB420]

SENATOR HADLEY: Alegent...well let's...Brodstone Memorial Hospital owns Edgar Medical Clinic, Superior Family Heath Center, Superior Family Medical Center, and basically they would be paying sales taxes on basic things they buy that are not exempt because of their particular item. For example, they wouldn't be paying sales taxes on food because no one does. [LB420]

SENATOR LOUDEN: They're paying sales taxes like on their heat and that sort of stuff? [LB420]

SENATOR HADLEY: The very things that any other business would be paying sales tax on, yes, sir. [LB420]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

SENATOR LOUDEN: Okay, thank you. [LB420]

SENATOR CORNETT: Senator Adams. [LB420]

SENATOR ADAMS: So under current law, if nonprofit A and nonprofit B together owned the clinic, the supplies, the electric bill, the medical supplies in that clinic--are exempt from sales tax? [LB420]

SENATOR HADLEY: I think that... [LB420]

SENATOR ADAMS: But they have to be owned by two, right? [LB420]

SENATOR HADLEY: That's correct. [LB420]

SENATOR ADAMS: So what your bill is saying is, let's get away from that and as long as that clinic is owned by one nonprofit entity then everything from band-aids to electricity would be sales tax exempt? [LB420]

SENATOR HADLEY: That's right. [LB420]

SENATOR ADAMS: Okay. [LB420]

SENATOR HADLEY: And hopefully, just to follow up on that, Senator Adams, hopefully this would ultimately mean lesser medical costs to the rural Nebraska by lowering the cost to the clinics. [LB420]

SENATOR CORNETT: Seeing no further questions. [LB420]

SENATOR HADLEY: Thank you, Senator Cornett. [LB420]

SENATOR CORNETT: First proponent. [LB420]

ANDY POLLOCK: (Exhibit 3) Chairwoman Cornett and members of the Revenue Committee, my name is Andy Pollock, A-n-d-y; Pollock is P-o-l-l-o-c-k, and I'm here as a registered lobbyist representing the Friends of Nebraska Nonprofit Hospital Association. I'd first like to thank Senator Hadley for introducing LB420 after discussions he had with us. There will be representatives of some of the hospitals that would be affected by this bill who will testify after me, and I'll leave some of the more meaty policy reasons why this particular legislation is a good idea to them. Let me just say briefly that there are, as Senator Hadley testified, 46 rural health clinics scattered across the state of Nebraska that would benefit from this legislation. These are nonprofit clinics that operate on a shoestring budget. Most of them are subsidized by the hospitals that own them. The relief that LB420 would provide would help these clinics to continue to serve people

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

across the state with their medical care needs; it would provide affordable healthcare; it would provide relief for the nonprofit hospitals that subsidize these clinics, and it would protect an industry that's vital to the economy and the good health of communities across Nebraska. You'll hear more about that later. Let me start with what the current law is, and I won't belabor this because I think Senator Hadley did a very good job of explaining it. Currently, nonprofit clinics are technically exempt from sales tax but only if they happen to be owned by two or more nonprofit hospitals. The intent of this bill is to address the 46 nonprofit clinics owned by hospitals. I want to point out that there's some language in the bill that deals with nonprofit, healthcare practitioners. And I think at some point that probably needs to be amended out. Senator Cornett, I heard on the floor you testifying today about LB165, and there was a reference to a section that was removed from that particular bill and there was some thought that you'd given to putting that in another bill and I understand that there may be some possibility that it might find its way in here, I don't know for sure, but if that's the fact, that would be an opportune time to address the nonprofit healthcare practitioner language that I think might be problematic in this bill. I think it might open up a door that we didn't want to open. We've been working with HHS and I think, finally, in the last two days we've got some understanding of some better language, and I've talked to Senator Hadley about that, that would focus on the 46 hospitals, the 46 nonprofit clinics that we're talking about. We're trying to address the needs of 46 nonprofit clinics. All of those clinics are owned by one hospital. None of them are owned by two hospitals. And just to give you an example, that I was talking with one of the senators on the committee about today, earlier today, the Henderson Health Care Services Hospital--it's the hospital in Henderson--currently owns and operates the clinic there and it's called Henderson Family Practice. That clinic is only owned by the one hospital, the Henderson hospital, so it does not qualify for a sales tax exemption under current law. As Senator Hadley correctly pointed out, that two-hospital requirement was set up in the 1980's when certificate of need statutes were still on the books. They are no longer on the books, they have since been repealed. And the current two-hospital requirement, therefore, as Senator Hadley said, is obsolete. It really has no public policy basis. This issue had not been an issue until just a couple of years ago, and at that point the Department of Revenue, exercising authority under the law in an appropriate way, began auditing nonprofit clinics and assessing sales tax revenues that they had not sought to collect in the past. So this is an issue that's really just come up in the past couple years. There was a bill up last year that addressed the same type of issue, and there were similar issues with the nonprofit healthcare practitioner language that, as I understand it, caused the bill to run into trouble. What LB420 will do is very simply remove that two-hospital requirement and it will require that the nonprofit clinics continue to be owned by one nonprofit hospital if they are going to realize the benefits of the sales tax exemption. The bill would exempt all 46 of those nonprofit clinics that we're talking about, that are scattered across the state. It would exempt them from sales and use taxes, and it would exempt them because each of those is owned by one nonprofit hospital. Before I close I want to just address one fairness and equity issue here that I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

think is important for the committee to take note of. In addition to these 46 clinics across the state, there are currently about 75 clinics that are owned and operated, not by nonprofit hospitals, but rather by local communities, local political subdivisions. Each one of those 76 nonprofit clinics that are owned by those municipalities, those communities, is tax exempt under current law. They are exempt from sales taxes, unlike their counterparts which just happen to be owned by nonprofit hospitals. Those clinics are tax exempt--why? I think the simplest way and maybe an overly simple way to look at it, but it would be accurate, is to say that they are mere extensions of the communities that own those nonprofit clinics. So you've got the community of--I'm trying to think of a good example here--you've got a community in Henderson, let's say Henderson's the example. It happens to be owned by a nonprofit hospital but let's say it's the community that owns that clinic. Then that clinic would be tax exempt because it's an extension of the community of Henderson. Here, nonprofit clinics should be viewed also as extensions of the nonprofit hospitals that own them. And they truly are extensions. You'll hear testimony from the two witnesses behind me that these clinics operate as departments of the hospital so they should be treated as extensions of the hospital, as departments of the hospital, and they should be tax exempt just like those community-owned clinics are tax exempt. Why aren't they? They're not simply because of that two-hospital rule that we are seeking to reduce down to one hospital. I would submit to you that this is not fair, it's not equitable to treat these hospital-owned clinics any differently than their community-owned counterparts. There's no good public policy reason for treating them differently. It would simply not be fair and equitable that the people in the areas that the nonprofit hospital owns the clinic in, like Henderson, to pay more than the people in the areas where the community itself owns the nonprofit clinic. And with that I would be happy to answer any questions and I would ask you to support LB420. [LB420]

SENATOR CORNETT: Go ahead, Senator Adams. [LB420]

SENATOR ADAMS: Mr. Pollock, one of the questions--I think I know the answer to but I just want to verify it for my thinking: if a nonprofit hospital owns an assisted living or a nursing home, wasn't it a year or two that we exempted sales tax for those purchases for the nursing facility? [LB420]

ANDY POLLOCK: I believe it was LB535 from last year, and it exempted the assisted living facilities and the nursing facilities, and that's regardless of whether they're... [LB420]

SENATOR HADLEY: Whether they're nonprofit or not. [LB420]

ANDY POLLOCK: ...owned by a hospital or not, right. [LB420]

SENATOR ADAMS: And you and I started to talk about this a little bit outside but it's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

important, I think, and we look at so many of these bills that are sales tax exemptions or income tax exclusions and we always look at the fiscal note. I'm...this has got to have one and I don't see one. And I'm not putting that on you. [LB420]

ANDY POLLOCK: Yeah. [LB420]

SENATOR ADAMS: Do you have any explanation for that? [LB420]

ANDY POLLOCK: I attempted to talk to the Department of Revenue this morning but they were tied up listening to another revenue bill that was on the floor. I don't have an explanation for that. What I expected--and I won't jump the gun too far--is that the fiscal note would be roughly in the neighborhood of \$70,000. That was based on discussions I had in December and then just as recently as a couple of weeks ago with the Department of Revenue. I'm not sure how they're interpreting it to get it down to a zero; I love the zero but I don't know that it is what I expected or to be accurate. What I would ask is that the committee and Senator Hadley, and I'd be glad to help too, sit down with Department of Revenue and just try to find out why it is zero. That was a surprise to me. [LB420]

SENATOR ADAMS: So you said \$70,000? [LB420]

ANDY POLLOCK: That was a ballpark figure. [LB420]

SENATOR ADAMS: Right. [LB420]

ANDY POLLOCK: I want to be real careful and real clear that when Department of Revenue spoke about this bill with us in mid-December and then a couple of weeks ago that they had not run projections, that they were anticipating that it would have a roughly \$70,000 fiscal note. You know, does that mean \$65,000 or \$85,000? I don't know and I don't want to suggest that they pin themselves down like that but I certainly didn't hear zero. So perhaps there's some different type of interpretation that they have than we do about the effect and we definitely need to get to the bottom of it. My concern is that this bill would not accomplish in their eyes what we're seeking to accomplish, and so I think we just need to have a good discussion about that. I wish I would have known before yesterday what the fiscal note looked like. [LB420]

SENATOR ADAMS: Thank you. [LB420]

SENATOR CORNETT: I was going to say... [LB420]

ANDY POLLOCK: Yes. [LB420]

SENATOR CORNETT: ...onto the fiscal note, Mr. Pollock...the facilities you're talking

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

about, are they licensed under the Health Care Facility Licensure Act? [LB420]

ANDY POLLOCK: They are, as I understand it, Senator Cornett, they're federally certified under Medicare. [LB420]

SENATOR CORNETT: But they're not licensed under the Health Care Facility Licensure Act--it's different than what you're referring to. [LB420]

ANDY POLLOCK: That's correct, that's correct. [LB420]

SENATOR CORNETT: Your drafting of the bill does not include that; that's why the fiscal note is zero. So you're correct in assuming that the way it is drafted it does not do what you want it to do. [LB420]

ANDY POLLOCK: Yeah, and I do think that that boils down--I don't want to say that I disagree with the Department of Revenue... [LB420]

SENATOR CORNETT: There's two separate licensing, correct? [LB420]

ANDY POLLOCK: I understand that. [LB420]

SENATOR CORNETT: Yeah. [LB420]

ANDY POLLOCK: There's federal and there's state. [LB420]

SENATOR CORNETT: Yeah, and I don't think it's drafted to both. [LB420]

ANDY POLLOCK: Yeah, there's a provision--it's on page 2, lines 23 and 24--that speaks of respite care services licensed under the Health Care Facility Licensure Act. Our read of that is that only applies to that particular subdivision. As I understand it, Department of Revenue's interpretation might be that that applies to all of those. If that's the case, then I understand where they're coming from. [LB420]

SENATOR CORNETT: Okay. [LB420]

ANDY POLLOCK: Yes. [LB420]

SENATOR CORNETT: That will be something you need to work out, most likely. [LB420]

ANDY POLLOCK: And that's something we certainly can work out. I don't see it as being a difficulty. [LB420]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

SENATOR CORNETT: Any further questions? [LB420]

ANDY POLLOCK: One thing I would point out is that there was a similar bill, LB949, that was introduced last year which had language much like what you see here and, as far as I know, that language was in there last year and the fiscal note was roughly \$56,000 so the difference I don't understand, but I...you know, point well taken, Senator... [LB420]

SENATOR CORNETT: Um-hum. [LB420]

ANDY POLLOCK: ...that there is a fair interpretation there. Looking at what I just read and we can certainly work with the department and with you to address that. [LB420]

SENATOR CORNETT: Seeing no further questions, next proponent. [LB420]

ANDY POLLOCK: Thank you. [LB420]

SENATOR DIERKS: Go right ahead, sir. [LB420]

HAROLD KRUEGER: (Exhibit 4) Okay, thank you. My name is Harold Krueger, H-a-r-o-l-d K-r-u-e-g-e-r. I'd like to thank the members of the Revenue Committee and Senator Cornett for allowing me the time to come and talk to you briefly about LB420. A little bit of background: I've been in healthcare, after coming out of the army, for about the last 40 years. I've served at the chief executive officer level for 30 years, and 20 of that has been at Chadron Community Hospital in Chadron, Nebraska. Approximately ten years ago when we closed, or they closed, the Legend Buttes Health Services Hospital in Crawford, I convinced our board that we probably ought to be in the people business and not the illness business. So we ventured out into community and public health. We opened up our first certified rural health clinic in Crawford, Nebraska. The year after that we opened our second in Hay Springs, Nebraska. Our commitment to the city of Crawford, basically, which is located in Dawes County and in Harrison, Nebraska, located in the far western portion of Sioux County, was to provide necessary health care, related family services that would assist in maintaining a good quality of life and affordable. We believe that we have accomplished this by providing far more services now in Crawford than when their Acute Care Hospital was open. Our provider-based rural health clinic offers, basically, services five days a week, Monday through Friday, where we'll have either a mid-level provider or a physician, and two days a week I'll have both a physician and a mid-level providing services. We have a complete line of laboratory services, not just a limited scope. We have a radiology department, physical and occupational therapy services, community wellness center, free child immunization clinics, we do annual public and community health fairs, provide free athletic physicals in the schools in their communities, public health services to include WIC, or Women, Infant, and Children programs, family planning services, respite services, elderly

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

nutritional services to include distribution of commodity foods, and children with special needs. Adult and child mental health clinics, home health and hospice services, and a 340B Drug Program. We assist the residents in that area with obtaining free or low-cost drugs and have provided over \$40,000 in the last year alone in medications. We're able to provide all these services to our community residents at affordable rates, and for our most needy we offer a sliding fee schedule based on income, and assist those as needed with charity care. By keeping these services local, we save the residents of Crawford and Harrison both time and money by not having to drive 25-100 miles one way to get services. Since none of our rural communities have public transportation, that's certainly a big deal. Those that utilize us are 58 percent Medicare, 15 percent Medicaid, and 5 percent true charity care. These three groups of individuals pay from zero to 100 percent of cost--not charges, but cost. When you're collecting cost, that leaves a very small portion or ability to generate any future dollars for equipment or sustaining your staff. The sales tax exemption, whether it comes in the form of LB420 or LB460, will be the difference of our two clinics from staying open or closing. I say that with the following explanation. We have, since the first day of operations, or ten years ago, provided our rural clinics with supplies purchased through our national hospital purchasing contracts. This is where hundreds of hospitals have banded together to buy products at simply the best procurement cost. Most contracts state that you cannot take non-tax products and use them in a tax entity, so that would cause us to either have a dual inventory or to basically say we can't do this. Many years ago we started the Nebraska purchasing group out of Schuyler, Nebraska, which gave us access, then, in rural areas. Urbans were paying for IB products 72 percent off cost; the rurals were paying 100 percent of the list. It would take us back to where we were 40 years ago. It's unfortunate grim reality but we do have to face that. This is a position that we find ourselves in and one in which, without relief, we will not be able to survive. That is my input on LB420. I would be more than happy to answer any questions. [LB420]

SENATOR DIERKS: Any questions? Senator Louden. [LB420]

SENATOR LOUDEN: Yeah. Thank you for coming today, Harold, you've had a quite trip. If you was exempt on the sales tax, then, what would it be mostly--your heat and fuel or...because you don't pay sales tax on some of your medical supplies, do you? [LB420]

HAROLD KRUEGER: I don't now, illegally, because I'm buying them through the hospital and distributing them to our clinics. We had the pleasure of being one of the three areas that were audited two years ago so we had to assess what the value is and what the taxes would have been paid. Postcards: you can go down to the United States Post Office and buy prestamped little postcards. If you use them for your own good--put on the back, Merry Christmas, mail them out--they're tax exempt. We were purchasing these and stamping on the back, your next clinic appointment is such and such, sending them out to remind people to come in--that's taxable. All the needles and syringes that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

we took out of a tax exempt inventory and took down are taxable, besides everything else that's in there. Again, being a cost-based clinic for Medicare and Medicaid, if you raise my cost on Medicaid on one hand, you're going to pay it back to me through the formulary on Medicaid payments. So it's pay me now, pay me later. But it takes away our ability to purchase our supplies in bulk, have one warehouse, one distribution system...you know, we've got the economies of scale in place and nowhere in the ten years that we have been doing this, be it the state of Nebraska, those that inspect our clinic every two years, have said oh, by the way, you should be paying taxes. Until they showed up at our door and said surprise, we're here. [LB420]

SENATOR LOUDEN: Thank you. [LB420]

SENATOR CORNETT: Any further questions? Seeing none. Next proponent. [LB420]

HAROLD KRUEGER: Thank you very much. [LB420]

TODD CONSRUCK: (Exhibit 5) Hello, my name is Todd Consbruck, T-o-d-d C-o-n-s-b-r-u-c-k. Senator Cornett and members of the Revenue Committee, I am the director of the clinic services in West Point, Nebraska, for St. Francis Memorial Hospital. We're a not-for-profit hospital; we've been open since 1923 in the community. Today I'm here as a representative of our own hospital and clinics along with the Nebraska Hospital Association in support of LB420 and I do thank Senator Hadley. As director of the clinic services I manage five medical clinics. We're in Oakland, Wisner, Howells, West Point, and Scribner. Our mission is to serve the primary healthcare needs of our area residents. We deliver 80 babies a year, approximately; about 23,000 patient visits through our clinics; and give or take 2,000 emergency-emergency room visits and so on. We also do a great deal in training students and residents for careers in rural medicine. Last year, as an example, we had seven residents from the Clarkson Family Practice Residency, which is affiliated with UNMC, come through our program. They each spend a month. So we do do a lot to try to give back, not only to the community in healthcare but also the greater good. Our main clinic, the Dinklage Clinic, opened in 1998. I've been employed there for 16 years and the reason I came in 1992 was we had two private clinics: one was very typical--older physicians had been able to replace themselves; they'd had partners come and go, and one clinic that was two young physicians--one partner left; that left the young one on his own and they simply couldn't recruit. And the hospital and myself--I was hired to help do this process--we recruited physicians in 1995, brought them in the community; physician assistants and so on, and have employed medical staff since then. And then in 1998 we opened the new clinic. Basically, we were pretty lucky. Our clinics operated break-even and most hospital and clinic administrators would tell you that's not normally the case. However, in the early 2000's, federal Medicare changed a great deal as far as their payment policies and so on, and since that time we have increasingly went from break-even to being subsidized by the hospital. I always seem to be able to make budget but this has been tougher as

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

the year goes on. In many cases, our physicians actually get paid less now for services than they did in 2002. I know it's hard to believe, but that is the truth. This is where LB420 or LB460 would help us. A sales tax exemption on all those goods and services...basically we would pay any tax that a private physician clinic would. Well, there's a reason there aren't private physician clinics out in these communities--they simply can't make it. The income that's (inaudible) for the physicians, staffing, training...keeping up with all that is impossible. We do, in our clinics currently, as Mr. Krueger said, and he's an exemplary CEO here in the state, we use our central purchasing for almost all of our supplies. It gives us purchasing power, better pricing...basically, our whole system was around that, even trying to keep inventory in that type of a clinic situation where you have clinics open for a few days a week and so on. You have to be very careful in how you do that--you do try to buy all the things you can locally, but there are certain things you just can't. The other thing is in rural Nebraska, or rural Kansas, or any of the states, it's just a different set of healthcare circumstances. We're going to serve older, less mobile populations. As Mr. Krueger said, our Medicare in our clinic's approximately 50 percent of our patients. Many of those patients, even to make it down to the clinic it's great difficulty, much less traveling 20 miles or 30 miles to another clinic, which is the case across most of rural Nebraska. The other thing that you see in hospital and clinics in particular is we have, over the years, put a lot of resources into doing better quality medicine. Our clinic, I'm proud to say, we have 600 enrollees in a diabetes program for chronic disease management. We just purchased the software package this week called Care Measures, which I believe was \$6,500. Under this bill, as I understand it, that would have been taxable. That's a patient data registry, trying to do better for those diabetic patients. So when we enrolled with this product through Iowa's quality improvement organization we found out in West Point, Nebraska we have, in the top 5 percent in the nation, a chronic disease management program. Those are things that private physicians typically would not take on because of the cost, staffing, and so on. We actually have those nurses come down from the hospital. Our hospital clinic educators who work with our patients. Those things also reduce the cost to the patients and even ultimately the state and federal government. If you do a better job with chronic diseases you don't see those patients in the ER, admitted and other things. In closing, you know, Nebraska not-for-profit hospitals, I hope we all agree, do serve a vital role. Our clinics, like Chadron's and all the others, are in a very tenuous position right now, financially. We're regulated under Medicare and most insurance fee schedules are based off of Medicare fee schedules. A real-world example is last year Blue Cross and Blue Shield, in their judgment, is now only paying our mid-level practitioners 85 percent of the fee schedule in place because that's what Medicare does. You know, that's a great deal of dollars that come out. All of the insurance fee schedules are based on the Medicare fee schedules. So we don't have the ability in the clinic to really generate more revenue. There basically is just no way for us to do that. So when we absorb costs, either hospital or municipality, someone has to absorb those costs to keep those clinics open. Or at some point, as Mr. Krueger says, you have to walk away from those services and hope that those folks will

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

be able to drive to your main clinic or do something else. We viewed the satellite clinics in particular as an investment and a help for those communities. We hear from the hardware store in Scribner, Nebraska, the busiest days are when our clinics are open and those types of things and, you know, we're proud of that fact. On behalf of the hospital and the clinics, I do hope you can support this bill and I would welcome entertaining any questions. [LB420]

SENATOR DIERKS: Mr. Consbruck, you mentioned something about...how many diabetes patients did you say you have? [LB420]

TODD CONSRUCK: We have approximately 600 now. [LB420]

SENATOR DIERKS: Isn't that an inordinately large number for... [LB420]

TODD CONSRUCK: We have about 11,000 charts. I think it was surprising to me to learn that over the last few years, but it is what it is. We also do programs on hypertension and osteoporosis, but... [LB420]

SENATOR DIERKS: Do you have a lot of Native American patients that might add to that? [LB420]

TODD CONSRUCK: We do not. We see very few in our area. If you would go to say, Pender, to the north, they might perhaps, but we do not. When you read, nationally, a lot of times about the growth in chronic disease I think in some cases that was always out there and people didn't know. Honestly, every week we have a number of patients who simply didn't know they were diabetic and probably were for a number of years. And also given the current economic climate, people are certainly avoiding any types of tests or clinic visits that they can. [LB420]

SENATOR DIERKS: Thank you. [LB420]

SENATOR CORNETT: Any further questions from committee? Seeing none, thank you. Next proponent. [LB420]

JOHN ROBERTS: (Exhibit 6) Members of the Revenue Committee, for the record, my name is John Roberts, J-o-h-n R-o-b-e-r-t-s. I'm executive director of the Nebraska Rural Health Association. We're here today to testify in support of LB420 and LB460. I don't want to repeat any of the things that the previous two testifiers talked about, but I guess the one thing that I would like to emphasize is the fact that rural health clinics in the state of Nebraska are very important to the infrastructure. We're not like a lot of other states who may have community health centers and other types of provider models that take care of the underserved or the uninsured. For the most part, in the state of Nebraska our critical access hospitals and these rural health clinics are the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

safety net providers across the state. So it's very important that we make sure that they continue to be viable so that patients across our great state have access to services and as has been testified before, most of these rural health clinics operate at a loss. That's why you'll see so many that are provider based, which is connected to a hospital, so that those services can be subsidized to keep access to care open to our rural residents. With that I'd be glad to answer any questions you have and ask for your support of LB420. [LB420 LB460]

SENATOR CORNETT: Senator Dierks. [LB420]

SENATOR DIERKS: John, did you hear my question of Mr. Consbruck? [LB420]

JOHN ROBERTS: About the diabetes? [LB420]

SENATOR DIERKS: Yeah. Is that... [LB420]

JOHN ROBERTS: Huge issue in rural Nebraska. [LB420]

SENATOR DIERKS: That's what? [LB420]

JOHN ROBERTS: That's a huge issue, growing issue in rural Nebraska. [LB420]

SENATOR DIERKS: Isn't that something? [LB420]

JOHN ROBERTS: Yeah. [LB420]

SENATOR DIERKS: What do you attribute that to? [LB420]

JOHN ROBERTS: Overweight, and other conditions. [LB420]

SENATOR DIERKS: Lack of exercise? [LB420]

JOHN ROBERTS: Yeah. The chronic diseases we're seeing increase across the state for our rural providers. [LB420]

SENATOR DIERKS: Thank you. [LB420]

SENATOR CORNETT: Any further questions? Seeing none, thank you. [LB420]

JOHN ROBERTS: Thank you. [LB420]

SENATOR CORNETT: Next proponent. Are there any opponents? Anyone in a neutral capacity? Seeing none, that closes the hearing on LB420. Senator Friend, you are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

recognized to open on LB460. [LB420]

SENATOR FRIEND: (Exhibit 7) Thank you, Madam Chair, members of the Revenue Committee. My name is Mike Friend; the last name is spelled F-r-i-e-n-d. I represent the 10th Legislative District in northwest Omaha here to introduce LB460. LB460 allows purchases made by nonprofit hospitals to be distributed to nonprofit clinics owned and operated by the hospital without losing their sales tax exemption. In other words, a nonprofit hospital would be able to purchase supplies and then distribute them to the clinics it owns. The supplies would keep their tax exemption status, thus creating an incentive for nonprofit hospitals to engage in central purchasing. As mentioned in the testimony earlier in Senator Hadley's communication with us on LB420, 46 nonprofit clinics are owned by nonprofit hospitals and they would benefit from this exemption. Current law exempts purchases by a nonprofit hospital from sales taxes but by the Department of Revenue regulations, the purchased supplies lose their exemption if distributed to nonprofit clinics owned by the hospital. This creates a disincentive to cost-efficient central purchasing, economies of scale and cost savings from bulk purchasing are lost, and ultimately, patients end up paying more. Central purchasing, I believe, would result in savings to patients, ensuring the access to affordable healthcare--better access to affordable healthcare throughout the state. I did want to offer an amendment. It would actually replace the green copy. It's supposed to be cleanup in nature; I think it also clarifies a little bit the intent of the bill and changes the federal reference to the U.S. Code citation, so if I could have that passed around--thank you. I wanted to address something...I wanted to address the fiscal note because I think when we get done here there's going to be a lot of confusion, not just with LB460 but also with LB420--if I'm not mistaken there already is. When I introduced LB460 I was told...it was communicated to me that the Department of Revenue said that the fiscal note would be the same as the fiscal note for LB420. Well, first of all that would be hard to do, because the fiscal note for LB420 is zero; we heard that earlier. The department roughly estimated the fiscal note on both bills. It is my understanding, even to this day, it was supposed to be in the \$70,000 range. And I don't know what else I can say about that other than what I know I had been told. The fiscal note, if you look at LB460, for fiscal years 2009 and 2010 it's \$6.9 million; for fiscal years 2010 and 2011 it's \$10.6 million. I've been studying fiscal notes--studying them--for about seven years now, almost. This is absurd. I don't usually contend the...this is absurd. The bill was drafted...the intent of the bill was not to be any different than LB420's; I'm not angry, I'm just saying this is absurd. How can we go from zero on one bill with one intent to \$10.6 million on the next one. So there's an absurdity here that I don't really know how to deal with. I will; I just don't know now how to deal with it, but I will. (Laughter) There is confusion...I'll sum up this way: if there is confusion by the Department of Revenue--if, I say--to whether this allows tax exempt status for for-profit hospitals that's not the case. This language doesn't do that. There's no question that this particular bill, the green copy or the amendment that I passed around, applies only to nonprofit hospitals. As we said, it would only affect...and as Senator Hadley said earlier, would only affect 46

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

nonprofit clinics. And a year out, a fiscal note that says \$10.6 mill? I'll say it one more time: that's absurd. I'm going to stop here. I don't know where to go with this, other than where I've already gone. Thank you, Madam Chair. [LB460]

SENATOR CORNETT: Thank you, Senator Friend. Questions from the committee? Seeing none, thank you. First proponent. [LB460]

ANDY POLLOCK: That may be a challenging act to follow. My name is Andy Pollock. I'm here representing the Friends of Nonprofit Hospital Association and I would like to thank the committee, Chairman Cornett and members of the committee for the opportunity to testify on behalf of...in support of LB460. And I would like to thank Senator Friend for introducing this important bill. I will keep my testimony very brief. The same policy reasons that underlie LB420 underlie this bill as well. I think this presents you with a slightly different way of getting at what we had expected to be the same result as LB420. Senator Friend has addressed the different results, very widely different results, and I'll talk about that a little bit too. The lay of the land right now--and I'll use an example that I used before: current law exempts purchases by a nonprofit hospital. So the hospital in Henderson purchases supplies, you know, electricity, x-ray machinery, other medical supplies--those are tax exempt by the nature. Not of the product, but by the nature of the entity purchasing the product. But those products lose their sales tax exemption if they are not used at the hospital, and that's pursuant to, probably sensible, Department of Revenue regulation that requires the purchases to be used onsite. We had gone to Department of Revenue after conversations with a couple members of this committee to see if they might be able to ease up that restriction for nonprofit hospitals and the clinics that they own and they declined saying that's basically a policy issue for the Legislature to make. Fair enough. What happens to that exemption that the Henderson hospital has is if it would distribute goods that it purchases centrally and it takes advantage of bulk purchasing and the economies of scale, if it purchased those goods and then distributes them to one of its nonprofit clinics, then they lose that exemption that they once had--just by virtue of leaving the hospital door. Even though that clinic is owned and operated by that hospital. I would ask you to consider this argument and that is that the current Department of Revenue regulations in this setting discourage central purchasing. They discourage hospitals from taking advantage of cost-saving measures and bulk purchasing of goods that they later distribute to the nonprofit clinics that they own, whether that be one or whether that be five. They really...it gives a disincentive to those sensible, cost-effective measures which what do they do at the end of the day--they save patients money. LB460 does very much the same thing, or at least was intended to do very much the same thing as LB420, just in a less direct way, if you will. What this bill does, it gives an incentive for these cost-efficient central purchasing measures. It gives an incentive to the hospital to purchase in bulk and then distribute those tax exempt goods and supplies to the clinics that they own. It allows that sales tax exemption to be retained for, and only for, supplies purchased by the hospital and later distributed to the clinics that it owns. In

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

other words, the Henderson hospital would purchase supplies; it would distribute them to its clinic; those supplies would retain their sales tax exemption. It's pretty simple; maybe less direct than LB420, but that's what it would accomplish. By allowing this exemption to be retained, it would create incentive for central purchasing. So if the more direct route of just giving a sales tax exemption by removing the two-hospital requirement is not palatable to this committee, you could approach it by giving hospitals an incentive to reduce costs, reduce their own costs, reduce costs to their patients, and the reward, if you will, or the incentive at the end of the day would be a tax break. The fiscal note I'll address briefly. I won't dwell on it too much since Senator Friend addressed that. I was the one who communicated that to Senator Friend; it was based on information I had. Again, I'm not trying to say that anybody gave me wrong information; information changes. But certainly, it was our understanding, and after conversations that we had with various agencies, we believed that the fiscal impact of this bill would be the same if not very similar to the fiscal impact of LB420. Why is it not? I don't know, at this point. And we will work with Department of Revenue to try to get an idea. We obviously have different interpretations of how both bills handle the situation, and we didn't realize that until we saw the fiscal note yesterday. I can tell you that I would not have, and I know our association would not have approached Senator Friend, or any of you for that matter, or anybody in the body for a fiscal note that was going to be \$7 million on this particular issue; not in this economic climate. And I regret that we put Senator Friend in the position that we did, but it was based on an understanding we had at the time that we asked him to consider this bill. I would close by saying this bill is necessary to create incentive for common sense central purchasing. It's a practice that saves hospitals and clinics money, and it in turn reduces healthcare costs for Nebraskans across the state. And with that I'd be happy to answer questions, and I would ask you to support LB460. [LB460]

SENATOR CORNETT: Senator Utter. [LB460]

SENATOR UTTER: Yeah. Obviously don't need both of these bills to advance out of committee? [LB460]

ANDY POLLOCK: I don't believe that we need to have both of these bills advance out of committee. And our preference would be--and I've talked to Senator Friend about this so this is not a surprise to him--that the Hadley bill, the more direct bill, probably makes things a little bit more streamlined. There may be reasons why you would view LB460 as a better way of approaching it, but the Friends of Nebraska Nonprofit Hospital group--it's preference is LB420. [LB460]

SENATOR UTTER: Well, I certainly like Mr. Hadley's fiscal note better. (Laughter) [LB460]

SENATOR HADLEY: Thank you. (Laughter) [LB460]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

SENATOR CORNETT: Senator Hadley. [LB460]

SENATOR HADLEY: Senator Cornett. Andy, quick question: I believe, in a question that Senator Adams had asked earlier, are nursing homes and assisted living exempt from sales tax, paying sales taxes? Is that what you said. [LB460]

ANDY POLLOCK: Pursuant to, I think it was LB535, they're exempt. [LB460]

SENATOR CORNETT: Nonprofit. [LB460]

ANDY POLLOCK: Yes, good point. Nonprofit. [LB460]

SENATOR CORNETT: Only nonprofit. [LB460]

ANDY POLLOCK: Nonprofit. But they are exempt, those nonprofit assisted living and nursing homes are exempt whether they're owned by a hospital or not. [LB460]

SENATOR HADLEY: So I guess I'm just trying to think of a rationale that would...a hospital owns a nursing home...a nonprofit hospital owns a nonprofit nursing home and a nonprofit clinic in the same town, and we exempt the purchases for the nursing home and we tax the purchases for the clinic. That doesn't seem to be a rational look at the situation. [LB460]

ANDY POLLOCK: I would agree with that. It doesn't seem to have a good public policy basis. There doesn't seem to be a good, rational basis for that. I'd just add, similar to what I said on LB420, you also have community owned hospitals that own their own nonprofit clinics, like in Valentine--that's an example of one of those. That clinic is exempt from sales tax because it's owned by a community run hospital which is also nonprofit. [LB460]

SENATOR CORNETT: Seeing no further questions. [LB460]

ANDY POLLOCK: All right. [LB460]

SENATOR CORNETT: Thank you, Mr. Pollock. [LB460]

ANDY POLLOCK: Thank you, thanks. [LB460]

SENATOR CORNETT: Next proponent. [LB460]

HAROLD KRUEGER: Well, thank you very much again for allowing me to come up here. Not many groups allow me to come back the second time. I'm here to state that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

we are for LB460 and would... [LB460]

SENATOR CORNETT: I'm sorry; you have to restate your name for the record. I apologize. [LB460]

HAROLD KRUEGER: First name is Harold, H-a-r-o-l-d; Krueger, K-r-u-e-g-e-r. Sorry. With due respect for all of you and your time, I'm not going to go through what I did for LB420. If you have any additional questions, I'd be more than happy to answer those. Your question earlier: we do own an operating assisted living--a not-for-profit assisted living unit, and that is tax exempt. It doesn't make a lot of sense not to have the clinic with it. [LB460]

SENATOR CORNETT: Seeing no questions, thank you. [LB460]

HAROLD KRUEGER: Thank you very much. [LB460]

SENATOR CORNETT: Next proponent. [LB460]

TODD CONSRUCK: Todd Consbruck, St. Francis Memorial Hospital, T-o-d-d C-o-n-s-b-r-u-c-k. Thanks again, Madam Chairwoman and committee. Just reiterate my support for LB460 and I would mention a couple other things. Like Mr. Krueger, we too have an assisted living. We went through quite a process with that--it is now sales tax exempt. I would also point out in a hospital, even though I'm the clinic manager, basically it is just a department of the hospital in all respects. I go to the department manager meeting, it's no different than the lab, radiology, any of those things when it comes to reporting anything within our system. In fact, one of the greatest difficulties when this really became aware to us maybe 18 months ago, approximately, in some ways you wouldn't even know how to begin to pull this apart. My clinic is the front of our hospital and clinic. How do you start to split off the sales tax on the lighting or the signs or repair to pavement? And if you pull out even some of the supplies it gets kind of murky on even how you try to pull those things back apart. So even if it stays in place how you, in good faith, would even try to respond to this is very difficult for any clinic to try to figure out where those things even start and stop because you are just like the lab or the radiology: do you have a part of a hallway? Do you not have a part of this hallway? It just becomes complicated. So once again I would ask your support and I'll also tell you one other thing, Senator Dierks, as I sat there and thought about this. There is good news with diabetes. We have seen a number of those 600 people change and we have the data that shows that they have become much healthier, over time, in that program. [LB460]

SENATOR DIERKS: Thank you. [LB460]

TODD CONSRUCK: Any questions? [LB460]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

SENATOR CORNETT: Seeing none, thank you. Next proponent. Opponents? [LB460]

JACK CHELOHA: (Exhibit 8) Good afternoon, Madam Chairman, members of the Revenue Committee. My name is Jack Cheloha, the last name C-h-e-l-o-h-a. I'm a registered lobbyist for the city of Omaha. I wanted to testify in opposition to LB460, assuming that the fiscal note was correct on it and, obviously, from what we've heard we don't know that to be true and, more likely than not, it's probably not true. I do have a handout though. Anytime we have an opportunity to look at sales tax exemptions it gives me, as a representative of the city of Omaha which has a local option sales tax, an opportunity to get on the soapbox ever so briefly. And so I have a handout for you relative to the amount of state aid that the city of Omaha enjoys and what's happened to it over the last decade or so. And so any time the city...let me back up. The city of Omaha's very reliant on our local option sales tax--I think I've testified before this committee before that it's roughly about 40 percent of our General Fund budget. We take in about \$120 million and so we do have a concern any time we look at constricting the sales tax base, if you will. If the number here is \$70,000, obviously it may not affect us, or we may not even have any of these clinics within our city of Omaha metropolitan area. However, I think Senator Friend would appreciate this though, it was easier for me to come in and oppose his bill because I've known him longer than Senator Hadley, so. (Laughter) And he's usually mad at me anyway, so. So I just wanted to give you this handout and tell you about the rough times we're having in Omaha and ask you to consider that and finally, one part of that will address the bill that we've yet to hear today and there's a little piece of information there and I'll be back up again on the next one, so. I'll try to answer any questions you might have. [LB460]

SENATOR CORNETT: Senator Adams. [LB460]

SENATOR ADAMS: Just a quick one, Jack, and I don't mean to pick a fight with you, but if I'm Henderson and I have a penny local option sales tax--and they're not here worrying about losing that exemption on the Henderson Medical Clinic... [LB460]

JACK CHELOHA: Um-hum. [LB460]

SENATOR ADAMS: ...and proportionately that might be a bigger chunk of their budget than what one of these may be of the city of Omaha. [LB460]

JACK CHELOHA: Right. [LB460]

SENATOR ADAMS: But I understand your concern. [LB460]

JACK CHELOHA: Right, I see your point, too. I'm trying to be here more on the big picture, you know, as we look at exemptions. And then I did give you some examples of

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Revenue Committee
February 19, 2009

some--to us--very costly exemptions that the previous Legislatures have adopted.
[LB460]

SENATOR ADAMS: They all add up. [LB460]

JACK CHELOHA: Right. [LB460]

SENATOR ADAMS: Yep. [LB460]

JACK CHELOHA: That's all. [LB460]

SENATOR ADAMS: I understand. [LB460]

JACK CHELOHA: Yep. Is that it? Thank you. [LB460]

SENATOR CORNETT: No further questions. Next opponent? Anyone to testify in a neutral capacity? That closes the hearing on LB460. [LB460]

SENATOR DIERKS: Senator Cornett to open on LB485. Whenever you're ready, Senator. [LB485]

SENATOR CORNETT: Good afternoon, Vice Chairman Dierks and members of the Revenue Committee. My name is Abbie Cornett and I represent the 45th Legislative District, and I'm here this afternoon to introduce LB485. Before I say what LB485 does specifically, I want to give you a little bit of background. With our fluctuation in the markets that we've seen over the past couple of years, you can relate this best to the price that you pay at the gas pump. Prices skyrocketed for a while and then they've returned to a new level. But that did not protect the consumer during that period of time. The thing that did help is price at the pump was based on the cost of the gasoline, not...the usage of the gasoline, not the cost, per se. This wasn't seen in natural gas use. People, instead of being taxed on their usage of natural gas, were being taxed on the price that gas was being sold at. This bill was brought to me to try and bring some equity to the consumer, for residential homes. LB485 would impose an excise tax on all sales, use, or other consumption of natural gas used for residential purposes. The excise tax shall be remitted to the Department of Revenue for the distribution to either the General Fund or to political subdivisions that impose a local option sales tax. The reason LB485 is written in this way is so we do not affect the way tax credits would be determined in relation to commercial use of natural gas. In making sure the bill is following the intent of this, I found the bill drafted struck a reference to gas in some sections and would affect how this was done. I will offer an amendment to correct that problem and to make sure the bill only dealt with residential gas usage. I've been working with the Department of Revenue on the bill and the numbers in Section 7 of this bill are from the Department of Revenue. When I originally met with the department, our

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

intent was a revenue-neutral bill and the fiscal note does not show that. We will be continuing to work with the department on that and if you have any questions I have testifiers to follow that can answer some more of the technical questions in regards to gas pricing. [LB485]

SENATOR DIERKS: Thank you, Senator. Questions for Senator Cornett? I think you've had it. First proponent, please. [LB485]

DOUGLAS CLARK: (Exhibit 9, 10) Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Doug Clark. I am vice president of government affairs and marketing for the Metropolitan Utilities District. My last name is spelled C-l-a-r-k. We asked Senator Cornett to introduce this bill--we, as the Metropolitan Utilities District because, as you're going to see in the handouts, and they've become rather popular here of late so I don't have one of them in front of me but I'll do the best I can. What's transpired over the last ten years in the natural gas industry and, actually, it's been going on since about 1977. Back in the '70s, an individual home consumed over 100 decatherms of natural gas a year. Last year, the average home is consuming somewhere between 70 and 75 decatherms of natural gas a year. So what this is equated to is that we are not selling any more natural gas today than we sold ten years ago. And the Metropolitan Utilities District, over the last ten years, has added 30,000 new residential customers. This happens because all homes are better built, all windows are better, all gas fired appliances are more efficient, and we have seen conservation become part of the daily construction and lifestyle of all homes. So we, as a company, have realized greater efficiencies and, at that same time, have had to maintain 30,000 new services in the Metropolitan Utilities District. But anyway, those 30,000 extra homes equates to about 200,000 residential customers that we have. Over the last ten years, even though they're not consuming one molecule more of natural gas, they're paying three times more in taxes. In the energy business that puts us at a distinct disadvantage. When the price of our product is going up at such a rapid rate and we have zero control over the price of that product and the taxes on that product are going up three times also. So this has caused a burden for the company to keep providing services to more and more people with less and less resources, and also a burden to our consumers who have done their job--consumed less natural gas but in the process has paid three times more in taxes. The hope is that through LB485 a revenue neutral source of an excise tax can be developed to hold cities harmless and hold state harmless for their services that they're required to provide also. The department numbers, as calculated by my staff, indicate a price of \$13.48 a decatherm. That number is not revenue neutral, according to the recent ten-year history that the district has experienced in our prices, which we show as \$8.60 over the last ten years. And people need to understand that the last ten years in the natural gas business have been the most expensive in the history of natural gas. And at no point has anyone paid \$13.48 a decatherm. So that number, in my humble opinion, is not revenue neutral--it's a revenue generator. And as you see in the charts that I'm handing out, our argument at

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Transcriber's Office

Revenue Committee
February 19, 2009

this point in time would be that that number would be revenue neutral at roughly \$7.50 a decatherm because we are in a recession. And that is not something that I take great joy in. But that has reduced the price of natural gas to the point today, on the NYMEX, natural gas can be bought for about \$4.25 a decatherm. And there is no short-term indication or long-term indication that the prices of natural gas are going to go up to the historic record numbers that they have been over the last five to ten years. And so when you look at a \$7.50 a decatherm charge, it does come out to a pretty fair number. I'm selling natural gas today at \$6.86 a decatherm, so \$7.50 still represents a premium over what is being charged today. With that I'll open it up for any questions. I'm happy to explain anything you would like to know. [LB485]

SENATOR WHITE: Thank you, Mr. Clark. Mr. Clark, if natural gas prices...let's say we set this... [LB485]

DOUGLAS CLARK: Yes. [LB485]

SENATOR WHITE: ...at whatever price per decatherm and then natural gas prices drop again, significantly. [LB485]

DOUGLAS CLARK: Yes. [LB485]

SENATOR WHITE: In fact, it could effect a tax increase. [LB485]

DOUGLAS CLARK: It could, yes. [LB485]

SENATOR WHITE: All right. And also, if there is no foreseeable, substantial rise in the shorter midterm in natural gas prices--and I agree with you, given the decline in usage--why bother with this? Because what you fear, I thought, was rampant inflation in natural gas prices and therefore you wanted to get off of a sales tax basis onto an excise tax basis. But if that's not the foreseeable future, is this bill timely? [LB485]

DOUGLAS CLARK: It would have been very timely in July of last year when in July you paid \$12.00 a decatherm for gas, and that was the highest price ever paid for natural gas. And July would usually tend to be the lowest price ever you would pay for natural gas in the normal course of a year. [LB485]

SENATOR WHITE: We can, of course, talk about the fact that a large number of New York Wall Street speculators were rolling out of banks and rolling into oil and gas and then since have gone bankrupt, and the markets have started returning to normalcy as the cause of that, correct? [LB485]

DOUGLAS CLARK: I wouldn't disagree with that, and the homeowner will benefit from that, I believe. [LB485]

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Transcriber's Office

Revenue Committee
February 19, 2009

SENATOR WHITE: Thank you. [LB485]

DOUGLAS CLARK: Um-hum. [LB485]

SENATOR CORNETT: Senator Hadley. [LB485]

SENATOR HADLEY: Senator Cornett. Thank you. Who is your competition? Would it be the electric companies providing electrical energy to heat homes and buildings? [LB485]

DOUGLAS CLARK: The electrical companies in our area would be the Omaha Public Power District would be our direct competitor for heating and energy services to the home. [LB485]

SENATOR HADLEY: And do they bill their sales tax based on the kilowatt hour or do they bill it on the...or is there a sales tax on their bill? [LB485]

DOUGLAS CLARK: They charge a sales tax. And the difference...my position would be that their price structure is much more stable. They're not buying natural gas on the open market every day, or coal on the open market every day. They have long-term contracts in which they're receiving the coal over a five- or ten-year period so they have a tighter control over their electrical output than we do. They are a very good organization. They offer a great price for their product, and it makes us uncompetitive when natural gas is at \$8.00 or above a decatherm compared to what you have to pay for electricity. So it does make a big difference. [LB485]

SENATOR CORNETT: Senator Louden. [LB485]

SENATOR LOUDEN: Yeah. Thank you for bringing something like this forwards because I was working on something similar with propane and home heating fuel. And of course you're talking about decatherms and my understanding that's one million BTU, isn't it, which is a decatherm? [LB485]

DOUGLAS CLARK: Yes. [LB485]

SENATOR LOUDEN: And I have to get down to smaller figures where I just call therms, but on this what...on a therm you have to have somewheres around \$1.30 a therm for your 5.5 percent sales tax to make it revenue neutral? And how much would that be a decatherm--\$1.30 a therm: would that be \$13.00 for a decatherm then? [LB485]

DOUGLAS CLARK: I don't believe so. To be revenue neutral we would need to establish the price somewhere around \$7.00, at least in my opinion, that we... [LB485]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

SENATOR LOUDEN: Using this figure in the bill, 74.15... [LB485]

DOUGLAS CLARK: If you use the figure in the bill, yes, sir, the per decatherm cost would be \$13.48. [LB485]

SENATOR LOUDEN: Okay, yeah, that's what I mean. And then you would have to have...gas would have to be a lot cheaper or else this number in the bill is too high in order to be somewhere around a 5.5 percent at the rate that you're talking about--the average rate is \$8 and some cents? [LB485]

DOUGLAS CLARK: Yeah, over the last ten years it'd be about \$8.60, yes. [LB485]

SENATOR LOUDEN: Yeah, okay, because that's what I was...I was looking at this to see how you could work it with propane or heating oil or...I mean, when you put it into therms you can, like I say, you can use...once you put everything into therms you can use propane, you can use natural gas, you can use oil, you can use cow chips, you can use wood, you can anything because it's all on a...a therm is a therm no matter how you... [LB485]

DOUGLAS CLARK: A BTU. [LB485]

SENATOR LOUDEN: Yes. [LB485]

DOUGLAS CLARK: A BTU is how, if you want to do an apples to apples comparison, the British Thermal Unit is one of the easiest and best ways to do an apples to apples comparison of what you're paying for taxes. [LB485]

SENATOR LOUDEN: Right. And this is what I was wondering, how I could work that over into propane per gallon because that was our trouble with propane. It got up to over \$2.00 a gallon and we were at 5.5 percent, or we were paying 11 cents a gallon for propane and that was all we ever...when we first started buying propane, that's all we ever paid for propane was 11 cents a gallon. And now we were paying that much in taxes, so I was wondering if there's a way that can be used, the same system, to stabilize any home heating fuel, residential heating fuel. [LB485]

DOUGLAS CLARK: I believe if you looked at it from a standard BTU value you could establish an excise tax for any of the heating products or the home energy products that are utilized. [LB485]

SENATOR LOUDEN: Yeah, yeah. And it wouldn't be that hard to do even with oil--home heating oil, I think. Electricity would be a little it harder because you can't separate your heating electricity out from your lighting or something else. [LB485]

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Transcriber's Office

Revenue Committee
February 19, 2009

DOUGLAS CLARK: It's a little more difficult, but if you have...you could probably come up with a formula to understand what people are utilizing for home heating with their heating equipment, per kilowatt hour, and then turn that into BTU value. My engineers love that stuff. I'm not good at it, but they love it when I talk this way. [LB485]

SENATOR LOUDEN: Well, talk to them a little bit. Let's put them to work here a little bit and see if they can come up to something. And anyway, and I agree that homes right now are way more efficient than what they used to be because I've had the same house that I've lived in for over 50 years and used the same type of heat, which is electric heat, and I've been able to lower that just by the insulation and the windows that were put in nowadays and from what it was built it's made a big difference on it. And that's just the same house sitting out there on the same hill and it has, you know, for 50-some years. So you're right--you probably aren't selling any more gas now than you did several years ago. [LB485]

DOUGLAS CLARK: No, I feel like a dentist. I keep trying to put myself out of business. [LB485]

SENATOR LOUDEN: Very good. (Laughter) Well, that works two ways because when I first came down here all we heard was MUD--that's who you're with? [LB485]

DOUGLAS CLARK: Yes, sir. [LB485]

SENATOR LOUDEN: And who was the other one that kept fighting over where we was going to have the pipelines all the time, on the same side of the street, you know? [LB485]

DOUGLAS CLARK: Black Hills currently, sir. (Laugh) [LB485]

SENATOR LOUDEN: Yep. (Laugh) Anyway you've that settled so I feel much better. [LB485]

DOUGLAS CLARK: We hope it's settled. (Laughter) [LB485]

SENATOR LOUDEN: Thank you. Thank you for your testimony. [LB485]

DOUGLAS CLARK: Thank you. [LB485]

SENATOR CORNETT: Seeing no further questions, thank you, Mr. Clark. [LB485]

DOUGLAS CLARK: Thank you for introducing the bill, Senator. [LB485]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

SENATOR CORNETT: Proponents? Opponents? [LB485]

JACK CHELOHA: Good afternoon, Senator Cornett, members of the Revenue Committee. My name's Jack Cheloha; first name is J-a-c-k, last name is C-h-e-l-o-h-a. I'm a registered lobbyist for the city of Omaha. I want to testify in opposition to LB485. Essentially what I want to repeat was in the handout that I offered earlier on the bill previously that we heard today. The city of Omaha opposes LB485 strictly as we look at it. The bill right now with the sales tax Omaha receives roughly \$3.7 million a year off of residential natural gas sales. Based on the draft of the bill there's provisions in there, if you will, for the local option sales tax but it doesn't say specifically how much of that would be refunded, if any, back by the Department of Revenue to the localities. And so we have a concern about the language, obviously, whether or not we'd actually get any of this excise tax back on the local level. Let's see, what else are our concerns...an excise tax based on the number of BTUs would not grow over time as price increase occur, if you will. So naturally as we grow and get older, I mean, prices go up and government's cost to provide services to its citizens rise and so, you know, we just have to try to stay up with the tide, if you will, and so we rely on sources of revenue, if you will, that can grow and increase over time and if we change from a sales tax over to the excise tax we won't have that growth any more unless, of course, you would look at the bill and write the bill to revisit it and look at it regularly to see where we are. Typically, or similarly, to the sales tax on the motor vehicle fuel, if you will. And sometimes we have the part of that that can fluctuate due to the needs of the Department of Roads, etcetera, you set that portion of a sales tax. So that is an option, if you will, to look at it and to provide for some growth down the road. But under the green copy now it'd be set at a specific number and that would stay the same. Finally, as some other questions have already developed, if we do this and adopt it on the natural gas basis for residential customers, other commodity producers would come in and maybe ask for the same thing so that concerns us. And finally, you know, as I testified earlier, any narrowing of the sales tax base would put more pressure on us locally, especially to go to our property taxes, and those are not very popular with local residents, so. For those reasons we're opposed to LB485 and I'll try to answer any questions. [LB485]

SENATOR CORNETT: Senator Louden. [LB485]

SENATOR LOUDEN: Do you think property tax...which is the most unpopular, property tax or sticking it on your fuel bill, especially in the winter time when some of them people are having problems (inaudible)? I mean, is one going to be popular? [LB485]

JACK CHELOHA: Well, good point, Senator. I don't think any tax is ever popular, but we know with certainty the property tax is very unpopular, so. [LB485]

SENATOR LOUDEN: Your sales tax on heating, perhaps you could consider that kind of a bonus that you probably should have never had it to start with. [LB485]

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Transcriber's Office

Revenue Committee
February 19, 2009

JACK CHELOHA: That could be, Senator. [LB485]

SENATOR LOUDEN: I mean, this is something that residents in town, they have no way of deducting that. Your businesses can deduct that as a business expense, but any of your residential homeowners, that's just a dyed-in-the-wool tax whether it's property tax or on their fuel or either one. So I mean, I don't know as I can understand that, you know, that it would be property tax on homeowners. Because either way they have no recourse on that. [LB485]

JACK CHELOHA: I can't answer, you know, for any tax exemptions. I do know that there's some energy assistance programs out there for those that it truly hits hard and they really get stressed, if you will, when the rates of fuel have gone up and people have been able to get some assistance--I do know that. But yet at the same time, Senator, you have to remember that 5.5 percent of this is going into the state's General Fund too, so. You know, it's a matter of looking at the whole picture, if you will--I mean, I know the state sometimes counts on growth too, so. [LB485]

SENATOR LOUDEN: Thank you. [LB485]

SENATOR CORNETT: Senator White. [LB485]

SENATOR WHITE: Mr. Cheloha, I just had to stop you on people getting help. Do you know the number of children and adults who've died because their heating was shut off in the Omaha area over the last couple of years? You're aware of that. [LB485]

JACK CHELOHA: Am I aware of that? Yes, I've heard of that. [LB485]

SENATOR WHITE: Okay, thank you. [LB485]

SENATOR CORNETT: Seeing no further questions. Next opponent. [LB485]

JACK CHELOHA: Thank you. [LB485]

JOE KOHOUT: (Exhibit 11) Senator Cornett and members of the Revenue Committee, Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing today on behalf of the United Cities of Sarpy County, a coalition of the five cities in Sarpy County. I'm passing around a letter signed by Mayor Doug Kindig of the city of La Vista on behalf of those five mayors, expressing our opposition to LB485. And I would particularly highlight the reason for their opposition in the fourth paragraph of the first page and that is that we did ask the natural gas provider for the city of Gretna to run a scenario with a small change, and that was the amendment as we understood that it was coming, and the projection that they'd made was that there would be a reduction of approximately

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

\$11,000 to the city of Gretna in their sales tax. The city raises about \$33,000 a year off of natural gas so that is about a one-third reduction to them. Obviously, we know the purpose of the bill is to try to hold cities harmless and we appreciate that component. I've always, obviously, willing to talk about that but as LB485 was and as the amendment as we understood it was coming that is a reduction, so. I would stand for any questions you might have. [LB485]

SENATOR CORNETT: Actually, I have one. Why would Gretna be hurt more significantly than the other cities? [LB485]

JOE KOHOUT: Senator, again, they just ran the scenario based upon the one city and that was... [LB485]

SENATOR CORNETT: Just the one city, got it. [LB485]

JOE KOHOUT: ...our specific provider...it was just the one, Gretna. Again, we had some, as you're aware, we had some issues trying to figure out exactly how the formula was going to work and so I think the best example that came back to us was run the city of Gretna and it was an example that we could readily come to you with. [LB485]

SENATOR CORNETT: Thank you. Seeing no questions, thank you. [LB485]

JOE KOHOUT: Thank you. [LB485]

GARY KRUMLAND: Senator Cornett, members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in opposition to LB485. I won't repeat what Jack and Joe said but just similar concerns about the effect on the city sales tax and how it's going to affect cities. The fiscal note seems to imply that over the next five years there will be loss of revenue. I know the intent is to make it revenue neutral but we're just concerned that, without knowing for sure that that's the case that we do have concerns about the bill. [LB485]

SENATOR CORNETT: Seeing no questions, thank you. Next opponent. Anyone in a neutral capacity? [LB485]

ROGER COX: Senator Cornett, members of the committee, good afternoon. My name is Roger Cox. I have testified in front of some of you in other hearings, but for those of you who don't know me, I'm with the Lincoln law firm of Harding & Schultz. Since 2003 I have served as the public advocate for natural gas rate payers pursuant to the state Natural Gas Regulation Act. Under that act, my charge is to represent the interest of jurisdictional rate payers which would be virtually all of your residential customers and many of the small commercial customers in your respective districts. I'm appearing as neutral for the following reason. This bill has one very good idea, one very good

concept, and it's what Senator Cornett mentioned in her statement and that is to protect consumers against these untoward spikes. If you look at Mr. Clark's handout, these spikes have occurred during the winter heating seasons of 2005 and 2006 and 2007 and 2008--just really murdered some rate payers. And I understand and sympathize with my colleagues who represent city interests, and no one ever wants to give up a revenue source, but that revenue source during those periods is nothing more than a pure windfall driven by the market. If we analogize it to something like water utility--fairly standard cost of producing it--we don't have a market-driven commodity that just fluctuates wildly, so I would applaud and support the idea of an excise tax as a way to try to avoid the spike. I don't have a solution for Senator White's question of what do we do to avoid the dip if we put an excise tax so this may be more tax than would be paid on a sales tax basis. But Senator White also made the comments, in the Omaha area, and it's a concern for my rate payer constituents across the state, this is not a luxury, this is a necessity. And during times of bitter winter weather it's a matter of a life-saving necessity. So particularly for those who are on fixed incomes, those who are in lower socioeconomic backgrounds and situations, or just temporary crises as we head into this economic problem that's affecting our state and the nation, I think it is a problem that cries out for a legislative resolution. One other comment, and it's just in response to a question that Mr. White, or I'm sorry, that Senator White asked Mr. Clark: we have forecasts--sometimes they're accurate and sometimes they're not--about the markets. I would concur with the discussion, Senator, that you and Mr. Clark had about it, but I would note that there's a lot of usage now of natural gas for electric generation peaking units. It used to be, when I started being involved in gas regulation many years ago at the municipal levels, we could guarantee that the price would be at rock bottom during the summers. You heard Mr. Clark's example about the one July figure. We don't know what's going to happen to the market, but my concern is, and your challenge is, I think that it's likely there are going to be more spikes. There was an earlier bill, and I apologize, I don't know the number, from several sessions ago that had this same concept of an excise tax and at that point we were in the midst of one of these spikes. And the problem there was everyone had revenue they were counting on and this was going to be a takeaway. So I think if there's a way to craft an excise tax that could deal with the concern Senator White raises about not having a dip, that would be an ideal solution. If I can answer any questions I'll be happy to try. [LB485]

SENATOR CORNETT: Senator White. [LB485]

SENATOR WHITE: Thank you for your consideration of the issue. The Legislature faced this with the gas tax and the infrastructure, the Roads Department, wanted us to move to a price-based tax because it faced a decline in substantial revenues. As things got more efficient as people bought less gas, they wanted us to move to that so the government could keep pace. Here you would have government move its resources off of spike prices even though, for example, one of the major costs of operating government--schools and other areas--is heating them. So again, it becomes an issue

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Revenue Committee
February 19, 2009

of...and I'd also note that, at best, we won't stop a spike. We would represent a small percentage of the spike based on the sales tax. 93 percent of spike will occur in any event; we can't stop that under any circumstances. Wouldn't you agree? [LB485]

ROGER COX: I would certainly agree with that, Senator. [LB485]

SENATOR WHITE: But when the fuel costs become the very highest for government to keep, for example, our children warm in schools, we would deprive government of the revenue, in those times, to do that. [LB485]

ROGER COX: I understand the concern and I can't tell you that it doesn't exist. A countervailing concern, just so you know, the way things are set up for consumer complaints for the Public Service Commission is they have a consumer advocacy specialist who takes those complaints and I do review them on a monthly basis. A lot of those, especially this time of year, deal with people who are having gas shut off and adding that extra few percentage points of the tax is sometimes the difference between somebody keeping their gas on and off, so. [LB485]

SENATOR WHITE: Without question, that's true. But when you are looking at the fact that a brand-new furnace can cut consumption of natural gas by 40 percent, keeping the house in the same temperature with no new insulation, no new windows, is this really the way we go about it? Or do we take the funds generated, by perhaps, higher taxes on this, help assist people buy more efficient furnaces and fix the problem long term? [LB485]

ROGER COX: If we had the proverbial easy button so we could get those efficient furnaces in all the right homes it would be a perfect solution. And I'm not here to say that what you're proposing may not be a solution, what I'm concerned about is the distress during the spikes. But if we can hold off a spike long enough to deal with your long-term approach, that may well be another way to address it. [LB485]

SENATOR WHITE: Well, defunding government during times of fiscal crises will not address the problem, will it? [LB485]

ROGER COX: I guess that's what you all get to decide. [LB485]

SENATOR WHITE: Thank you, sir. [LB485]

ROGER COX: Thank you. [LB485]

SENATOR CORNETT: Senator Hadley. [LB485]

SENATOR HADLEY: Senator Cornett, thank you. This is probably a question I should

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Transcriber's Office

Revenue Committee
February 19, 2009

know but I will ask it anyway. If we use an excise tax, would that be separately stated on the bill or is an excise tax just put into the price of the product? [LB485]

ROGER COX: Let me speak in terms of my understanding of how it's done now, at least by the investor-owned utilities, which are the only ones that I deal with--those such as MUD I do not deal with. I believe the sales tax is shown, currently, as a line item on the bills of virtually all of the natural gas suppliers. There are some differences where you're out in the SourceGas territory out in western Nebraska where they have choice gas that you may contract with a separate supplier. Here in the Black Hills service area that I'm a member of, you do get a separate sales tax. I suspect those billing programs could do a similar line-item treatment of an excise tax if the Legislature would adopt that. [LB485]

SENATOR HADLEY: I was just curious because if it's just put into the price of the product, so much per BTU or such as that, how do schools and such as that who now are exempt from paying sales tax on natural gas...if they bill it into the price of the product versus showing it separately, they would pay the price, the tax. [LB485]

ROGER COX: I understand your point. I believe it's separately stated. [LB485]

SENATOR CORNETT: Senator Louden. [LB485]

SENATOR LOUDEN: Yes. I'm not that familiar with gas but I am with electricity. Do you have to unbundle your system beings you'll be using your pipeline to transport other people's gas and that sort of stuff? In other words, do you have an unbundled system? In other words, do you have to show how much transportation is, how much gas--the price of the gas--was and all that through there? [LB485]

ROGER COX: The answer, Senator, is it's different depending on who your supplier is. In the Black Hills area, it's a bundled service as you referred to it, whereas out in the SourceGas area they basically are being paid for the distribution function and the individual suppliers are the ones that are charging for the cost of the commodity. So it's handled differently with different utilities in different areas of the state. [LB485]

SENATOR LOUDEN: The SourceGas, then, on their bill doesn't show how much transportation is and how much the cost of gas is? [LB485]

ROGER COX: No, they show both as I understand it, but the distribution charge is just showed separately for how many units of gas have been moved. And then depending on which of the separate suppliers that are known to certified natural gas providers are actually under contract with the rate payer then they will show separately--so much charge per therm and that sort of thing. [LB485]

SENATOR LOUDEN: But it would be no problem to have that all broken down

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Revenue Committee
February 19, 2009

depending on the corporation that's doing it. [LB485]

ROGER COX: My colleagues who are involved in jurisdictional utilities will probably get angry with me for speaking for what their billing systems can and can't do, but it seems to me that's something that they should be able to do. [LB485]

SENATOR LOUDEN: Yeah, because in other states you'll get a bill that long of every little person along the line that pumped something into that deal and that's the reason I was wondering how it works up here the same way. [LB485]

ROGER COX: That's correct. [LB485]

SENATOR LOUDEN: Okay, thank you. [LB485]

SENATOR CORNETT: Seeing no further questions from the committee. Are there...thank you very much. [LB485]

ROGER COX: Thank you very much, Senator. [LB485]

SENATOR CORNETT: Is there anyone else to testify in neutral capacity? That closes the hearing on LB485 and closes the hearings for today. [LB485]

Transcript Prepared By the Clerk of the Legislature
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Disposition of Bills:

LB420 - Placed on General File with amendments.

LB460 - Indefinitely postponed.

LB480 - Indefinitely postponed.

LB485 - Indefinitely postponed.

Chairperson

Committee Clerk