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Revenue Committee
March 18, 2009

[LB186 LB249 LB640]

The Committee on Revenue met at 1:30 p.m. on Wednesday, March 18, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB249, LB186, and LB640. Senators present: Abbie Cornett, Chairperson; Merton (Cap) Dierks, Vice Chairperson; Greg Adams; Mike Friend; Galen Hadley; LeRoy Loudon; and Dennis Utter. Senators absent: Tom White. []

SENATOR CORNETT: (Recorder malfunction) and welcome to Revenue. I'm Senator Abbie Cornett from Bellevue. To my left will be our Vice Chair, Cap Dierks from Ewing. Senator Greg Adams from York will be joining us; Senator Hadley from Kearney. Our research analyst is Bill Lock and committee clerk is Erma James. On my far right, Senator Utter from Hastings will be joining us as will Senator LeRoy Loudon from Ellsworth. Senator Tom White is excused today. Senator Friend from Omaha, and legal counsel is Shannon Anderson. The pages today are Rebecca Armstrong and Elsie Cook. Before we begin the hearing today, I'd please advise everyone to turn off your cell phones or at least turn them to vibrate. Sign-in sheets are by both back doors for testifiers. They are on the tables. If you wish to testify, you need to fill out the forms completely and please make sure they're legible and submit them before testifying. Hand those forms to committee clerk when you come up to testify. There are also clipboards at the back of the room. If you wish to show your support or opposition to a bill, but do not wish to speak, those will be included in the official record. We will follow the agenda posted on the door today. Introducer or representative followed by proponents, opponents, and neutral testimony. Only the introducer will be allowed closing remarks. As you begin your testimony, please state and spell your name for the record. If you have handouts, please bring ten copies for the committee and staff. If you only have the original, we can make copies for you. Please hand those copies and/or handouts to the pages. With that, we will begin today's hearing. Senator Fulton, you are recognized to introduce...to open on LB249. []

SENATOR FULTON: Thank you, Madam Chair, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29. I bring to you today LB249. The responsibility for collecting the state sales tax which comprises a quarter of state and local revenue is largely concentrated on the relatively small segment of the business community that comprises Nebraska's retailers. For bearing this responsibility, state policy has properly afforded a withholding fee. Since enactment of LB32 in the 2002 Special Session, the amount of withholding to retailers for collecting the sales tax and use tax has been capped at 2.5 percent of the first \$3,000 remitted or a maximum of \$75 per month. Prior to 2002's budget crisis, those responsible for collection of sales and use tax were also entitled to an additional one-half of 1 percent of the remittance above the first \$3,000. LB249 restores the withholding rates on sales and use tax to pre-2002 status as was originally intended in LB32 from 2002. Such restoration would occur beginning in the 2010 fiscal year. Lifting the sales and use tax

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withholding cap would help to alleviate financial pressures, particularly experienced by Nebraska's smaller retailers. According to a recent national Pricewaterhouse study of the compliance costs to retailers for sales tax collection and remittance, such as the cost of training personnel on sales tax, preparation of returns and credit card fees on sales tax collections, the costs are actually more than six times more onerous for small retailers, a small retailer being that with retail sales under a million dollars per year. Continuing to the present withholding rate for sales and use tax engenders a disincentive to retail businesses as many end up paying more sales tax than they actually collect. I submit that our sales tax policy should be oriented toward collecting more sales tax revenue by providing for a broader retail base. The present sales and use tax reimbursement rates stand in opposition to this goal and place an additional burden on an already stagnating base. With that, I'll try to answer any questions, if there are any. [LB249]

SENATOR CORNETT: Thank you, Senator Fulton. Questions from the committee? Seeing none, thank you. First proponent. [LB249]

JIM OTTO: (Exhibits 1, 2) Senator Cornett, members of the committee, my name is Jim Otto, O-t-t-o. I'm president of the Nebraska Retail Federation, a registered lobbyist for the Nebraska Retail Federation, also a registered lobbyist for the Nebraska Restaurant Association, and I'm here today in support of LB249, and very appreciative of Senator Fulton's introducing the bill. He already suggested that this study that shows that retailers pay much more to collect the tax than they're presently being reimbursed for. It goes anywhere from 13 percent of small retailers to collect the tax, 13 percent of the tax to 2.17 percent for large retailers. And presently, you can only get \$900 a year back from the state for collecting it. This was taken away in tough budget times in 2002 because of tight budget times, and I assume that it was thought that it would be reimbursed in better budget times. But when we went through better budget times, it did not get reimbursed. And it really does impact...result in an unfunded mandate on retailers, on merchants, restaurants, those who collect sales tax. And I want to point out that very few, if any, economic development programs, those being tax incentives, etcetera go to these types of businesses. They, understandably, usually go to primary employers, manufacturers, those kinds of businesses with retail, restaurant, merchants being the spin-off businesses that happen, and, as a result, most economic development incentives don't go to them. I'm not saying incentives should go to them; I'm saying, we shouldn't tax them unfairly for being our tax collectors. It is an inequity. I would just encourage you to take a serious look at repairing, correcting this inequity before we grant more sales tax exemptions. I also...the last thing I want to do is, most people don't want to point out the fiscal note. I do want to have...maybe you already all have the fiscal note, but I just wanted to make sure that you did. The fiscal note is some \$6.9 million on this bill, and there, I have a method to my madness which I will explain at the next bill. Any questions, I'd be glad to try to answer. [LB249]

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SENATOR CORNETT: Any questions from the committee? Senator Utter. [LB249]

SENATOR UTTER: Well, you brought up the fiscal note, Mr. Otto. How do you suggest we handle that? [LB249]

JIM OTTO: Well, good question. I don't...I think it's a big concern. If I were in your position, it would be very tough for me to try to decide to do this in tough economic times. My goal is to just show you that there is an inequity, and I guess I'm not on that committee, so I won't try to solve the problem. But I do sympathize with it. Don't have an answer, to be honest. I do...one thing I might add is, there are probably...I would assume that cities will testify against this bill. I think we would gladly take the cities out of it if it had a chance of going forward, so the biggest portion is the state portion. [LB249]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB249]

JIM OTTO: Thank you. [LB249]

SENATOR CORNETT: Next proponent. [LB249]

ROBERT HALLSTROM: (Exhibit 3) Senator Cornett, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the National Federation of Independent Business in support of LB249. My letter highlights some of the concerns of small business in being the remitters of the sales tax collections to the state for a reduced collection fee that has existed as Mr. Otto indicated since 2002. We certainly do not want to belabor the point. I think Senator Fulton and Mr. Otto went through some of the inequities that exist in this area, and we are certainly sensitive to and not unmindful of the fiscal situation that the state is currently facing, but we think it's an issue that's worthy of consideration to provide fair compensation for small businesses who are providing a valuable service to the state. And with that, I'd be happy to address any questions. [LB249]

SENATOR CORNETT: Any questions from the committee? Seeing none, thanks. [LB249]

ROBERT HALLSTROM: Thank you, Senator. [LB249]

SENATOR CORNETT: Next proponent? [LB249]

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 an assistant legal counsel with the Nebraska Association of County Officials. We're

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appearing in support of this bill based upon the motor vehicle taxes that are collected by county treasurers. By statute, county treasurers or the Department of Motor Vehicles are required to collect sales taxes at the time that the vehicle is registered. So the collection fee that counties receive is the same that retailers receive for collecting sales taxes. Before the rate was changed in 2002, as you've heard, counties collected a little over \$900,000 in the sales tax collection fees. After the rate was changed, counties were allowed to collect the same as what you've heard for other retailers--\$75 a month essentially, or \$83,700 annually statewide. That \$800,000 loss was made up through property taxes so we see this bill at least from the motor vehicle sales tax perspective as a property tax relief measure. Even though the rate is the same, counties are a little bit different in the way that taxes are collected. We're a little bit different from retailers in the sense that the decision is made when the customer is at the counter whether or not a vehicle is exempt, and what category it falls under. Ideally, if a vehicle is purchased from a dealer, they get a Form 6 which is the form that sets out all of the exemptions and all of the sale amount, and if there's a trade-in, that sort of thing. If a sale is from an individual to another individual, typically they don't have the Form 6 in many cases, because they don't know that that's required. So then the treasurer works with the customer to figure out what the sales tax should be. So we have a little bit different process. We're dealing with the customer face-to-face wherein many retail situations, that's already been determined, so, for example, the cashier can just run the item through. Treasurers are very diligent about collecting the sales taxes for the state. They try to follow up if they know that the sales tax is being evaded, if there's title jumping or something like that going on. So we would like to see this part of it restored. However, we do recognize that there is a significant fiscal note to that. The county part of it would only be probably \$800,000 but there still is a fiscal impact to that. Be happy to try to answer questions. [LB249]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. Next proponent. Are there any opponents? [LB249]

JACK CHELOHA: Good afternoon, Senator Cornett, members of the Revenue Committee. My name is Jack Cheloha, J-a-c-k, last name is spelled C-h-e-l-o-h-a. I'm a registered lobbyist for the city of Omaha. This session, the city of Omaha has tried to consistently oppose any bill that would take away sales tax dollars. As you know, city of Omaha implements a 1.5 percent local option sales tax, and if we would allow the retailer to retain a higher fee, that would cut into the amount of revenues, as you can see on the fiscal note going to the state as well as the amounts that go to local governments. And once again, it's a matter of economics to us, and for those reasons, we're opposed to the bill. I'll try to answer any questions. [LB249]

SENATOR CORNETT: Seeing none from the committee, thank you. [LB249]

JACK CHELOHA: Thank you. [LB249]

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SENATOR CORNETT: Next opponent? [LB249]

GARY KRUMLAND: Senator Cornett, members of the committee, my name is Gary Krumland. That's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LB249, and for the same reason that Mr. Cheloha is here, we are concerned about the impact on the city sales tax. The fiscal note does show that there will be over \$400,000 impact. We understand that the reasons for the bill was state aid was cut in the early 2000s from \$17.6 million to \$11.3 million, was not restored at the time, but just because of that and other fiscal matters, it just would be a very hard hit on cities, and for that reason, we do oppose this. Be happy to answer any questions. [LB249]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB249]

GARY KRUMLAND: Um-hum. [LB249]

SENATOR CORNETT: Next opponent. Is there anyone to testify in a neutral capacity? That closes the hearing. Senator Fulton has waived closing, I believe. That closes the hearing on LB249. Senator Karpisek, you are recognized to open on LB186. [LB249]

SENATOR KARPISEK: Thank you, Senator Cornett, members of the Revenue Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I represent the 32nd Legislative District. LB186 is a bill that would try to make the merchants who collect sales tax for the state of Nebraska more fair for them. If a credit card is used when someone pays a bill, let's just say they do \$100 restaurant bill. There's 7 percent tax...no, sorry, this is tough. There's a 7 percent tax on that in Lincoln. The restaurant takes the credit card, swipes it for \$107. They have to turn in that \$7 of tax. Credit card companies usually...it costs roughly 2 percent on the total to have the credit card the company will charge. So the merchant is actually getting charged 2 percent on that \$7. Doesn't sound like a lot, but the fiscal note shows \$8 million. If the...I know one of the arguments then is, don't take credit cards. Well, in this day and age, you can't hardly not take credit cards. I think before we grant any more exemptions, and I know that a lot of those come before you, I think that this should be addressed, and testimony after me will detail that more. And I use the \$100 of a restaurant bill, but what if somebody would go to buy a four-wheeler? There is a sales tax on that. You don't go to the courthouse and license it, not yet anyway. If it's a \$10,000 bill, a lot of people pay with a credit card, because they can get cash back on a Cabela's credit card, something like that. If it's 7 percent on that, that's \$700, and 2 percent of that \$700 would go to the credit card company, but you have to remit the whole \$700. When I introduced...when I drew up this bill, I thought the economy would be turning and better, and I knew that it would be a pretty substantial fiscal note. So I realize that right now that we're in dire

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straits, but I do want to bring the point to say that these people that are collecting our sales tax are getting another 2 percent taken out of that. And it does...like I say, \$8 million seems to be a lot of money, to me, to be collecting for the state. The state does not reimburse the way we used to for retailers that collect the tax. And, again, behind me, I'm sure that Mr. Otto will be able to tell you more about that or some of you on the committee probably know. In my business, I didn't collect much sales tax, because there wasn't a lot of...there wasn't sales tax on food products. But still on some of that, if it's a big amount, you have to pay that 2 percent of the tax, it does add up. With that, I'll take any questions. [LB186]

SENATOR DIERKS: Questions for Senator Karpisek. Didn't think so, Russ. Will you stick around and close? [LB186]

SENATOR KARPISEK: I will stick around, and we'll see how it goes. [LB186]

SENATOR DIERKS: Good. First proponent, please. Go right ahead, Jim. [LB186]

JIM OTTO: (Exhibits 4, 5) Senator Dierks and the committee, my name is Jim Otto, O-t-t-o, Nebraska Retail Federation, Nebraska Restaurant Association here in support of LB186. And, first of all, very, very appreciative of Senator Karpisek introducing LB186. The primary purpose of the introduction of this bill is to show you the inequity that exists. I passed around the fiscal note on the previous bill, LB249, and that was some \$6.9 million. To just explain what Senator Karpisek, and you may have already received this. I don't know what Senator Karpisek sent to you, but I wanted to itemize and explain the \$100 sale. On \$100, if that sale is in Lincoln or Omaha, there would be \$7 tax, so the total state sales tax would be \$5.50; city sales tax \$1.50. The total sale \$107 including tax. Then if that \$7 amount, the average discount rate to the credit card company is 2 percent, so the merchant would on a net basis, lose the 14 cents which would go to the credit card company and collect on a net basis, \$6.86, so that is the point that...that's really what sticks in the craw of all merchants--retailers, restaurants, any kind of merchant, when there is no...practically no reimbursement for collecting the tax, and then, in fact, they do remit more sales tax than they collect on a net basis. And now, documented by the state of Nebraska, that is \$8.4 million a year. So the point is, and here is the fiscal note. You probably already have it. But here is the fiscal note on LB186. Not only does the state not reimburse the merchant for collecting the tax, the merchants collectively, over the state of Nebraska that collect sales tax, actually remit to the state in excess of \$8 million a year more than they collect on a net basis and still don't get reimbursed for it. So this is what really sticks in the craw of everyone who collects sales tax, especially those who collect...who sell a significant portion on credit card. And with that, not trying to say that this can be solved in these tough times, I am trying to say that there is definitely an inequity here. It's a very significant inequity. Most of these businesses do not receive economic development incentive funds of any kind, and we really are not only telling them to collect our taxes, but telling them to pay more

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than they collect. So I just want to...I mean, the purpose of this is just, especially now with term limits, no one would remember that it used to be this way in 2002. And I want to make sure everyone understands that it is an inequity. [LB186]

SENATOR DIERKS: Thanks, Jim. Questions? Senator Louden. [LB186]

SENATOR LOUDEN: Yes, thank you, Senator Dierks. Well, Jim, where did the fiscal note of 8 million bucks, who figured that out or I mean, what was their methodology, I guess, to come up with 8 million bucks? [LB186]

JIM OTTO: I don't know, Senator. I have been saying it was significant, but I assume the Fiscal Office went, and I don't know exactly. I know that the state of Florida has done this...had this same type of legislation introduced. It did not go anywhere, but I think their fiscal office came up with a number, and I guess, in some kind of formula, if you take the percentage of sales that are done on credit cards, what that dollar amount might be, that comes to \$8 million. And I honestly can't answer how it was arrived at. That was done by the state's Fiscal Office. [LB186]

SENATOR LOUDEN: Okay, because I was wondering...this is actually a tax on a sales tax, I guess, would be one way to define it. And I'm wondering how they...that 2 percent on all the sales tax they collected that went through credit cards, is that what we're talking about or that...yeah, I guess that's what it would be is the 2 percent... [LB186]

JIM OTTO: I think you're exactly correct. [LB186]

SENATOR LOUDEN: ...on that, and it looks like an awful lot of money. I was just wondering...and I've heard this before from some of these...especially you get in some of the rural areas. In fact, I remember last summer, in Merriman, there a gas station guy down there, didn't take credit cards, couldn't afford it. At the time, his margin, his gas, and whatever it was, it wasn't worth it. If you didn't have cash, he'd take your check, but he wouldn't take a credit card. And that was how it was done mostly, and this is what he talked about was sales tax, and the amount that he had to pay back if they bought some Nachos or something through the outfit, so I understand it's a problem. Thanks, Jim. [LB186]

JIM OTTO: Thank you. Well, just your point. We don't have \$3 gas anymore, but people...if the gas station...this has nothing to do with sales tax, but if the gas station is paying a credit card fee on the \$3 a gallon of gas, it's 6 cents a gallon. So you think, I mean, it's a significant portion, so. [LB186]

SENATOR DIERKS: Thanks, Jim. Other questions? I guess not. Thanks so much. Are there more proponents for LB186? Hi, Kathy. [LB186]

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KATHY SIEFKEN: Senator Dierks and members of the committee, my name is Kathy Siefken. Kathy with a K, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association, in support of LB186. As Mr. Otto stated, this is a significant expense for members of the food industry. It is one of the fastest growing expenses that we see in the food industry. The latest statistics that I saw indicates that every family, and this is a nationwide statistic, every family, whether they own credit cards or not, whether they have a credit card or not, pays an average of \$400 per year in the added cost of goods. And that cost is to pay for the credit card transactions. So one of the reasons we like this bill is, number one, to point out to the leaders of this state what is going on, and the interchange fees that the citizens of this state are paying. You may hear someone come up in opposition to this bill, but is going to say, but they forget to tell you that as a result of taking credit cards, we reduce their bookkeeping and their labor. There comes a point when the reduction in labor and in bookkeeping is lower than the cost of the interchange fees that we are paying, and those fees have grown so quickly and so high over the last ten years, that I can tell you that if grocers knew back then what they know today, they would hesitate on taking credit cards, because the expenses have grown that high. If you have any questions, I'd be happy to try to answer. [LB186]

SENATOR DIERKS: Thanks, Kathy. Do you have any questions? Do you know of grocers that have stopped taking credit cards in their grocery store? [LB186]

KATHY SIEFKEN: There are some grocers who have not taken credit cards, because they saw what was coming, but they're the small people in smaller communities. The larger stores in larger communities can afford...or they can't not take credit cards, because for a lot of people, it is the only form of payment. [LB186]

SENATOR DIERKS: Is there a difference in the way credit card companies charge? Do some have a higher fee than others as far as their business? [LB186]

KATHY SIEFKEN: Well, let's take the Cabela's card since that is a Nebraska corporation anyway. The Cabela's card is a card that is one of the most expensive cards out there along with any of the American Express cards. Any of the corporate cards that have a company name on them, those cards are also higher. We don't know until we get our statement at the end of the month, what cards are being charged at what rate. And also, in the credit card agreement that our retailers sign, and you can't take credit cards if you don't sign it, so you have to sign it. But in that agreement, you agree that you will accept all credit cards that are presented. If you take American Express or if you take Mastercard or Visa, any Mastercard or Visa card that is presented, you have to take. You cannot turn it down because it's a corporate card or a Cabela's card. [LB186]

SENATOR DIERKS: Okay. Another question. I understand that some of the smaller grocers are having difficulty getting groceries delivered to their stores without some kind of a contract they sign with the company that sells the groceries to them. And because

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owners sometimes they just are not able to buy the...the charges are enough that they just can't afford to buy them. Do you know about that sort of a situation as well? [LB186]

KATHY SIEFKEN: There is a minimum order that the stores have to purchase in order for deliveries to be made, and this affects the smaller stores. And those rules were put into place maybe a year or two ago when the fuel was so expensive. And the position that the warehouses take is that they would lose money if they go below those minimums. So they'll still deliver, but there's a higher surcharge on the lower volume. [LB186]

SENATOR DIERKS: Do they allow two or three grocery stores on the route to merge together their needs and allow for that sort of a transaction? [LB186]

KATHY SIEFKEN: Absolutely, and we have many stores across the state of Nebraska that have...that place all of their orders through one store, and the satellite stores will go pick up or have that store where the delivery was made deliver their goods to them. And it's usually small communities that are really close together. [LB186]

SENATOR DIERKS: Yeah, well, I think I've heard some of this out in my country. Any questions? Senator Hadley. [LB186]

SENATOR HADLEY: Yeah. Kathy, question. Is there the same kind of fee for a person using a debit card? Does the grocer or the merchant pay a discount fee on a debit card also? [LB186]

KATHY SIEFKEN: There is a fee, but it is a different type of fee, and it's much lower than the credit card fees. Nebraska has a NETS (phonetic) program where all of the banks are linked, and it's not the Interlink system. It is a local network, and so the transaction fees for a debit card transaction, since it goes over the local banking network and not over the Interlink which is the big worldwide network, it's a lower fee, much lower. [LB186]

SENATOR DIERKS: Other questions? Thanks, Kathy. [LB186]

KATHY SIEFKEN: Thank you. [LB186]

SENATOR DIERKS: Further proponents, please? Anyone else in support of LB186? Opposition? [LB186]

GARY KRUMLAND: Senator Dierks, members of the committee, my name is Gary Krumland. It's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. Our concern about LB186 is the same as I talked about on LB249 is the concern on the impact on city sales tax. And for that reason, we wanted to register

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opposition to the bill. Be happy to answer any questions. [LB186]

SENATOR CORNETT: Seeing none, thank you, Gary. [LB186]

GARY KRUMLAND: Um-hum. [LB186]

SENATOR CORNETT: Next opponent. [LB186]

JACK CHELOHA: Good afternoon once again, Senators and members of the Revenue Committee. My name is Jack Cheloha. Last name is C-h-e-l-o-h-a, registered lobbyist for the city of Omaha. Once again, we oppose LB186 as it would cut into the local option sales tax if we averaged a 2 percent fee on all of our local option sales tax collected. We sympathize with the retailers, and I was around in 2002 when the rate was reduced, and as another witness pointed out, you know, all of us went through that. State aid to cities was reduced and other things, and we just haven't been able to make it up, and once again, we're back in tough times. And so because of that, we have to watch all of our nickles very closely as well, so I'll try to answer any questions you might have. [LB186]

SENATOR CORNETT: Any questions from the committee? Seeing none, thank you. [LB186]

JACK CHELOHA: Thank you. [LB186]

SENATOR CORNETT: Next opponent? Is there anyone here to testify in a neutral capacity? Senator Karpisek, you're recognized to close. [LB186]

SENATOR KARPISEK: Thank you, Senator Cornett. Funny how you came back right for my closing (laughter). [LB186]

SENATOR CORNETT: The best part (laugh). [LB186]

SENATOR KARPISEK: Probably. Again, as everyone has said, we realize the money...maybe, as I sit here, maybe the way to go about this is to try to pass something, the credit card companies wouldn't be able to charge on the sales tax part. The problem is, where does that go back to? Probably the card holder or somewhere else. I did...I wasn't going to close, but I just wanted to say, I can't say this for everyone, but when I had my business, the fee was a sliding scale usually. There was usually a flat fee on all these cards, so much a year, usually \$45, \$50, and then a sliding scale, usually on the average sale. So if your average sale was \$20, you would get maybe 1.5 percent. If it was \$50, maybe they would take a smaller 1.25 percent, but if you were averaging small amounts, \$10, they may charge you 2 or more percent. So good question, Senator, how they figure all this, but that was always on a sliding scale. So I

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guess the biggest thing I wanted to say was don't go in and use your credit card to buy a bag of sunflower seeds, because you're not helping the merchant at all. And I've seen some places that will say, no credit card sales less than \$10 or \$5, so maybe that's a way to think about it, I don't know. But, again, the \$8 million coming out of our businesses, to me seems to be like a lot of money that they're being charged for collecting the tax for state. Any questions, I will try to answer. [LB186]

SENATOR CORNETT: Senator Dierks. [LB186]

SENATOR DIERKS: Thanks, Russ. Your business was processing meat, so you actually slaughtered the animals to start with. [LB186]

SENATOR KARPISEK: No, we didn't. We got boxed beef in. [LB186]

SENATOR DIERKS: Oh, I see. Okay. My question was going to be, if you had to send the check-off fee for the animal you slaughter, but I can't ask you that question. [LB186]

SENATOR KARPISEK: Well, I would assume that they should. [LB186]

SENATOR DIERKS: Well, that would just be another little bookkeeping chore for you, and that happens to the slaughterhouses where I take my cattle to have butchered. [LB186]

SENATOR KARPISEK: Um-hum. The bookkeeping to me, I mean, and I wasn't big, and, again, we didn't collect tax on much of what we did, but the bookkeeping part isn't so hard. It's just the...I mean, there's obviously good parts about taking credit cards. You don't have to worry about bounced checks. You don't have to worry about some other things, but it isn't cheap. I would get my statement at the end of the month, and maybe it was \$500, and you'd go wow (laugh). That was pretty expensive for that, so, again, maybe that's another way to think about it over the interim. [LB186]

SENATOR DIERKS: Thanks, Russ. [LB186]

SENATOR KARPISEK: Thank you. [LB186]

SENATOR CORNETT: Thank you. [LB186]

SENATOR KARPISEK: Thank you, Senators. [LB186]

SENATOR CORNETT: Senator Schilz, you're recognized to open on LB640. You were back in the corner there. I didn't see you. (Laugh) [LB186]

SENATOR SCHILZ: (Exhibits 6 and 7) Good afternoon, Senator Cornett and members

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of the Revenue Committee. I'm here today to introduce LB640. LB640 will allow municipalities to decide how its local sales tax is used by future contracts with Nebraska Advantage. The opt-out, opt-in provision affects only that portion of the law that currently subjects local sales tax to refunds. Currently, cities are finding it difficult, because they are unaware of when the state is going to be deducting its share of tax revenue, therefore causing cities to experience hard hits at unexpected times. LB640 allows counties the choice on whether or not to participate in Nebraska Advantage. I've drafted an amendment for the committee which would allow the tax refund to be made from the state General Fund at the local tax fund under the Local Option Revenue Act for an affected city, exceeds 10 percent of the city's tax revenue from the previous year. I bring this bill on behalf of a constituent who said he has experienced difficulties with this issue firsthand. He and others whose testimonies will follow, will be able to answer any questions that you may have that I cannot answer for you. And if there are any questions, I'd be happy to take them now, and I do have a couple of letters that I can hand out after I get done. Any questions? [LB640]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB640]

SENATOR SCHILZ: Wow, must be...that's a first. Thanks a lot. [LB640]

GARY PERSON: (Exhibit 8) Chairperson Senator Cornett, Revenue Committee members, my name is Gary Person. I'm the city manager and development director for Sidney, Nebraska. Thank you for the opportunity to address a very pressing and growing concern to municipalities across Nebraska on the loss of our local sales tax revenue. I also thank Senator Schilz for his concern and support in helping our voice to be heard. Your communities that have been the most aggressive, helping to sell Nebraska and encouraging new investment and job creation in our state are now experiencing an unreasonable and painful amount of local sales tax loss. This local revenue loss is due to LB775, Nebraska Advantage, and other state incentive legislation. These are the same communities that have been your best economic development partners. I will point out to you several arguments as to why this issue needs to be addressed now, not later. For too many years already, we have heard the battle cry "just wait till next year," but next year never arrives. You will hear valid arguments against this bill for some of our economic development friends, many of whom I have worked side-by-side for many years to help build Nebraska's economy. I would argue they also need to be concerned, because this issue will impact funding for local LB840 economic development programs and certainly add to the financial strain of city budgets across Nebraska, thus raising property taxes. If you take a community like Sidney, for example, most of our development projects are city-driven, because the tools and the infrastructure needed to do development is dependent upon municipal participation and funding commitments. When hearing my comments, I would ask that you take into consideration I've had 25 plus years of working in the economic

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development trenches both on the statewide and the local levels. I'm not just some government bureaucrat raising a voice of concern over something I don't understand. I do. I applaud the state intent of Nebraska Advantage, and I applaud the previous state incentive legislation that helped successfully build Nebraska's business and industry base the past two decades. My points are simple. Local voters authorized use of local sales tax for specific local purposes, and the state is currently diverting those funds away from its intended use without any local consent. And that's just flat wrong. These programs were supposed to be state incentive programs. They were not intended to make local communities the victims of their own economic development success and Nebraska's subsequent success as a result of those local efforts. Sidney, Nebraska, has been a good partner for the state of Nebraska as we have tripled our economy over the past two decades. We are the only community and only county over the far western 22 counties to grow in population between 2000 and 2007. Why do you penalize us for doing so? Not only are you taking close to a half million dollars of our local sales tax away from Sidney each year through incentive refunds, but you have also taken a half million dollars of state municipal aid away from our small community annually since 1995. While a million dollar annual loss doesn't sound monumental in comparison to the state's budget, it is significant in a community our size and nearly equal to the entire property tax requirement in our general fund. It's the equivalent of wiping out our entire police and fire department budgets or eliminating our parks and street departments. Unlike Nebraska Advantage where you reward those private sector companies that perform and grow Nebraska's economy and job base, and you should, but you penalize the local community that worked hard to create the atmosphere that embraced growth of new investment and job creation. It's like saying "shame on us for creating jobs, shame on us for growing our valuation and helping increase Nebraska's state revenue streams." That's what your actions have been saying. How would a private sector company dependent upon its sales force, treat its best sales staff members? Would they allow them to have a commission, or would they take away their commission and part of their salary? My economic development experiences even predate LB775 adopted 22 years ago. I know what a tough sell Nebraska was in the 1980s during the agriculture crisis, and we had no state business incentive legislation to diversify our economy. I was on Nebraska Governor Kay Orr's staff when she pushed LB775 through the legislative process. One of my responsibilities was to travel throughout western Nebraska and sell the virtues of the Employment and Investment Growth Act. I did nearly 100 presentations over the western one-half of the state, but during all of those marketing efforts when we talked about this new state incentive, we sold it as an incentive for state income and state sales tax refunds and tax credits for performance and new investment job creation. Never once were the words "local sales tax refund" ever used or implied. And I think if you go back to see the fiscal note that was originally adopted, it never addressed the local impact for local communities. Why it's been interpreted that way over the years is another argument and challenge for another day. The local sales tax loss has grown by 830 percent in Sidney since the year 2000 and continues to skyrocket beyond that. Sidney's current budget year losses have already

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set a new record standard less than six months into our fiscal year. How do you expect us to survive the next six months? It's impossible to budget for its impact, and it causes community leadership and citizens to see the negative aspect of it and makes some of them antidevelopment. We've worked too hard to let that effort disappear. I also argue that with community growth comes growing demands for community infrastructure and services. How are we going to provide that to our local citizens when you take away our revenue? We all preach that the only way real property tax relief in Nebraska is going to occur is to grow your valuation yet you penalize us for doing so, making it impossible to show property tax reduction, and, instead, we are left with property tax increases. We provide the jobs for 20 smaller communities surrounding Sidney, and we're the only reason they remain viable communities with a future and other trade center communities in Nebraska can tell a similar story. LB640 gives local municipalities the right to decide how its local sales tax is used as it is impacted by future contracts with Nebraska Advantage. The opt-in opt-out provision affects only that portion of the law that currently subjects local sales tax to refunds. At least the community has control over that issue where now it has no control. How many times have we heard the state battle cry advocating local control? I have heard the Governor and most state senators several times tout the virtues of local control, and how much they believe in it. Is that reality? In essence, local control has been taken away by LB775 and Nebraska Advantage, but you can restore it through LB640. Many of the LB775 and Nebraska Advantage projects are also the beneficiary of LB840 local economic development financing or redevelopment plans. We are already doing our part in providing local incentives. In Sidney's case, this is true on every incentive qualifying project that impacts our local sales tax refunds. I've always been told the legislative principles of the state are not supposed to harm local communities, but we are now seeing financial examples of that across Nebraska in our case to the tune of \$1 million annually. Local sales tax refunds in Nebraska Advantage do not just come from "new projects" as existing companies doing expansion in their local communities for new projects that qualify under these programs were previously purchasing items in the community that contributed towards local sales tax referendums. Because the expansion allowed those companies to qualify for this program, those same revenues are now diverted away from the local community and wind up as refunds, sometimes several years after the fact, further eroding the local sales tax base. And many of these local sales tax referendums were in place prior to any time that any incentive refund law was passed by the state. LB640 provides the opt-in opt-out provision on new projects in regards to the local sales tax refunds, and Senator Schilz has also proposed an amendment to LB640 that addresses existing issues with existing contracts that causes financial uncertainty and burdens for local city budgets. To prevent a fiscal crisis on the local level as a result of existing contracts in LB775, we have proposed that a 10 percent safety net needs to be implemented for protection of local municipality budgets and intended local sales tax uses. This does, therefore, allow cities to plan for a worse case scenario on local sales tax refunds and not deter the local community from being aggressive in its local economic development efforts in helping build Nebraska's

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economy. No community, including Sidney, wants to be seen as being against economic development or not realize the importance of business incentives in the development of our state. We need you, the state, to demonstrate good faith towards good community partners in Nebraska that helps create that additional state sales, state income, state lodging, state fuel taxes for your state revenue streams. The state of Nebraska has also adopted numerous sales tax exemptions over the years, and you have several bills again this year that broadens that even further that continues to erode the local sales tax base, which is already suffering because of Internet sales and a sluggish economy. Please, I ask you to do the right thing--restore local control and honor the local citizen's choice on where they have already determined those local revenues are supposed to go. I've also given you a chart showing the sales tax taken away from our community since the year 2000, how it's continued to grow each year. There is also a monthly sample of the revenue you're supposed to get a month to help your cash flow situation. You can see the sample I provided where we were supposed to receive \$216,000, but the state kept \$215,200 of it. I'll also show you a chart with the municipal aid for the first-class communities where it illustrates the disparity that exists because you penalize communities that have worked hard at growing their valuation. And finally, the chart shows kind of a sad state of affairs for the population in the counties out west, and where we have defied that logic, but yet now we are being penalized for doing so. I appreciate the opportunity to speak and apologize that I probably took more than my allotted time. [LB640]

SENATOR CORNETT: It's quite all right. Questions from the committee? Senator Friend. [LB640]

SENATOR FRIEND: Thank you, Madam Chair. Mr. Person, thanks for coming all the way in. I know it's a long...I know it's a long haul. Has Sidney utilized, and I don't know how long you've been there. I think you've been there... [LB640]

GARY PERSON: Thirty years. [LB640]

SENATOR FRIEND: ...in this position... [LB640]

GARY PERSON: I've been city manager ten years. I've been the economic development director for 20. [LB640]

SENATOR FRIEND: Let's take the last decade then. Sidney's utilized tax increment financing at all? [LB640]

GARY PERSON: Yes. [LB640]

SENATOR FRIEND: Okay. Do you know how much property has actually been taken off the property tax rolls when you do that? [LB640]

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GARY PERSON: I know we've generated about \$30 million that are now on the property tax rolls that would not have been there had we not been able to use TIF. [LB640]

SENATOR FRIEND: That's interesting. I wonder, you know, are we...is it apples and oranges here? I mean, you'd rather have local control and you'd rather TIF. What do you think your schools would think about that when you're taking that property off the rolls? [LB640]

GARY PERSON: I think they were, in fact, our school just passed a bond issue for a new school, and we were able to roll about \$22 million of TIF projects onto the tax rolls this year that helped that. Those were projects that were supposed to take, you know, under the law you can be allowed 15 years to roll them on. They were paid off in nine years. So, you know, I'm a big believer in that, because that program cost nobody anything, and we... [LB640]

SENATOR FRIEND: You don't think Tax Increment Financing costs anybody in the state anything, but you think the Nebraska Advantage Act does? [LB640]

GARY PERSON: Well, my biggest contention is it's supposed to be a state incentive program. We already have our local incentive programs, which we are a good partner. We provide that incentive. That is paid by our local sales tax. My point is, LB775 Nebraska Advantage is supposed to be a state incentive. It doesn't say Nebraska and Sidney Advantage; it says Nebraska Advantage. And I don't think the original intent was ever to impact local... [LB640]

SENATOR FRIEND: So the key to the whole thing is you don't have control over it. You have... [LB640]

GARY PERSON: Absolutely right. [LB640]

SENATOR FRIEND: You have...okay, thank you. Good enough. [LB640]

SENATOR CORNETT: Further questions? Senator Adams. [LB640]

SENATOR ADAMS: Can you help me out? Remind me, when we moved to the Advantage Act, we tried to...didn't the Legislature then try to address, to a small degree, this issue by at least some reporting requirements so cities weren't blind-sided? [LB640]

GARY PERSON: And we appreciate that very much, Senator Adams. But there have been no Advantage projects from what I understand that have yet rolled through the process. We have had nine projects by six different companies that qualified under LB775, and we will have to live with those consequences for a long time. [LB640]

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SENATOR ADAMS: And those are still unreported? [LB640]

GARY PERSON: One month advance notice, and it makes it impossible to do city budgeting. You look at that chart where Sidney was impacted. It has grown to...the last three previous years, it was \$400,000 each year. So logic would tell you, we're going to get hit with another \$400,000 worth of refunds for this fiscal year. Just six months into this current fiscal year, we've already exceeded that. We've already set a record. We're at \$437,000. We have no idea of what's coming in the next six months, so consequently, we didn't budget for any more than that loss. [LB640]

SENATOR ADAMS: Help me out here with my understanding. So an LB775 or Nebraska Advantage Act company comes in to make application for sales tax exemption or income tax credit. Is it one or the other? [LB640]

GARY PERSON: There's no exemption. They still pay the sales tax. It's just after they file the paperwork, and it's audited, and it's processed. But sometimes that can be years down the road... [LB640]

SENATOR ADAMS: Where I'm headed...excuse me, where I'm headed is, on a year-to-year basis, can they alternate which one of those credits to use? So I'm Company Adams, and this year I decided I want to use sales tax credits whereas last year I used state income tax credit. [LB640]

GARY PERSON: The problem is most of them have more than sales tax...or income tax credits that they can possibly use so they consequently just turn to the sales tax, because it's the easiest and most direct refund. [LB640]

SENATOR ADAMS: I can see that, but part of the issue may also be here, on a year-to-year basis, you may not know which one of those credits the company is going to take which compounds the problem. [LB640]

GARY PERSON: Exactly. It's a good point. [LB640]

SENATOR ADAMS: Thank you. [LB640]

SENATOR HADLEY: Thank you, sir. You have an actual monthly report in there. [LB640]

GARY PERSON: Yes. [LB640]

SENATOR HADLEY: Am I reading that right that you basically had \$215,000, give or take, in sales and use tax that you collected and you received \$865 back? [LB640]

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GARY PERSON: That is correct. We were supposed to...we were counting on getting \$216,000 and that's what...how much sales were generated in Sidney, Nebraska, in October of 2008, that should have come back to us as local sales tax. We have a 1.5 cent. Instead, we got a check for \$865. [LB640]

SENATOR HADLEY: How do you make your budget balance when something like that happens? [LB640]

GARY PERSON: It's an absolute crisis. I mean, you can't. I mean, it's something, you know, if you have some reserves, initially, we were trying to be smart about it and reserve a little bit of the sales tax. If it exceeded what we projected during the year, to hold it in reserves, but it's been depleted. I mean, because it's continued to grow, it just absolutely is hammering us. [LB640]

SENATOR HADLEY: Since I'm new to all this, I can ask questions that probably aren't very smart. In our fiscal note, though, we show no...really no impact to the state, so could you explain to me how...? [LB640]

GARY PERSON: No impact to the local city governments. That was corrected in Nebraska Advantage. They did address that when they did the fiscal note, but I'm going back to LB775 where all of these projects currently that we're dealing with have come from, and it was never addressed. And I was in the trenches out there, touting the virtues of this. I think it was good for Nebraska. I, honest-to-God, I'll defend that, although you have to have state incentives to be competitive in a very competitive world. We've obviously used it to help sell Sidney, Nebraska, but it was never, I believe, ever intended to harm local communities or take their local sales tax away. I think that was an interpretation that was made because of the word "sales tax." But never was it ever addressed or intended, I believe, and like I said, I was on the ground floor level trying to help market that. [LB640]

SENATOR CORNETT: Mr. Person, let me just ask you, isn't Sidney kind of in an unusual situation where you actually have more jobs available than people? You have a very strong economy compared to the rest of the state. Am I correct? [LB640]

GARY PERSON: Well, we're suffering like everybody, but, you know, relatively speaking, yes. [LB640]

SENATOR CORNETT: Relatively speaking. [LB640]

GARY PERSON: Yeah. [LB640]

SENATOR CORNETT: So you...because we did this, you have businesses that the rest

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of the state does not have at this time, and you want to be able to pick and choose when you decide whether to collect sales tax or not or be able to opt in and out? [LB640]

GARY PERSON: Well, that's kind of a two-part question. We have benefitted as a result of our own hard work. [LB640]

SENATOR CORNETT: Without a doubt, but you have people and homes and... [LB640]

GARY PERSON: And we have to provide...okay, so we have, you know, on paper we're a community of 6,000. Every day we have 12,000 people there either working or staying in our motels or doing business there. We have to still provide those services for 12,000 people in all of the infrastructure needs and services that go along with that. So, you know, we're trying to provide from a small community perspective what a larger community twice our size would normally have to provide. I mean, obviously, you know, as you grow your economy, you should be rewarded as a community with additional revenue to meet those demands, and that's what we've done. The point is that we have been a good partner. We do our part with the local incentives. We provide those companies up-front to be a partner with the state. The state incentive should be just that...a state incentive. It should not come on the back side and harm us, because we've already done our part. [LB640]

SENATOR CORNETT: Does the reporting in LB165 requirements help? [LB640]

GARY PERSON: LB165, yes... [LB640]

SENATOR CORNETT: It's a bill that has reporting requirements for the incentives. We were told ahead of time or at least LB164, pardon me, wrong number. [LB640]

GARY PERSON: Okay. [LB640]

SENATOR CORNETT: That this would help your situation. [LB640]

GARY PERSON: With the LB775 stuff too then? (inaudible in background) See, on future projects, yeah. You know, I think we'll get...so we get an advance notice. Our misery starts six months earlier, you know. It's still...okay, they'll say Sidney, okay, this year you're going to lose a million dollars to sales tax, and we have no idea what the economy is going to do. We have no idea where those sales tax numbers. In fact, our sales tax is continually going down, because at one time, we had the only Cabela retail store in the country. Now there's 29 of them across the country, so obviously, we're not drawing in the people that we once did. And Internet, you know, I think it's affecting everybody, that it's eroding away all the tax base on sales and across the country including Nebraska. [LB640]

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SENATOR CORNETT: Senator Utter. [LB640]

SENATOR UTTER: Thank you, Senator Cornett. Mr. Person, from the tenor of your testimony a little bit, and I want to check and make sure that I'm kind of understanding what you're saying is that you seem to imply to me that there are no benefits. When you lose this sales tax, there are no benefits for the jobs, for the 12,000 people that visit your city daily, and buy things, and support that local economy by pumping money into that economy. Surely, there must be the other side of the ledger that shows that there are benefits to having Cabela's and having the Cabela's store and beyond the sales tax collections that have supported your city. Is that not true? [LB640]

GARY PERSON: That is very true, Senator. [LB640]

SENATOR UTTER: Thank you. [LB640]

SENATOR CORNETT: Seeing no further questions, thank you. Next proponent?
[LB640]

LANCE HEDQUIST: (Exhibit 9) Senator Cornett and members of the committee, my name is Lance, L-a-n-c-e Hedquist, H-e-d-q-u-i-s-t. I'm the city administrator of the city of South Sioux City. On behalf of the city of South Sioux City, I want to express our strong support and appreciation of the Nebraska Advantage program. Our city has been very fortunate to attract many industries to our location because of this bill, particularly because of our three-state areas where people can actually move to Iowa or South Dakota. The Nebraska Advantage has been a godsend for us, and we definitely appreciate that. Our concern deals with the impact of losing existing sales tax dollars that have been voter-approved for specific purposes. We had sales tax approved for property tax relief, streets, capital improvements, and we have the...we're the only city, county that has a joint city-county sales tax for a law enforcement center and a jail. It's hard to explain to persons that voted for these programs that these funds have been captured by the state and not sent to the city or the county for these particular projects. Our concern does not deal with the new taxes generated. When a new industry comes in, they pay additional sales tax and they pay additional revenues into the area. Ours really has to do primarily with the expansion of existing businesses, because that was not planned for when the voters approved those projects. Just to give an example, if company X paid \$50,000 a year in sales taxes for paper supplies for their business, and then they expanded, and they spent an additional \$25,000 because they expanded, so they pay a total of \$75,000. They could get the entire \$75,000 back. Even though when the voters approved it, they considered the \$50,000 as a revenue for the jail or for the streets or for the property taxes, you not only lose the additional \$25,000 but you lost the existing \$50,000. And so that's kind of our key issue here, and it kind of ties in a little bit with Senator Friend's comment about a Tax Increment Financing district which is

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built upon new expenditures, new growth, new jobs, new property tax base that comes into an area. What you wouldn't want a TIF district to do is to take away from the schools or from the counties or for what other things the voters have approved for, take away that tax base in that particular process. You can see by the numbers, the impact on our community. In 2006, you can see our sales tax revenues and about 20 percent were recaptured. In 2007, it was less than 10 percent, and in 2008 you can see it's closer to 30 percent. So there's quite a bit of swings that take place in that particular realm. And the reporting requirements that are out there to give us advance notice, we're very appreciative of that, because that does help us. You know, the sooner we can know about what's going to happen, the better off we can decide how we want to proceed with our budgets and protect the interests of our public. So, Madam Chairman, members of the committee, again, be glad to answer any questions that you might have. [LB640]

SENATOR CORNETT: Senator Friend. [LB640]

SENATOR FRIEND: Thank you, Madam Chair. Mr. Hedquist, so the Tax Increment Financing, I think we all know, we're trying to use Tax Increment Financing all over the state in order to generate future growth. You know, we're betting on the come. Well, that's what...we look like this discussion here, in regard to LB640 is, we like one type of future generation of revenue, but we don't like this other one, because we have control over it. That's my only point. I just don't think...I don't think we're talking about apples and oranges here. I think that these things can work together, and they do the same ultimate thing. That's the point I was trying to make to Mr. Person earlier. I think the argument is, and here's my question for you, if we let folks opt-out of this type of thing statewide, why wouldn't they, based on the testimony here today? We'll just use TIF, and we don't want any part of any of that other stuff. And that defeats the whole purpose of betting on the come for everybody in the state. Am I missing something here? [LB640]

LANCE HEDQUIST: Yeah. First of all, I do want to comment that our support is on LB640, as amended, with a 10 percent cap or not with an opt-in opt-out side. [LB640]

SENATOR FRIEND: Fair enough, fair enough. [LB640]

LANCE HEDQUIST: But in terms of...and I should also point out that we're in great cooperation with our schools. Our school board members sit on our TIF district, so that they see that part, but a TIF is intended to attract new industry and new area. And the same thing is true with the intent of the Nebraska Advantage Act is to attract new revenue and new businesses to come into the area. But what I'm also trying to say is that the existing tax base, in this case, the sales tax base is eroded when an existing business expands because they capture not...they're taking away the money that was already generated for those purposes. [LB640]

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SENATOR FRIEND: Very true, Mr. Hedquist. [LB640]

LANCE HEDQUIST: Okay. [LB640]

SENATOR FRIEND: But when we TIF something, we're eroding a property tax base immediately, right out of the gate. [LB640]

LANCE HEDQUIST: No, the tax base would stay the same. It's only the new industries that wouldn't be paying...would pay into that purpose. That's correct. [LB640]

SENATOR FRIEND: That's right. But how fair is that to a property tax payer and owner of a facility right next to something that got TIF'd? I mean, they're the ones that are paying that...we can go on later. I'm just saying, it seems like these two are not mutually exclusive, and we're trying to drum up a conversation that would indicate that they are. Where do we think that the cry would be if we got rid of Tax Increment Financing, or we let people statewide understand that we're going to...the state is going to wrap parameters around it, and you're only going to be able to use it if we tell you you can use it. I mean, we're talking about a local control question here. Mr. Person brought that up. Is that just simply all we're talking about here? It's just local control? [LB640]

LANCE HEDQUIST: Well, obviously, in terms of the TIF districts that are established, you know, through a local, you know, public process and discussion, if those are used for projects that would occur anyway, then that whole process is wasted but if they create the new jobs and the new industries, and that's why we want the county and the school to be part of our team in terms of looking at that, because they're the big property tax payers. [LB640]

SENATOR FRIEND: I'll sum it up in this way. We have more data that shows us that LB775 and the Nebraska Advantage Act have been successful than we do TIF, because the local communities don't have to give the state that information. [LB640]

LANCE HEDQUIST: We submitted a January report on TIF. [LB640]

SENATOR FRIEND: I don't see it, and I've been the chair of the Urban Affairs Committee...I'm telling you I get more information about how successful this has been than how successful TIF has been. So I guess I don't know what we're arguing about. I don't know where this is going, and what we're trying to accomplish here still after 25 minutes. [LB640]

SENATOR CORNETT: Senator Utter. [LB640]

SENATOR UTTER: Thank you, Senator Cornett. First of all, Mr. Hedquist, I compliment

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South Sioux City. It seems like I read all the time about their shining star and economic growth in our state, and I congratulate you for that. My question is, is that, what responsibility do you feel that the local community or the local county or the area that receives the benefits of a new industry that has been located there or an existing industry that has expanded to participate in the incentives that are offered? [LB640]

LANCE HEDQUIST: I definitely think we should be part of that picture, and my comments here today actually indicate that. The question really comes back to, and again, my concept...the best concept I could see would be if the last year's sales tax of an existing industry was frozen to that amount, and they would get credits for the additional sales tax which was the intent. That would resolve the issue and would not cost the state or the local governments any money at all. And that's what I was saying, it's the new piece...it's when you start eroding what the people...say they wanted property tax relief, and you take that away from them. The intent of the law, as I saw the advantage was to get new investments, and to encourage people to do that, but not at the same time erode that existing base. So for my idea, the best solution of all, which has zero impact on the state and the local governments, is freeze the last year's sales tax of that industry. They can get credit for their new sales tax that they generate, but they don't take it away from the existing ratepayers, existing taxpayers, that amount of money that was already there. That's what I think is the best solution, because it's zero impact on the state, zero impact on the city, and the industry has to expand to earn those credits. And I think that was the intent of LB775 and the advantage of encouraging people to expand which is a little bit different approach than what's on the table today. [LB640]

SENATOR UTTER: Thank you for your testimony. [LB640]

LANCE HEDQUIST: Thank you. [LB640]

SENATOR CORNETT: Senator Adams. [LB640]

SENATOR ADAMS: Lance, I have two questions for you, but first of all, you stimulated a thought. So if this were done as you just suggested, basing that on the new growth, then you really have paralleled it with TIF. [LB640]

LANCE HEDQUIST: Yes. [LB640]

SENATOR ADAMS: They are, in essence, the same thing just different tax. [LB640]

LANCE HEDQUIST: That's correct. [LB640]

SENATOR ADAMS: The other question I had for you, as I looked at these numbers that you handed us, if I understand them correctly, so, for instance, in 2006, you had total

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sales tax receipts of \$2.2 million, and of that, the city of South Sioux City finally retained \$548,000? [LB640]

LANCE HEDQUIST: We actually...the funds that were kept by the state, we actually got the difference of about the \$1.7 million. [LB640]

SENATOR ADAMS: Okay, all right. But still I guess, that changes my thinking just a little bit. Do South Sioux City and I'll ask you to speak for Sidney if you want to, are they something of an anomaly in the state? I mean, is there some kind of unique business that's there? When I was a mayor, I can remember giving away some, but it was nothing like the percentages that I see here. [LB640]

LANCE HEDQUIST: The reason...I certainly can't speak for Sidney, but I can say for South Sioux City, what is happening...see, if these are new businesses, this would not be an issue because your sales tax revenue would grow in proportion to that new business. It's when the existing businesses expand, and as most communities that have had successes, so local businesses that they try to get to expand, and when the local businesses expand and qualify, they can keep not only their new amount, but they keep the old amount that's there. We have over a half a billion dollars' worth of construction taking place in our community which is a lot to take place. And I'll tell the committee and right from my very first get-go here is that the Nebraska Advantage has been a godsend for us, and that has brought those companies to locate in our area. But we hate to see it erode for the jail...some of those sales tax revenues for the jail when there are existing businesses that are making that expansion. [LB640]

SENATOR ADAMS: Does it also create a problem for you in South Sioux not knowing from one year to the next whether that company will use income or sales? [LB640]

LANCE HEDQUIST: That's correct, and we never know...we don't know who the companies are; we don't know how much those are. We do appreciate the advance notice. That's a beneficial piece to have. [LB640]

SENATOR ADAMS: Thank you. [LB640]

SENATOR CORNETT: Senator Utter. [LB640]

SENATOR UTTER: Thank you, Senator Cornett. One more question, and it sounds to me from your testimony, from what you've just told us, that this bill really doesn't accomplish what you'd like to have accomplished. [LB640]

LANCE HEDQUIST: If I had my druthers, to be honest with you, Senator, I think the idea of coming in, freezing the previous years, that protects those people just the same as it freezes the tax base in a TIF district. It freezes that sales tax revenue at that level,

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and then the company gets the benefit for the increase. And that was the whole intent of the law from my standpoint is getting an increased sales tax, increased people and jobs to get the increased income tax,...to reward them for that, but not take away from that base that is there at the local level. [LB640]

SENATOR UTTER: Thank you. [LB640]

SENATOR CORNETT: Seeing no further questions, thank you. [LB640]

LANCE HEDQUIST: Thank you very much. [LB640]

SENATOR CORNETT: Next proponent? [LB640]

CHRIS ANDERSON: Senator Cornett, members of the committee, my name is Chris Anderson, and I'm the city administrator in Central City. I'd like to speak in favor and maybe come at it from a slightly different perspective. Central City was fortunate to have an ethanol plant locate in our community which began operations about five years ago. At that time, we knew the plant was eligible for this program, but we had no idea what purchases were subject to the program or what our potential exposure might be. We asked the plant management a few times, but they were uncertain either...weren't certain either. At one time, we were told that industrial production isn't subject to sales tax or exposure should be minimal. In five years of operation, the plant has never received a rebate. The Central City plant is now being sold through a bankruptcy proceeding. This has caused some information to become available to us, and to the best of our knowledge, the plant is eligible for about \$1.3 million in sales tax refunds. We have calculated our share of that amount to be about \$200,000. Our community budgeted for about \$345,000 in sales tax revenues this year, so the refund would amount to the city missing about seven months of revenues if this refund is awarded. Our residents voted to allocate one-half of our sales tax to our economic development efforts, and one-half to retire debt on our waste water treatment plant. Losing seven months of revenue will seriously impact our ability to service debt in both of these areas. I've been asked why the city didn't set aside funds over the years to offset this future liability. I've answered that we have no idea what this potential exposure was, and our local law allocates these funds 50-50, and we had no provisions to set funds aside. We have seen an increase in our sales tax revenues in the community since the plant was built, but we suspected much of this increase was due to the hundreds of construction workers during the initial construction, the plant expansion a few years later and the new economic activity in the community from the plant operation. Last week I called a plant official and asked why they've waited so long to file a refund. The official responded that they started the process about three years ago. They indicated the process was complex, and they had to hire a consultant to help them through the system. This complexity of working both through the consultant and coordinating with the state has taken a long time. I don't know anything about the process, and I don't

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know the specific causes for this delay. The plant official seemed frustrated over the issue, and wouldn't give me any details about what sales were subject to the taxation and to a refund. I asked several specific questions about the program such as whether the refunds will expire at some point, and they didn't have answers to those questions. The city has some frustration that these refunds can accumulate for such a long time, and that we have no means of knowing our potential exposure. We don't understand the budgetary impact on the community relative to our lid laws. We have to calculate these sales tax revenues into our lid calculation, but it doesn't appear we get credit back if the funds are refunded to the industry. We don't know if any limitations exist on the accumulation of these refunds. We hope that they have to be applied for within a specific time frame. If not, the plant could wait another three or four years to apply and wipe out our entire sales tax revenues for that whole year. Currently, we're not aware of any other industry in town that's eligible for a sales tax refund. The problem is, we won't know until our sales tax payments stop being made. At that point, we'll be scrambling to respond to the impact on our budget and to our cash flow. We believe LB640, rightfully, would give the community the option of whether to participate in the program. We believe an amendment to cap the refunds would have an greater benefit to our community as we could continue to fund our programs and set funds aside. If we know the refunds will be set...a set amount for a set period of time, we can more effectively budget around them. And I think if four years ago, we would have known that the ethanol plant was going to be coming in to apply for \$200,000 we could have set aside \$50,000 every year and been prepared to pay it off. But as it is, we don't necessarily know what's coming until it gets here, and we wouldn't know our current situation unless the plant was in bankruptcy proceedings and had to make some of this information available to us. So we thank you for considering this, and would ask you to consider those impacts on our community as far as our lack of knowledge of what may be hitting us down the road. Thank you. [LB640]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. Next proponent. [LB640]

GARY KRUMLAND: (Exhibit 10) Senator Cornett, members of the committee, my name is Gary Krumland. Last name is spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB640. The handout I have are letters from, I think, 11 different cities in support of the bill. The league is not opposed to incentives and specifically came in and supported the Nebraska Advantage Act. One of the problems, as you've been hearing, is when LB775 was first announced because of confidentiality provisions in there, cities had absolutely no notice when a sales tax rebate was taken out. They got the notice when the Department of Revenue sent the monthly check, and they found out that instead of \$200,000 it was \$50,000. Working with the Department of Revenue at the time under the law, they were able to give 30 days' notice if a big hit was going to be taken out of the check, and we appreciate them working with the cities to do that. But if it happened in the middle of the fiscal year, it

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was still a problem. When the Nebraska Advantage Act was adopted, this was addressed, and we really appreciate that that was included in the Advantage Act. And as been referred to, if a company is going to take a city sales tax rebate, they have to file it before June 15th of the year, and once the city gets notice that a rebate has been filed, they have until November 15th to make the payment, so that it does coincide with the city's budget process, and there is a way for them to deal with it in the budget. The concern, though, the problem is we're finding, first of all, most of the rebates now are still under LB775 and so cities just don't have notice of that. But even some of the cities are finding that the rebates are much larger, so even if they do have the notice, and they have an opportunity to budget for it, it's very difficult if they suddenly find that a large percentage of their sales tax for the upcoming year is going to be taken. And so they need to do other revenue sources which probably would be the property tax. So we do think there is a problem. We would be interested in addressing it in some way, maybe working as Mr. Hedquist mentioned, with the base and just dealing with that, might be a way to do it. We'd be happy to work with Senator Schilz and the committee to address the problem, but there is a real problem out there, especially for specific cities who are being hit very hard by these rebates. I'd be happy to answer any questions. [LB640]

SENATOR CORNETT: Senator Adams. [LB640]

SENATOR ADAMS: Gary, what percentage of our first- and second-class, primary-class cities have local option sales tax now? Do you have any idea? [LB640]

GARY KRUMLAND: There are 160 cities and villages who have the local option sales tax. Most of those are 1 percent or 1.5 percent. I would say, I can't think of any...I think every first-class city--Lincoln and Omaha--has a sales tax plus...and that's about 32 cities, so a large number of second-class cities have it too, and a few villages. [LB640]

SENATOR ADAMS: Can you tell me...as I looked through this bundle of letters, I find it a little bit curious and maybe it's just coincidental that not all, but most of these come from western Nebraska? [LB640]

GARY KRUMLAND: Yeah, I... [LB640]

SENATOR ADAMS: You're just the delivery or... [LB640]

GARY KRUMLAND: Just...yeah, I don't know why they...it could be that maybe they're being affected by it, those cities that are... [LB640]

SENATOR ADAMS: That's what I'm wondering if that was possible. [LB640]

GARY KRUMLAND: And I can't answer the specifics of that. [LB640]

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SENATOR ADAMS: Okay. [LB640]

SENATOR CORNETT: Senator Utter. [LB640]

SENATOR UTTER: Thank you, Senator Cornett. Mr. Krumland, if this, indeed, is a partnership effort between the state and the cities, which seems like a reasonable thing to do, how would you suggest that LB640 be changed to indicate that this is a truly partnership effort? [LB640]

GARY KRUMLAND: Well, I guess some of the ideas suggested here is maybe putting a limit on the amount that a city needs to rebate in a specific year. Maybe it rolls over. [LB640]

SENATOR UTTER: Let's assume that it's a year like it looks like we're headed into in this next year. [LB640]

GARY KRUMLAND: Yeah, and if it looks like the applications for a sales tax are going to be 50 percent of the sales tax, that's going to be a problem. So maybe if there is a limit on the amount they would have to pay in one year, or to change the standard like Mr. Hedquist mentioned, so that you create a base of the existing sales tax, and then the rebate applies to any new purchases above that. That would also help, because the city would at least have an idea of what their sales tax has been generating in the past and can plan for that. They wouldn't be planning for the increase, but...so there may be some ideas that... [LB640]

SENATOR UTTER: I guess the thing that is bothering me about setting that base is that if we get into a period, even though somebody qualifies for the expanded...for the Nebraska Advantage funds, and it comes out of sales tax, but we get into a slow period, and sales tax revenues overall decline by a substantial amount which could happen, then how are we going to handle that? [LB640]

GARY KRUMLAND: Well, I don't know if there may be a way to show which purchases would have been made the year before even though maybe they dropped. I don't have a specific answer for it, but I mean, when the sales tax drops, the city has to accommodate for that. It's just these unknown areas where purchases that were going in the city coffers suddenly are exempt and the city just can't plan on how that's going to happen, because they just haven't had notice of it. [LB640]

SENATOR CORNETT: Any further questions? [LB640]

SENATOR HADLEY: Thank you. Just so I follow this through for my own experience in Kearney where we passed an extra half-cent sales tax, and we made the commitment

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to the community that we would share exactly what we were going to pay for, what we were going to do for it, hold hearings with the citizens, so we committed that money to very specific projects that it's possible that some of that money may not be available. [LB640]

GARY KRUMLAND: Yeah. I mean, the rebate is taken out of the sales tax, so whatever is left over would be part of the city, you know, proceeds that they would use towards that fund. But that amount would be gone, that you could not use that. [LB640]

SENATOR HADLEY: I guess a serious concern, I guess in commitments made to passing of the...when we were trying to get the extra half-cent passed by making commitments for transparency on the use of it, and such as that, that could cause us problems if we're going to end up using it for something that we didn't... [LB640]

GARY KRUMLAND: Yeah, and that's been one of the problems, just not knowing what rebates are going to be out there. [LB640]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB640]

GARY KRUMLAND: Um-hum. [LB640]

SENATOR CORNETT: Further proponents? Are there any opponents? [LB640]

RICHARD BAIER: (Exhibit 11) Good afternoon, Chairman Cornett, members of the committee. For the record, my name is Richard Baier. The last name is spelled B-a-i-e-r. I'm here today as the director of the Department of Economic Development, and I'm here to testify in opposition to LB640. I'd like to share with you some reasons why this legislation is problematic for our state's economic development effort. As you know, Legislature passed LB312, the Nebraska Advantage Act in 2005. And since then, we have had significant amounts of return on our investment in terms of jobs and new capital investment. To date, the act has helped create more than 15,500 new jobs in our state and \$5.5 billion in new capital investment. This activity has even surpassed my original expectations on a statewide level, and I believe it's the wrong time to begin pulling back on our development efforts in our state. Shortly after the implementation of LB312, site selection publications and well-respected site consultants around the country began to recognize Nebraska as one of the leading states in which to locate a business. The national attention received for our progress in business expansion and recruitment was invaluable. We expended targeted resources to spread the word about the new program. We also received a great deal of free publicity promoting our state. I can tell you that just as we were recognized by industry leaders when the legislation was passed, we would receive similar national attention for eroding our program with the legislation contained in this bill. In the last several months, we've seen article after

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article detailing the trouble that states are finding themselves in financially, and that turmoil will catch up with businesses in these states sooner rather than later. In a recent case, for example, we were contacted by a major manufacturing company that was interested in growing our Nebraska operations, simply because the competing state where they have another sister facility, was eliminating their R&D tax credits even though this company had a signed contract with the other state for those benefits, and we are beginning to see those kinds of telephone calls. This bill, if enacted, would also have a negative implication on our statewide business recruitment effort. When we are contacted by a company or site selection consultant, they are often looking at several locations in Nebraska. As the process unfolds, they will then narrow their sites on only one or two potential locations. This bill would require recruiters or our office to keep track of every city, town, or village that passes a resolution to opt-out of the local sales tax refund provision, and share with site selectors which political subdivisions do and don't allow the refunds. This would be cumbersome for our recruiters and especially confusing for our site selection specialists and prospective companies that are looking at multiple states where they're trying to track incentive programs in more than one location. This would consequently result in lost opportunities for communities across our state and the state of Nebraska as a whole. When taking into consideration the total economic impact a company has on a community, I think the conclusion remains that the city sees a net gain in overall tax revenue. The sales tax refund from cities in the Nebraska Advantage Act is project specific, meaning the sales taxes paid by the companies themselves are refunded. So in most cases, the city would not see that income but for that particular development project. If LB640 were to pass, the lost economic impact would include sales taxes on employee purchases as suggested by Senator Utter, patronization of the local grocery and other retail stores, service providers, and property taxes on homes and, yes, even charitable giving among other things to our nonprofits across the state. Imagine the difference some communities would see even if their largest employer wasn't located there. I think the overall quality of life in Nebraska is better because of the Nebraska Advantage, and I believe we need to look at ways to enhance this program rather than dilute it during a recessionary time period like we're currently in. I would note, which is not included in my testimony, we have worked with the league, as noted, when we drafted Nebraska Advantage to make some additional enhancements about notification. And as Senator Cornett suggested, LB164 includes further opportunities to be able to share information with the cities, because we do recognize the importance in their planning process. Again, I want to thank you for allowing me this opportunity to testify, and I would be happy to offer and answer any questions that you might have. [LB640]

SENATOR CORNETT: Senator Louden. [LB640]

SENATOR LOUDEN: Yes. Thank you, Richard, for your testimony. [LB640]

RICHARD BAIER: You bet. [LB640]

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SENATOR LOUDEN: In the business I'm in, we don't get to do much of this Advantage stuff, so what I'm wondering is, is how do these businesses get into the refund of the sales tax, that this business comes in and develops in a town. Why is it they're getting the sales tax money refund? Is that because they've generated that tax? Is it tax they've generated? [LB640]

RICHARD BAIER: That is correct, Senator. The way it's written now is it's simply a refund of the sales taxes they've paid, so if you're a new business moving into Alliance, as an example, and you buy a million dollars in equipment, you're going to pay a percentage of that to the city of Alliance. Their challenge then is to capture part of that, because knowing that there's going to be a refund at some point. I think that's where we have to help the cities in that planning process. [LB640]

SENATOR LOUDEN: Now, when we had some of these lists here where they had what...a huge amount of money, that was their share of the sales tax like this 200 and some thousand dollars of equipment that this outfit bought in Sidney. [LB640]

RICHARD BAIER: Um-hum. [LB640]

SENATOR LOUDEN: And then they get this corporation, whoever they were, got most of that refunded back. [LB640]

RICHARD BAIER: It would be refunded on qualified equipment. That is correct. [LB640]

SENATOR LOUDEN: And that would be the state sales tax or just the city? [LB640]

RICHARD BAIER: That would just be the cities' share. [LB640]

SENATOR LOUDEN: Okay. Then that \$212,000 is 1.5 percent of some... [LB640]

RICHARD BAIER: Whatever X was, sure. [LB640]

SENATOR LOUDEN: Unknown figure or some... [LB640]

RICHARD BAIER: Yeah, my math's not very good without a calculator so I better not give you a number (laugh). [LB640]

SENATOR LOUDEN: ...some big figure. Yeah. But anyway, that's it. Now, was that something that they accrued over a year's time, and then, all of a sudden one day they decided, I want it all back at once, or can they go in there and get that as...every month or something like that? Is this what the problem is, is they take it all at once or should they be taking it a little bit at a time? [LB640]

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RICHARD BAIER: I think you see both. You may see some companies hold on to a portion of it until they get a significant amount to have to go through the paperwork. As was suggested, sometimes our program is a little burdensome for the companies as well, and so as we kind of go through that process, sometimes you'll see them hang on and sort of pull up some refunds. There's no doubt that we've seen companies do that, but we've also seen companies that every 30 days, they're submitting refunds on projects. So it's kind of the gamut in terms of that process, but there's a lot of other factors, I think, as my good friend, Mr. Person suggested, you know, Internet sales and a variety of other things that impact those overall sales tax numbers because you don't see maybe quite as much growth in Sidney's numbers as you anticipate based upon those refunds. [LB640]

SENATOR LOUDEN: Well, I'm wondering about is they get this money back. Why wasn't that set up so that they had to get it back on an orderly basis instead of all at once? I mean, like you say, if you cut the monkey's tail off an inch at a time, is it going to hurt as much as all at once? (Laughter) And this is what it looks like they're doing. They just chop it off all at once and then all of a sudden, well, yes, if they run across that big cash reduction bang, why it...why wasn't that \$212,000 or whatever it was or \$215,000...why wasn't that over a period of months so that they didn't get it all in one shot? [LB640]

RICHARD BAIER: It may have been, Senator. I don't know the purchases that correspond to that refund. You may have had somebody that bought \$10 million, \$15 million, or \$20 million in equipment in a two- or three-month period. The other piece is we've got to go through the audit process. I mean, our pledge to you is that we do a great job with the audit, thanks to the Department of Revenue and Doug's staff. They do a fantastic job getting to the audit, so, you know, that's part of what slows that process as well from our end, and so we have to make sure that there's proper verification in terms of cutting those refund checks. [LB640]

SENATOR LOUDEN: Okay. But at the present time, it's up to that company to decide whether they want to get it all at once or a little bit in increments. [LB640]

RICHARD BAIER: They could make that decision, yes, Senator. [LB640]

SENATOR LOUDEN: They make that decision. Should that be changed so they can't make that decision, so that whatever the sales tax they pay this month, then they're entitled to get that back this month, and then next month is another deal? [LB640]

RICHARD BAIER: I think, you know, we ought to talk about it, and if there's a way to do it, I think the challenge is there's, again, a lot of other factors in that process in terms of audit. You know, did the company have a change in CFO. Did they...I mean, they have

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all sorts of other factors that fit into that as well. So, I mean, so that's clearly something we want to look at, and we want to continue to work with the cities because they're our partners in the growth process. [LB640]

SENATOR LOUDEN: Okay. Thank you. [LB640]

SENATOR CORNETT: Senator Hadley. [LB640]

SENATOR HADLEY: Would I be correct in saying the cities voluntarily enter into this kind of an agreement because they're looking to attract businesses to their city? [LB640]

RICHARD BAIER: Absolutely. I mean, I don't know any community in Nebraska that's saying, no, I don't want any new jobs in my town. [LB640]

SENATOR HADLEY: Okay. Do they know that this can happen, that the sales tax can be rebated to the businesses? [LB640]

RICHARD BAIER: Yes. Yeah, we do everything we can to work with the cities and the leagues. I mean, we make presentations at the league meetings and a whole variety of factors. Sometimes in our project exuberance, we sometimes forget about the detail, and I'm going to use my friends in North Platte as an example from when I was out there. Got a call not long ago asking a similar question to what Mr. Person is referring to in terms of refunds, but we went back in the city council minutes, and you'll actually see the project referenced in the city council minutes, and it says, make sure that you recognize, you're going to get a huge influx of cash. You need to be setting that aside. And it was actually the city council minutes, so sometimes we kind of lose track of the detail in that process, so it gets a little fuzzy. And we have changes in mayors and changes in administrators and changes in finance people that impact all of those things along the way. [LB640]

SENATOR HADLEY: And theoretically, what they're going by...I shouldn't say theoretically. One of the decisions a company could make on whether to locate in North Platte or Sidney or Kearney,... [LB640]

RICHARD BAIER: Um-hum. [LB640]

SENATOR HADLEY: ...right now the rebate of the local sales tax is not a decision point, because it is done in all these cities. Right? [LB640]

RICHARD BAIER: It is...that is correct. [LB640]

SENATOR HADLEY: But if we go to an opt-in opt-out, then that would be another decision that the company would have to make as to whether...if Kearney says that we

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will rebate all of your local sales tax over, you know, however the arrangement is,...
[LB640]

RICHARD BAIER: Sure, um-hum, right. [LB640]

SENATOR HADLEY: ...and Hastings says no, then that would be something the company would...could conceivably... [LB640]

RICHARD BAIER: Could clearly create an advantage in one community over another. From an administrative perspective, our concern is trying to keep track of who's in and who's out. [LB640]

SENATOR HADLEY: Who's in or...and one last question. [LB640]

RICHARD BAIER: Um-hum. [LB640]

SENATOR HADLEY: So the opt-in opt-out, could that be on a company by company project, or would this be a blanket opt-out or opt-in, or do I get to choose? If I'm in the city council, do I get to choose whether I opt-in or opt-out? [LB640]

RICHARD BAIER: Who gets what. I don't know that that's very...spelled out very well in the proposed legislation. It's something we'd have to clearly get a handle on. [LB640]

SENATOR HADLEY: I was going to say, I would hope that we would, that we're not picking and choosing who we opt-in and opt-out for. [LB640]

RICHARD BAIER: Yeah, you would...yeah, you would begin to create a lot more internal competition. And one of the things that happened...I'm going to use Kansas as an example. They have property tax abatement in Kansas, and so you'll see projects literally pit one city against another, saying, you know, X community. McPherson is going to opt-in and Hays is going to opt-out, in this case, with a property tax piece, and it gets to be a bit of a challenge, and I think it leverages a much more of an overly enthusiastic competition in that state than we need to, and I think you would see some of that play out here as well as part of that. [LB640]

SENATOR HADLEY: And just thinking out loud, if I was back wearing a mayor's hat, my ideal goal would be to opt-out and still get companies to come. [LB640]

RICHARD BAIER: Um-hum. Yeah. [LB640]

SENATOR HADLEY: Because then I get to keep the sales tax and not have to refund any of it to the company, and I can get the benefit of having the companies and their workers in my city. [LB640]

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RICHARD BAIER: Sure. You're in a mayor's position, that would be the perfect answer, Senator. [LB640]

SENATOR CORNETT: Senator Friend. [LB640]

SENATOR FRIEND: Thank you, Madam Chair. Mr. Baier, what would happen just...put your hypothetical hat on. What would happen if the amendment weren't adopted. We adopted the green copy in Omaha, and the Omaha City Council said, good enough. We would really love to, you know, maintain some of that sales tax base that we're losing. We're opting-out. I mean, would that pretty much the end of this or not? [LB640]

RICHARD BAIER: I think...yeah, I think what you'd see is a lot more projects leaving for areas around that maybe are opting, and maybe it's a LaVista or a Papillion, or a Lincoln scenario, or Bellevue that winds up being the winner in that process. [LB640]

SENATOR FRIEND: Well, the green copy doesn't differentiate. I mean, if you're Omaha... [LB640]

RICHARD BAIER: Right. [LB640]

SENATOR FRIEND: ...and you have budget woes, you can do it. So anyway, just a comment. [LB640]

RICHARD BAIER: Yeah, create some interesting challenges. [LB640]

SENATOR FRIEND: Yeah. [LB640]

SENATOR CORNETT: Any further questions from the committee? Seeing none, thank you. [LB640]

RICHARD BAIER: Great. Thank you. [LB640]

SENATOR CORNETT: Next opponent? [LB640]

RON SEDLACEK: Good afternoon, Chairman Cornett and members of the Revenue Committee. For the record, my name is Ron Sedlacek. Last name is spelled S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce in opposition to LB640. First of all, I'd like to state that we certainly do recognize the concerns that were expressed, particularly by Mr. Person as well as Mr. Hedquist. Have great respect for those individuals, have worked with them in various capacities, and we've tried to address this problem over and over again, it seems like, and thought we had done so when Section 77-5726.2(e) was adopted in regard to timing and notifications and so

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forth. However, the bill as drafted, we just don't believe is going to resolve that particular problem. It's not going to make us competitive. So in that respect, we would echo what Mr. Baier has...Director Baier has stated before in previous testimony. What we believe, however, is that the problem...there are a number of problems that layer out here. For example, if you are...establish a new business. You make a number of investments in Alliance, but you do all your purchasing, let's say, because of the product in another city such as North Platte. Okay. The taxes collected in North Platte as opposed to Alliance, and that is a problem in regard to notifying well, where are they making their purchases? Where does this come from? Where is it going to? That helps complicate the problem that's being addressed...that they're trying to address here. Suppose you use a purchasing agent, and that purchasing agent then starts looking around, identifying just those cities that are tax-free zones. And I can imagine if this green copy or any copy, even if the amendment were enacted, the next tier of marketing would be, we're a tax-free zone then as far as a city, and we're going to bid one city against the other--Hastings versus Grand Island or Kearney versus Lexington, Cozad, etcetera. And I don't think we want to get into that particular local bidding war in regard to where communities should be located, so you have those issues involved. Really it seems that, and it may be a viable solution, it may not, but I just throw this out as an idea. And that is to resolve the local income tax option problem. The Legislature granted that tax authority and can take it away, and we're not asking that. However, the Legislature could also say, all right, fine, you're having a problem here. The tax is going to be paid to the cities, and then you apply for a refund claim. Well, let's not then have the cities collect it in the first place. Okay, if you're an applicant under the program, you get a certificate that you're an applicant under that program, and you make your purchase, as an example, then you show that the city doesn't collect the tax. There's auditing on the state level, and they make their refund claim, whatever denied, has to be paid to the state where the purchase was made then, and that purchase, that sales tax is paid back to the locality after the fact. So, instead of becoming something that you can't predict budgeting-wise, then the city essentially gets a windfall later on. That is another approach to resolving the problem. Don't collect in the first place, and then subject to the audit. Then the city gets the money after the fact. That might be something at least to consider in that regard. The other problem is where you have, as Mr. Baier alluded to, you have a change in CFOs or you have a change in direction of that company where you may have credits earned, and you're using it against the income tax. Maybe you'll be using it partially against the income tax or the sales tax or purely against the sales tax. You know, particularly if you're a financial institution, and you're buying a number of computers. You may be subject to the state franchise tax and can't really use those incentives against that tax, but you can use it against the sales tax. So it kind of depends what industry you're in, where are you going to make those purchases then? In a sales tax-free community or not, you know, or else where? So those are the issues and I'd be happy to entertain any questions. [LB640]

SENATOR CORNETT: Senator Loudon. [LB640]

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SENATOR LOUDEN: Thank you, Senator Cornett. Ron, I guess I'm still getting...trying to get an education on this thing, and I presume that if it's a refund and somebody had that money in their pocket someplace or else it wouldn't be called a refund. And I get back to what Gary Person brought of Sidney, because that's the one I have in front of me here, but anyway, there \$215,000 so which was evidently a \$21 million purchase somewhere along the line in order to get that 1.5 percent. Now, are you telling me that that necessarily wasn't that much bought in Sidney, that it was bought...could have been bought someplace else, but yet Sidney has to refund that much money? [LB640]

RON SEDLACEK: No. It would be bought in Sidney. Okay, number one, it would be bought there, yes. [LB640]

SENATOR LOUDEN: It would...that equipment that that company bought would have had to buy that in Sidney, and that money...that's the reason you call it a refund because Sidney had the money in their hand at one time? [LB640]

RON SEDLACEK: They have the money. They pay the tax up-front. They may be eligible for that refund and make that claim. And so Sidney has the money, and now they're claiming that money back because it is exempt. So then they pay it back. Okay? So they're holding onto the money. They are earning interest on the money. But what I'm talking about unpredictability-wise is let's say you have that same company, and they'd buy half the stuff in Sidney and half the stuff in North Platte or someplace else, in another city that has a local option. Well, then, how do you predict or budget for that? Is it the full amount or partial amount? And that was kind of the idea behind trying to give some kind of advance notification so that, you know, there could be some planning ahead. We're willing to work with...again, and we say this, and we've tried, and in previous sessions to try to come up with some resolution. It seems to me if you don't collect it in the first place, that would resolve the problem. You wouldn't be budgeting for it or not anticipating, and then if you do get the money, well, then that's great. You've got that extra money now in reserve for those projects. [LB640]

SENATOR LOUDEN: Well, if they were buying this much local, why don't they just give them a sales tax waiver like some of these small businesses have and go from there. Then the money would have never been collected, and you would never have had this problem. Why don't you go that way? [LB640]

RON SEDLACEK: It's like a tax exempt certificate or if we're not-for-profit, as an example. [LB640]

SENATOR LOUDEN: Why don't they go some route like that? [LB640]

RON SEDLACEK: That might be a state policy to at least consider. I agree. [LB640]

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SENATOR LOUDEN: Okay. Thank you. [LB640]

RON SEDLACEK: Um-hum. [LB640]

SENATOR CORNETT: Senator Hadley. [LB640]

SENATOR HADLEY: Quick question. I understand that a new company coming into a community, because I think it would be very easy to keep track of the sales tax and, you know, they're building a plant or whatever, but an existing company that's expanding...is it just the tax on the expanding part of it that would be could be given back to them, or is it...I'm thinking of a plant that expands, and they also buy all new office furniture for their existing plant. Do they get the tax break for both the expansion and the existing...?
[LB640]

RON SEDLACEK: It's for the project; it's for the new project is where we're getting. It's not for existing operations. We're not rewarding for that which has already been established. So the baseline is there, that's correct. It's the new investment, and we want to encourage that, obviously, because if you retool, for example, or you have a significant new investment in Nebraska as opposed to let's say a company in Ohio or Pennsylvania, you've got...it's kind of like buying insurance as far as I look at it, because they are investing in this state all the new equipment, all the new projects which indicates that if there were ever a plant closure or some kind of closure in the future, it would not be the up-to-date, the one where they made the most recent and significant investment. It may be in those other states where it's old; they haven't done so, those would be the first on the list. So I consider that essentially, you know, some guarantee...not a guarantee, there's no guarantees. But, I mean, essentially, that it would be a strong indication that they want to have a sustained presence in Nebraska.
[LB640]

SENATOR HADLEY: And, theoretically, over, you know, in looking at Sidney, we looked at one month, and it showed that tremendous difference. But, theoretically, if we looked over a period of years, what is being refunded should be the additional sales tax that they wouldn't have gotten if that company hadn't taken advantage of the Nebraska Advantage Act and had their business in that city. [LB640]

RON SEDLACEK: That's absolutely correct, Senator, and it's not only that particular business, but all the other businesses...your fast food, your groceries, your retail, support industries, janitorial, you know perhaps local professionals, and so forth.
[LB640]

SENATOR HADLEY: But those aren't refunded, right? Those are not...but that...
[LB640]

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RON SEDLACEK: No. But I mean, what I'm saying is, though, that's generating additional economic activity, and all those particular sectors plus you have new employment, hopefully. That new employment, they're buying homes; they're paying property taxes; they're buying food; they're buying at retail and so forth, and contributing to an increased revenue base in that community. [LB640]

SENATOR HADLEY: And one last question. City could say, we don't...if we have to do that, we don't want the company, right? I mean, they could say...they can opt out... [LB640]

RON SEDLACEK: Well, you could. You could say, you know, we just don't like the unpredictability, and you may make a lot of purchases here to support local business, and we just don't know how to budget for it, so we'd rather not have you come. I hope not, but, you know, that's certainly a possibility. [LB640]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB640]

RON SEDLACEK: Thank you, Senator. [LB640]

SENATOR CORNETT: Next opponent? Are there any...is there anyone in a neutral capacity? Yes, Senator Schilz, you're welcome to close. [LB640]

SENATOR SCHILZ: Thanks. Senator Cornett and members of the Revenue Committee, thanks for sitting here on a lovely afternoon and listening to the arguments for and against LB640. I think it should be said that the state of Nebraska was very smart in what they did with LB775 and Nebraska Advantage. I think it really...I think Richard was correct. It has set us up...you know, as one of the premier states in providing those kind of things. I guess what it really comes down to for me is that, as Senator Utter asked, you know, we are receiving those benefits. I mean, there's no doubt that all of those multipliers that are out there are making that work, but I think also that as you move forward, and you see some of these...and it comes down to a frustration level, because I've worked on economic development in my community for the past five, ten years or whatever, and you're just striving, and in a small town like Ogallala or Sidney, you're just striving and working so hard to get that one win, that one home run that you've been looking for. And then when it happens, and you find out that the benefits that are created are being marginalized by having to pay that back, now, yeah, maybe you should have realized that. But it does get frustrating, and I can understand that. I think that what we've shown here today is that there are some issues that are out there. Is LB640 the absolute best way to solve it? I'm not sure it is. I'm not sure it's not. But I do appreciate the conversation that it sparked, and the debate that it sparked, because I think we need to be mindful as we go forward on how we want to set these things up

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and make sure that we don't get set up to whereas people move down the road, they forget what it was in the beginning, and you know, you get 5, 10, 15 years into a program, and you can have that kind of turnover where you start to lose that. So I think the conversations is good, and I'd like to continue to keep that going. If there would happen to be an opportunity to find something that would make it better, obviously, LB164, I believe, is going to help with knowing what's coming down the pike. And I think that's positive; I think that's good; I think that's a good step forward. And I think that will help. I guess we'll have to wait and see if...as we move through time, if all of this works itself out. I guess, at this point, what I would like to do is to have you guys consider this, consider the different alternatives that everyone who came here either as proponents or opponents of the bill brought together, and see if there's something that needs to be done. And I would be more than happy to help craft whatever it is that we need to do or just keep talking about it, so I thank you very much for your time. And I hope that you can see a way to help support LB640 and move something forward on this. Thank you very much. Are there any other questions while you still got me here? [LB640]

SENATOR CORNETT: I don't think so. [LB640]

SENATOR SCHILZ: Okay. Thank you very much. [LB640]

SENATOR CORNETT: Thank you. That closes the hearings for the day. [LB640]

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Disposition of Bills:

LB186 - Indefinitely postponed.

LB249 - Indefinitely postponed.

LB640 - Indefinitely postponed.

Chairperson

Committee Clerk