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Revenue Committee
February 11, 2010

[LB952 LB975 LB1018]

The Committee on Revenue met at 1:30 p.m. on Thursday, February 11, 2010, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB952, LB975, and LB1018. Senators present: Abbie Cornett, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Greg Adams; Galen Hadley; Pete Pirsch; Dennis Utter; and Tom White. Senators absent: LeRoy Louden.

SENATOR CORNETT: Good afternoon and welcome to the Revenue Committee. Could everyone please take their seats. I am Senator Abbie Cornett from Bellevue. To my left, Senator Cap Dierks from Ewing will be joining us I believe for a while. To his left is Senator Adams from York; Senator Hadley from Kearney. To my far right, Senator Pete Pirsch from Omaha will be joining us; Senator Dennis Utter from Hastings; Senator LeRoy Louden will not be here today; and Senator White from Omaha. Research analysts today are Stephen Moore, who will be to my right, and Bill Lock. Committee clerk is Erma James. The pages today are Abbie Greene and Ryan Langle. Before we begin the hearings today, I'd please advise everyone to turn your cell phone to either off or vibrate while you're in the hearing room. The sign-in sheets for testifiers are by both back doors and need to be completed prior to coming up to testify by everyone wishing to testify. If you are testifying on more than one bill, a sheet needs to be filled out for each bill. Please print when completing the form and bring that up with you and hand it to the committee clerk. There are clipboards in the back of the room to sign in if you do not wish to testify but wish to either indicate your support or opposition to a bill. These sheets will be included in the official record. We will follow the agenda posted on the door today. The introducer or representative will present the bill, followed by proponents, opponents, and neutral. Only the introducer will be allowed closing remarks. As you begin your testimony, please state and spell your full name for the record. If you have handouts, please bring ten copies for the committee and staff. If you do not have ten copies, we will make copies for you. When you come up, please hand those copies to the pages. With that, we will begin the hearings for today. Senator White, you are recognized to open on LB952.

SENATOR WHITE: Thank you, Senator Cornett, fellow members of the Revenue Committee. I appreciate the opportunity to introduce this bill. LB952 is a bill that is extremely important, not just to the metropolitan Omaha area but in fact to the entire state, and it is a bill that over time will become increasingly important to all of our communities in the state. One of the unfortunate side effects of the fiscal crisis and the ongoing debt crisis of the United States government is the rise of unfunded federal mandates. An unfunded federal mandate, in my mind, is a tax. Rather than taking money from the community, from the country as a whole and then building a project, however, an unfunded federal mandate simply tells one segment of the community that they must invest money to accomplish a federal purpose. In this case, LB952 addresses the purpose of clean water. It insists that the people in the metropolitan Omaha area,

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not just Omaha but all the communities surrounding it who attach to the metropolitan sewage system, must invest a huge amount of money in order to avoid continuing pollution of the Missouri River. The problem is this. Omaha, like many older cities, has what is called a unified sewer system. There's one set of pipes that handle both toilet water and also storm runoff water from the gutters. When it rains, in some cases more than a tenth of an inch, Omaha has to get permission and does have permission to bypass the sewage treatment plants and directly discharge the combined storm water and sewage water into the Missouri River. We have and are going to be denied a permit to continue to do so and, as a result, must engage in a public works project that is the biggest one since, in my study, since the interstate highway system across the state. What it will entail is the construction of a tunnel about 200 feet deep, 17 feet in diameter, running from Eppley Airport in the north all the way across the city into Bellevue. That tunnel will become a reservoir so when it rains, rather than dropping the sewage into the Missouri River, it will in fact dump it into this vast storage system to be pumped out later, treated and cleaned up, and then put into the Missouri River. Current estimates, and these are not written but they are the best I have been able to obtain from talking to a number of people, are approximately \$2.8 billion to \$3 billion, and that's with a B, to accomplish this project. Now if it is like any other project of this type, there is, almost invariably, cost overruns. I am, for example, assured the project will take a decade or longer to create and those numbers alone are in today's dollars, so the final dollars expended, even if it's on budget, will actually include more dollars to make the equivalent of today's dollars, assuming continued inflation. So the amount of money to be expended ranges, minimum, \$3 billion; my own estimations, it will probably be closer to \$6 billion when all is said and done. Why is that a concern of the state? Well, what has happened to Omaha and its burden is coming for almost every community in the state in one form or another. When we talk later, I have a long list of communities, many of whom are in your various districts, who face similar projects, though not of the magnitude, on a per capita basis for the residents equally burdensome. We have talked to a community that is facing a \$4 million infrastructure replacement charge and it is a community of 3,000 people. So what we have increasingly then is a federal policy that is going to mandate communities make major structural changes to obtain a federal (inaudible), in this case clean water for the Missouri and for the people in Kansas and Missouri and Mississippi below us, but give us no money. Many states have faced this already, Cleveland, for example, and other cities, and their states have in the past given them help because it is an incredible burden and the cities are economic engines for the entire state. In Omaha, we recognize that the state is in no position to fiscally help the taxpayers of the metropolitan area with meaningful contributions to discharge this federal obligation, even though, of course, we like everyone else are taxpayers and represent in the metropolitan area a third of the population of the state, are being affected by this one charge. So we know there's no money there to help us, unlike other states, and we know the federal government will not help us and has not helped us. So then the question is, will the state at least not subject us to additional punishment when we're down? And let me explain how it's working. The mandate is for \$3 billion. As the

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Metropolitan Utilities District purchases a pipe, because it will likely act as its own contractor to replace the natural gas lines and the water mains under these areas, it will pay sales tax. Metropolitan Utilities District will pay sales tax. That will remain the same under LB952. It does not change. As the city of Omaha, through its subcontractors and contractors, because it is unlikely to act as its own contractor, as it hires this work done, they will pay sales tax on the taxable items. Nothing in LB952 changes that. So we have a situation where the federal government says we must create a \$3 billion project with our own money, the state and the city are going to charge sales tax on the pipes and the other taxable items used to accomplish that, and I do not object. I don't think it's great but I accept that's the reality that we face. But now we come to the third level, and this is the part that LB952 is aimed at. Not only are we told that MUD must pay that sales tax; that when they pay it and MUD and the city borrow the money to pay for this project, they finance it, and then, as the citizens make their payments, each one of those payments will be taxed at 7 percent as well. Now what that means is, to put it in laypersons' terms, if you went down to the store and you bought a coat and you put it on your charge card and you paid 7 percent sales tax on that coat and you walked home, that would be done. But then, as you start paying your credit card, the state says, well, that's a service, that's a service that you must also...the credit card is a service you must also pay sales tax on, and so now they will charge you 7 percent of every payment you make on your credit card. Now why is that so important? Because when you take \$3 billion and you put it out for a bond, and the last time I checked a couple weeks ago AA rated tax-free sewer bonds were running between 4.5 and 4.98 percent interest. Well, you put \$3 billion out for 20 years at those interest rates and the amount of money that ultimately must be paid back becomes \$4,652,810,000. Now what that means then is the \$3 billion, to the extent it was subjected to sales tax, we pay the sales tax, but then we must pay it again on the \$4.652 billion. This would result on that last level of tax in the people of the metropolitan area paying an additional \$325 million in sales tax for something they never wanted in the first place. Now it's been articulated that this is really a fee for service; that the sewer projects, our sewer use is a service and we've always taxed this. If we have taxed sewer services before, it's been at a de minimis level. It has never been a large amount of money and never have they been put in a position where a city has been ordered on this scale, or the utility district on this scale, to make such massive chargebacks. This is different in kind than anything we've faced before, and what that means is a fundamental question of policy for the state of Nebraska, and that is when a community faces an unfunded federal mandate, when as part of that unfunded federal mandate they've already paid sales tax on the applicable portions to comply with the mandate, whether they can again be charged sales tax as they struggle to pay off the debt. In my community, this is going to cause enormous hardship. Already, if it comes in at projected costs, and again you can all apply your own experience as to whether such projects come in at cost, but if it comes in at cost it will have a \$35 per month per household charge in 2014 to tack on to the sewer. By 2017, that will rise to excess of \$50 a home per month for 20 years. Now the reality of that is this. People on Social Security, people on fixed income, people who are

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struggling to keep homes will have added to their monthly statement. In fact, it's a property tax because in Omaha you can't put up an outhouse, you can't have a house unless you have a sewer connection. And so what it means is in their house payments this bill, as it sits, will add \$50 a month to every resident of the area's house payment. That's a backbreaker. Now the argument has been made that we cannot further eliminate the tax bases that sales tax applies to and that this is money the cities need desperately, and I'd like to address both of those separately. First of all, it has never in my experience been that the fiscal policy of this state is based on taxing unfunded federal mandates. On this level, these are a new creature, on this level. They've existed before but never anything like this. So the idea that we already have a subtle policy that we tax these things is completely inconsistent with what, in effect, is the real historical reality. We haven't faced this kind of a dragon before. And to say automatically, oh, well, we must tax it, is completely to disrespect historical reality. It's true they taxed sewer fees, but sewer fees were never even a fraction of \$50 a month per home. Second thing, the argument is the cities need this money; it will blow a hole in their budgets. That has been made in my own city and it's been painful. A democratic mayor, I am a Democrat, has made that point, has become quite upset. But I would point out to you that if a city actually needs this revenue, this is absolutely the most inefficient way to raise it. The city gets \$2 out of every \$7 raised by sales tax. The other \$5 goes to the state. For the city to say it is better for us that you take \$7 from each citizen's wallet than us to look at the citizen and say, look, we need to raise taxes on taxes that stay at home, and make the case and try to keep \$2, is really, really unfair tax policy. The state, on the other hand, should not be in the business of taxing communities that are already under pressure because of what I would consider reckless federal policy using unfunded federal mandates. And again, this is not just an Omaha problem. We will...and we have...it's too many for use but there will be mayors talking. These are coming for every community. Whether it's quality of water, water quality, whether it's sewage issues or other environmental issues, unfunded federal mandates are going to become the rule rather than the exception as we move forward. The question is, for us as senators, do we wish, as a policy, that the people of Nebraska will build their tax bases not on true economic activity, not on true prosperity, but we will start taxing what are in essence backbreaking taxes already thereby giving us the appearance of being fiscally healthy but in fact basing our tax policy not on what it always has been--true economic activity--but rather required governmental services? I hope you'll take a long look at LB952. I hope you listen to the people who will testify beyond. Happy to answer questions. I will reserve my right to close. [LB952]

SENATOR CORNETT: Senator Pirsch. [LB952]

SENATOR PIRSCH: Just a question in terms of background. When did the...you said Cleveland has been reeling with this, I think is the example you said. When did this...how did this unfunded federal mandate come down? Was this the result of a congressional act that was passed? Is that correct? [LB952]

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SENATOR WHITE: Yes, it's... [LB952]

SENATOR PIRSCH: When was that passed? Do you know? [LB952]

SENATOR WHITE: Well, I can't tell you when the mandate on the separated sewers were passed because I don't think it's passed in that way. It's part of the Clean Water Act, Senator, and that the Clean Water Act now...I will tell you initially when the Clean Water Act was passed there were large grants of money to help communities defray this. They were required to put in some of the money, but the federal government gave a lot of money to build sewage lagoons and treatment plants across the state and across the country. As things have evolved, those monies are no longer available or at least the will to spend them in this area is not there. And they require now cleaner and cleaner compliance with the water and in our case, in Omaha's case, the EPA simply said, we are going to deny to you a permit to discharge into the Missouri River untreated sewage water. And the only way we can comply with that, Senator, the only way is this project. And so it has evolved through the Clean Water Act and then, as those requirements have been tightened down, the money to help comply with them has dried up. [LB952]

SENATOR PIRSCH: Insofar as this money...these monies, these funds have not been previously collected, right? This is for a new and an additional charge that... [LB952]

SENATOR WHITE: Yeah, great question. [LB952]

SENATOR PIRSCH: Is that correct? [LB952]

SENATOR WHITE: Great question. [LB952]

SENATOR PIRSCH: Is this...is this something then that the city has in the past planned for, or is this something more akin to a windfall for the city that has not... [LB952]

SENATOR WHITE: Well, I guess what I would say to you is this, Senator. They have always collected a sewage fee but it's been de minimis, nominal amount, not a big amount, nor...and it has over the years been used just to do normal expansion and maintenance. That doesn't change. Under this bill we have to...the body should be very clear, this bill does not talk about getting rid of that underlying charge, nor does it talk about getting rid of sales tax in complying with those things. For example, if a pipe in Omaha broke because of a frost heave and they bought a pipe to replace it, they will pay...MUD will still pay sales tax on that pipe. This only applies to major infrastructure replacement charges or projects that are unfunded federal mandates. So whatever was in the city, it takes nothing away. All it does is take away the anticipation of tax revenues because of a massive project that is now we have no choice but to engage in. But we

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do not take away any existing funding sources under this bill. [LB952]

SENATOR CORNETT: Senator Adams. [LB952]

SENATOR ADAMS: Thank you, Senator. Senator White, I just want to make sure conceptually I understand what we're talking about. So in effect, the city, i.e., Omaha or any other... [LB952]

SENATOR WHITE: It's actually more than Omaha. It's the whole metropolitan area in this case. [LB952]

SENATOR ADAMS: ...would delineate on the sewer water bill normal costs and these new infrastructure costs... [LB952]

SENATOR WHITE: Absolutely. [LB952]

SENATOR ADAMS: ...federally mandated or what was the other language? [LB952]

SENATOR WHITE: Infrastructure replacement. For example, if you had a federally mandated cost in Hastings that you, too, had to do this, you've got older gas pipes or leaking water mains, there may be federal requirements they be replaced,... [LB952]

SENATOR ADAMS: Uh-huh. [LB952]

SENATOR WHITE: ...you know, that when you're going about that, as they're part of an overall plan like this, that amount of money dedicated to replacing that would not be taxed. [LB952]

SENATOR ADAMS: Okay. But the...but the...as you said before,... [LB952]

SENATOR WHITE: Everything regular stays the same. [LB952]

SENATOR ADAMS: On the other side of your rate chart for your normal compensation for sewer and water, both state and city sales tax would be there. [LB952]

SENATOR WHITE: Yes. And they remain there. [LB952]

SENATOR ADAMS: Okay. Gotcha. [LB952]

SENATOR WHITE: And Metropolitan Utilities District, Mr. Clark, will follow me, they do the billing and they will break this out, and it needs to be broken out anyway. Because as you float these bonds, they're going to be required to show an income stream from the project sufficient to pay the bonds. So it's broken out anyway. What this simply does

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is the credit card payments for the citizens of the affected area, we're not going to tax them again. And I would suggest to you, as we work through this on a theoretical level, this...if this is a service, if this is a service in this sense then any credit card charge including interest is also a service that's subject to sales tax. Because all we are talking about is not taxing the payments on the debt instrument that bought the project in the first place. We are going to pay all sales tax that is otherwise owed as part of the project to begin with, but we're literally charging a sales tax twice, not just on the underlying item but all the interest we must borrow too. [LB952]

SENATOR ADAMS: Let me follow up with you on another question. The federally mandated portion, I get that. What I'm wondering here is when we throw out major infrastructure versus a frost break of a pipe, how do we...I apologize, I haven't looked at the language specifically, but how do you...how do you intend to draw that line? I mean you can categorize federally mandated, whether it be water or sewer project. I get that. But this other area in here, isn't that pretty gray? [LB952]

SENATOR WHITE: No. Well, I would say it's not, Senator. For example, if York says the old district has cast-iron pipes that are 110 years old. New federal safety guidelines say in order to...I know you would remember the Pathfinder Hotel when it blew up in Grand Island from the gas line, the old gas line connections, federal government often says, look, that's no longer...you got to get rid of that. Okay? So the city of York said, okay, our downtown business district has 120-year-old, 100-year-old natural gas lines that are cast iron; we must replace all of them. Okay? They define that as a plan. They say this is the plan, these are the pipes. They designate that as a plan. They get bonding, you know, to do it and that plan, those...that work and that plan, part of the consistent plan is exempt. On the other hand, if the pipe just springs a leak, they send out the emergency teams, they dig it up, you know, they replace the pipe, none of that is exempt. It's not part of the actual plan to replace a whole infrastructure replacement. This... [LB952]

SENATOR ADAMS: Not to be nitpicky, but then, okay, so we got six blocks of storm sewer we want to replace. [LB952]

SENATOR WHITE: Or you have to. [LB952]

SENATOR ADAMS: But what if we don't have to but we want to? [LB952]

SENATOR WHITE: Hmm. [LB952]

SENATOR ADAMS: Now what? Would it be exempt? [LB952]

SENATOR WHITE: If it's part of an overall plan it would be; if the city said, look, and, you know, remember it's a city and cities got skin in this game too. The cities... [LB952]

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SENATOR ADAMS: Right. So the city...so the city has designated we've got six blocks of storm sewer that's 90 years old and we want to replace that. Is that...is that... [LB952]

SENATOR WHITE: Right. Yeah, let's say downtown, the six-block downtown area, it's dying, we've got to revitalize it as part of an infrastructure project, we do that and we designate that. We have a policy where we're appropriating money to redo that whole district. They can. Now one of the reasons that's here, Senator, is almost invariably something like that will accompany an unfunded federal mandate of a sewer system. You can't talk to anybody that says, look, you got to tear those streets up, you've got to go down to the ground. If you're replacing the sewer systems, you've got to do the other stuff too. It makes no sense but it just dumps a huge burden on the city. They're not really elective in any meaningful sense, you know, like we can just put that off for another ten years, leave the roads up. Because if we've got to tear them up, we got to replace everything. [LB952]

SENATOR ADAMS: Okay. [LB952]

SENATOR WHITE: And if there's language that needs to tighten that, Senator Adams, happy to do it. Now one other thing. The fiscal note on this is quite substantial and the Fiscal Office has been incredibly cooperative. That will drop to a fraction of what it is because we have made it clear that our intent and the bill will...I will propose an amendment that says actual cost of the pipes, it exempts...it makes it clear that we are not going after any of the normal stuff, the, you know, you're going to rehabilitate in my case the Florence treatment center. It's not part of this. Doesn't qualify. We will pay sales tax on that. Everything that's normal it won't. It has to be part of a very defined structural program. It's the kind of thing that a city either survives or dies on, and that's really what we're aiming at, Senator. [LB952]

SENATOR ADAMS: Okay. [LB952]

SENATOR CORNETT: Senator Hadley, then Senator Utter. [LB952]

SENATOR HADLEY: Thank you, Senator Cornett. Senator White, you...I think you mentioned some place in your talk about tax on tax. [LB952]

SENATOR WHITE: Yes, sir. [LB952]

SENATOR HADLEY: Because one of the principles we have is trying not to charge sales tax... [LB952]

SENATOR WHITE: Yes, sir. [LB952]

SENATOR HADLEY: ...on sales tax, correct? [LB952]

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SENATOR WHITE: Yes. Very much so. [LB952]

SENATOR HADLEY: Would you elaborate on that in this? [LB952]

SENATOR WHITE: Absolutely. They've said it's a double tax but I would tell you it's a triple tax. Let's start with this proposition, Senator. If the federal government goes to Kearney and says you will put in a new water system without lead in the pipes and you will do it now and we're not going to give you any money, I would submit to you at the first instance that is a tax. They are ordering you to expend money from your citizens' pockets on a project. The only difference is it's only falling on the people of Kearney, not on the people of the whole United States. So in many ways it's a much more regressive tax. Okay, so that's the first level tax. We can't do anything about that. That's a federal matter, right? But now as Kearney moves forward, if they have...now cities don't pay sales tax themselves but if they hire, as they almost invariably do, a contractor to go out and do that work, the contractor buys pipe, buys equipment and he has to pay sales tax on that. Well, that goes into the bill that the city pays. Okay? At that point in time, though the city didn't write the check for the sales tax, the city is paying for the sales tax because in order to get the project done the sales tax must be paid. That is true whether it's Metropolitan Utilities District, which does pay sales tax, or a contractor of the city. Okay? So the price of the project, if it's \$100, \$7 of that, if it's largely, you know, subject to sales tax, will be sales tax and that is paid and then the city pays \$100. Fine. Well, the city has to borrow that money so that's sales tax level one. City goes out and borrows that money and has to pay back about...all that money plus maybe 80 percent more over 20 years because of the accumulated interest. Now the state is saying, on that debt payment where you already paid sales tax, and you in fact borrowed money to pay that sales tax, you're going to pay sales tax again as you pay off that debt. So the city has borrowed money to pay sales tax. We now have to make our monthly loan payments, and they're going to throw another 7 percent sales tax on our monthly loan payments to pay off that tax. So if, for example, you put it into a credit card analogy, you paid the 7 percent when you went down to the store and bought your purchase; you come back, and let's say you're running a credit card, in the end it's going to charge twice what you paid for that coat, you will have paid 7 percent on \$100 on the coat, so you will have paid \$7. You borrowed \$100, with the finance charges it's going to be \$200, right, over time. State proposes that you must pay 7 percent on that \$200 as you pay it off, so you will have paid \$21 for a \$100 coat because you paid it initially and then you borrowed the \$100, including tax money, and that was to get the interest, it was \$200, and you paid sales tax on the entire \$200 as you paid it off. [LB952]

SENATOR CORNETT: Senator Utter. [LB952]

SENATOR UTTER: Thank you, Senator Cornett. Senator White, and it's probably in here and I've missed it, but is the nonpayment of tax on the debt portion of this by the

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subscribers to the sewer and the infrastructure, the people that are covered by the infrastructure, is that tied to the repayment of bonds or is this going to go on and on forever and ever? [LB952]

SENATOR WHITE: Well, my hope is, in the bill it's tied to the repayment of the fee. Now I can't tell you how long it will go on, Senator, because I assume if it's a \$6 billion project it's going to take longer to pay it off than if it's a \$3 billion. But the bill is designed that only so long as you are paying for a federally mandated project and you're paying fees for it, then you are exempt. Okay? If that bond is paid off, I think the exemption dies... [LB952]

SENATOR UTTER: Okay. [LB952]

SENATOR WHITE: ...because it's no longer a federally mandated proposition. So if...and it's a great question... [LB952]

SENATOR UTTER: And I'm assuming that by the time the bonds are paid off, inflation has probably raised the sewer charges up... [LB952]

SENATOR WHITE: Then it drops off. [LB952]

SENATOR UTTER: ...a bigger level. But when that drops off, there's going to be a cliff effect, isn't there? [LB952]

SENATOR WHITE: Yes. Well, even more...yes, it will, exactly, Senator. I hadn't contemplated that but you are right. But even more insidious, I'd hate to tell you, and you've probably seen it, there will be people who want to continue spending that money since the taxpayer is used to the pain rather than... [LB952]

SENATOR UTTER: I don't understand that at all. [LB952]

SENATOR WHITE: (Laughter) Senator, we need to talk. But this is by design intended to end the minute the federally mandated project is discharged. And if that language is not sufficiently tight, I will join you in amendment to make it clear. This is not some kind of long-term mandate so that we can increase fees for normal services. This is meant to hit an emergency where the city of Omaha, one-third of the population, is just getting hit over the head by the federal government and we have the state and the city piling on. [LB952]

SENATOR UTTER: So are you satisfied with the...with the identification of these projects in this bill? [LB952]

SENATOR WHITE: I am, but should they become problematic as we move through the

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process and get more, I'm, as I said to Senator Adams, more than happy if people deem it necessary to tighten up what qualifies as a project, thrilled to do it, okay, because I don't want this abused. On the other hand, I don't want our cities...and I need to let you know the small towns that are going to face this on a per capita burden, it will be even worse than it is on Omaha. If you've got a small town that's now about two-thirds of its population with those miles of street, water, drinking water, natural gas lines, whatever, and the economy is not strong and they've got to replace all of that in order to conform with the federal mandate, the per capita hit on that small town is going to be worse than what we're going to be looking at in Omaha, though the overall numbers may not be as eye-popping. [LB952]

SENATOR UTTER: So, Senator, I'm looking at the fiscal note now and I know that you've looked at that also. The specific project we're talking about is sewer overflow. Is that correct? [LB952]

SENATOR WHITE: Yeah, it's a combination of two things. We... [LB952]

SENATOR UTTER: But we've got gas and water infrastructure. Is it a combination project we're talking about? [LB952]

SENATOR WHITE: Absolutely, Senator. You cannot possibly tear up...you know, we've got to tear up the streets. We have no choice but to tear up the streets. Once they're up, we have cast-iron pipe that's 120 years old that's a threat, both because of water leakage, threat to water quality, but also we have natural gas pipe that is just unsafe. We're going to have to replace it. There's no way you can do it engineering, as an engineering matter nor an economic matter without doing it all at once, so. [LB952]

SENATOR UTTER: So therein comes...becomes problematic at least and difficult to determine exactly what the federal mandate is then. [LB952]

SENATOR WHITE: No question, and that's why we wrote it the way though that, for example, if the federal mandate was--and we had one of these awhile back--we had to remove a certain amount of heavy metal from water surfaces and it was a huge problem in small towns, and yet if they'd run the water for two seconds before you put the cup in it instead of right out of the pipe, it wouldn't have been a problem. Nevertheless, you can't say, okay, what part of that pipe must be replaced and what part isn't? I mean where do you draw the line? And so we looked at it and said, okay, you got a major infrastructure deal where you got a town dying. You know, pick your town. Cozad downtown is dying. The gas pipes are bad, the sewers are bad, we can't make it, we're going to try to save our town. We're going to put together a plan that says we're going to do this infrastructure only, replacing what's already there on a part of an overall plan. Then it would qualify. [LB952]

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SENATOR UTTER: Thank you. [LB952]

SENATOR CORNETT: Senator White, over the course of the last few weeks, I have frequently been posed the question, if your bill passes won't this increase property tax in the city of Omaha. Could you please address that issue? And then could you explain a little bit further why these issues haven't been addressed sooner? [LB952]

SENATOR WHITE: Yeah. I cannot tell you why we have not had more planning on an urban level or a state level for this problem other than that human nature, that it's such a big, overwhelming problem that people just pushed it off as long as they can. So I cannot give you a satisfactory answer on why we haven't had better financing. In terms of a property tax, I want to talk about it on a couple of levels. Number one, unless the city has already spent money, in other words they're counting on the federal mandate money to balance their budget and they've budgeted that in, this can't cause a property tax of any kind unless they're literally spending money they, in my view, had no right to expect that the EPA would actually force us to do this. So first of all, unless it was actually budgeted in and they based it on the idea we're going to have to spend money on a federally mandated, unfunded mandated project, there was no basis for them to count that in their budget. Second, they say that somehow this is a sales tax rather than a property tax, but that's just not true. You cannot keep a home without a sewer hookup. This bill goes to your home. This bill will be a lien on your home. This bill is not a fee. If I go to Mahoney Park, want to take my children to the park, I have a choice. I have a choice of whether I want to use that service or not. I want to go hunting. I have a choice if I want to use...go hunting or not. You have no choice. If you own a home, you have to have a sewer hookup. This is a direct charge against your home. You have no choice. Final thing is, and this is one I have deep concern about, the sales tax split in the metro area is a 7 percent tax, 5 cents going to the state, 2 cents going to the city. If the city is saying they need, in this case, about \$40 million, don't take \$325 million out of your citizens' pockets. You don't do that. You only take out of the community what you need and you don't go in and say, hey, it's not us, we're not raising taxes, when in fact you really are and you know you are. It's much more honorable, it's much less onerous to the taxpayer to go to the city and say, look, if we need a property tax increase, folks, to justify whatever it is, whether it's safety services, whether it's better streets, take it on straight up, tell the citizens, explain the need to them and let them vote yes or no. They're sick of potholes. They think the money is justified and they think you've spent the money well, they'll support it; if not, they won't. What I've always had a problem with, and I think you've heard me over the years get upset about it, are stealth tax increases that are not honorably talked about. The property valuation where they say, we never raised your mill levy, yeah, well, my house went up 40 percent in value and my tax bill went up 40 percent in value. I got a tax increase because I'm paying 40 percent more than I was last year. Oh no, not me, I didn't raise your tax mill levy. That is just not good government, in my opinion, just not good government. And that is why, Senator, for all those reasons this isn't a...I mean the sewer fee will be a property tax increase and a

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much higher one than if they did it through a straight property tax increase. Also, it crosses jurisdictions. The people in Bellevue, the people in Papillion, the people in the communities that attach to this, they have no choice. If they need to raise their own property tax, we've always said, raise it yourself for essential services. What we're doing here is taking an interpretation of sales tax that raises city revenues, but many of those communities, I think you will hear, don't want this money pulled out of their taxpayers. And if they want to raise taxes or they feel driven to raise taxes, they'll take it up directly with their voters. So there's a wide variety of reasons why I believe this is bad policy, Senator, and it is not going to cause a property tax increase. [LB952]

SENATOR CORNETT: Senator Utter. [LB952]

SENATOR UTTER: Senator White, one additional question, if I may. You talked about the size of this project,... [LB952]

SENATOR WHITE: Yes, sir. [LB952]

SENATOR UTTER: ...into the multibillion-dollar range. [LB952]

SENATOR WHITE: If you believe their estimates. [LB952]

SENATOR UTTER: Is part of that paid with federal funding or is there no federal funding? [LB952]

SENATOR WHITE: To my knowledge, the only federal money is a \$500,000 earmark out of a \$3 billion project. And the prospects of getting it now are not good. And the frustrating part, Senator, was had we done this properly, had we been looking aggressively, had we been lobbying the state and the federal government, this was a perfect stimulus project. This is going to put a lot of people to work in good jobs, laboring jobs where...the kind that can step a whole family out of poverty and get them on the road to security. But we did not get any stimulus dollars for this and, in my view, it's a terrible thing. [LB952]

SENATOR UTTER: So in the event that sometime down the line, maybe not for this project but for the project in York or wherever it happens to be comes with some federal funding, the tax rebate that you're proposing here just applies to the amount that is financed. Is that correct? [LB952]

SENATOR WHITE: Exactly. And so if the federal government put in money on this, Senator, let's say the federal tooth fairy showed up and gave us \$1 billion, this would only apply to the \$2 billion remaining. The federal dollars, it's its own entity. You know, that would just diminish the cost. So we're not exempting anything other than the money the public must borrow to pay back this. So it's precisely. [LB952]

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SENATOR UTTER: Thank you. [LB952]

SENATOR CORNETT: Senator Pirsch. [LB952]

SENATOR PIRSCH: Thanks. And, you know, I think what I hear you saying is that the reason this change is needed is because this will result in a windfall amount that would flow to the city, this unexpected, humongous expenditure would cause a burden to the taxpayers. And with respect to the issue of the windfall, you're saying this doesn't create any extra cost to the city such that they would need this extra revenue and you're saying that they haven't relied on this for so long that it would be unfair...kind of an equitable type of argument there, for so long that it would just devastate the city at this point to have those...to have it not flow to their coffers, so to speak. I mean is that a correct understanding, that you're saying that this is a bit of a windfall? [LB952]

SENATOR WHITE: Well, yeah, and I would say, Senator, this project has not started; that we haven't expended any money. They're not collecting any sales tax now nor will they I think for the next year or two, okay? [LB952]

SENATOR PIRSCH: Right. [LB952]

SENATOR WHITE: So there's no way they could actually be relying on it and having it in their coffers because the project hasn't even begun. [LB952]

SENATOR PIRSCH: But has the announcement of the project been such and the expectation reasonably relied on for a long time? That's my question. [LB952]

SENATOR WHITE: I would tell you it is fundamentally unreasonable and unfair for any governmental entity to assume that they're going to raise income or profit or tax, any kind of tax, on an unfunded federal mandate. If, in fact, they were planning on it in their budgeting process, and we're way outside of their budgeting process, they had no right to do that. I mean that's one. And second, you know, a windfall? Yes, but I think that's a term I wouldn't want to use because this is money coming out of the citizens of the metropolitan area's pocket. Okay, a windfall is like some aunt I hardly knew left me some money in her will. Never even thought about it happening, right? That's not this. This is piling on to the taxpayer, saying we're going to double-up on you because now we know the feds are forcing you to spend extra money and we're going to call it a fee. [LB952]

SENATOR PIRSCH: No...and my question isn't a windfall from the perspective of the taxpayer. I'm saying windfall from the...you're saying the city's (inaudible), I'm saying entrusting it from the perspective of the city of Omaha. [LB952]

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SENATOR WHITE: Yes, I would tell you that if the city had been planning on taxing this, if that in fact is what they're saying, first of all, we're years out and that was not rational. [LB952]

SENATOR PIRSCH: And I don't know that they are. I'm just raising...asking. [LB952]

SENATOR WHITE: Well, no, but if they were, they're not here yet, I mean we're giving them plenty warning. Second, they had no right in the first place, in my view, to assume that they are going to get to tax us. I mean the next thing is it's literally, in my view, literally like if the city started putting a fee on. They tax, decided to put a...well, it's really a fee you're paying for in your income tax so we're going to put a city tax or the state is going to put a city tax on your federal tax. So you pay \$1,000 in federal income tax. Well, you know, I don't know, you're using some fee, we'll tax that too. There is no difference, none, and I don't think they have any business ever assuming that they had a right to add additional taxes to compliance with the federal tax. They...if the federal government fined you for something and you paid it, should they be able to tax that? [LB952]

SENATOR PIRSCH: And to the first of my questions, are there any additional costs, do you know, the city will have to bear as a result of this infrastructure that the... [LB952]

SENATOR WHITE: Well, they're going to have to bear at least \$1.8 billion, Senator. I mean the city is going to have to separate the sewer system, but the citizens are going to have to pay that. The question is, as the citizens pay the charge, the credit card charge, do they have to pay sales tax on their credit card payments? [LB952]

SENATOR PIRSCH: I see. [LB952]

SENATOR WHITE: That's really the issue. [LB952]

SENATOR PIRSCH: Thank you. [LB952]

SENATOR CORNETT: Senator White, we spent the course of the interim studying property tax and sales tax throughout the state. A couple of things were very apparent during that course. We have a lot of cities that are up against their lid levies in this state. [LB952]

SENATOR WHITE: Yes. [LB952]

SENATOR CORNETT: Am I correct? [LB952]

SENATOR WHITE: Yes. [LB952]

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SENATOR CORNETT: Do you know what the lid levy for the city of Omaha is and where they are at? [LB952]

SENATOR WHITE: I can't give that to you specifically. I do know we are under the lid and that there is more room under the lid and many cities in the state are not in that position. [LB952]

SENATOR CORNETT: In regards to sales tax, it's fair to say that sales tax is more regressive on people of lower income. Am I correct? [LB952]

SENATOR WHITE: Infinitely. And when you're taxing an essential service, like the ability to use the rest room or take a shower, which is what this is, it's like taxing food. I mean nobody has a choice. [LB952]

SENATOR CORNETT: And with the way the tax structure is set up in the state of Nebraska with sales tax, as you've described it, out of every 7 cents, I believe you said,... [LB952]

SENATOR WHITE: Yes. [LB952]

SENATOR CORNETT: ...the city receives 2? [LB952]

SENATOR WHITE: Two, roughly. [LB952]

SENATOR CORNETT: To count on that money from sales tax when property tax would be a more direct solution... [LB952]

SENATOR WHITE: I think it's bad tax policy. I mean nobody likes property tax and I'm not advocating for that, Senator. [LB952]

SENATOR CORNETT: No. Trust me, I know. We have listened to your bills. (Laugh) [LB952]

SENATOR WHITE: But I will tell you right now, if the city wants to raise revenue, okay, first thing I would say is don't ever take more out of the economy than you can actually justify an actual taking. City in this case, by our standards, if I look at my numbers here, Senator, they will get, if this bill is not passed, the state...the total sales tax generated if we do not pass this because of the sewer project, if it comes in at \$3 billion, which I think is a huge assumption, I think that's very low, it will generate \$325,696,708 over 20 years. The state revenue out of that would be \$279,168,607. Omaha, city of Omaha's tax revenue out of that would be \$46,528,000. If the city needs \$46 million over the next 20 years that badly, don't take \$325 million out of the metro area. Number one, you're taking far more than you need and it's going to the state; number two, you're taxing

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communities that may not make that decision. Bellevue may have a completely different attitude on how it wants to run its tax policy, but you are doing that and making this decision for them willy-nilly. [LB952]

SENATOR CORNETT: Have you considered leaving the tax in place but returning it to the infrastructure project so it would help pay off the project? [LB952]

SENATOR WHITE: I had not looked at that because generally, Senator, I mean, you know, I'd talk about anything on that line... [LB952]

SENATOR CORNETT: Uh-huh. [LB952]

SENATOR WHITE: ...but as a general matter, Senator, I believe that if we can leave the money in the community rather than pulling out to the government, even if we return it, we're better off. It's better to leave dollars in the economy than pull them out and return them. That's just a philosophical problem. But if we can get help to the city that way, I mean I'll do what I can to help the poor ratepayer in the metro area. [LB952]

SENATOR CORNETT: Senator Utter, I believe you had a question. [LB952]

SENATOR UTTER: From a time line standpoint, when is this project scheduled to start? [LB952]

SENATOR WHITE: I think, Mr. Clark can probably give you better information, but I think we start breaking dirt 2014 roughly. So they haven't even broke dirt yet, Senator. [LB952]

SENATOR UTTER: So tell me the source of the fiscal notes in... [LB952]

SENATOR WHITE: The fiscal note... [LB952]

SENATOR UTTER: ...'10-11... [LB952]

SENATOR WHITE: Yeah. [LB952]

SENATOR UTTER: ...and '11-12 and '12-13 if the ground is not even going to be broke till 2014. [LB952]

SENATOR WHITE: Twenty fourteen, yeah, and what that is...and I am advised by the Fiscal Office that you will see a very, very substantial, a fraction of what we have now will be the fiscal note when we're done, because they were exempting any sewer work, any pipe work, any kind of that work across the state right now, and that is not this bill. This bill is only for defined projects. So personally, Senator, when this bill...and we have

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language they've agreed to that will reduce that and I will introduce that amendment. This bill will only affect actual defined projects as we move forward. [LB952]

SENATOR CORNETT: Further questions from the committee? Seeing none...and you will be closing. [LB952]

SENATOR WHITE: I will close. Thank you for your courtesy. [LB952]

SENATOR CORNETT: We'll open the hearing up to proponents. May I see a show of hands of the number of people here that are here to testify in favor of the bill? In opposition? Do we really need three people from the city of Omaha? I'm going to limit testimony to three minutes each. Erma, I think you might need to start his time. [LB952]

DOUG CLARK: (Exhibits 1 and 2) Good afternoon, Chairman Cornett and members of the Revenue Committee. My name is Doug Clark, D-o-u-g C-l-a-r-k. I'm vice president of government affairs and marketing for the Metropolitan Utilities District and I'm here today to testify in support of LB952. The Metropolitan Utilities District has been operating in the metro area of Omaha since 1913 and as we have grown our system has aged, and what you're looking at in the colorful map I have handed out is the areas in which cast-iron piping exists in the city of Omaha and are the areas due to be reclaimed and refurbished with new pipes in our project that is projected to last over the next 30 years. As you look at the map, you will see gas areas of cast-iron pipe and water areas of cast-iron pipe. In the gas area, when you look at that red area, you're seeing roughly 540 miles of cast-iron main to be removed and replaced. When you look at the water service area, you're looking at roughly 1,200 miles of cast-iron main that needs to be torn out and replaced. We, while we are not federally mandated to remove those pipes at this time, at the age of 100 years for a lot of these pipes, their serviceable life is over and it is time that we as a utility take care of them and get them replaced. The federal mandate by the federal government for the sewer separation project dovetails nicely with what we need to accomplish and will serve as a opportunity for us and the city to work together to more efficiently address these two items that have to be taken care of or should be taken care of. And so what you see before you is the amount of work that we're going to be doing, and we see the city as a partner in this effort and we will be working with them very closely. I think it's important to note that Senator White identified that there are projects that will not be sales tax exempt and on this project I would like to identify several projects that we have completed in the last several years that are not tax-exempt and they are significant in number. We upgraded our liquid natural gas plant at a cost of \$4 million. We upgraded our data center at a cost of \$3 million. We retrofitted our downtown office building with new mechanical services for \$700,000. We have overhauled a Platte South treatment facility for \$7 million, a propane plant in Omaha that we overhauled for \$13 million, and we built a brand new water treatment facility for \$325 million. And this has all taken place over the last five years. Planned projects that will continually...will continue to be...receive a sales tax: our

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Florence treatment plant, we will be overhauling it with...because it's now well over 100 years old, at a cost of \$70 million will be eligible for sales tax; the Platte South treatment plant, we have another contact basin down there that we have to overhaul, that's another \$10 million that will be used for sales...that is available for sales tax. What you won't see is for...what we won't be able to use for sales tax. If you look at the bill that I handed out, underneath the gas residential rate you will see a gas infrastructure charge. It is \$3. [LB952]

SENATOR CORNETT: Mr. Clark. [LB952]

DOUG CLARK: Yes. [LB952]

SENATOR CORNETT: The red light is on. We'll be happy to ask you questions. [LB952]

DOUG CLARK: Okay. [LB952]

SENATOR CORNETT: Okay. And I will follow up with could you please explain. [LB952]

DOUG CLARK: Sure. That would be great. Thank you. [LB952]

SENATOR CORNETT: Could you please explain the service tax or service fee. [LB952]

DOUG CLARK: Okay. The service charges you see on the bill are the only parts of...are the only part of this bill that would not receive a sales tax. The other projects that I discussed will be in our rate and our rate will be available for sales tax at the 7 percent rate. So what we are talking about currently is a gas infrastructure charge of \$3 and a water infrastructure charge, on this bill, it's last year's bill and so it shows \$2, but we increased that to \$3 this year. So the water infrastructure rate is \$3. This money, by our board, is only available for use for new pipe and to address the 540 miles of gas infrastructure and the 1,200 miles of water infrastructure pipe that we have to replace. This money will go nowhere else. And that's why we are in total agreement with Senator White's amendment that says only actual cost, and actual cost would include the cutting of the concrete, the digging of the trench, the purchase of the pipe, the replacement of the pipe, and the filling of the trench, and the new concrete to go on top of it. That's what this charge is for. And the reason it is there is so we have a stream of cash so we can tackle this \$1 billion project. It seems pretty simple until you start looking at the total cost over the 30-year program that we're going to be executing with this. So while \$3 for gas and \$3 worth of water doesn't sound like a whole lot, over a 30-year period it adds up to \$1 billion. And so it has a significant impact on our customers. We have had many, many customers come to our board meetings and ask us why they are paying sales tax on these fees. I think Senator Cornett has a letter in her office from one of those people who came to our meetings. That's the significance of this bill to us. It represents roughly \$1.2 million a year in sales tax revenue that would not be paid, and

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\$200,000 of that would go to the city and \$1 million of that would go to the state.
[LB952]

SENATOR CORNETT: Questions from the committee? Senator Adams. [LB952]

SENATOR ADAMS: Thank you, Senator. Following up on the line of questioning that Senator White and I were working with, let me pick out one example that you listed, a multimillion dollar water treatment plant. [LB952]

DOUG CLARK: Yes, sir. [LB952]

SENATOR ADAMS: Under this bill, would you see you in the future exempting that water treatment plant, not that particular one but the next project similar to it? [LB952]

DOUG CLARK: Absolutely not. [LB952]

SENATOR ADAMS: Why not? [LB952]

DOUG CLARK: Because it is not...it is not a...it is not a situation in which we would be digging it up and replacing it with a brand new one. I've got a great example: our Florence plant was built in 1890. We are going to have to overhaul that plant and that plant will cost \$70 million to overhaul. My board and the management of the Metropolitan Utilities District does not believe that that falls within the infrastructure charge. We feel that falls in our rates because it's maintaining the system as it was when we started running the plant. But we have to dig up these pipes and we have to get rid of them, and it's easier to swallow \$70 million than it is to follow \$1 billion, and that's really what it comes down to. [LB952]

SENATOR CORNETT: Senator Pirsch. [LB952]

SENATOR PIRSCH: Thank you. And my question kind of falls along that same line, so how do you distinguish? You're saying...there's the federal mandate, right,... [LB952]

DOUG CLARK: Yes. [LB952]

SENATOR PIRSCH: ...that comes down. That deals with the tunnel that's going to be (inaudible) described 70 feet down and... [LB952]

DOUG CLARK: Yes. [LB952]

SENATOR PIRSCH: ...all the way down to Bellevue from north Omaha. With respect to the cast-iron pipe, that's not part of a federal mandate. Are you saying, at the same time that you're tearing up, if I understand this correctly and tell me if I'm wrong, that the

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same time that you're tearing up, you're doing the federally mandated project, is it...it only makes sense that you carry out this cast-iron pipe project at the same time? Is that (inaudible)? [LB952]

DOUG CLARK: I would say absolutely. In an efficiency manner, it wouldn't make a lot of sense for us to let the city go in, do their project, and then two years later go, oh, there's some pipe in the ground that's 110 years old and it's time to get rid of it so go cut the concrete and disrupt the neighborhood again. [LB952]

SENATOR PIRSCH: The cast-iron pipe then runs pretty related with the types of needs that will come about with the unfunded federal mandate. That is what you're saying, right? [LB952]

DOUG CLARK: Yes. [LB952]

SENATOR PIRSCH: Okay. And so that's what you're saying is the distinguishing cost, I mean the distinguishing nature of the cast-iron pipe, and the fact that I think you pointed out that it's a large billion-dollar project with a B as opposed to other. [LB952]

DOUG CLARK: An M. (Laugh) [LB952]

SENATOR PIRSCH: So those are the distinguishing features as opposed to other large dollar cost of other operations. I mean that's why you say everything else should not fall under the change, but everything... [LB952]

DOUG CLARK: And it's a third... [LB952]

SENATOR PIRSCH: ...these two things are so intertwined that they should. Is that what you're saying? [LB952]

DOUG CLARK: Exactly. The \$70 million Florence plant overhaul will take a period of years but it won't take 30, and it won't take the consistent revenue sources that a 30-year replacement of roughly 1,700 miles of cast-iron pipe is going to take. [LB952]

SENATOR PIRSCH: Okay. I was trying to get an idea of how you distinguish, how you're going to determine, as Senator Adams wondered, other large-scale projects that may occur in the future, not necessarily in your jurisdiction but in the Panhandle or whatnot. [LB952]

DOUG CLARK: Right. And what I liked about Senator White's amendment, it says actual cost, so it doesn't allow for any of the fudging that might take place. [LB952]

SENATOR PIRSCH: Thank you. [LB952]

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SENATOR CORNETT: Further questions from the committee? Seeing none, thank you, Mr. Clark. [LB952]

DOUG CLARK: Thank you. [LB952]

SENATOR CORNETT: Next proponent. [LB952]

DACIA KRUSE: (Exhibit 3) Good afternoon, Chairman Cornett, members of the Revenue Committee. My name is Dacia Kruse, spelled D-a-c-i-a K-r-u-s-e, and I'm testifying in support of LB952 on behalf of the Greater Omaha Chamber. I'll be brief. I just want to read a letter into the record that is signed by our president and it reads as follows: Dear Senator Cornett, members of the committee, I am writing to express support for LB952 which exempts from sales tax certain utility infrastructure upgrades. The Greater Omaha Chamber has long supported policies that lower taxes, reduce the cost of doing business in our state, and make Nebraska more competitive in attracting jobs and investment. LB952 accomplishes those objectives while having a positive impact on every business and homeowner in Nebraska. It is our belief that LB952 is consistent with our principles and we urge the committee to give this thoughtful consideration; signed, David Brown, president of the Greater Omaha Chamber. And with that, I would be happy to answer any questions. [LB952]

SENATOR CORNETT: Thank you, Dacia. Questions from the committee? Seeing none, next proponent. [LB952]

SALLY McGUIRE: (Exhibit 4) Good afternoon, Chairwoman Cornett and the members of the Revenue Committee. My name is Sally McGuire, S-a-l-l-y M-c-G-u-i-r-e, mayor of the city of Gretna, and I appear before you today on behalf of the five mayors of the United Cities of Sarpy County in support of LB952. If LB952 passes, it will force the city of Omaha to review its methods of funding their combined sewer overflow program. For the last year and a half the United Cities of Sarpy County have been meeting with Omaha officials to address the inherent unfairness in their proposed funding structure, the funding structure that has all Sarpy County residents paying for millions of dollars of improvements within the city of Omaha. Sarpy residents will never use nor receive any direct benefits from any of the proposed improvements. Omaha has not been responsive to our multiple requests to address the unfairness and passed on an ordinance that will, on average, result in a 166 percent increase in sewer fees for Sarpy residents. In a unilateral move, in 2007, the city of Omaha completed a study that identified all users as owners of the sewer system. Sarpy County cities have never been and will never be owners of the Omaha sewer system. We have all built, own and maintain our own sewer systems. The city of Omaha did not, and we assume never will, pay for the construction or maintenance of the sewer systems in Sarpy County. Our sewer currently drains into the Omaha system and we pay a bulk user rate to the city of

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Omaha. As such, we believe we have some limited responsibility to assist with this project. However, the 2007 unilateral classification of Sarpy cities as owners of the system, according to the city of Omaha, makes us responsible to assist with the construction of a deep tunnel at the cost of \$442 million; lift stations, \$131 million; storage structures, \$30 million; and miscellaneous other projects at \$36 million within the city of Omaha. We believe the aforementioned projects are the sole responsibility of the city of Omaha. One may ask why we appear in this forum to air our concerns. The answer is simple. We have tried for the last year and a half to address the inequalities of the city of Omaha. While they have attended several meetings at our request, the end result is always the same--ambiguous information on the project detail and demand that Sarpy residents are owners and must pay to rebuild the Omaha sewer system. In June of last year, members of our group appeared before the Omaha City Council to oppose the reclassification for owners. The Omaha City Council supported Omaha staff and passed a new rate structure reclassifying Sarpy residents as owners of the system. Let us be clear on this point: We do not oppose for paying our fair share. We vehemently oppose making the people we represent pay for the improvements that are the responsibilities and only a direct benefit to the city of Omaha. We all had to pay for our systems; Omaha should do the same. Thank you, Chairwoman Cornett and members. I'd be happy to answer any questions. [LB952]

SENATOR CORNETT: Questions from the committee? In the meetings with the city of Omaha,... [LB952]

SALLY McGUIRE: Uh-huh. [LB952]

SENATOR CORNETT: ...what is their reasoning that you are co-owners of this if they don't consider themselves co-owners of your sewer system? [LB952]

SALLY McGUIRE: I don't have an answer to that. [LB952]

SENATOR CORNETT: And have they just flat-out refused to acknowledge your points of contention? [LB952]

SALLY McGUIRE: We have asked at several occasions for detailed information on what our increase...the increase is being caused by, whether....and we have not gotten that. We asked again several weeks ago. [LB952]

SENATOR CORNETT: Would some of these increases be for services or infrastructure that you would never use? [LB952]

SALLY McGUIRE: The information...the deep tunnel system would never be used by our systems. The...I don't believe the lift stations would. Our sewer systems run on the southern part of Sarpy County and does not go to the area where the sewer needs to be

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separated. [LB952]

SENATOR CORNETT: Thank you. [LB952]

SALLY McGUIRE: Uh-huh. [LB952]

SENATOR CORNETT: Further questions from the committee? Senator Adams. [LB952]

SENATOR ADAMS: Maybe I misunderstood but did you say that there was a mutual ownership agreement? [LB952]

SALLY McGUIRE: In 2007, the city designated users as owners. [LB952]

SENATOR ADAMS: Oh, all right. It wasn't something that you entered into. [LB952]

SALLY McGUIRE: No. [LB952]

SENATOR ADAMS: I gotcha. Okay. [LB952]

SALLY McGUIRE: It was given to us. [LB952]

SENATOR ADAMS: Thank you. [LB952]

SALLY McGUIRE: Okay. [LB952]

SENATOR CORNETT: Have you taken any legal steps? [LB952]

SALLY McGUIRE: We have not. [LB952]

SENATOR CORNETT: Seeing no further questions, thank you. [LB952]

SALLY McGUIRE: Thank you. [LB952]

SENATOR CORNETT: Next proponent. Are there any further proponents? We'll move to opposition testimony. [LB952]

MARTY GRATE: (Exhibit 5) Good afternoon, Senator Cornett, members of the committee. My name is Marty Grate, M-a-r-t-y G-r-a-t-e, and I'm the environmental services manager for the city of Omaha. One of my chief responsibilities is project management over this CSO program and, in fact, that's the main reason for me being here today, was that I think Senator White obviously has done a lot of studying of this issue and gave you some good information but there probably are still some misunderstandings about what this program is and what it isn't. It is a federal mandate.

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It is a program that we have 15 years to complete. Our cost estimates in 2009 dollars are right now at \$1.66 billion. This will be done, you know, over a long period of time under a consent order, and although it's an unfunded federal mandate, our consent order is actually with the state of Nebraska. The state of Nebraska has the enforcement authority on this program so it's us that are in this, not EPA directly. One of the main misconceptions I think and Senator White kind of helped to reduce some of that, is that this isn't a sewer separation project. There is some sewer separation work that will be done, but Omaha maintains about 850 linear miles of combined sewers. We are not going to replace 850 miles of sewers. We are going to use tunnels, we are going to use treatment facilities, a lot of different technologies to reduce these overflows of raw sewage. When we get done in 15 years, we will have added about 16 miles of new sanitary sewers and about 61 miles of new storm sewers so, yeah, it's still a big, big part of the program but it's not as widespread as tearing up every street and replacing every sewer line in eastern Omaha. To put that at contrast, we maintain about 4,400 lane miles of roads, so we're not going to replace all of the roads as part of this project. Again, this is a clean water mandate enforced by the state of Nebraska upon Omaha. All of the residents, both those inside Omaha and outside Omaha, do contribute to these overflows. When it rains they do overflow. Everyone will benefit in the region by cleaner water quality when we get done and everyone will share in the cost of the program. We have received some federal funds for this. We did receive some stimulus funding, but rates are undeniably going to be the chief funding mechanism unless, you know, the federal money pours in unexpectedly. A final issue that I just want to make is that the city of Omaha contractors do not pay sales tax on commodities they use to go into these projects. Our contractors are exempt from sales tax. So if they're buying pipe or concrete or pipe or whatever, we give them a certificate. When they go to buy their stuff, they don't pay sales tax, so we're not really taxing it. MUD is different and I don't understand their stuff as well, but I do know for our projects consumables are not taxed. If a contractor bought a pickup truck that he used on multiple things he'd have to pay sales tax on that, but the things that go into our job aren't assessed sales tax. I do think there are a lot of gray areas here and I'm more than happy to answer your questions. [LB952]

SENATOR CORNETT: When was this mandated by the federal government? [LB952]

MARTY GRATE: It stems from the Clean Water Act of 1972. It was really 1994 when CSO, combined sewer overflow, as a policy came out of EPA. It was a much more accelerated program in the Great Lakes area and where they had beaches, because every time that it would rain the sewage would overflow and the beaches were just trashed with sanitary products. It's been slower coming in Omaha, but Omaha has actually been under a permit that authorizes us to have these overflows since 2003. One of the conditions of that permit was that we must begin to develop a plan and take short-term measures to do what we can without a lot of money. It was just last October that we submitted our final plan to the state of Nebraska, and that's the 15-year clock

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that started ticking last October. We actually have already done projects. For those of you that are familiar with the Omaha area, last year it was very difficult to get to the convention center because Cuming Street was all tore up for most of the year. That was a big sewer project. That was part of this. Our city council began raising the sewer rates in...back in 2007 to start to fund these studies and, in fact, this project has been underway for a long time and we've actually had an organized program of capital improvement of the combined area that dates back to 1990, and we've already spent over \$100 million on sewer separation projects under that. So it's not a new program. [LB952]

SENATOR CORNETT: One final question for myself. What services does Sarpy County utilize that would make you consider they were co-owners of your system when they have their own systems that they operate? And are you doing anything to financially support their systems? [LB952]

MARTY GRATE: Okay. If I don't get all parts of those questions, remind me. First, you know, how do they contribute to the system, they have their sewers to maintain and we have our sewers to maintain. Again, this isn't going to replace all of our sewers. It isn't going to do that. What we're really trying to achieve here is a reduction of these overflows. And when it rains hard, all of those Sarpy communities have overflows from the system that we all operate in. On the owner/nonowner issue, Mayor McGuire mentioned that, you know, there's some change in 2007, and in fact that's not really the case. We have considered in our rate philosophy, going back to the 1980s, that we were not going to treat our wholesale customers as nonowners because if we did that, what that would mean is that we would charge them higher rates than we charge ourselves because we would be assuming risk. We assumed that we were all in this together so, historically, all of our customers have paid for the same rates. Some of the...more of the improvements here, the most cost-effective way to reduce the overflows of everybody's sewage is going to come from improving Omaha's sewers in ways, because it's more cost-effective, more bang for the buck, cheaper for the overall system. But the owner/nonowner issue, when we took it to our rate consultants after we met with the Sarpy communities and asked, okay, they would like to see what would happen if in the model we treated the Sarpy communities as nonowners. They said, well, then their rates would go up more under that philosophy because they would have to pay us for other services. I'd be happy to meet with the Sarpy County communities and go over that report again. I can understand their frustration, it's hard for people to understand, but it's always been one system, one set of rates. And as wholesale customers, in fact their residents, we are charging them much less than we are our residents, because we are treating them as a wholesale customer. So if there's a flat charge and a variable charge on the flat charge that we assessed them, we count Bellevue as one customer, the same as we count Marty Grate in Omaha. And so when we take the pie of cost, half of those CSO costs are on that customer charge, the city of Bellevue as a whole pays only as much as Marty Grate, citizen of Omaha does, for half

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of that capital cost. So we are giving benefits for being a wholesale customer, but we are including them in helping to fund the part that's on the flow charge. [LB952]

SENATOR CORNETT: Then if you are basically co-owners of this system, what are you doing to maintain their systems inside of their cities? [LB952]

MARTY GRATE: We are not maintaining their systems in the routine sort of ways. If there's a sewer that gets plugged in Omaha, we send our public works folks out to remove that blockage. And in our rate model, that's funded only by city of Omaha residents. That's not funded by Bellevue or by Gretna, but for the purpose of this infrastructure project, to reduce the overflows from the system, to improve the community as a whole, the water quality, those are common cost except for the benefit of the wholesale classification. [LB952]

SENATOR CORNETT: Questions from the committee? Senator Utter. [LB952]

SENATOR UTTER: I really hate to get into this but I think I will, but I must tell you that admittedly I'm just kind of a country boy and I guess I don't fully understand what's going on between the Metropolitan Utilities District, the city of Omaha, and the Unified Cities of Sarpy County. Can you help me any with that? [LB952]

MARTY GRATE: MUD provides natural gas and water service to the region. They also act as the city of Omaha's billing agent in collecting sewer use fees for the region. The city of Omaha owns and operates the treatment plants and some interceptor sewers. The Sarpy communities are our wholesale customers and those costs are recovered in a number of different mechanisms, but it's all based upon a sewer rate model. The city of Omaha sets the rates for the system and then we tell MUD, here's how much money you need to bill these customers by their classification. Does that help or is there... [LB952]

SENATOR UTTER: So who owns MUD? Is that a privately owned organization or is that owned by the city of Omaha? [LB952]

MARTY GRATE: MUD is a public utility. No, MUD is a separate public utility with their own elected board. [LB952]

SENATOR UTTER: It's a public utility. [LB952]

MARTY GRATE: Yes. [LB952]

SENATOR UTTER: But at times you folks don't get along. Am I hearing that or not? [LB952]

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MARTY GRATE: Oh, I think we... [LB952]

SENATOR UTTER: Is that true? [LB952]

SENATOR WHITE: I think that's more than accurate. [LB952]

MARTY GRATE: If I could comment, please. [LB952]

SENATOR CORNETT: Can we keep comments from the floor, from the committee to a minimum. [LB952]

MARTY GRATE: Oh, I think at levels we work and cooperate very well. I think, like any other utility or public board, that politically sometimes we aren't always in lockstep. But in terms of moving forward with this construction project... [LB952]

SENATOR UTTER: Do you ever get together and talk... [LB952]

MARTY GRATE: Yes, sir, we do. [LB952]

SENATOR UTTER: ...and see if you can work these things out? [LB952]

MARTY GRATE: Yes, we do. [LB952]

SENATOR UTTER: Okay. (Laugh) [LB952]

SENATOR CORNETT: Senator Hadley, go ahead. [LB952]

SENATOR HADLEY: Mr. Grate, I just have a quick question. It's your second to the last paragraph. You say that the concern that Omaha ratepayers will have to fund sales taxes on materials used in the CSO improvement. Is that because...I guess I'm confused because I thought I heard that MUD is going to pay sales taxes on these materials. Is that correct? [LB952]

MARTY GRATE: My best understanding, and like I said, I can speak to the sewer side of it because that's my area of expertise. My understanding is that, yes, under state law, because it was just decided that way, MUD does pay sales tax on materials they purchase. The city of Omaha is allowed an exemption for things that are consumables that go into a project and they're not charged sales. It's just a different ruling in state law. [LB952]

SENATOR HADLEY: Okay. So...and I'm more of a country boy even than Senator Utter. I mean he's from the big city of Kenesaw and Hastings. But you know...but if the city of Kearney, where we own, the city owns, its water system and sewer system, so if we

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were to enter into this we would not pay sales tax on this project, yet MUD is going to pay sales tax. Doesn't that increase the costs to the people in Sarpy County, Douglas County, Omaha for this project? [LB952]

MARTY GRATE: The answer to your last question is, yes, it does increase the cost. But in terms of whether Kearney would pay sales tax on water, I think they would. I think the way the state law is written is that the water projects, whether they're public or... [LB952]

SENATOR HADLEY: No, I'm talking about buying the pipes and doing the...Kearney wouldn't...if you're saying Omaha wouldn't then Kearney wouldn't either, would they, if they... [LB952]

MARTY GRATE: If they were buying sewer pipes they wouldn't. If they were buying water pipes like MUD, I believe they would. [LB952]

SENATOR HADLEY: Oh, okay. I agree with Senator Utter. This is way beyond for country boys... [LB952]

MARTY GRATE: I didn't write the law. [LB952]

SENATOR HADLEY: ...to figure this out. Okay. [LB952]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. Next proponent. Opponent, pardon me. Thank you, Senator Dierks. You may begin. [LB952]

PAM SPACCAROTELLA: (Exhibit 6) Okay. Good afternoon, Chairwoman Cornett and members of the Revenue Committee. My name is Pam Spaccarotella, that's S-p-a-c-c-a-r-o-t-e-l-l-a. I'm a finance director for the city of Omaha and I am here today to basically give you an idea of what this bill will do financially to the city of Omaha and to sort of plead our case a little bit as to where the city of Omaha is financially. As many of you are aware, Omaha and similar communities and states are facing their greatest financial challenge. The city currently receives over 48 percent of its revenue from sales tax and we've seen that sales tax declining. From 2008 to 2009, our sales tax declined 3.4 percent and, in fact, in January of this year we received our sales tax figures and they're continuing to decline. This impact of the sales tax decline basically impacts Omaha at the approximate amount of \$4.5 million annually, which is more than enough to cover the costs of our swimming pools, ice arenas, summer youth programs, and city sports programs combined, just to provide you with an example of how much that actually funds. In addition to the recession, the exemptions that the city...that the state also provides the sales tax has a significant impact on our sales tax revenues to the extent that all sales tax exemptions approximate \$3.7 billion annually for both the state and cities combined. With respect to some of the testimony I've seen today, one of the

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things that I would like to point out, and I'm not going to read my memo in its entirety, the first is that the sewer service charge is the sum of three separate charges, and that's why we believe that it's actually a fee, not a tax. It's a combination of a customer charge, a flow charge, and an abnormal charge, all of which are based upon the use of the actual sewer system itself. Because of that, we believe that it's a fee, it's a charge for a service. It varies based upon the amount that you use that service, and it's not actually a tax. To talk about how much it's going to impact the city financially, I've given a couple of tables in my handout that I've given you, but the CSO fees, to let you know, I've given you. We actually have increased the fees and I've given you seven years worth of fees. For the state, we're looking at, from 2011 to 2017, approximately \$18.1 million of revenue, and for local, for cities, all cities, not just Omaha, we're looking at \$4.9 million. For the customer, what that means is that on their CSO portion of the bill in 2011 they'll pay an additional 18 cents, both state and local tax, and in 2017 that amount will increase to \$2.22. The other item I'd like to point out that I've heard is that this bill comprises two separate exemptions. One is for exemption for infrastructure charges for water and gas, and then the second is for the CSO portion. The water and gas exemption will impact the city with approximately \$156,000 annually. And the last thing I'd like to point out is that is revenue that we are currently receiving. So the CSO portion is not something that's anticipated, nor have we budgeted for it, but we do currently include the sales tax on the infrastructure fees for water and gas in our budget. I'd like to answer any questions you may have at this time. [LB952]

SENATOR CORNETT: Questions from the committee? Senator Adams. [LB952]

SENATOR ADAMS: So if I interpret this right, the reality is if there were no negative impact to your sales tax receipts, this might be a pretty good idea. [LB952]

PAM SPACCAROTELLA: I'm not sure that would be the case. I mean I guess it's not...from a financial perspective, that would be correct. I can't speak to the policy. [LB952]

SENATOR ADAMS: Gotcha. [LB952]

PAM SPACCAROTELLA: Okay. [LB952]

SENATOR ADAMS: Thank you. [LB952]

SENATOR CORNETT: Taking the financial woes of the city of Omaha out of the equation, you mentioned broadening the sales tax base and how much is exempted in the state. Am I correct? [LB952]

PAM SPACCAROTELLA: Yes, I did. [LB952]

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SENATOR CORNETT: And I know the city was interested at one time at looking at even removing the sunsets on the Advantage and the Super Advantage Act. Part of the reason those are in place are to bring business to the state. Do you not see that there could be a negative impact if we actually removed some of those to the metropolitan area? [LB952]

PAM SPACCAROTELLA: You know, I'm not familiar with those particular acts, so what I would tell you is that I think they're... [LB952]

SENATOR CORNETT: Sales tax on manufacturing. [LB952]

PAM SPACCAROTELLA: Sales...and LB775? Is that what we're talking about? [LB952]

SENATOR CORNETT: LB775, Advantage, Super Advantage. [LB952]

PAM SPACCAROTELLA: And I believe that there are merits to those types of things. But I think you can make a case for any type of exemption, that it draws...provides stimulus and economic activity, but at the same time you have to balance both private industry and government. And currently today, I think what we're really asking is we need to hold steady on exemptions for the period in time that we're facing. The city of Omaha has not been unresponsive. We did raise our property tax this year. We are facing a serious economic crisis and all I think we're asking is let's hold steady for right now, let's make sure that we can get through these difficult economic times. And its impact is not just to the city of Omaha. It's all municipalities. And in fact, in addition, it impacts the state significantly. [LB952]

SENATOR CORNETT: And that brings up one of the points that Senator White has made, that you're taking \$325 million out of the metropolitan area to only bring back 2 cents on every 7 to the metropolitan... [LB952]

PAM SPACCAROTELLA: It's one and a half cents. [LB952]

SENATOR CORNETT: ...2.5... [LB952]

PAM SPACCAROTELLA: Okay. [LB952]

SENATOR CORNETT: ...to the metropolitan area, and the remainder of that goes to the rest of the state. But how does that impact the ratepayers of the metropolitan area? Why are we taking that much money out of the metro area... [LB952]

PAM SPACCAROTELLA: Well, we'd be... [LB952]

SENATOR CORNETT: ...and sending it to the rest of the state when this is a project

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that... [LB952]

PAM SPACCAROTELLA: Right. [LB952]

SENATOR CORNETT: ...is specific to Omaha? [LB952]

PAM SPACCAROTELLA: We would be very agreeable to turning back that revenue to the city of Omaha. [LB952]

SENATOR CORNETT: In regards to just infrastructure improvement? [LB952]

PAM SPACCAROTELLA: Yes. [LB952]

SENATOR CORNETT: Thank you. Further questions? Seeing none, next... [LB952]

PAM SPACCAROTELLA: Thank you. [LB952]

SENATOR CORNETT: ...opponent. Jack? Oh. Next opponent? Seeing no further opponents, is there anyone here to testify in a neutral capacity? [LB952]

LYNN REX: Senator Cornett, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're here today, we know, as you may know, obviously there are cities on both sides of this question and they are all our members, but I would like to just point out two things. I think Senator Adams and Senator Hadley have...both former mayors, have raised some legitimate questions about how do you differentiate between a large project from a policy standpoint that would be tax-exempt from one that is not? And I submit this to you, not in the context of the specifics of this situation but for all the cities sitting in this room who have local option sales tax, the precedent that would be set in terms of how do you then make those differentiations and do that in a legitimate way for future use. In terms of the specifics of this particular problem, it seems to me that this is something that Senator Utter, also a former mayor, has pointed out, and that is this is probably a time to get the parties together. I never think it's too late to get parties together, to sit down and negotiate and work something out, and it's obvious that that needs to happen in this case. I'd be happy to respond to any questions that you might have. [LB952]

SENATOR CORNETT: Senator Adams. [LB952]

SENATOR ADAMS: Lynn, you know the background of municipalities, so let's take this completely out of the Omaha perspective. [LB952]

LYNN REX: That was my first point, Senator, yes. [LB952]

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SENATOR ADAMS: So if...would there be some benefit to something like this for the village of 400 people that's just had their well shut down? And see what I'm getting at? [LB952]

LYNN REX: Yes, I do. [LB952]

SENATOR ADAMS: I mean I hear more about that than this particular issue. [LB952]

LYNN REX: That's why I'm suggesting that one really has to be careful about when you're dealing with sales tax exemptions, and certainly local option sales tax and how those interface, what type of precedent you set in terms of what's going to be tax-exempt and what is not. [LB952]

SENATOR ADAMS: Uh-huh. [LB952]

LYNN REX: But I think there have been legitimate issues brought forward on both sides this afternoon, but I do think it's extremely important to bring the parties together. And I know they've had conversations, that's been testified to this afternoon, but sometimes you need a third party involved, and I would submit that perhaps some of you might be in that position. You have at least three former mayors here. [LB952]

SENATOR CORNETT: I thought you were volunteering. [LB952]

LYNN REX: Oh, no, ma'am, (laughter) although we're always willing to meet with them and certainly they can use the League office and we'll certainly be involved any way that we can, but if I had a resolution to this I would have certainly brought it to everyone first. [LB952]

SENATOR CORNETT: Further questions? Seeing none,... [LB952]

LYNN REX: Thank you. [LB952]

SENATOR CORNETT: ...thank you, Lynn. Senator White. Or, I'm sorry, is there anyone else in a neutral capacity? Senator White, you're recognized to close. [LB952]

SENATOR WHITE: Thank you, Madam Chair, and thanks to the members of the committee. I want to correct one thing, and I appreciate Jack Cheloha's courtesy in allowing me to correct it. The city will get 1.5 cents; the state will get 5.5. I said 5 and 2 and that was wrong. The second thing is it is my understanding that, from contractors, that they do pay sales tax. Now I did not know there was an exemption for consumables and how that will play out here. I didn't know that and I don't know how it will play, but I would tell you then here is a really interesting scenario. The city says, well, we're tax-exempt when we buy the equipment and we put in the stuff, but when we charge our

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citizens to pay for it we get to charge sales tax. I mean that's completely irrational. If the city paid cash from its coffers there would be, according to them, no sales tax. But since we're going to have to pay over time, billing back to the citizens, they say that the citizens must pay sales tax on that which the city itself doesn't pay sales tax, even though MUD does. I would submit to you that has a couple of things that are important. One is it's irrational, but also, whatever loss to the city, where they're saying the statement that this is unfair to exempt this from sales tax, well, if you walk the walk, talk the talk, you know? If you really think pay sales tax, pay sales tax. Now finally, this one occurred to me during the conversation. It causes me a great deal of trouble. Sales tax is normally paid to the political subdivision at the point the service or the goods are delivered. Now these projects are to relieve pressure on a cross-county sewer system that dumps into the Missouri River, but the services to be provided, the ability to store runoff from Sarpy County so it doesn't contribute to storm runoff into the Missouri River will actually be provided in Omaha. So does Omaha get the sales tax, 1.5 percent, levied on people in Bellevue and Gretna? Where does that...which political subdivision gets credited with that 1.5 percent tax? You could argue that since the structures are being built in Omaha and the service of cleaning the sewage is occurring in Omaha, that Omaha in fact in a sense is now being allowed to levy a sales tax on cities not only outside of its city jurisdiction but outside of the county that it is in. Now I don't know if that's true, I don't know exactly how it will be planned out, but it is certainly arguable that the service is provided in Omaha. Final point, the state...that this is a state-mandated project--no, not final, there's two more--yes, but the federal government has told the state if you don't enforce this we're going to do it, you know, and that's kind of not really as transparent as one would like it. The state has no choice but to enforce this or it loses federal money and it loses its ability to enforce these standards. Then there is another point: How long has the city been getting this money? It is true, I just found out from Mr. Clark and MUD, in order to start trying to defray the impact of this they started charging the infrastructure fee one year ago. So for a period of one year MUD has been charging an infrastructure fee. But again, the idea that this is some kind of a long-term vested right that we can rely on is inaccurate. It just hasn't been the case. Now I do urge this body to listen and to look carefully at this from all angles, but I would like to bring us back to a basic point. Any time government is taking money from a citizen, it's a tax. I don't care if you do it by unfunded mandate, you must build this, that's a tax. Or if you take the money from my wallet and you say, look what I'm building for you, that's a tax. This is a tax and now we have a city in fiscal trouble, like so many of our other cities, that wants to quietly tax an unfunded federal mandate. I just think that's incredibly bad policy. I'd really ask the committee to work through this with me and I think this is so important, because so many of these projects are coming around the state to every town and city, that this needs full debate on the floor so whatever is done, it is a statewide policy that we enter into with our eyes wide open after full and fair debate; we don't just back into a state policy by doing nothing. I again thank you for your courtesy.
[LB952]

SENATOR CORNETT: Questions from Senator Utter. [LB952]

SENATOR UTTER: Senator White, I guess I'd like to have you just expand a little bit on the relationship between MUD and the city of Omaha and the implication at least that I drew from the testimony that if the city of Omaha bought the big pipe that there would be no sales tax, but if MUD buys the big pipe there is a sales tax, and all of this just kind of, frankly, leaves me in a...we've got Hastings utilities out where I live and it operates a separate board that is appointed by the city council, unelected but appointed by the city council, and I think there they have...they enjoy the same tax exemptions that the city does. I don't understand. Help me with that. [LB952]

SENATOR WHITE: I don't either, Senator, to be real honest. I can...let's start with what we do know. I do know that MUD does pay tax, sales tax, on these kind of things now and that they will continue unless they're part of a big infrastructure plan and this bill passes, in which case it will be limited. And we can work on that language. My understanding was when the city actually did do contracting that the contractors did pay, and maybe the devil is in the language, pay sales tax as required. Now I did not know, as the city seems to indicate, that they could exempt the big pipes. That may be true, Senator, I don't know, but I'd like to know. I would like to say then, according to the same source in the city, they indicated that when city of Hastings, buying sewer pipes, no sales tax, but when they're buying water pipes, sales tax. Now that's just as irrational as MUD versus the city. What we have in Omaha, because of the growth that's really moved beyond any urban area's growth in the state, we have always had public power, a public power district. MUD is in a sense the equivalent for water and gas that OPPD and NPPD is for electricity. It crosses all kinds of jurisdictional boundaries. They don't go hand in hand with the city. MUD will support, for example, unincorporated areas if they want and they'll bring them into the sewer system and there will be a charge for that, and they don't necessarily harmonize their charges. They work differently. Metropolitan Utilities District works across a big drainage basin, far beyond the city's limits. Therefore, their interests aren't always aligned and they don't always get along, you know, and that's the nature of the beast. They have different interests and they serve literally, in MUD's case, a broader constituency than just the city of Omaha. I'm as confused as you, Senator. (Laughter) [LB952]

SENATOR CORNETT: Senator Hadley. [LB952]

SENATOR HADLEY: I would echo what Senator Utter said, because we have private gas companies in the state, we have MUD as a quasi-public, we have city-owned utilities, we have MUD which is a quasi-owned. We have city-owned electric companies. We have NPPD,... [LB952]

SENATOR WHITE: Yeah. [LB952]

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SENATOR HADLEY: ...OPPD, it does get confusing when we have about three or four or five different models. [LB952]

SENATOR WHITE: Yeah. [LB952]

SENATOR HADLEY: And it would be interesting to know are we consistent across those models and what costs can be incurred by these entities. [LB952]

SENATOR WHITE: And shifted. [LB952]

SENATOR HADLEY: And shifted. That is just interesting. [LB952]

SENATOR WHITE: Well, and one of the things, Senator, you're right, I mean you're absolutely correct on that. I guess in dealing with this, there's an immediate harm, though, that I want to focus on and it may be two, because Senator Cornett raised some stuff. One is what are we going to do when the small town has nitrate infiltration in the city wells and the EPA says shut it down? You got to drill it or you got to put this in. That's a clean drinking water violation. Maybe the state is the guy that sends the bad news, but it's the federal government and they say take the money out and rebuild it. Are we going to tax them? Are we going to tax them? When they're already, as you know, backs against the wall, are we going to throw on an additional tax on these kind of deals? That's one thing. What worries me even more, Senator, and I mean I think we need an opinion on this, where does the sales tax go? Does it go back to the entity? Does it go back to Gretna to the extent Gretna residents are paying it, or does it go to the place where the service is rendered, which is going to be eastern end of Omaha where it's stored, lifted, and treated? And if so, are we going to let this kind of a sales tax be collected in that manner or is there a more fair way to do it? [LB952]

SENATOR CORNETT: Senator Utter. [LB952]

SENATOR UTTER: I just have one parting...about a year ago at this time I made the suggestion that we really needed to get together and have a barbecue. [LB952]

SENATOR WHITE: Yes, sir. [LB952]

SENATOR UTTER: I would suggest or I just wanted to reinforce that suggestion. I think that was a good suggestion a year ago. Maybe we should have a little beer with it too. (Laughter) [LB952]

SENATOR WHITE: Senator, I think we ought to have a little barbecue with the beer on this problem. It's... [LB952]

SENATOR CORNETT: Senator Utter, if I remember correctly, that was over Omaha and

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Sarpy County again. [LB952]

SENATOR UTTER: I believe it was. (Laughter) [LB952]

SENATOR WHITE: Thank you. [LB952]

SENATOR CORNETT: Thank you, Senator White. That closes the hearing on LB952. Senator Nordquist, you are recognized to open on LB975. [LB952]

SENATOR NORDQUIST: Thank you. Thank you, Madam Chair. Members of the committee, my name is Jeremy Nordquist. I represent District 7 in Omaha. LB975 seeks to reduce the restrictions on funds distributed under the Convention Center Facility Financing Assistance Act. As you may know, under current law 10 percent of the funds that go to the city of the metropolitan class, Omaha, under the Convention Center Facility Financing Assistance Act is distributed equally to areas that have a high concentration of poverty, which is defined in statute. Unfortunately, the restriction, that limitation, ignores potential benefits of projects that are nearby, close to, or just outside of those areas which could bring people into those areas of high concentration of poverty. Currently, as it stands there in north and south Omaha, where the two pockets of poverty exist and this money is distributed, members of the community serve on the board. There's one community member, there's one city council member from that area, and one county board member who are up for election and responsible to the public. I brought this bill because I've heard concern from members of the community and all the members of the two boards. I spoke with every one of them. Every one of them is supportive of this. Basically, the bill seeks to recognize the positive impact of a project that could be nearby but just outside the area that has a significant or demonstrable impact on the area of poverty. In north Omaha actually, our Senator Council serves as one of those three board members. Just one example from my district, and the south Omaha site is significantly smaller in size than the north Omaha site. The legislation identifies census tracts that have a very high percent of poverty, 30 percent, and then any neighboring census tracts are included. In south Omaha, for instance, if you're coming west from Iowa, you get to the 13th Street bridge where...on I-80, which is where Rosenblatt and Henry Doorly Zoo are, you get off the exit and head south, you're about a mile away from the area that's a high concentration of poverty, but that area there is very heavily traveled. A lot of tourists come through there. Allowing the three members on these panels to have a little bit more discretion to say, well, maybe down the road when they tear down Rosenblatt, it would be a good place for a museum of college baseball history, which will draw tourists in and eventually draw them into the areas of the high concentration of poverty. The same thing goes on South 24th Street in Omaha where there's a lot of shops and small businesses, good restaurants. If you just drive north a little ways, you're outside. But if there's a project, a grant-eligible project there that would draw people into the south Omaha district and down 24th Street, I think it would make sense to give the committee, the community members, that discretion to

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decide whether or not that project should receive funds. So essentially it just gives the three members on the north and the south Omaha boards a little bit more discretion on how...on where projects can be. And I'd answer any questions. [LB975]

SENATOR ADAMS: Thank you, Senator Nordquist. Are there questions? Senator Hadley, go ahead. [LB975]

SENATOR HADLEY: Senator Adams. Senator Nordquist, a quick question. Are the 10 percent of the 70 percent, which would be about 7 percent right now, is this being fully utilized in the high poverty areas now? [LB975]

SENATOR NORDQUIST: It is but all the members that I talked to said, you know, they know they have to utilize the money. They've all been approached by people who have ideas, projects, and it has to be nonprofit entities to qualify for the grant funds that are outside of the boundaries right now that maybe are a better use of that fund. [LB975]

SENATOR HADLEY: I guess to me that's a key question, isn't it, to whether it's the better use of the fund, because I would hate to have projects within the high poverty area... [LB975]

SENATOR NORDQUIST: Just getting it because it's... [LB975]

SENATOR HADLEY: ...not getting the funding. [LB975]

SENATOR NORDQUIST: Yeah, that's true too. [LB975]

SENATOR HADLEY: So something in the nearby vicinity gets it,... [LB975]

SENATOR NORDQUIST: Yeah. Sure. Yeah. [LB975]

SENATOR HADLEY: ...I just worry that you expand it... [LB975]

SENATOR NORDQUIST: And that is a little bit of...you know, I had that concern initially, too, but looking...I mean two of the three members on the boards are elected by the people in those areas, the county board member and the city council member that represent that, so I think they would be responsive and would be hesitant of making...of taking funds outside of the area that they represent too. [LB975]

SENATOR HADLEY: Thank you, Senator Adams, Senator Nordquist. [LB975]

SENATOR ADAMS: Senator Utter. [LB975]

SENATOR UTTER: Thank you, Senator Adams. Senator Nordquist, is there a sunset

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on when the Convention Center Facility Financing Act dies? [LB975]

SENATOR NORDQUIST: I believe it was a 20-year turn back, but that's...I think that's what it was, is 20 years, but I could be... [LB975]

SENATOR UTTER: And how long has it gone? What year are we in? [LB975]

SENATOR NORDQUIST: I think the 20 years probably started when they passed it in '03, is when the...when they came with it. [LB975]

SENATOR UTTER: Or about seven years old now? [LB975]

SENATOR NORDQUIST: Yeah. They may... [LB975]

SENATOR UTTER: So you got 13 years to go. [LB975]

SENATOR NORDQUIST: And this tweak, yeah, this tweak came, they tweaked it in...would have been '07 I think, yeah, because Senator Ashford and Senator White worked on that. [LB975]

SENATOR UTTER: And so this 10 percent is available just until the act expires. [LB975]

SENATOR NORDQUIST: Yeah, until the state quits turning back the sales tax funds, yep. Yep. [LB975]

SENATOR UTTER: Thank you. [LB975]

SENATOR ADAMS: Senator Nordquist, does the language "close proximity" give you any concern? [LB975]

SENATOR NORDQUIST: It...I mean we were trying to...you know, we didn't want to say one mile or two miles. You know, you could put that in there and then if you're up on the other side of the block or something, that was some language that I...on a bill that I worked on with my predecessor, Senator Synowiecki. We used it one time relating to grant funds for...grant funds for areas to combat prostitution. So that's where that came from. There's no magic to those words and it is up to interpretation. Yeah. [LB975]

SENATOR ADAMS: Okay. Any other questions? Thank you, Senator. [LB975]

SENATOR NORDQUIST: Great. Thank you, guys. [LB975]

SENATOR ADAMS: Proponents? [LB975]

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JACK CHELOHA: (Exhibit 7) Good afternoon, members of the Revenue Committee. For the record, my name is Jack Cheloha, that's J-a-c-k, the last name is spelled C-h-e-l-o-h-a. I'm the lobbyist for the city of Omaha. I'm here to testify in support of LB975. I'd like to thank Senator Nordquist for putting this bill in. I guess first and foremost, you know, none of this would be possible without the actions of the Legislature and the Governor's Office ultimately approving the turn back system of financing the public convention and arenas, and so I'd like to thank the state again for enacting that law and making all of this possible. This bill really is a minor small change. What I've handed out is a letter from two councilmen in Omaha that each respectively represent the parts of the city that qualify for this 10 percent. Ben Gray is a council member that represents north Omaha where that high level of poverty is, and council member Garry Gernandt represents south Omaha where we have this other census tract that meets the state qualification. Both of my council members that would deal with this, that handle the grant applications and awarding of the grant, think that this bill could be helpful. It would expand the potential impact in the areas but, ultimately, still help, you know, these parts of our city that are impoverished and have a high concentration of poor people. And you know, for those reasons they just think that this would be helpful and it would make it easier to administer this program. So I'll try to answer any questions you might have. [LB975]

SENATOR ADAMS: Questions? Senator Pirsch. [LB975]

JACK CHELOHA: Yes, sir. [LB975]

SENATOR PIRSCH: Just in general, under the...so this was these two areas in Omaha that ended up with additional financing through the act, the Convention Center Act, was the result of an amendment by Senator Chambers, is my memory as I recollect. Is that correct? [LB975]

JACK CHELOHA: Yeah, that's right, Senator Ashford and Chambers, yes. [LB975]

SENATOR PIRSCH: Yeah. And what were the...there was a...the specific provision then in terms of defining the area we're looking at bumping out so that...specifically, what was the...these were said to be poverty areas or areas of higher poverty but it was the language that kind of fleshed that out... [LB975]

JACK CHELOHA: Right. [LB975]

SENATOR PIRSCH: ...defined it as how again? [LB975]

JACK CHELOHA: If you'd look on page 3, Senator, lines 16 through 20, that's where it identifies the amount and as we, you know, determine through the federal census. So basically what it is, Senator, is an area that contains a percentage of persons below the

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poverty line of greater than 30 percent, as determined by the most recent federal decennial census. And so that's based on the last decennial census, which would have been, you know, 2000. We'll have a new one here soon. But because of that, these two map areas or these two, you know, census tracts qualified. And so the guiding language under that amendment was you split the amount equally. And one last thing, too, Senator. It's not an extra amount per se that goes to Omaha. Basically, the way the turn back money is split now, it's 70 percent goes to the qualifying builder of a convention arena and 30 went into the statewide fund for the enhancement of programs statewide. We only use 10 percent of Omaha's 70 percent to split equally in these areas. [LB975]

SENATOR PIRSCH: Okay. [LB975]

JACK CHELOHA: Right. [LB975]

SENATOR PIRSCH: And so the proposal that Senator Nordquist comes now is to...increases the, I guess as he puts it, the flexibility of the funds to be distributed in areas close to or geographical proximity to the areas that currently are in law. [LB975]

JACK CHELOHA: Right. [LB975]

SENATOR PIRSCH: And how does that...what is the language that allows it? And it's obviously up to the representatives who are already in place, but do they represent...are they elected from districts that overlap the areas entirely or is it just (inaudible). [LB975]

JACK CHELOHA: Right. Once again, that's set by statute. What it is, Senator, is each area has a committee of three and the statute requires it to be the council member that represents the area, the county board member that represents the area, and between the two of them, they select a third member and they have a panel of three that ultimately accepts grant applications and then awards the grants. [LB975]

SENATOR PIRSCH: But it just so happens in these two areas' particular case that there is just one city council member who...I mean there could be an area of poverty that has two... [LB975]

JACK CHELOHA: Right. Right. [LB975]

SENATOR PIRSCH: ...city councilmen or three or possibly even, you know, four, depending on how the lines are drawn. [LB975]

JACK CHELOHA: Right. [LB975]

SENATOR PIRSCH: It just so happens that after the census overlays were conducted there was just one city councilman in the north area and one in the south area. Is that

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correct? [LB975]

JACK CHELOHA: Right. If you look at page 3, line 17, that's...basically it talks about whose district includes a majority of the census tract. So, you know, it's the biggest size and then that would be the person. So it's already in existing law. [LB975]

SENATOR PIRSCH: Okay. And the concept, as you understand it, underlying this is there may be some benefit that will accrue to the areas or a higher...in a higher level if you...although it doesn't technically fall within the geographical lines of the area. Is that... [LB975]

JACK CHELOHA: Right. There could be a nonprofit that happens to have its main headquarters, you know, across the street, outside the census tract, and so this bill would allow us to expand, you know, the area we could take grant applicants. [LB975]

SENATOR PIRSCH: Would it ever occur that there may be something even...and the way that it writes does it just say within...is the terminology within close geographic proximity of such area? That's the proposed language, right, that we're referring to? [LB975]

JACK CHELOHA: Correct, uh-huh. [LB975]

SENATOR PIRSCH: So it still has a geographical tie to the area and that would be, you know, though it's not specifically defined, would be interpreted by a court, assuming (inaudible) challenges (inaudible). Is there the possibility, I just ask since we're talking about an expansion, that there might be an additional place where such funds could be sent to that would benefit that area that wouldn't...that would be even further than a close geographical proximity? In other words, I mean...and I don't know what the answer is to the question but you were I guess some of the proposed usage of I think Rosenblatt was...and I'll direct this. Some of the proposals were that, you know, although Rosenblatt Stadium may not fall within the strict boundaries, it's close, and that might be. Are there other...I mean do...is the geographic...if the monies have to be expended for the benefit of the area, is the geographical requirement necessary or helpful? Might there be uses that might not even be within a close geographical proximity that would get more bang for the buck, so to speak, for the area? [LB975]

JACK CHELOHA: I see your point. I know you're trying to be helpful, right, Senator? I mean you want to...you want to benefit the area, but you're saying... [LB975]

SENATOR PIRSCH: Correct. [LB975]

JACK CHELOHA: ...there may be an agency even further away from the census tract itself. [LB975]

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SENATOR PIRSCH: That arguably isn't a close geographical proximity. [LB975]

JACK CHELOHA: Right. [LB975]

SENATOR PIRSCH: Or do you think that you, at that point in time, you run the risk of stretching it? [LB975]

JACK CHELOHA: Well, I guess, I mean once again our point, though, is to show important historical aspects and, you know, I know there's blanket umbrella agencies that are in the business of doing that and they may have their headquarters, you know, in downtown Omaha or in west Omaha, if you will. I think, boy, I think that's something maybe you would have to work on the language with Senator Nordquist, but for now I think we tried to tie it as close as we can to the areas that would...that benefit, because we want to draw... [LB975]

SENATOR PIRSCH: Okay. I didn't want to belabor the point. [LB975]

JACK CHELOHA: Right. Okay. [LB975]

SENATOR PIRSCH: I do appreciate your answer to the question. [LB975]

JACK CHELOHA: All right. Thank you. [LB975]

SENATOR PIRSCH: Yeah, thank you. [LB975]

SENATOR CORNETT: Thank you, Senator Pirsch. Further questions? Seeing none, thank you, Mr. Cheloha. [LB975]

JACK CHELOHA: Thank you. [LB975]

SENATOR CORNETT: Next proponent. Are there any further proponents? We'll move to opposition testimony. Is there anyone here in a neutral capacity? Senator Nordquist, you are recognized to close. [LB975]

SENATOR NORDQUIST: Thank you again, Madam Chair. Just real quick, I'd be happy to work with you, Senator Pirsch, on some language. I think the critical component is the significant and demonstrable impact in that the discretion would be left up to those two elected officials and then the third member that they appoint. They're ultimately accountable to the public and to the people that they represent there, so I think having that tie would keep them, you know, keep them looking out for the best interests of that area. [LB975]

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SENATOR CORNETT: Thank you. [LB975]

SENATOR NORDQUIST: Thank you. [LB975]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB975]

SENATOR NORDQUIST: Thanks. [LB975]

SENATOR ADAMS: Whenever you're ready, Senator Cornett, we'll open on LB1018. [LB1018]

SENATOR CORNETT: (Exhibit 8) I'm dropping things. Good afternoon, Senator Adams and members of the Revenue Committee. My name is Abbie Cornett and I represent the 45th Legislative District. I appear here before you today to introduce and ask your support of LB1018. LB1018 is the result of years of careful consideration and investigation. It would adopt the Nebraska Advantage Transformational Tourism and Redevelopment Act. The act would allow cities throughout Nebraska, after a vote of its residents, to commit their local option sales tax dollars generated within a specific geographic area to pay back the debt on a project. It would encourage the development of major tourism destinations throughout Nebraska and simultaneously encourage the redevelopment of portions of our cities which may be feeling the effects of age. While the threshold varies for the major tourism project according to the taxable sales in individual counties across the state, ranging from \$10 million in our smaller communities to \$50 million in our largest, the legislation does not vary when it comes to the redevelopment projects--a \$10 million threshold for redevelopment projects within the boundaries of any city in our state. Let me be clear, this allows a city to commit the local option portion of the sales tax only after a vote of the people. It does not commit any portion of the state sales tax. I have provided a matrix for the members of the committee identifying the thresholds for a project in individual counties across the state. In some cases these amounts may seem high. I want the committee to know that these amounts are high for a reason. We want this mechanism to only be used for their major tourism or redevelopment projects. It should not be used for small projects. The kinds of projects I envision for the use of this mechanism are those that would transform a community or an area along our interstate system in such a way that individuals traveling throughout our state would want to stop and spend a few dollars. Further, the kinds of redevelopment projects should be transformative as well. I know my home community of Bellevue is looking at a major redevelopment along Fort Crook Road, which has been devastated since the opening of the Kennedy Freeway a few years ago. This will give them a long-needed tool in their toolbox. Following me in testimony today will be mayors of two cities who want the opportunity to utilize this new tool. Additionally, you will hear from a member of the chamber of commerce, a developer, and economic development experts. The messages you will hear will be clear: We need this additional

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tool in our toolbox. With this, we will be able to transform our communities into tourism destinations and better places to live. I hope you will carefully listen to what these experts tell you. As I close, I would like to make this point. I have been a part of the Revenue Committee since I arrived in the Legislature in 2005. Since then, I have seen many pieces of legislation that are similar to LB1018 but in many cases they have asked for state sales tax dollars and have been targeted to a specific retailer or development. This legislation is neither. It asks for no state dollars and does not have a specific development in mind. It is a tool that can be utilized by cities when needed to attract a development. In other words, it puts our cities at the ready when it comes to individuals approaching their cities to do economic development, and we need to put them at the ready. If we pass LB1018 this year, cities can go to their voters and get permission so that when the current economic downturn ends, as some have indicated hopefully will occur within the next 24 months, cities can move forward. This legislation, because of the vote of the people, cannot be implemented overnight and it will take time. I want to thank you, Senator Adams and other members of the Revenue Committee. I'll be happy to answer any questions you might have. But a lot of the technical issues I would appreciate if you would direct to the experts that follow. [LB1018]

SENATOR ADAMS: Questions for Senator Cornett? Senator Hadley. [LB1018]

SENATOR HADLEY: Yeah, Senator Cornett, and I'd hope that...it can't be a technical question for me, but anyway, because I'm not sure I can do one, but this is not in the realm of the ability for cities to do now. We would need this law to do it. They don't have the ability to rebate the 1.5 cents...5 percent. [LB1018]

SENATOR CORNETT: To specific projects, no. [LB1018]

SENATOR HADLEY: They can't do it on their own is the reason this is coming to us. [LB1018]

SENATOR CORNETT: Yes. [LB1018]

SENATOR HADLEY: Okay. [LB1018]

SENATOR ADAMS: Any other questions? Senator, go ahead. [LB1018]

SENATOR CORNETT: Senator Utter. [LB1018]

SENATOR UTTER: Thank you, Senator Adams. Senator Cornett, I am interested in how we arrived at the tiers. [LB1018]

SENATOR CORNETT: Those tiers were based on population and the dollar amounts

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can be adjusted, depending on the communities. We looked at the metropolitan area for a larger amount because of the probability larger projects would go in that area, but we're happy to look at any of those thresholds. [LB1018]

SENATOR UTTER: Yeah. Quite frankly, I would be real honest with you right now and say that a \$50 million project in Hall County or a \$30 million project in Adams County are probably very remote that either of these counties...and maybe the same would be true with Buffalo County, we're talking about an awful lot of money. And maybe right along the interstate there is a possibility of something happening, but Adams County, for example, off the interstate and Scotts Bluff County is off the interstate; Madison County is off the interstate. Even though we do have some population, I just question as to whether this would have any...would be something that we could even utilize in those areas. [LB1018]

SENATOR CORNETT: Again, like I said... [LB1018]

SENATOR UTTER: And maybe that's not bad or good, I don't know. It's just... [LB1018]

SENATOR CORNETT: Like I said, we would be more than happy to look at the ranges and understand that for the redevelopment the threshold is \$10 million. [LB1018]

SENATOR UTTER: I see that, yes, thank you. [LB1018]

SENATOR ADAMS: Other questions? Thank you, Senator Cornett. First proponent. [LB1018]

DOUGLAS KINDIG: (Exhibits 9, 10) Good afternoon. I'm Mayor Douglas Kindig, D-o-u-g-l-a-s K-i-n-d-i-g, from the city of La Vista. I am here today representing the United Cities of Sarpy County in support of LB1018 to adopt the Nebraska Advantage Transformational Tourism and Redevelopment Act. I appreciate the opportunity to inform you about this initiative to enhance our economic development toolbox. For some time we have recognized the need to expand the economic development toolbox available to municipalities in order to attract and facilitate tourism-type destination projects and redevelopment opportunities in our communities. Through La Vista's involvement in ICSC, the International Council of Shopping Centers, over the past several years, it has become clear that we cannot compete as well with the other areas of the country that are doing more to incent projects that include a retail component. We have worked with national consultants specializing in economic development legislation to review the options available in Nebraska and advise us on what is working well elsewhere throughout the country. As a result, we have concluded that if we are going to be successful with economic development related to redevelopment and tourism-type destination development projects we must expand our toolbox to provide more options. The primary intent of this legislation is to give municipalities the authority to rebate a

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portion of the local sales tax generated in a qualifying development to help offset some of the development costs. The use of this authority by a municipality would require that the city first get approval by their citizens. Not all projects would be eligible to utilize this tool. The qualifying developments are twofold: major tourism development and redevelopment areas of cities suffering from the effects of age. This is a tool that can be utilized for both new development and redevelopment types of projects with minimum thresholds that must be met. The bill provides a tiered system to make minimum thresholds obtainable for jurisdictions throughout the state on the major tourism development component. On the redevelopment side, it requires a \$10 million threshold. While there is no specific project on the horizon that this bill is being brought to lure to Nebraska, it will provide an opportunity for cities to be able to move quickly should an opportunity develop. If predictions for a significantly improving economy within the next 18 to 24 months hold true, it is important that this legislation move forward as it will take some time for a municipality to implement such a program. Again, this is only one tool in our economic development toolbox. Currently there is nothing in Nebraska available to incent projects that include retail. This bill would change that. Nebraska does provide some effective incentives. However, sometimes the combination of incentives may be needed to attract certain types of quality projects. I hope this gives you a better understanding of our position regarding the proposed legislation. I appreciate your consideration this afternoon. I'd be happy to try to answer any questions. [LB1018]

SENATOR ADAMS: Senator Utter. [LB1018]

SENATOR UTTER: Thank you, Senator Adams. Mr. Mayor, how many of the United Cities of Sarpy County are now using all or a part of the 1.5 percent city option sales tax? [LB1018]

DOUGLAS KINDIG: I know that four of them. I don't know if Springfield has that 1.5 cent so I don't want to... [LB1018]

SENATOR UTTER: So should this...if you're already utilizing this for general fund budget purposes primarily I guess... [LB1018]

DOUGLAS KINDIG: Right. [LB1018]

SENATOR UTTER: ...or other uses, then what's going to replace those funds should you dedicate them to some type of a development project? [LB1018]

DOUGLAS KINDIG: Yes, sir. None of our funds that we have right now would be dedicated to this, only the new sales tax dollars generated by the qualifying development. So in other words, the sales tax dollars that we have now will not go towards this program. It's only the new dollars generated by the development. [LB1018]

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SENATOR UTTER: Thank you. [LB1018]

SENATOR ADAMS: Senator Pirsch. [LB1018]

SENATOR PIRSCH: Just a question and I appreciate your testimony here. You said this is the only tool that would, if passed, incent projects that would be retail in nature. Is that right? Or that could include retail in nature? [LB1018]

DOUGLAS KINDIG: That could include retail. [LB1018]

SENATOR PIRSCH: Has that been a conscious practice of the state in focusing more on, in terms of economic development, bringing in outside dollars to the pot as opposed to...I mean, if you're allowing for retail, you're not just sacrificing the bowling alley instead of...one already entertainment venue that exists as opposed to another? What's the reason or rationale for including retail within this I guess? [LB1018]

DOUGLAS KINDIG: The trend nationally, Senator, has moved towards more of multiuse developments that include not only retail but residential, commercial, office buildings, tourism, and then, of course, entertainment districts. To compete nationally, we feel like that we had to include at least a percentage of retail. It is only 40 percent. We realize that it's important that we bring in the rest of it. It does...a project would not qualify for this, and I'll mention the Cabela's, this would not qualify by itself. As part of a major development, if only 40 percent of it was retail, we feel we need that to compete with the new trend of destination points. [LB1018]

SENATOR PIRSCH: Yeah. Well, I wanted to check with you about that. I just wanted to see because perhaps with a place like Cabela's, even though technically retail, you may argue that while retail it does bring in dollars from outside. And I don't know. I just wanted to check with you about that point. [LB1018]

DOUGLAS KINDIG: Exactly. And I think if this moves forward, I think that is something that we will have to define because you're right--Cabela's is probably the number one tourism destination in Nebraska. [LB1018]

SENATOR PIRSCH: Yeah. And I know that you said you don't have anything on the horizon in terms of, but you noted in other areas as you were developing and drafting this bill that in competing for projects. [LB1018]

DOUGLAS KINDIG: Right. [LB1018]

SENATOR PIRSCH: What types of things have been used in other jurisdictions? What types of projects would you envision may...could possibly look at this type of... [LB1018]

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DOUGLAS KINDIG: This started, Senator, our 84th Street because our Walmart moved across the street to my friend's city in Papillion (laugh) hurt our tax base greatly. It was almost a third of our sales tax dollars. Since it has moved out, we've lost a number of the supporting stores. So we started to look at this, La Vista did, well over a year ago as far as what can we do to redevelop our 84th Street? The old shopping centers of a sea of concrete and the building set way off the street are a thing of the past. We knew that to develop this multiuse facility we were going to probably have to need some type of an incentive program. We also knew that our new development could use something like this. La Vista has been very visionary, very proactive in how we've developed our city. By going to the international shopping centers conference, we've learned from the major developers across the nation that to compete on a level playing field we need something like this. [LB1018]

SENATOR PIRSCH: Thank you. [LB1018]

SENATOR ADAMS: Senator Hadley. [LB1018]

SENATOR HADLEY: Senator Adams. Mayor, thank you for being here. I guess I asked the question, we're going to hear a bill in the Revenue Committee later this session from one of the cities out west that wants us to set up a...that they feel that so much local sales tax has been used for economic development and such as that and they want us to set up a safety net to try and get local funds...to get the funds back to them. And then we hear a bill here that wants to use the local funds so I feel like we're getting whipsawed just a little bit. One city says use, you know, give us more of the funds back that's being used for economic development. And yet we hear now, give us another tool to use more local funds. [LB1018]

DOUGLAS KINDIG: Yeah. If you don't...I am familiar with, you know, the problem that Sidney has. The difference with this bill, Senator, is--and I think this is very important as a mayor of a city--the Nebraska Advantage and LB775, I'm afraid in the Sidney area so much of their sales tax dollars are committed to those initiatives that they are running into trouble. Those incentive bills come from the state level. This bill, Senator, is at the control of the local government. If we feel that this would be a bad bill to where we would stretch ourselves tax dollars, the local government would not approve this bill. And so this starts at the local level and goes up instead of the other way. And I think that's important, obviously, to a mayor. We also will only be committing the new sales tax dollars, and that's the other component that I think is important. [LB1018]

SENATOR HADLEY: And, Mr. Mayor, one other question. Is it common that you would commit 100 percent of the new sales tax dollars because you aren't...you will be now. Is that correct? [LB1018]

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DOUGLAS KINDIG: Not necessarily. Again, as we would negotiate with the developer, we are asking that this bill be passed saying that we could commit the entire 1.5 cent of the new sales tax dollars. But as we get into this, I would say that when we are negotiating with that developer if they also are going to be using maybe the Nebraska Advantage Act or some of the other incent programs, as a local government I wouldn't feel comfortable maybe committing all of our sales tax dollars if they were given other incentives. Could we? Yes. Who gets to say that is the local city council. [LB1018]

SENATOR HADLEY: Okay. Thank you, Mr. Mayor. [LB1018]

SENATOR ADAMS: Any other questions? Let me ask. I know...I think I understand the difference between what you're trying to do and a regular LB840 plan. But I have to ask because I'm sure you've thought it through, why wouldn't you, if you're going to go to a vote on this, why wouldn't you go to a vote on and develop an LB840 plan that would also recapture your sales tax dollars and use it? [LB1018]

DOUGLAS KINDIG: Right now what I can answer about that, Senator, is LB840 has a \$2 million cap on it at this time. The city of La Vista, because of our hotel conference center project, which has been extremely successful, we are already up to that lid. It does not include, LB840, any of the retail component. Could it be blended into that bill? I think, you know, we've gone this route with it. I do think there are some differences with the LB840 and what we are trying to propose. [LB1018]

SENATOR ADAMS: Fair enough. Thank you. [LB1018]

DOUGLAS KINDIG: Yeah. [LB1018]

SENATOR ADAMS: Any other questions? Next proponent. [LB1018]

DAVID BLACK: (Exhibit 11) Good afternoon, Senators of the Revenue Committee. My name is David, D-a-v-i-d, Black, B-l-a-c-k. I'm mayor of the city of Papillion. I'm here in support of LB1018, and I encourage you to vote in favor of it. I just want to thank you for holding this hearing today, and I'll be brief, as La Vista Mayor Kindig already provided a great summary of the act. Mayor Kindig was speaking on behalf of the United Cities of Sarpy, of which Papillion is one. Papillion likes the idea of the local city control that LB1018 provides--no use of state revenue. We believe this adds another economic development tool to aid us when working with private developers and site selectors that are looking throughout the region to place a destination development. The ability to leverage local city resources is critical when working with regional economic development. Like La Vista, Papillion has no specific project in play. However, I would like to give three specific examples of how in just the last six months we have competed with other states. Local economic incentives played a role in every discussion. Papillion is proud that we were able to play a role in expanding Cabela's presence in Nebraska

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by having a local tool available as an incentive. Because of our ability to utilize local resources, the data center for Cabela's worldwide operations will remain in Nebraska. Papillion recently found out we were number two in the site selection process for a major telecommunications company. Because of local incentive tools, that company was wooed to Arizona. Papillion is in the final selection for a regional headquarters, and my understanding is we are in competition with a neighboring state. I feel good about that potential opportunity and like with Cabela's, it's the local resources I have that played a role in private developer making a competitive bid for that headquarters site. The above theme is a local community having the ability to supplement state-level-funded programs with local incentives. LB1018 is all about local tax dollars working locally for regional development. In Papillion's case, LB1018 will most likely be used for a major tourism project as opposed to another city that might focus on a major redevelopment project. In Sarpy County, the Highway 370 corridor between Interstate 80 and 72nd Street is a six-mile stretch and that's Papillion's logical growth area and is primed for regional tourism. As we progress with comprehensive planning and focus on future economic development, this is an important area, and LB1018 could play a crucial role. With Mayor Kindig's explanation of the act and hearing how Papillion might apply it, I encourage this committee's support. LB1018 we believe has been crafted to assist communities throughout the state. Thank you for your time. I'd be happy to answer any questions. [LB1018]

SENATOR ADAMS: Thank you, sir. Are there questions? Thank you then. [LB1018]

DAVID BLACK: Thank you. [LB1018]

SENATOR ADAMS: Next proponent. [LB1018]

DEVIN MEISINGER: Good afternoon. My name is Devin Meisinger, spelled D-e-v-i-n M-e-i-s-i-n-g-e-r. I am the president of Nebraska Economic Developers Association and I'm here today on behalf of the Nebraska Economic Developers Association, a membership organization of over 300 members statewide. I'd like to voice our support of LB1018 to adopt the Nebraska Advantage Transformational Tourism and Redevelopment Act. We see this as an important bill that would give municipalities a tool to incent tourism attractions and redevelopment projects through rebating a portion of their local option sales tax. The bill also provides a tiered structure that makes a vital mechanism that can be used across the entire state for tourism related development projects. Quality tourism and retail attraction enhances the ability of a community to recruit people into their communities to make them more livable and stable economically. I am also registering and testifying on behalf of the Nebraska Chamber of Commerce today as well. Thanks for giving me the opportunity to support the legislation that will create and retain jobs within our state. [LB1018]

SENATOR ADAMS: Thank you, sir. Are there questions for this testifier? Thank you.

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Next proponent. [LB1018]

MEGAN LUCAS: (Exhibit 12) Good afternoon. Members of the Revenue Committee, my name is Megan Lucas, M-e-g-a-n L-u-c-a-s, and I'm with the Bellevue Chamber of Commerce. I'm here today in support of LB1018, the Nebraska Advantage Transformational Tourism and Redevelopment Act. At the Bellevue Chamber of Commerce, we focus on community economic development opportunities. Growing and sustaining the community is one of our core tenets. We strive to develop public-private partnerships that will engage the talents of our residents and strengthen our ability to meet our goals. Vacant buildings lead to disinvestment. Over the years, our ability to assist in redevelopment of critical community areas has become priority number one as we work to redevelop Fort Crook Road, a 6.5-mile corridor in Bellevue. Reuse and redevelopment projects often located in distressed neighborhoods, are usually high-risk development projects from a private sector point of view and require public action to leverage public activity. Government frequently has to initiate redevelopment because without a kick start the market risk in many distressed areas is too high for a private party to assume without assurance of ongoing improvement and investment. Also through an open planning process, the public sector can build community support for redevelopment. LB1018 allows for constituents and elected leaders to move forward together. Through the approach of targeted area redevelopment, resources are proactively focused on revitalizing a defined group of physically or economically distressed properties. While a developer is interested in maximizing value from a site, a community has a clear interest in thinking about the area around that site and how to maximize the value of that site to the community. Combining tools and techniques, such as planning, zoning, stakeholder involvement, land acquisition, tax increment financing, environmental assessment and cleanup, and infrastructure development, allows for a strong, proactive approach. We all know funding is a critical component to any development and is especially critical as we compete for projects. LB1018 is a financing tool that would assist us as we redevelop a major corridor in our community. Often in areas where target area redevelopment is likely to be used, a variety of mechanisms is in place to stimulate market interest, such as grants, tax credits, and regulatory benefits. Frequently it is this combination that can tip the balance in favor of a project, and we believe that LB1018 is a complementary and beneficial layer that integrates community ownership. This legislation would allow the citizens of our community and other communities across the entire state to partner together with their cities for agreed upon growth. Firmly, by a vote of the people, a true public-private partnership could be formed as a consensus for community development and, in our case, redevelopment moves forward. LB1018 is an additional tool that can be utilized by municipalities across the state with a vote of their citizens. The Bellevue Chamber of Commerce and the Bellevue business community we represent urge you to support LB1018. [LB1018]

SENATOR ADAMS: Thank you. Questions, Senators? I guess not. Thank you.
[LB1018]

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MEGAN LUCAS: Thank you. [LB1018]

SENATOR ADAMS: Next proponent. [LB1018]

LEE PEDERSEN: (Exhibit 13) Good afternoon. My name is Lee Pedersen, L-e-e P-e-d-e-r-s-e-n. I'm a senior vice president of CB Richard Ellis/MEGA, a commercial real estate brokerage and management company located in Omaha. I want to thank Senator Cornett for introducing this bill. I'm here today in support of the passage of LB1018. Our firm represents many real estate developers here in Nebraska. As I'm sure you are aware, the recession has been greatly felt by the commercial real estate community, and competition for projects is both national and international. Projects have become much more difficult to accomplish. Financing is especially difficult given the lending environment. Developers are being required to meet much more difficult standards than in previous economic times. Banks are requiring more equity in potential projects. Many projects that in the past would have been financed and completed are just not feasible today. Worthy and necessary projects for the health and growth of our communities are being shelved and potentially never done. Many of these projects need some public assistance to be feasible and to make financial sense in order to qualify for financing. LB1018 is a tool that municipalities can use to aid developers in the development of necessary projects, projects that improve communities and meet many needs. Redevelopment projects to revitalize a community are especially desirable. But these types of projects are even more difficult to accomplish in this financial environment. Without some form of public assistance, these projects will not happen. LB1018 can provide municipalities with a tool to help make these projects a reality and a means for a successful public-private partnership. Our firm also represents many tenants who have become very cautious today. They are more conservative in their growth and expansion plans. They're also more demanding of the developer in the economics of their transactions. This fact, coupled with the challenging economic and lending environment, have made developments hard to pencil for the developer. The stimulus of some public assistance, such as provided by LB1018, will help developers and municipalities across the state to see projects start to come up out of the ground. These projects will employ many people in the construction trades during the development stage and create many permanent jobs in completed projects. It appears to us that LB1018 is a win-win situation. The bill requires a project to meet certain qualifications in order to be eligible for LB1018 benefits. The requirements are tiered in order to provide these benefits to communities of all sizes. The project must be either a redevelopment project or a tourism-related project which will benefit the state as well as the local community. The project must meet the but-for test also to qualify, so without the benefits of this bill, the project won't happen. Qualified projects provide sales tax revenue to the state, employment to the local community, and new tax revenue to the local community. Thank you for your time today and the opportunity to speak in favor of this much-needed legislation. [LB1018]

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SENATOR ADAMS: All right. Thank you, sir. Questions? Thank you. Any other proponents? [LB1018]

LYNN REX: (Exhibit 14) Senator Adams, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities, and if a page would come forward, please. First of all, we'd like to thank you for the opportunity to be here today to support this measure. We also want to thank the Cities of Sarpy County for bringing this important measure to us for our consideration early on as well because this is a bill that I think will help cities across the state of Nebraska. It's also one that will take advantage of the constitutional provision which was the structure of LB840 because we have got several mayors sitting on this panel, and you're familiar with what LB840 programs are. And what I'm handing out to you is basically what is Article XIII, Section 2. And I've noted on the little mark on the side which provisions related to LR11CA which passed and was overwhelmingly approved by the voters in 1990. And that's extremely important because when the voters in 1990 had the chance to say should the Legislature have the authority to allow municipalities to use local sources of revenue for economic or industrial projects or programs, subject to a vote of the people, that vote was overwhelming. There was no opposition to it and literally passed with over I think 80 percentile. So that was the basis constitutionally for LB840. That is the constitutional basis for LB1018. What is extremely important and a distinction to be made between what's occurring, if Senator Hadley was here, what's occurring with this bill what can occur and what occurred in Sidney, Nebraska, and is occurring there and will occur in other cities is that this bill really codifies the whole concept of local control. LB1018, just like LB840, allows municipalities to really determine their own destiny. This is about local control. With LB775, with the Nebraska Advantage Act we have cities across the state that are struggling deeply with sales tax revenue. It is a grave concern. But they didn't have that choice as to whether or not to give up their sales tax revenue. They did not have the choice as to when that would happen and how it would happen. This bill certainly allows them the opportunity to structure that and have it as a local incentive, a viable incentive, as new sales tax dollars are generated from these very important projects for tourism and redevelopment across the state of Nebraska. We think this is vitally important. We think it's going to help not just the cities in the Sarpy County area but also cities across the state. And we thank them for also taking into account the various thresholds that those cities need in order to make these types of projects effective. But I cannot underscore enough the difference between this type of a project in LB1018 in terms of how it is structured and how the bill is structured and works as opposed to the Nebraska Advantage Act and LB775 which basically from the git-go just takes money right off the top and local option sales tax cities have been suffering from that. We also have benefited from LB775 certainly and benefited from the Nebraska Advantage Act. There's just no doubt that those are incredible incentives in the state of Nebraska. But that being said, you do have a problem when you end up with a city like Sidney that is looking at less and less sales tax revenue to the point that

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that city really is going to be impaired in terms of their operational, daily operational basis. So with that, we think this is just an outstanding proposal. It is a proposal that does foster the ability of a local government and its people to vote on whether or not this is something that they want to do with their local dollars. I'd be happy to respond to any questions that you might have. [LB1018]

SENATOR ADAMS: All right. Thank you, Lynn. Are there questions for Lynn? I guess not. Thank you then. [LB1018]

LYNN REX: Thank you very much, appreciate it. [LB1018]

SENATOR ADAMS: Any other proponent testimony? Opponent testimony then? We'll move to opponents. Neutral testimony. Senator Cornett, you're up to close. [LB1018]

SENATOR CORNETT: Thank you, Senator Adams, members of the committee. I just wanted to stress that we are happy to sit and work with members of the committee on those thresholds. We did establish those thresholds higher because we didn't want...we don't want to incentivize the small projects. We actually want to incentivize things that will attract tourists. This is something that could have been used for the arch, those types of projects. It is different in regards to Sidney like Lynn Rex stressed, that this is just on the project and the voters get to vote on that and the city can budget for it at the time. But I would be happy to work with the committee on any of their concerns on this bill and would please ask you to advance it forward. Thank you. [LB1018]

SENATOR ADAMS: Thank you, Senator Cornett. Any final questions for the senator? If not, thank you and that will end the hearings for today. [LB1018]