[LB752 LB962 LB1128]

The Committee on Revenue met at 9:30 a.m. on Monday, February 13, 2012, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1128, LB752, and LB962. Senators present: Abbie Cornett, Chairperson; LeRoy Louden, Vice Chairperson; Greg Adams; Lydia Brasch; Deb Fischer; Galen Hadley; Pete Pirsch; and Paul Schumacher. Senators absent: None.

SENATOR LOUDEN: Good morning, ladies and gentlemen. We'll start the hearing now for the Revenue Committee. I'm Senator LeRoy Louden, Vice Chairman of the Revenue Committee. On my left is Senator Deb Fischer from Valentine, on her left is Senator Adams from York, and the committee clerk is Matt over here someplace. I never did learn your last name, Matt, but what is it?

MATT RATHJE: Rathje.

SENATOR LOUDEN: Okay. And to my right is Senator Galen Hadley, to his right is Senator Pete Pirsch, to his right is Senator Lydia Brasch, and to her right is Senator Paul Schumacher. Our pages today are Katie Miller and Loguen Blazek. And we will begin. Now be sure and turn off your cell phones or put them on vibration or whatever it is so they don't disturb anybody. And there's sign-in sheets for testifiers on the tables by both doors and need to be completed by everyone wishing to testify. If you are testifying on more than one bill, you need to submit a form for each bill. Please print and complete the form prior to coming up to testify, and when you come up to testify, hand your testifier's sheet to the committee clerk. There are other clipboards in the back of the room to sign if you do not wish to testify but would like to indicate your support or opposition to a bill. These sheets will be included in the official record. We will follow the agenda posted at the door. The introducer or representative will present the bill, followed by proponents, opponents, and neutral. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, state your name and spell it for the record. If you have handouts, please bring ten copies for the committee and staff, and if you only have the original we will make copies. Give the handouts to the page to circulate to the committee. With that, we will start with the first bill which is LB1128, and Senator Schumacher will present it. Good morning.

SENATOR SCHUMACHER: (Exhibit 1) Good morning, Senator Louden and members of the committee. My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, and I represent District 22 here in the Legislature. I'm here today to introduce LB1128. This particular bill was brought to me with the idea that Nebraska is missing out on some possible participation in a federal program that basically allows around 39 percent tax credit for investments made--and it's a nonrefundable tax credit so it's not like you get something if you don't do something--for investments made in certain designated areas, certain kinds of investments by a qualified company. And I understand there will be a map presented by some of the presenters here today which indicates that the targeted areas of the investment are very similar to a lot of the areas that we've thought need investment stimulation in Nebraska, so it could possibly integrate well with some of our other plans. What this would do is extend a similar deal to the federal 39 percent tax credit to Nebraska companies that owe Nebraska tax. Now if you looked at the fiscal note, your hair has turned white by now and you said, oh gee, it's pretty big--and it is. Now the theory--and we've heard this theory before, but they will explain it again today--is that there's a two-year lag between the time that the investment is made and the credit is then taken out of the system--so the revenue loss. And supposedly in this two-year period these businesses will be coming up to steam that are stimulated and offset the revenue loss, so that in the context of the seven years that are involved there is no revenue loss, in fact, a revenue gain. It still doesn't change the fact that the fiscal note is pretty scary on it. And while this is the kind of thing that doesn't sit well with our risk averse nature of our government, I did want to toss out something that is novel--I've always got to toss out something that is novel and a little bit of a curve ball--that we might consider for financing this. If indeed it is true that this thing will make the state money over a period of time in exchange for the extension of this credit, then in order to make it palatable and reduce the fiscal note to zero, either in this bill or perhaps a future rendition of this bill, we know that there's a lot of money sitting out there in Nebraska. That money is looking for a home. It's not happy in no-interest CDs. It's not particularly even happy investing in $10,000-an-acre farmland, even though they aren't making any more of it and, you know, you've got to put your money someplace. And it's not particularly happy riding the roller coaster on Wall Street. So what if we were to allow people to invest in some entity to come up with the $75 million or so that this thing will take over its lifetime, and structure it so that if it does make the state revenue, they get paid back from that revenue with a nice profit for taking the risk? And so the state would be indemnified against a loss. Now it takes some pretty fancy footwork and some securities' thinking as to how you would market that kind of a security, but I don't think it's beyond the capacity of the system to be able to say, let's mobilize the capital; let's give the benefit of this investment and the risk to private investors, and let's make this possible. Because in the end there's the 39 percent carrot that the federal government is hanging out there, and that money would come out of the federal side of things and into our underinvested areas, into the rural areas and some sections of Omaha that are qualified for this federal credit. So the carrot is a pretty big carrot, that 39 percent off of the federal tax liability that a business might owe to the federal government. And to the extent we can figure out a way to make it no risk to the state, it may be a winner for private investors, a winner for the state, and a winner for society. So with that, I will take any questions and turn the presentation over to folks who know a whole lot more about the details of how this thing works than I do. [LB1128]

SENATOR LOUDEN: Questions for Senator? Seeing none, thank you, Senator. [LB1128]

SENATOR SCHUMACHER: Thank you. [LB1128]

SENATOR LOUDEN: Can I see a hand of how many proponents we're going to have? Okay. Then we'll take the first proponent. [LB1128]

RYAN BRENNAN: (Exhibit 2) Thank you, Mr. Chairman and members of the committee. My name is Ryan Brennan, B-r-e-n-n-a-n, with Advantage Capital Partners based in St. Louis. And thank you to Senator Schumacher for raising this legislation. Advantage Capital Partners is 1 of the 350 or so participants in this federal program, the federal New Markets Tax Credit Program. This federal program is one of these very strange bipartisan programs, if we still have those, in D.C. Jack Kemp and Ted Kennedy put together this plan to drive private capital to low-income census tracts, both rural and urban, recognizing that some of our highest potential companies are there and that funding for them is below market. Thus, they created the federal New Markets Tax Credit Program. And since then it's remained bipartisan. It's been renewed five times by Congress. It's been named the "Top 25 Innovations in Government" by Harvard who studies programs like this that come out. And it's shown tremendous results early like 14:1 private capital coming in after these New Markets Tax Credit dollars and thousands and thousands of jobs, good projects. But there are two ways that the federal program many would say have not succeeded. The first is that it is not given out, that federal program, per capita. It's not given out per state. The 350 participants like us, like Advantage Capital--and there are thousands that apply for those spots--choose where to invest the capital anywhere in the United States. So you find some states which are, quote, tax credit rich, getting a lot of these federal dollars, and some states which are for whatever reason falling behind. And I think you see in one of the maps provided through our testimony, Nebraska strangely is one of the states that has been very much behind in getting this federal money. This is a $29 billion federal program. Nebraska has received about $50 million of that program--on a per capita with Wyoming. So LB1128 is one of the more popular jobs bills in states across the country. They're trying to capture this federal dollar; provides a state matching credit, as Senator Schumacher alluded to; and it says...it acts as a magnet, I think you would say, for these federal dollars that as groups like ours choose where to invest, then they look first to states that provide these matches: Missouri, Illinois, Florida, Ohio, the state of Oregon, the state of Maine, across the United States. And then they have to take the federal dollars, invest in those companies, keep that money with those companies for a minimum of seven years--it cannot be short-term capital, and then at the end go back to the Department of Treasury who runs the federal program and prove there's been economic benefit impact in addition to a good loan that's been made. And I'll be very quick with some results from Missouri and Florida, and then certainly happy to answer any questions. Missouri started their program in 2007. They renewed it in 2009. They estimate...their committee of jurisdiction like yours, estimates 3,786 jobs created in those four years; about $1.53 of new tax revenue for every $1 invested, and that's that benefit of the credit not starting until year three so that that new tax revenue can accrue prior to the credits being utilized; and about $349 million of new taxes, total collected. Florida had a 2009 program still in play: $132 million of private capital invested in 18 months; a per job cost created of $5,254; $1,437 in the first two years; and then lastly, their state economic arm estimates 8,000 jobs created. So sorry for those statistics but I think the relevant thing is this is not a new idea. This is a proven program. It has a track record. This is not industry specific. There are early stage biotechnology companies and there are established manufacturing companies. This is rural and urban. And again I think it's unique because the credit does not start until the third year. Thank you for your time and I'm happy to answer any questions. [LB1128]

SENATOR LOUDEN: Questions for Mr. Brennan? Senator Hadley. [LB1128]

SENATOR HADLEY: Thank you, Senator Louden. Ryan, thank you. I think the last time you were here we had a snowstorm if I remember right. [LB1128]

RYAN BRENNAN: Yes, sir. [LB1128]

SENATOR HADLEY: On the states that have enacted this, you mentioned Missouri and Florida, is there any data as to where in the state these programs are being successful? And I ask that question only in the context of obviously you can see it for Lincoln and Omaha because they have a work force, they have very well-defined, whereas rural Nebraska one of our problems is getting workers, employees. So is there any data as to the success across the states that have implemented this? [LB1128]

RYAN BRENNAN: Thank you, Senator. And there is. They track that closely, as you would expect, because in my experience members want to know this is not urban or rural. We have seen about 30 percent of the programs in other states go to nonmetro areas; the federal programs, about 20-25 percent. So the states' programs have slightly outpaced. And I would tell you that states that have perhaps a concern like yours have put in the legislation that at least 30 percent needs to be a nonmetro or some number you would know better than I. So I would certainly offer that as you consider this legislation that there are sideboards that can be added. [LB1128]

SENATOR HADLEY: Okay. Thank you. Thank you, Senator Louden. [LB1128]

SENATOR LOUDEN: Other questions? Senator Pirsch. [LB1128]

SENATOR PIRSCH: And so all industries are eligible. There's certain, within this LB1128, strictures in terms of which areas are eligible. And overall those are termed lower income. What is...does it in this bill mimic exactly the federal requirement or is there leeway that's included by the federal government for us to determine what constitutes lower income area? [LB1128]

RYAN BRENNAN: Yes. Thank you, Senator, and very on-point question. The Department of Treasury has been very supportive of the state programs like this. The one thing they've asked is don't change our maps so that the low-income census tracts, and that's generally 20 percent of population, is deemed impoverished, and there are several others. But Treasury has asked that the map that U.S. Section 45D implements be the state map as well. [LB1128]

SENATOR PIRSCH: And when you flesh that out then, do you know of Nebraska's counties, how many would thus qualify? [LB1128]

RYAN BRENNAN: I did not count counties but there is a map in your materials, I believe, that... [LB1128]

SENATOR PIRSCH: I don't think we have the map, unfortunately, at this point. [LB1128]

RYAN BRENNAN: I believe perhaps the clerk has them. [LB1128]

MATT RATHJE: Is this it? [LB1128]

RYAN BRENNAN: Yes. Please. [LB1128]

SENATOR PIRSCH: Thank you. That will be extremely helpful, so. [LB1128]

RYAN BRENNAN: Excellent. And this is a strange way to put it, but Nebraska has a very good map, meaning that there are quite a few eligible areas, both Lincoln and Omaha but also western Nebraska. [LB1128]

SENATOR PIRSCH: Okay. That map helps. Thank you. [LB1128]

RYAN BRENNAN: Thank you. [LB1128]

SENATOR LOUDEN: Any other questions? Seeing none, thank you for your testimony. [LB1128]

RYAN BRENNAN: Thank you, Senator. [LB1128]

SENATOR LOUDEN: Next proponent. [LB1128]

RICKY CUNNINGHAM: Good morning. [LB1128]

SENATOR LOUDEN: Good morning. [LB1128]

RICKY CUNNINGHAM: My name is Rick Cunningham, R-i-c-k...actually it's Ricky, so it's R-i-c-k-y is the legal name, Cunningham, C-u-n-n-i-n-g-h-a-m. I am representing the city of Omaha. I'm the planning director for the city of Omaha. In the city of Omaha, economic development as a city function also rests in the planning department, so the economic development staff is within the planning department. I'm here to support this legislation. We have been in Lincoln quite a bit this session supporting a number of different tools that would be economic development tools. We have been saying all along that we need more tools here in the state, and particularly in the city of Omaha, for economic development to supplement the workhorses that we have, which is TIF, and maybe take a little bit of a load off of TIF so we can fine-tune how we use the tool, for what kinds of projects. So we do support this tool. We think that it's pretty neat that it's modeled after the federal program that's been successful across the United States. Unfortunately, as was pointed out earlier, not so much in Nebraska. To my knowledge, only one New Markets Tax Credit project in Omaha--that's the TipTop project on 16th and Cuming. There are some interesting differences we see in looking through this--and we had to read it many times so it's kind of interesting legislation--differences between it and the federal program and that there are no allocations per se of the $15 million per year. This is a project or investment by investment basis that you move forward. So in the federal program you will actually get approved for an allocation and then you have project types and you'll locate an area and that you will invest those allocations in, and you have a certain time frame in which you have to do that investment. You cannot also, from what I see, sell those tax credits or transfer them, and I think that's a difference, especially a difference between other tax credits that we've seen where an investor can actually invest it and then transfer that to others. In this case it's not readily transferable to other than that initial investor. Still it's a good tool, one that we think will perhaps bring more of the federal New Markets Tax Credit to the state and to the city of Omaha as you combine it and as we might combine it with other economic development tools such as perhaps a new historic preservation tax credit for projects on historic structures, the other...the existing tax credits that happen here in the state, and our TIF tools and others. We do see it focused very heavily on jobs, creation of jobs, in the city of Omaha, because it's a...the focus is not on housing and rental property or property, real estate property, so we think that this one is kind of going to be in the area of jobs and that kind of economic development. So if...I'm here to answer any questions. We did look at the Web site as far as the definition of low income, and to answer perhaps the question before you ask, in the state of Nebraska it would be 80 percent of the state's median income. So it is kind of focused then on the state that you're in, I mean any state, so it does come on to ground here in Nebraska based on our median income, so. [LB1128]

SENATOR LOUDEN: Questions? Senator Pirsch. [LB1128]

SENATOR PIRSCH: The investment, are there any limitations to...or how do they define investment in a project then? [LB1128]

RICKY CUNNINGHAM: It mainly focused on, from what I can see, a definition of low-income types of companies and projects benefiting the low income. So I mean there's some...an application has to be filled and you have to tell what the investment is and the company that you're investing in or the investment that you're going to put the money in. So there's not a list of approved types of things that I saw in here. [LB1128]

SENATOR PIRSCH: Okay. And then if the state were to proceed down this track, right?--and the benefit is then that this federal money would kick in as well. Correct? Is that... [LB1128]

RICKY CUNNINGHAM: Well, you could...I think a person or company or investment group that would look to use the Nebraska tax credit would...and it's actually focused on those who are already qualified and approved at the New Markets Tax Credit level. So they have those allocations theoretically on the federal side, so they come into the state, applied for it, and then get the state credits to add to then what they already have from the federal government. [LB1128]

SENATOR PIRSCH: Right. [LB1128]

RICKY CUNNINGHAM: So the way the bill is written you can only...the way I read it, you can only participate if you are approved at the federal level through the tax credit program, so. [LB1128]

SENATOR PIRSCH: You're essentially doubling the inducement, is... [LB1128]

RICKY CUNNINGHAM: Yeah. Incentivize them to take some of that allocation and actually spend it here, so to speak, in Nebraska. [LB1128]

SENATOR PIRSCH: Right. And then so...then is the...to qualify on a statewide level is to automatically qualify through this federal New Markets Job Growth Investment Act you'd be going through the same entity, 1 of these 350 programs, the gentleman who just testified? [LB1128]

RICKY CUNNINGHAM: The way I read it, you would have to already be approved at the federal level and then get approved at the state level. [LB1128]

SENATOR PIRSCH: I see. [LB1128]

RICKY CUNNINGHAM: So it wouldn't be the other way around. You wouldn't be approved at the state level and then go get approved at the federal level. The way I read it, you have to be first approved by the...in the federal New Market Tax Credit Program as defined by I think it's 45D or 46D of the Internal Revenue Code, etcetera. [LB1128]

SENATOR PIRSCH: Wonderful. Thank you. [LB1128]

SENATOR LOUDEN: Senator Hadley. [LB1128]

SENATOR HADLEY: Thank you, Senator Louden. Mr. Cunningham, do you see the primary advantage of this is putting people to work in these low-income areas? [LB1128]

RICKY CUNNINGHAM: I think putting them to work, providing services that otherwise would be difficult to get on the ground, and incentivizing. Perhaps probably the primary advantage of this would be to get some of the capital that's just sitting there not being invested, to get that invested. [LB1128]

SENATOR HADLEY: I guess the concern I have, I understand in outstate Nebraska if you have a small town where you have...that meets the definition and you're trying to get a work force and the work force comes from that town. But I guess a concern I have in Omaha is that you put a datacenter in a low-income area and all the workers come from west Omaha to work in it, so what have you done for the low-income people in the low-income district? [LB1128]

RICKY CUNNINGHAM: I agree with you especially as it relates to datacenters, because they tend to be highly skilled jobs. I think, though, that this would be applicable to a full range of types of manufacturing, other types of office types of projects, and not just datacenters. Datacenters tend to be a little hot right now. Our chamber is focusing on datacenters just because it's sort of a sweet spot but...because of our location and power, the cost of power, the cost of water here. But I think that this would be applicable to a full range and not just datacenters. [LB1128]

SENATOR HADLEY: I just want to be sure, and I used datacenters but it could be anything. You know, a bank, an investment firm, or you know, something come in, and I want to make sure that if we're going to do something like this that it helps the people in that low income. Because that's...if the definition is based on low-income designation, we should be doing something to make sure that that somehow translates to more income for the people that are living in that district and not more income to people who are living in a high-income district. [LB1128]

RICKY CUNNINGHAM: Absolutely. I agree with you. I think the concept is, first of all, to get the jobs located where there's a lot of folks that need jobs. And then you've got to come in and supplement with other programs and get that work force ready to take those jobs. So it's not...this is not going to be the solution, end-all, be-all. [LB1128]

SENATOR HADLEY: Okay. [LB1128]

RICKY CUNNINGHAM: We're going to have to have programs that prepare people to take the jobs such as we do have going on in Omaha right now with the Heartland Solutions program and others through the community colleges and other providers, getting people prepared to take those jobs. There's not many kinds of opportunities that wouldn't have a full range of jobs. When we look at them, we always ask our applicants, what are the job types that you have? What are the salary ranges? What are the skill levels required? And we're looking to see that they have a full range of job types. And I was just looking at one the other day where they had one that was, you know, $36, $40 an hour. That was sort of the manager of the overall facility. All the rest were pretty well distributed through the areas down to some below what we call living wage, but most of them were above or at the living wage. And that's what we're shooting for, a living wage which a person can actually live and have a family, have healthcare, and be able to pay their rent and so forth. [LB1128]

SENATOR HADLEY: Thank you, Mr. Cunningham. Thank you, Senator Louden. [LB1128]

SENATOR LOUDEN: Other questions? Are you familiar with this flow chart that they handed us to you? [LB1128]

RICKY CUNNINGHAM: I cannot say that I...I don't have my glasses on, for one. But it doesn't look like something I've seen. But I did a lot of research on the New Markets Tax Credit Program itself. And like I said, I read this over a number of times trying to understand it completely, but I haven't seen that. [LB1128]

SENATOR LOUDEN: Okay. What I was wondering is my understanding is that there's a pool of money that either investors put their money into or small businesses try to withdraw from. And I am wondering how you get the one dollar into there and the guy down below gets the dollar out. How does that work? I mean you're talking about they get a tax credit, but how do you get that from the small businessman up to the banker, whoever is going to want to take that tax credit? How does that work through there? [LB1128]

RICKY CUNNINGHAM: I'm going to be honest with you, I am not a New Markets Tax Credit expert. As I've said, we've only had one, to my knowledge, in the city of Omaha, and that was before I actually came back to the city of Omaha. At a high level, my understanding is you basically have approved this investment that is loaned out or invested in a business. From what I understood is that that pool of money is put together by investors who then get that tax credit based upon their investment into that pool of money, and that's at a very high level. And I don't...and I will not purport to you that that's exactly how it works or that I have the totality of understanding, but that's how I envision it. You get that pot of money put together and that's where your tax credits come from, people investing in that. You have to invest that in qualified investments in order for those tax credits to be eligible. [LB1128]

SENATOR LOUDEN: Okay. Thank you. And I guess no more testifiers...thank you for your testimony. [LB1128]

RICKY CUNNINGHAM: Thank you for this opportunity. [LB1128]

SENATOR LOUDEN: Next proponent. Wasn't there one more? I thought there were three. [LB1128]

MARK KOLLER: (Exhibit 3) Good morning, Mr. Chairman, Senators. My name is Mark Koller, M-a-r-k, last name is Koller, K-o-l-l-e-r. I'm the executive director of Nebraska New Markets Resources and I'm here today to testify in favor of LB1128, the New Markets Job Growth Investment Act, which is similar in form and function to the federal New Markets Tax Credit Program. By way of background, Nebraska New Markets Resources is a for-profit subsidiary of Community Development Resources designated for the purpose of deploying federal financial resources of the U.S. Treasury Community Development Financial Institutions Fund, or CDFI Fund, and I apologize for some alphabet soup that I'm going to deliver, but that's just the nature of dealing with the federal government. CDR grew from the self-employment loan fund of Lincoln, which was established in '94 by then-Mayor Johanns to fill a gap in access to capital resources, technical assistance, and training for low-income, minority, and women business owners. So it began as a peer group lending program, then in '99 initiated a direct loan program making commercial loans up to $5,000. From there, in 2001, it self-evolved into CDR, Community Development Resources, and became an independent 501(c)(3) nonprofit organization with a governing board of directors, and began a plan to increase its community impact and presence. Late in 2002, CDR became a U.S. Department of Treasury certified Community Development Financial Institution. And in listening to the prior testimony I think it's important to understand that these federal level tax credits are administered by the U.S. Treasury Department. We have the additional designation of a community development entity or CDE. To become a CDFI, we had to go through a pretty onerous process to prove that we have a primary mission of community development. We're a financing entity. We make direct loans. We serve and maintain accountability to eligible target markets. We provide technical assistance and we're not controlled by any governmental entity. As a CDFI, CDR has the opportunity to increase economic development capital in the state of Nebraska through the CDFI Fund's financial products and assistance programs. In April 2006, we established New Markets Resources for the intention of making an application, which we did in 2007. Unfortunately, what happened in our case was that we were a little bit naive and asked for an amount of money which was way beyond our capacity. And so we went back to the drawing board, and in the interim CDR was able to land a 504 loan program, SBA's 504 loan program, and to deploy more capital into the state. For example, we got the SBA program, so we are the only Nebraska CDFI CDE--I think that's important to know--that is eligible to make application to deploy New Markets Tax Credit in the state of Nebraska. There are other CDEs, there are other CDFIs. They have not reached the level that we have in deploying capital and in technical assistance and financial assistance into the state. Now the other entities that can apply for the New Markets Tax Credit obviously are those regulated by the U.S. Treasury Department, would include commercial banks. And so there are some commercial banks that have made applications successfully. I think Commercial Federal at the time made application and deployed their tax credits into Iowa. What my research in Nebraska tells me is there have been five projects of about $50 million that have been deployed into Nebraska from outstate entities. So this would be the...an allocation to us would be the only and first in-state application for new market tax credits. So we're excited about the opportunity. We are putting together an application right now. We've learned a lot in the interim on how to structure application to be successful. We feel that this program that you're reviewing would really be an enhancement to community impact and jobs, which I think are the two primary purposes of the federal law, but it would also be the primary purpose of your law and your act to then deploy those funds into those areas where they would get the most benefit. With that, I think I will stop my comments and then entertain any questions, because this is a very complex, as I've learned, process that takes quite a while to get your arms around. [LB1128]

SENATOR LOUDEN: Okay. Questions for Mr. Koller? Senator Hadley. [LB1128]

SENATOR HADLEY: Thank you, Senator Louden. Just a quick question, Mr. Koller, the same question I kind of asked Mr. Cunningham: Do you see this as an opportunity to provide jobs for people who live in these low-income tracts that we would so designate? [LB1128]

MARK KOLLER: Yeah. Thank you for the comment. Yes, exactly, and by way of explanation and hopefully not too deeply, we make application to the Treasury to deploy these...or to get an award for these tax credits. What we do in our application is we put out several strategies, one of which is a business strategy. In that business strategy, we can make the requirement that participants have a certain percentage level of employees who are in the low-income categories. And so that would be one of the enhancements. And what we try to do is we try to get the highest grade on our application, and so a rural project would certainly help us tremendously. There are projects available in both of the minor urban areas and both in Omaha and Lincoln that we could qualify for, but we would love to find a rural project that would then enhance our application. You get more points for a rural project in the process. [LB1128]

SENATOR HADLEY: Thank you, sir. [LB1128]

SENATOR LOUDEN: Other questions? Senator Adams. [LB1128]

SENATOR ADAMS: Thank you. So if we were to move something like this in Nebraska law, if we put those kind of qualifications in for a number of employees, level of income, those kind of things, would that help us get where we want to go with this money rather than taking a shot that it's going to the kind of people that we want to see get jobs? Or if we put that language in, does that encumber the grant process? [LB1128]

MARK KOLLER: My sense would be that it would encumber the grant process because you're getting too refined in your qualifications for applicants. In our case, what we're trying to do is to focus and target market areas where we can deploy those funds. And so that's part of the reason that we would, in our application and in our business strategy, detail that there would be certain requirements of the investors who would then put the money into the business that would then create jobs that would benefit the community. So, you know, one of our primary motives are not just job creation but community impact as well. [LB1128]

SENATOR ADAMS: It can't be used for housing? [LB1128]

MARK KOLLER: No. A portion of it can. I say no, but for mixed use, up to 80 percent of it has to be commercial, 20 percent can be residential, could be condos or something like that. But generally it's commercial entities. Our focus is on manufacturing. It would be anything along those lines that would produce a product. Agricultural entities, farms, don't qualify, but the processors would, for instance. Banks don't qualify because they can lend money. But one of the things that I wanted to also emphasize is this is really a socially responsible project or law that's going to put projects into areas that can benefit socially on a community impact basis. So the types of businesses that we would be looking at would be the types of businesses that would employ people. Golf courses don't qualify. Gambling entities don't qualify by the federal requirements. So there are some limits in which you can use the money for, but it's not totally...it's not really restrictive, it's not overly restrictive. [LB1128]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. [LB1128]

MARK KOLLER: Thank you. [LB1128]

SENATOR LOUDEN: Other proponents? Now at the present time, since Mr. Brennan's material didn't get handed out, are there any committee members that would like to ask some questions over this material that he handed out? You would? Okay, Mr. Brennan, would you come forward and to answer questions? Senator Fischer. [LB1128]

SENATOR FISCHER: Thank you, Senator Louden. Thank you, Mr. Brennan. On this material it says that ten states have enacted their own New Markets programs. Are those the only ten states then that have passed legislation that's brought before us today? [LB1128]

RYAN BRENNAN: That is correct. [LB1128]

SENATOR FISCHER: Similar. Can you tell me which of the states that are in the Great Plains region have enacted the legislation, or any of them? I would guess Missouri maybe. [LB1128]

RYAN BRENNAN: Missouri and Illinois, Senator, are the two closest. [LB1128]

SENATOR FISCHER: Okay. [LB1128]

RYAN BRENNAN: And I know Illinois, I'm sorry, is not represented on the map that you have there. Missouri's...I spent most of my time on Missouri. Really they are the first ones to bring this concept forward--in 2007. [LB1128]

SENATOR FISCHER: Okay. Thank you. [LB1128]

RYAN BRENNAN: Yes, Senator. [LB1128]

SENATOR LOUDEN: Other questions for Mr. Brennan? Well, thank you for coming back to it. [LB1128]

RYAN BRENNAN: Thank you, sir. [LB1128]

SENATOR LOUDEN: I'm sorry we didn't get your information passed out at the beginning. [LB1128]

RYAN BRENNAN: Certainly. [LB1128]

SENATOR LOUDEN: Any more proponents? Okay. Opponents? Neutral capacity? Senator Schumacher, do you wish to close? [LB1128]

SENATOR SCHUMACHER: Thank you, Senator Louden, members of the committee. This is one of those things where you...the more you think about it, the more you think that it might have some real potential. You have this pretty significant federal carrot that's out there and I would think that there are corporations in this state that owe federal tax liability and state tax liability. And by the state kicking into the picture, the pocket is sweeter. And if they can turn around and invest a dollar and get a 39, 40 percent credit across the board on those taxes, then that money begins to be invested here in these targeted areas. And it appears that the feds have done a halfway decent job at setting up criteria for the investments. And if the investments go south, of course, there's the thing doesn't work and the state doesn't have any liability. Since there are no restrictions on the nature of the investment, it kind of leaves the system, the federal end of the system and the investor, the community investment organization, in a position to make judgments as to what might work and what might not work. If the investment doesn't work, nobody is happy. But if it works then you draw down on this federal thing. So this idea I think certainly has merit. It is the kind of thing that if nobody makes an investment here, we're not out anything. On the other hand, we do have some exposure if the investments do not pan out enough to offset the credit that's extended. So I'll be happy to take any questions. [LB1128]

SENATOR LOUDEN: Senator Avery (sic--Hadley). [LB1128]

SENATOR HADLEY: I don't know whether that's a compliment or a slam. I'll try and figure that out. (Laughter) [LB1128]

SENATOR LOUDEN: Yeah, I don't know where that come from. Senator Hadley. Pretty close. [LB1128]

SENATOR HADLEY: I'm kind of taken aback so I'll just...no. (Laugh) [LB1128]

SENATOR LOUDEN: Well, you ought to be...you really...you know, he is a good-looking man, so. [LB1128]

SENATOR HADLEY: And I'm smart so okay that evens out. Okay. Senator Schumacher, is there...and I shouldn't ask a question that I don't know the answer to or it may be off the wall, but is there any way we could use just a small portion of this tax credit money for training programs in these low-income areas, you know, to make sure that the employees are being...or potential employees have a shot at learning some of the skills that might help them? I throw that out and I have no idea whether that's possible or not. [LB1128]

SENATOR SCHUMACHER: And you shouldn't ask a question I don't know the answer to, but I could guess a little bit, and that is probably a training program does not produce money to the investors. And as such, this has got...these businesses that are invested in have got to pay some type of equity dividends or have to pay interest back, so they've got to make money. So if the training programs were part of an enterprise that made money, it probably...it fit as long as it fit in the federal things, but if it was just a training program to train for other businesses, then there's no...it doesn't generate a revenue stream to retire the debt. [LB1128]

SENATOR HADLEY: Well, I guess I was thinking more in terms of just carving out a little bit of the refund or the tax credit and moving it over to a, you know, some kind of (inaudible). [LB1128]

SENATOR SCHUMACHER: Yeah, I don't know the answer. My inclination is probably not, but. [LB1128]

SENATOR HADLEY: Okay. Okay. [LB1128]

SENATOR LOUDEN: Any more questions for Senator Schumacher? Thank you. [LB1128]

SENATOR SCHUMACHER: Thank you. [LB1128]

SENATOR LOUDEN: And that will close the hearing on LB1128. We will open the hearing now on LB752, and Senator Avery is already here and been noticed. [LB1128]

SENATOR AVERY: Thank you, Senator Louden. My name is Galen Hadley. (Laughter) Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in south central Lincoln. I am here to talk to you about LB752. This bill provides a three-year income tax credit for wineries and grape growers in Nebraska, people or groups that purchase new and approved equipment for enhancing their business, such items as barrels, bottling equipment, fermentors, filters, and things of that sort used in the business. The credit will not include construction or labor costs, utilities, gifts, merchandise, or used or rented equipment. It would be available to qualified taxpayers whose operations are headquartered and physically located in the state of Nebraska. The credit is up to 25 percent of the cost of new equipment and materials that are purchased in the same taxable year. Credits are not transferable and they are not refundable. LB752 is similar to a program that exists in Missouri. It has been highly successful there. Since 1999, the number of Missouri farm wineries has nearly tripled to 114, and the annual revenue is now over $42 million. According to the Nebraska Grape and Winery Board, Nebraska's wine industry will produce approximately 88,000 gallons of wine this year, which will result in about $4.8 million in gross sales and will, in turn, generate $266,000 in sales taxes. And they expect this year to gain 3.1 percent of the total wine sales in Nebraska. It's important to stress that under this bill what we're trying to do is build an infant industry in our state through import substitution, that is to say production of a product in Nebraska that currently is largely imported from other states or even other countries. The dollar spent on Nebraska wine directly supports Nebraska jobs, not jobs in Napa Valley or wine producers in foreign countries. This bill seeks to improve the market position of Nebraska wineries, enabling them to capture a greater market share of wine that is currently imported. And that, of course, will benefit the Nebraska economy. Nebraska vineyards already are making a name for themselves. Prior to 1995, the Nebraska wine and grape growing industry was practically nonexistent in this state. Apparently though, prior to Prohibition, it was a fairly active industry, and like what happened in a lot of other states, Prohibition essentially killed the industry. It's now making a rebound. We now have 29 licensed farm wineries and around 125 grape growers. Interestingly, some of those live in my district, as do farmers. I was kind of surprised to learn that but that is true. These industries host over 150,000 visitors annually. You'll recognize the names: Deer Springs Winery, just outside of Lincoln; Mac's Creek Vineyard in Lexington; Feather River Vineyards in North Platte; Silver Hills Vineyards in Tekamah. These are wineries that are typically family-owned operations that produce award-winning wines recognized for their quality around the country. The industry directly contributes to the economy of rural Nebraska by helping to diversify the state's agricultural sector in adding another type of value-added agriculture to our economy. The industry makes a broad contribution to the Nebraska economy by generating employment, creating earning opportunities, promoting tourism, etcetera. So what I'm trying to do here is to provide a stimulus for this young and growing industry. This will allow the grape growers and wine producers in Nebraska to continue to create needed jobs in rural Nebraska. It's a modest investment. You look at the fiscal note, I don't think it goes...in the third year, the last year of the credit, it would cost about $284,000. We don't know what the contribution would be to the economy. I think it would be significant and probably would more than offset that loss of tax revenue. This, I believe, is something we should consider doing. I know that there is concern about the cost of bills of this sort, but I believe that if you don't make the investment, you don't get the return. So with that, I'd ask you to advance this to General File. Thank you. [LB752]

SENATOR LOUDEN: Questions? Senator Schumacher. [LB752]

SENATOR SCHUMACHER: Thank you, Senator Louden. Thank you, Senator Avery. I notice that the credit is limited in the case of a corporation to one that is headquartered and physically located in Nebraska and organized under Nebraska law. Have you checked at all into whether or not that's permissible under the Commerce Clause to treat one taxpayer that might owe tax to Nebraska different from another? [LB752]

SENATOR AVERY: It has been in operation in Missouri, I think, since '99. And I think they have...I don't know if they've been challenged on it, but this is modeled after their law. [LB752]

SENATOR SCHUMACHER: Thank you, Senator. [LB752]

SENATOR LOUDEN: Other questions? I have a question, Senator Avery. And it isn't so much about the fiscal note, but there's people out in some of that Sandhills area and some of those places, don't believe in alcohol. So they think, why should we give some industry a tax break that's going to make alcohol and then we're trying to do something to do away with alcohol impact zones in some of our areas. And you've read the papers, there's a $500 million lawsuit against alcohol from Native Americans. How does all of this...how am I going to justify voting for all of this or putting all of this together? Can you give me a...? [LB752]

SENATOR AVERY: Well, the issue here is abuse of alcohol. And I would point out that there are numerous studies that show that wine consumed in moderate amounts is actually beneficial to your health. So drink up. (Laugh) [LB752]

SENATOR LOUDEN: Well, yeah, I've heard of that old...they used to talk about old, whiskey-soaked men, too, lived longer too, but I don't know if that's true. (Laughter) Anyway, that was my first observation on this bill. Any other questions for Senator Avery? Thank you. How many... [LB752]

SENATOR AVERY: I'm not going to be able to stay and close. I'll waive closing. I have to get back to my own committee. [LB752]

SENATOR LOUDEN: Okay. Thank you. [LB752]

SENATOR AVERY: Thank you. [LB752]

SENATOR LOUDEN: How many proponents do we have? Okay, will they come forward, please. [LB752]

JIM PARTINGTON: Senator Cornett, members of the Revenue Committee, thank you for the opportunity to testify in support of this bill. My name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I'm a partner in Deer Springs Winery, a family-owned and operated farm winery located on 160 acres, homesteaded by my great-grandfather, Patrick O'Halloran in 1874. We were the 18th farm winery licensed in Nebraska and there are now 29. Wineries in Nebraska are a pioneering industry requiring significant capital investment for a relatively slow growth rate and low return compared to other industries. In order to succeed, you need to become proficient in agriculture, manufacturing, retail marketing, and sales. You also need some understanding of the tourism industry, economic development, and public relations. We're a combination of an agri-tourism experience, a neighborhood pub featuring local musicians, a quiet place to have a glass of wine with a friend, as well as providing a facility capable of supporting a variety of community activities. I don't know of anyone who started their winery already possessing this combination of skills. We're all learning together and cooperating because we know that the success of individual wineries depends on the industry as a whole, growing and capturing a greater share of the Nebraska wine market. Each of the wineries in Nebraska is at a different stage of development. The incentive provided by LB752 will be most beneficial to those wineries that have been in business long enough to earn a small profit and have reached the point where they need a greater capital investment to meet their growth goals. Being a part of a pioneering industry is fun and challenging. A lot of successful business people in other industries bypass that stage and buy the successes that survive the pioneering effort. They take seriously the quote that you shouldn't be a pioneer because a lot of times they wind up face down in the grass with arrows in their back. LB752 will provide incentives to invest and stay the course for individual wineries so that they avoid the arrows in the back and build the foundation for a growing and successful farm-winery industry that will contribute to the economy and the economic development of the state of Nebraska. I appreciate the opportunity to testify in support of this bill and I welcome any questions that you may have. [LB752]

SENATOR LOUDEN: Questions? Seeing none, thank you for your testimony. [LB752]

JIM PARTINGTON: Thank you. [LB752]

SENATOR LOUDEN: Next testifier. [LB752]

JIM BALLARD: (Exhibit 4) Senator Cornett, members of the committee, my name is Jim Ballard, J-i-m B-a-l-l-a-r-d. I'm with James Arthur Vineyards in Raymond, Nebraska, just north of here, of Lincoln, and I'm here to support LB752. As Mr. Partington stated, we currently have 29 wineries in the state of Nebraska and well over 100 growers, 125-130 growers, somewhere in that range producing high quality grapes and wine, providing...and these numbers are from an impact study that was done about four years ago, but providing nearly $13 million in economic impact to the state. I've personally been part of this industry, basically, since its inception as we've been farming grapes for nearly 18 years and James Arthur Vineyards will soon be celebrating 15 years in operation. And it's been personally gratifying to have watched this industry grow, and I think grow in the right way, through hard work and never losing the sight that we are a Nebraska product producing Nebraska grapes, Nebraska wines, and promoting the state of Nebraska, building this industry with a lot of that Nebraska pride. And I don't see that changing anytime in the near future here. You, or the State Legislature has helped greatly along the path as well through various legislation over the years. It's helped the Nebraska grape and wine industry, not just survive but also thrive in many ways. LB752 is another piece of that puzzle, I believe, in a couple of ways. Number one, we are farmers. Senator Louden, to answer your question earlier, I mean, that's really what we are. I mean, we sell wine, but really what we're selling is an experience and we're growing grapes. And, yeah, it's alcohol, but it's almost a little bit different in what we do. It's a value-added product that we really take a lot of pride in. And again, it's not just selling wine, but it's selling that experience, it's selling Nebraska, and it's being a farmer. That's what we all are basically when it gets down to it. And as you all know, farming sometimes isn't real cheap when it comes to equipment and the vineyard isn't any different. And this would be incentive to help not only provide possibly new growers to get into the business but, more so, establish growers to really help them...provide them the tools that will help them produce better quality grapes, which in turn will create a higher quality end product. And not only is the grape and wine industry growing in Nebraska, number two, but it's growing across the country and there are now over 7,000 wineries in the United States. And quite a bit of that growth has happened right here in the Midwest as we've found new varieties and varieties that can survive our winters and our growing season. And a lot of that is happening right here in the

Midwest. So I think LB752 would help us even be more competitive with our neighbors, such as Missouri, that already has something like this intact. So again, encourage your support of LB752 and I'd be happy to answer any more questions. [LB752]

SENATOR LOUDEN: Any questions? Senator Pirsch. [LB752]

SENATOR PIRSCH: Thank you. And I believe...maybe a previous testifier testified that we're at maybe at 3.5 percent market or penetration rate for the state. In other words, 3.5 percent of wines currently offered in Nebraska are Nebraska indigenous. My question is, those states that have gone down this path, what are...do you know what their market penetration... [LB752]

JIM BALLARD: Off the top of my head, I know that...and we're hoping to get to 3.5 percent this year and it's been a slow growth. Of all wines consumed in the state, 3.5 percent have been Nebraska. When you look at Missouri, I think they're up around 10 or 11 percent. Iowa is pushing 5 or 6, don't...somewhere in that ball park. Colorado is around that 7-8 percent. So there's a lot of room for growth still here in Nebraska. A lot of...some of that is based on population and number of wineries and other things, but we lag a little bit behind in terms of the percentage of wines that are consumed in Nebraska that are Nebraska made. [LB752]

SENATOR PIRSCH: Well, the percentage may not necessarily be...the raw numbers, are obviously, Iowa or Missouri are bigger states. But is there anything inherent about the soil or climate in Missouri or Iowa that would make it substantially different, such that they could grow a better quality grape to add more reds or more...? [LB752]

JIM BALLARD: Good question. Good question. Personal opinion, in Missouri they have a different climate. They're able to grow some things that we can't grow here in Nebraska. You know, in Iowa they're doing a lot of the similar grapes and varieties that we're growing. Iowa is a unique beast in that they...Nebraska, 75 percent of everything we grow has to be grown...or made has to be grown in Nebraska. So we have to use all Nebraska fruits to make our wines. And to the person, if you talk to any winery, we strive to be 100 percent. Because of weather and Mother Nature, some things happen. Iowa doesn't have that. They can bring in wine from all over the world basically, slap a label on it and sell it. So you know, there's a little bit different thing happening in Iowa. So to answer your question there, there are some differences in soil, some difference in varieties that can be grown. A lot of times it's like comparing apples and oranges. Things you can grow in California, we would never...I shouldn't say never be able to grow, but it would take a lot of extra effort and the quality probably wouldn't be there. So each state is unique and individual and what we've really tried to do here in Nebraska is educate people on the types of grapes we grow, the styles of wine we make, and just promote it as Nebraska. [LB752]

SENATOR PIRSCH: Wonderful. Thank you. [LB752]

SENATOR LOUDEN: Senator Schumacher. [LB752]

JIM BALLARD: Yes, sir. [LB752]

SENATOR SCHUMACHER: Thank you, Senator Louden. And thank you for coming and testifying today. Are most of the wine growers in Nebraska corporations, or LLCs, partnerships? [LB752]

JIM BALLARD: Most of them are LLC family owned. In fact, I don't know of a winery that's not family owned and I don't know all their specific setups and how they are, if they're LLCs or corps or whatever they are, S corps, C corps, whatever the case may be, but they're all family owned. [LB752]

SENATOR SCHUMACHER: Now as I understand it, the idea behind this is to facilitate investment of the money made back into the businesses because it's an infant business. Is that kind of the idea? [LB752]

JIM BALLARD: Basically, yes. I mean, any money saved will be going...and I'll be honest, most of our profits right now at James Arthur Vineyards go right back into the business to help grow it. [LB752]

SENATOR SCHUMACHER: Okay. And when they go back into the business under the current tax law, there is a huge amount of first year, 100 percent write-off. When you buy a new machine or something, chances are you can write it all off. Is that accurate? [LB752]

JIM BALLARD: To the best of my knowledge, in some cases, yeah. [LB752]

SENATOR SCHUMACHER: So when you reinvest into the business, 100 percent is really, say, back into the business, then there is no profit, right, or very little profit? [LB752]

JIM BALLARD: You...well, we're all in it to make profit eventually. (Laugh) [LB752]

SENATOR SCHUMACHER: Because this is a tax credit that's being asked for. [LB752]

JIM BALLARD: Sure. [LB752]

SENATOR SCHUMACHER: And as such, there first before there can be a tax credit, there's got to be tax liability. Before there can be a tax liability, there's got to be a profit. [LB752]

JIM BALLARD: A profit, correct. [LB752]

SENATOR SCHUMACHER: So that profit comes from not reinvesting back into highly depreciable assets or expense items, like corks and screws and whatever else. [LB752]

JIM BALLARD: Correct. [LB752]

SENATOR SCHUMACHER: Okay. So then let me follow up. What's the difference if we're giving a credit to people on their profits, why should the wine industry have a credit on their profits, and the farm industry or the ranch industry or the Internet industry or the telephone industry not have a credit on their profits? [LB752]

JIM BALLARD: Why should the wine industry...? [LB752]

SENATOR SCHUMACHER: Yeah. [LB752]

JIM BALLARD: You know, and that's a fair question, and I think to go back, you know, we keep saying an infant industry. You know this industry has been about 20 years, so it kind of makes me cringe when we say infant industry because it's a growing industry. It takes about 7, on average, 7 or 8 years to break even in the vineyard before you start to see a profit. Same thing with a winery, roughly 7 to 8 years, because there's usually a lot of capital investment that's made in this industry. I guess, then, as part of that second question, you know, this is an industry that if we can get a tax credit to get new equipment, to get things that help us become more successful there's a benefit to the state, because as Senator Avery said and as Mr. Partington said there's a lot of things above and beyond just selling wine. There's the tourism aspect. There's the economic development in rural areas, that aspect of it. It's a lot of investment that would come back not just to the winery but to communities to different areas that surround the wineries, if that makes any sense. So it's not just... [LB752]

SENATOR SCHUMACHER: If you invest all your revenue back into the business to grow it because it's a new business and it needs all this reinvestment, then your income, after depreciation for those investments or write-offs for those investments,... [LB752]

JIM BALLARD: Uh-huh. [LB752]

SENATOR SCHUMACHER: ...is zero and there's no need for the tax credit. The credit only kicks in, and this is where I'm confused, if you've got a profit, if you're taking money out. And then the ultimate question, if we're going to say, okay, it's okay for the wine industry to take their profits out, then what about all these other industries? I mean, the Internet business is younger than the wine business. Do they get a credit too? I mean, where do we draw the line? [LB752]

JIM BALLARD: Fair question. Fair question, and I may not be the smartest one to answer that one for you, so. [LB752]

SENATOR SCHUMACHER: Thank you. [LB752]

SENATOR LOUDEN: Other questions? Seeing none, thank you for your testimony. [LB752]

JIM BALLARD: Thank you. [LB752]

SENATOR LOUDEN: Other proponents? Seeing none, opponents? [LB752]

JUSTIN BRADY: Senator Louden, members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Liquor Wholesalers Association in opposition to LB752. Start off with saying that we understand and appreciate the farm wineries and what they do for agriculture and their communities. We oppose the bill on three points. One, would be the first point that Senator Schumacher at least asked on whether or not this was creating a nonconstitutional tax among in-state versus out-of-state corporations who would be similarly situated in selling a finished product of wine. The second one would be, farm wineries in Nebraska currently receive a number of other incentives to operate their businesses that others in industry do not get, and we feel that that's a way that is also the state has decided to help shepherd them and they don't need another step to help them along the way. And the last one would be...and this is purely from my client's standpoint, a selfish motive, and that is they, too, are invested in Nebraska. I mean they...give an example, one of the warehouses has about 60 employees and they're looking at doing a $1.5 million expansion of their facility, but they didn't come to this body to say, we'd like that to help pay us...help you....have you the state help pay for our expansion. So for those reasons, they oppose LB752. With that, I'd try to answer any questions. [LB752]

SENATOR LOUDEN: Any questions for Justin? Senator Pirsch. [LB752]

SENATOR PIRSCH: Just with respect to the legal, the constitutional issue that Senator Schumacher raised and you echoed, that with respect to physically headquartered and located in Nebraska, organized under Nebraska law, you think that that is suspect or...? [LB752]

JUSTIN BRADY: Yes, I think it would be treating two similar situated people and the only distinction would be whether or not they're in state or out of state. And I believe the Supreme Court has ruled on other issues that have said you can't decipher between the two. And to give you one quick example, Senator, on wine specifically, shipping laws, you're allowed out-of-state shippers, who don't operate in Nebraska, are allowed to ship in a minimum number of cases of wine a month into Nebraska. There was a fee placed on that. Nebraska was lucky enough when they structured that law to place that fee, I believe it's at $500, that the Supreme Court in other cases have ruled that's reasonable. If we had set that a $1,000, they would have said, you can't distinguish and make an outside state entity pay a $1,000 and the in-state pay nothing. So at least it's along the similar lines that you can't draw a distinction based on state lines. [LB752]

SENATOR PIRSCH: But when you said...are there...is there a distinguishment in the fee that is charged outstate shippers currently than in state? [LB752]

JUSTIN BRADY: Yes. [LB752]

SENATOR PIRSCH: What's the basis or rationale of the court allowing that? [LB752]

JUSTIN BRADY: That at least...their rationale was at least that the fee at $500 was not a barrier high enough, in essence, to create a barrier. If it goes up high enough, that's where the court has said that it would create a barrier. [LB752]

SENATOR PIRSCH: You said reasonable. Certain distinctions then are fine. But how are we to look at that and know what might be deemed reasonable then, if...? [LB752]

JUSTIN BRADY: I agree. I mean, that's why I can't come to you and say I wholeheartedly believe it's unconstitutional. I think there's a question that it's raised there. [LB752]

SENATOR PIRSCH: Have you looked at how it's been...has it been challenged in Missouri? As Senator Avery indicated, this was patterned after a... [LB752]

JUSTIN BRADY: I am not aware that it's been challenged in Missouri. I guess I'd say just, as you all know, just the fact that another state has a law that may be unconstitutional, doesn't make our law more constitutional then. [LB752]

SENATOR PIRSCH: Sure. I just wanted to know if you knew of it. [LB752]

JUSTIN BRADY: Uh-huh. [LB752]

SENATOR PIRSCH: Thank you. [LB752]

SENATOR LOUDEN: Other questions? Senator Fischer. [LB752]

SENATOR FISCHER: Thank you, Senator Louden. Thank you, Mr. Brady, for being here. Can you tell me what incentives wineries already have? You mentioned that they already have a lot. [LB752]

JUSTIN BRADY: Farm wineries...without taking too much of your time. Currently, there's a three-tiered system in Nebraska. You've got manufacturers, you have the wholesalers or distributors, and then you have the retailers. One incentive that farm wineries are given is they get to bypass the middle step of the wholesaler. They can be a manufacturer and a retailer, or they can distribute their product to other restaurants, grocery stores directly. They don't go through the three-tiered system, which I understand saves them time, energy, and expense. The other one that would be an incentive is on the state excise tax. Currently, wine that's brought in from out of state, it pays 95 cents per gallon. Farm wineries pay 6 cents a gallon on their product. So that would be another incentive that the state has already said, we want to incent you, the farm wineries, to get in this business. [LB752]

SENATOR FISCHER: Okay. Thank you. [LB752]

JUSTIN BRADY: Uh-huh. [LB752]

SENATOR LOUDEN: Other questions? [LB752]

SENATOR CORNETT: But if they ship the wine out of state, what do they...the other states charge because...? [LB752]

JUSTIN BRADY: That I don't know. [LB752]

SENATOR CORNETT: Do you see what I'm saying? [LB752]

JUSTIN BRADY: Yeah. [LB752]

SENATOR CORNETT: If we're shipping in farm wines from other states, those states... [LB752]

JUSTIN BRADY: Then they would pay the 95 cents. [LB752]

SENATOR CORNETT: Correct. But if we're shipping it out? [LB752]

JUSTIN BRADY: Then they would pay the 6 cents in Nebraska and then, I would presume, they would pay whatever it is... [LB752]

SENATOR CORNETT: Whatever. And I assume the other states where these wines are coming from also have similar...? [LB752]

JUSTIN BRADY: Yeah, well, most states, if you think of the large winery stuff would not qualify as far as... [LB752]

SENATOR CORNETT: For that. But I'm just talking about farm. [LB752]

JUSTIN BRAND: Yeah. But, yes, I suppose if you took like an Iowa farm winery, they would probably have an incentive in Iowa that benefits them on their tax codes similar to ours... [LB752]

SENATOR CORNETT: No, I'm just referring to farm wineries. [LB752]

JUSTIN BRADY: ...which, I would say, probably crosses...moves into that gray area, too, that Senator Pirsch and I were talking about. [LB752]

SENATOR CORNETT: That's...okay. That's the point I was getting to that was that. Thank you. [LB752]

SENATOR LOUDEN: Other questions? Seeing none, thank you, Justin, for your testimony. [LB752]

JUSTIN BRADY: Thank you. [LB752]

SENATOR LOUDEN: Other opponents? Neutral testimony? Seeing none, that closes the hearing on LB752. And now, Senator Cornett, do you want to open the hearing on...? [LB752]

SENATOR CORNETT: Senator Pahls? I saw you come in.

SENATOR PAHLS: (Exhibit 5) Good morning, Senator Cornett, Chairperson Cornett and members of the Revenue Committee. As you can see, this bill must not be too controversial because there aren't a lot of people behind me. Typically, when I bring up a bill dealing with tax exemptions, it causes a lot of...what I call, undue excitement. I'm handing out, or I'm having the page hand out, basically my written testimony this morning. I will go over a few of the points. I want to make sure that we can see...there possibly is some agreement. Again I need to...my name is Rich Pahls, P-a-h-l-s. I represent District 31. Each year by statute, the Tax Rate Review Committee meets during their interim after the Legislature has adjourned. The committee meets to determine if tax receipts are coming in at a rate to satisfy the budget adopted during the past session. Now this Tax Rate Review Committee is made up of, which I'm sure many of you already know, the Speaker, the Exec Board Chair, the Chair of Revenue, the Chair of Appropriations, and the Tax Commissioner. The committee is staffed by the Legislative Fiscal Office, which generates a report on behalf of the committee. The staffing is not in statute, but the Fiscal Office is the logical staff for the information needed. The Tax Rate Review Committee issues a report that is sent electronically to all members of the Legislature. The committee's report is not required by statute but the committee traditionally issues a report every time it meets. LB962 requires the report in statute and requires it is to be sent to members of the Legislature without any changes to the current practice. The bill also names the Tax Rate Review Committee. Currently, the committee exists in statute but it has no name. Traditionally, the committee has used that name assigned to it by this bill. Now, if tax receipts are lower than obligations, the committee is directed by statute to report to the Governor that a special session may be necessary to either increase tax rates or reduce appropriations or both. To me, a key consideration is missing from the committee's report and deliberations. This bill requires the committee to take into account the list of sales tax exemptions and append the list to its report for comparison by senators who receive and study the report and its ramifications. The bill adds one more option for the Legislature to consider when receipts are low. Besides raising taxes or cutting spending, we also have the option of repealing sales tax exemptions. The department is required in statute to generate a report called the Tax Expenditure Report once every two years. The report lists all sales tax exemptions and their estimated fiscal impact. The statute requires the department to submit the report to the Governor and to the Legislature. By recent tradition, the department releases its report to the body electronically. The statute also requires that the list of sales tax exemptions be appended to the Governor's biennial budget submitted to the Legislature. And again, by recent tradition, it is sent to us by the Governor, appends that report to his budget. This bill requires no reports. All the work has been done. There is no fiscal impact. The impact comes when we read the report. It broadens our view of the problem and offers more solutions. Simply put, what I'm trying to do is make this a complete circle. Right now, we get the reports. I'm saying let's put together, so we start analyzing, we'd have probably all aspects of the issues in mind. And one reason why I am promoting this concept is, in the past I have had senators call my office, say, okay, now where is that list of exemptions, even though it currently is being sent to them electronically. What I'm trying to do is get everybody to understand. Let's look at the whole picture. It's that simple. [LB962]

SENATOR CORNETT: Questions from the committee? [LB962]

SENATOR HADLEY: Senator Pahls, I apologize. I was called out but...and maybe you answered this question, if you put the Tax Commissioner on this body, this group. Isn't that correct? [LB962]

SENATOR PAHLS: Yes. Okay, go ahead. I'm sorry. [LB962]

SENATOR HADLEY: Isn't that a problem because the Tax Commissioner is an appointment of the executive branch? And I'm just thinking from a practical standpoint, if this committee is opting whether or not to ask the Governor to call for a special session, does this person, torn two different ways because they...the reporting line is to the executive branch and they're getting involved with a legislative decision? [LB962]

SENATOR PAHLS: Okay. And if so, you can amend that position out. It's my understanding that the person meets with you, if I'm not correct. I know...I actually talked to that person who's part of the commission right now. But by my putting this in statute, you're saying that would be...cause some conflict? [LB962]

SENATOR HADLEY: I just perceive conflict. [LB962]

SENATOR PAHLS: Okay. Yeah. Yeah. Right. [LB962]

SENATOR HADLEY: Perceive. Okay, that's the only thing I ask. [LB962]

SENATOR PAHLS: Well, and if you would...what I'm trying to do is cause all the information to be, it's out there, and let's just compile it. [LB962]

SENATOR HADLEY: You might just...you could put it in statute just as an ex officio member of the group without voting rights or something. [LB962]

SENATOR PAHLS: Well, I thank you for that, that suggestion. [LB962]

SENATOR CORNETT: Further questions? Senator Schumacher. [LB962]

SENATOR SCHUMACHER: Thank you, Senator Cornett. Along those same lines, Senator Pahls, it looks like presently it's the members of this commission, the voting members, excluding the Tax Commissioner, are in a position to ask for a special session. [LB962]

SENATOR PAHLS: Yes. [LB962]

SENATOR SCHUMACHER: And by putting the Tax Commissioner, who is kind of a lieutenant of the Governor, on the team, it seems to break that symmetry that exists between branches of government and, you know, to the extent that he is there able to say, no, don't call a special session, or yes, call a special session. The Governor has got the authority to call or not call on his own. He doesn't need another lobbyist on this commission. [LB962]

SENATOR PAHLS: Yeah. And I understand the point that both of you have brought forth. What I'm thinking that, that group already meets. And I think they discuss this issue with the...I'm not creating a new committee. That committee already meets. I've not...I just gave it a name. If you see the report, you will see that they call themselves the Tax Rate Review. That's the Tax Rate Review report if I'm not mistaken. I just gave it a name, and if that's an issue, I can see where classifying, as Senator Hadley said, is a possibility. [LB962]

SENATOR CORNETT: Further questions? Seeing none. [LB962]

SENATOR PAHLS: Thank you. Can I make one more statement? [LB962]

SENATOR CORNETT: Sure. [LB962]

SENATOR PAHLS: I'm just saying is, I'm going to be leaving this body and I'm afraid the idea of tax exemptions will get...it's going to get lost. Because I've been told that it's out there, the information, I'm just trying to say let's put it in a package and we can go from there. Thank you. Appreciate it. [LB962]

SENATOR CORNETT: First proponent? Are there any opponents? Is there anyone in a neutral capacity? Thank you, Senator Pahls. I make a motion we go into Exec Session. [LB962]