[LB53 LB468 LB547]

The Committee on Revenue met at 1:30 p.m. on Friday, February 22, 2013, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB547, LB468, and LB53. Senators present: Galen Hadley, Chairperson; Paul Schumacher, Vice Chairperson; Tom Hansen; Burke Harr; Charlie Janssen; Beau McCoy; Pete Pirsch; and Kate Sullivan. Senators absent: None.

SENATOR HADLEY: Ladies and gentlemen, welcome to the Revenue Committee. We appreciate your coming. My name is Galen Hadley, and I represent Kearney. And to my left is Paul Schumacher, Senator Schumacher, from Columbus. To his left is Senator Pirsch from Omaha. And to his left will be Senator Sullivan from Cedar Rapids. To my far right is Senator Burke Harr from Omaha. And to his left is Senator Janssen from Fremont. And to his left is Senator McCoy from Omaha. And to his left is Senator Hansen from North Platte. Our committee counsel is Mary Jane Egr Edson, to my right. Bill Lock is our research analyst. And Matt Rathje is, to my far left, is our committee clerk. Our pages are Evan Schmeits and Nate Funk. Turn off cell phones and put on "vibrate" while in the hearing room. The sign-in sheets for testifiers are on the tables by both doors and need to be completed by everyone wishing to testify. If you are testifying on more than one bill, you need to submit a form for each bill; please print. And complete the form prior to coming up to testify. When you come up to testify, hand your testifier sheet to the committee clerk. This is what they look like. Looking over the group, I think most of you have testified, so you know that. There are also clipboards in the back 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 a 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. If you only have the original, we will make copies. Give the handouts to the page to circulate for the committee. With that, we will get started. The first bill is...Senator Kolowski is...

__________: He was here.

________________: He's on his way.

SENATOR HADLEY: He's on his...

________________: He was just here.

SENATOR HADLEY: Okay. We can...

__________: He was just here.

SENATOR PIRSCH: Here he is.

SENATOR HADLEY: Here he is.

SENATOR HARR: Long commute?

SENATOR KOLOWSKI: Yes. (Laughter)

SENATOR HADLEY: We've been accused of being mean, but this is the first time we've scared away a senator (laugh) before they even reached the podium. Senator Kolowski, thank you for coming to the Revenue Committee.

SENATOR KOLOWSKI: Thank you, Senator. Double meetings here is why.

SENATOR HADLEY: Okay. Please take your time.

SENATOR KOLOWSKI: (Exhibits 1-7) Thank you. Well, thank you very much. Senator Hadley, members of the Revenue Committee, my name is Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i. And I represent District 31. LB547, before you, provides a tax credit for up to $500 for a single individual and $1,000 for a married couple for fees paid or contributions made to schools in support of extracurricular activities. In front of you is a packet that I'll refer to throughout my testimony. At the front is a white amendment that improves LB547 by, number one, expanding the tax credit to include contributions made to community organizations partnered with school districts and, two, redefining extracurricular activities and character education programs as "school-linked expanded learning opportunities" and, three, limiting the credit to qualified individuals who are the parents and legal guardians of a child who is enrolled in a school-linked expanded learning program; this will address the enormously large fiscal note. And I ask that you suspend your judgment on this bill in terms of the fiscal note until I can get you a new fiscal note that reflects the changes in this amendment. These changes were made in accordance with the most current and quality-oriented practices in out-of-school programs. You can find the definitions of both of these additions on page 6, line 18 through 27, of the amendment. My office has worked with an incredible team of experts to create this amendment: number one, Jeff Cole, with the Nebraska Community Learning Centers; number two, Rich...Richard Lombardi, with the YMCAs; three, Tom Casady, the city of Lincoln public safety director; number four, Todd Schmaderer, the Omaha chief of police; number five, Megan Addison, with Omaha's Collective for Youth Foundation; and number six, Rhonda Blanford-Green and Julia Plucker, with the Nebraska School Activities Association; and number seven, Dr. Jerry Deichert, professor at UNO's Center for Public Affairs. Due to the weather and attendance at some national conferences, several of these participants behind this legislation are not able to be here in person today. Their support for this legislation is reflected and incorporated into my testimony. As an educator for 41 years and a high school principal for the last 15 of those years, I have experienced firsthand the benefits of expanded learning opportunities for our students and their families. Let me briefly explain that statement in two ways, first in the theoretical and then in the practical. The excellent research done by the Gallup organization is very concentrated on the positive-thinking, positive-behavior aspects of human interaction. Dr. Shane Lopez and his associates have done considerable work in three concept areas; they are engagement, hope, and well-being. Using school terms, the greater the connection and reinforcement a student feels increases their goal-directed behaviors to a feeling of positive accomplishment and pride in that success. On the practical side, I have led a team of educators that built a Class A 2,100-student National Blue Ribbon-honored high school where the student activity participation rate was over 130 percent and the student graduation rate was 99-plus percent. That is how theory can turn into practical reality. Just think about it, 80 percent of a young person's waking hours are spent outside of the school day. These are valuable hours of opportunity that have been ignored by policymakers for too long. Please turn to the second handout in your packet. Research shows that regular participation in high-quality expanded learning programs leads to an increase in the key ABCs: attendance in school-day programs go up; behavior improves and negative behaviors are reduced; and coursework, in terms of both test scores and grades, improve. For example, in the graph on the second page of handout 3 you can see that the income differences in math achievement between students were eliminated for students who were enrolled in consistent after-school activities. Now let's talk specifically about Nebraska. Please turn to handout 4, if you would, please. Thirty-six percent of Nebraska's K-12 children are responsible for taking care of themselves after school. That is 114,040 kids who spend an average of seven hours per week unsupervised. That is one-third of the school-age students in the entire state of Nebraska. If you turn to page 2 of handout 4, you can see how Nebraska compares nationally. Nationally, 15 percent of kids are in after-school programs, where in Nebraska we are lagging at 11 percent. Additionally, Nebraska has 36 percent of our students in self-care, while the national average is 26 percent. The absence of kids enrolled in extended learning programs is not just an education issue for this state, it is also a health and public safety issue. For example, the second page of handout 5 refers to a study in which the prevalence of obesity was found significantly lower for children participating in after-school programs when compared to nonparticipants. Now to public safety, juvenile crime is at its peak during the after-school hours of 3:00 through 6:00 p.m. You can see this on handout 6, which was provided to us by Tom Casady, Lincoln's public safety director and former chief of police. Take note of the lunch spike, which further exemplifies that kids without supervision and direction are far more likely to cause troubles. The good news is that we have great...great expanded learning programs multiplying across Nebraska. Just this week I read in the Journal Star that two schools in Lincoln were awarded grant money for their strong after-school programs. And that...in handout 7 you can see the...this outlines the article. Jeff Cole, the network lead in Nebraska's community learning centers, will follow me with testimony that discusses even more of these quality programs. It is our job as policymakers to create better access to these enriching programs. There are many barriers that hinder enrollment in expanded learning opportunities. And this legislation targets one of those...one of the largest barriers, which is cost. High-quality programs require staffing and programming that costs money. As you can see in handout 4, page 2, on average, Nebraska families spend $64 per week for after-school programs; that is over $3,000 a year. My immediate intent with this amendment to LB547 is to encourage families to enroll their students in school-linked extended learning opportunities by reducing some of that financial burden. This keeps students safe and engaged and gives Mom and Dad peace of mind while they're at work or doing other tasks in their lives. Long term, I hope this creates a larger discussion about developing additional policies that lead to more Nebraska youth experiencing high-quality extended learning opportunities. On that note, I would ask you to advance LB547 with the white amendment. Thank you. And I'm happy to take any questions. [LB547]

SENATOR HADLEY: Are there questions for Senator Kolowski? Senator Hansen. [LB547]

SENATOR HANSEN: Senator, you mentioned $3,000 per family. And what page was that on in your handout? Four? [LB547]

SENATOR KOLOWSKI: Yes, sir. [LB547]

SENATOR HANSEN: I didn't see that in...in the print. Where's it at? [LB547]

SENATOR KOLOWSKI: That is on... [LB547]

_____________: That is... [LB547]

SENATOR KOLOWSKI: Yeah, $64 a week, or...it's on handout 4, page 2, Senator Hansen. [LB547]

SENATOR HANSEN: Okay. [LB547]

SENATOR KOLOWSKI: Handout number 4, page 2: On the average, $64 a week; about $3,000 a year, when you look at that. [LB547]

SENATOR HANSEN: Okay. And then the program that you said that you headed up that would help the participation in extracurricular activities, at 130 percent. So there was some students doing at least two? [LB547]

SENATOR KOLOWSKI: Yes, sir. Some students were in multiple activities within the school activities program at that...the athletic director/activities director is in charge of all those, be it athletics or activities, and many students doubled or tripled, depending on their activity level. And some students, of course, were not in anything; you have that happen. But we had a very robust program that was planned for, and we established that and had...we led the district as far as the percentage of students participating, which was way over the top. [LB547]

SENATOR HANSEN: And your graduation rate was pretty enviable, too, I think... [LB547]

SENATOR KOLOWSKI: Yes, it is. [LB547]

SENATOR HANSEN: ...99. What was the graduation rate prior to that program? [LB547]

SENATOR KOLOWSKI: Oh, I built the school from the ground up. And so I opened it and ran it for the first 15 years of Millard West's life. And so that was the statistics that I had from all that time. [LB547]

SENATOR HANSEN: Millard...so you were there, Millard West? [LB547]

SENATOR KOLOWSKI: Millard West, yes, sir. [LB547]

SENATOR HANSEN: Okay. Our North Platte basketball girls went to Millard West to play a basketball game against Kearney last week. [LB547]

SENATOR KOLOWSKI: The regionals? Yes. Yeah. [LB547]

SENATOR HANSEN: So we were familiar how far Millard West is away from North Platte. So thank you. [LB547]

SENATOR KOLOWSKI: Yes, sir. [LB547]

SENATOR HADLEY: Senator Pirsch. [LB547]

SENATOR PIRSCH: And thank you. I'm just trying to get a... [LB547]

SENATOR KOLOWSKI: Sure. [LB547]

SENATOR PIRSCH: ...background environment now. And if you're able...to the extent that you're able, because I know you've also served on the Learning Community and...did the Learning Community have programs designed for this out-of-normal-course-of-day, I mean, school-day type of programming, is that right?

[LB547]

SENATOR KOLOWSKI: The Learning Community activity levels primarily, as per the charge of the law, were directed toward the neediest students at the lowest grade levels, elementary levels. So the elementary learning center portion, which is huge, in the Learning Community bill, in the law, was where most of the dollars went in both north Omaha and south Omaha and all other districts. We had summer programs. I believe last summer they touched about 11,000 students' lives with different programs and different allocations to all...the potential was there for all 11 school districts to participate in that funding process. If they handed their grants in on time and balanced that out, then many of those were all across the board in all districts. [LB547]

SENATOR PIRSCH: Okay. So a fairly robust, then...you said 11,000 total students, north and south Omaha primarily. [LB547]

SENATOR KOLOWSKI: All over the two-county area, in fact, Senator. Yes, there were activities in the Millard district, the Elkhorn district, as well as...Papillion-La Vista had a very active program last summer, Bellevue, OPS. And, again, your original question goes back to what I was talking about, was the high school end, which is not necessarily the charge of the Learning Community, because it's directed more toward the younger students. [LB547]

SENATOR PIRSCH: Well...and, see, and that's what I wanted to get at too. So the figures that you...that were here, a hundred...you know, about a third of schoolkids... [LB547]

SENATOR KOLOWSKI: Um-hum. [LB547]

SENATOR PIRSCH: ...I think you had mentioned. [LB547]

SENATOR KOLOWSKI: Yes. [LB547]

SENATOR PIRSCH: Is this bill designed to get at younger students, older...high school age students, elementary? [LB547]

SENATOR KOLOWSKI: This would be the full range, not... [LB547]

SENATOR PIRSCH: Or everybody? [LB547]

SENATOR KOLOWSKI: Yes, K-12. Pre-K-12, in fact, depending on how far you want to go and if your district has a "pre" program as well. But this would be available across the board. My example was simply a high school, and that's where I spent my career. [LB547]

SENATOR PIRSCH: Okay, so...but there's not one demographic, like, you know... [LB547]

SENATOR KOLOWSKI: No, sir; wide open. [LB547]

SENATOR PIRSCH: ...that you think that you're kind of gearing this towards? [LB547]

SENATOR KOLOWSKI: No. This...the latchkey-type programs, "Kids Network"-type programs that districts have at their elementary schools before school, after school, opening at 6:00 in the morning, going to 6:00 at night after school, are indicative of the kind of things that you might want to put your child into, as well as preschool programs, as well as music programs, athletic programs, music...there's lots of different varieties of things that people might want their students to experience. [LB547]

SENATOR PIRSCH: Yeah. And I know that is going on. [LB547]

SENATOR KOLOWSKI: Yes. [LB547]

SENATOR PIRSCH: And, you know, I represent three school districts... [LB547]

SENATOR KOLOWSKI: Yes. [LB547]

SENATOR PIRSCH: ...Elkhorn, Omaha, and Millard. [LB547]

SENATOR KOLOWSKI: Yes. [LB547]

SENATOR PIRSCH: And I think...is that...it's going on in all three, right? Not just over the summer, right? [LB547]

SENATOR KOLOWSKI: Correct. There's extensions during the school year for many of them. But a lot of our summer activity was Jumpstart oriented, getting those students, like the kindergarten students, into a Jumpstart mode so they would walk in the door ready for their activities and not take the first couple weeks of school... [LB547]

SENATOR PIRSCH: Yeah. [LB547]

SENATOR KOLOWSKI: ...on the Jumpstart aspect. [LB547]

SENATOR PIRSCH: The Jumpstart is for...about a four- or six-week program... [LB547]

SENATOR KOLOWSKI: Um-hum. [LB547]

SENATOR PIRSCH: ...for those kids who have never been to preschool, though, before, correct? [LB547]

SENATOR KOLOWSKI: Correct, primarily for those kids. [LB547]

SENATOR PIRSCH: Yeah. Is there any other kind of...and maybe even...are there any federal programs or federal monies that are allocated for this type of... [LB547]

SENATOR KOLOWSKI: There are some. People following me can... [LB547]

SENATOR PIRSCH: Okay. [LB547]

SENATOR KOLOWSKI: ...direct their topics to some of those issues, because of the...some funding that does exist. And you've heard the...if you heard the President's speech on the emphasis on early childhood coming up into a greater visibility across the country, it's part of this kind of movement. [LB547]

SENATOR PIRSCH: Thank you. [LB547]

SENATOR KOLOWSKI: Thank you. [LB547]

SENATOR HADLEY: Senator Schumacher. [LB547]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Thank you, Senator Kolowski, for being with us today. [LB547]

SENATOR KOLOWSKI: Yes, sir. [LB547]

SENATOR SCHUMACHER: Just a couple of questions regarding the language. This program is designed to improve student academic performance through academic support services, physical fitness activities, nutrition education, and cultural activities. Does one of these programs have to do all those four or five things, or can it do just one of them? [LB547]

SENATOR KOLOWSKI: It can have emphasis in one; or if it's a mixture, depending on how broadly based the program might be as far as its components, it could have more than one; yes, sir. [LB547]

SENATOR SCHUMACHER: So this "and" at the end could be read to say "or"... [LB547]

SENATOR KOLOWSKI: Correct. [LB547]

SENATOR SCHUMACHER: ...so any one of them would work. [LB547]

SENATOR KOLOWSKI: Right, any one of those. It doesn't have to contain all four; yes, sir. [LB547]

SENATOR SCHUMACHER: The...I'm interested a little bit in your thoughts on the relationship between those communities that have a public school and parochial schools. Could the parochial schools be the nonprofit community organization? [LB547]

SENATOR KOLOWSKI: They could participate in the goal of getting the tax rebate. Whether they're the agency or not that you'd be dealing with after school...we had a member...a person in this morning talking to us about that issue of parochial or private schools participating in these programs and being eligible for the tax receipt or tax break on this. And we said, yes, it wasn't meant to be exclusive; it was meant to be inclusive. So if they would simply attend their school of choice during the day, and then after school, if these programs were available and okayed by the public schools, they could also participate in those. [LB547]

SENATOR SCHUMACHER: Okay. [LB547]

SENATOR KOLOWSKI: Whether it's the private school itself is something else we'll have to talk about and analyze that. [LB547]

SENATOR SCHUMACHER: But if somebody made a contribution...because this says you get the credit for amount of fees or cash contributions made by the qualified person to a school district or to a community organization partner. [LB547]

SENATOR KOLOWSKI: Um-hum. [LB547]

SENATOR SCHUMACHER: So if the parochial school partnered with the public school and somebody gave their money to the parochial school, they would get this deduction of this credit. [LB547]

SENATOR KOLOWSKI: I think that would be correct, in our interpretation of how that would flow, yes. [LB547]

SENATOR SCHUMACHER: And the parochial schoolkids could engage in this activity after school. [LB547]

SENATOR KOLOWSKI: Yes. [LB547]

SENATOR SCHUMACHER: Thank you. [LB547]

SENATOR KOLOWSKI: Thank you. [LB547]

SENATOR HADLEY: Senator Kolowski... [LB547]

SENATOR KOLOWSKI: Yes, sir. [LB547]

SENATOR HADLEY: ...since we use TEEOSA and we have equalization of funding in order to try and get equalization of ability to learn across the state, is there a problem because we have school districts with differing financial means, in the districts, to undertake something like this? Are we going to have a gulf between districts that have private money that can go into something like this and other districts that just aren't in a position to do that? [LB547]

SENATOR KOLOWSKI: Well, Senator Hadley, it's a good question that you're asking, but I think it's more directed toward...I see it more directed toward not necessarily the school district. Every school district has a range of some activities for students at the upper, middle grades as well as...the elementary as well as middle as well as high school. It's probably more directed toward what's available in your community, what could you find that could be opened up or if grants came in or you applied for some other federal or state funding that you might secure, something that would be of a major attraction for students on an after-school basis. You could hardly go to a town and not find a day-care center or a preschool somewhere for after-school care of students as the parents are working and those students are leaving a regular school day. And then they might be going to a relative's home, the grandma and grandpa or an aunt and uncle or something like that, as well as day care or some other kind of facility. If you have YMCAs, you have Boys Clubs, Girls Clubs, it could be even a Scouting organization, something like that going on after school. In other parts of the state it might be something with 4-H or other farm- or ranch-directed type of activities. I think it's wide open. We're not trying to be limiting or restrictive on this as far as involvement of students in something. The issue is engagement and catching them into something they really can connect with. [LB547]

SENATOR HADLEY: I guess I was thinking more in terms of...the tax credits require somebody to give some money to the program in order to get the credit. [LB547]

SENATOR KOLOWSKI: Or you're paying a fee to participate in that. [LB547]

SENATOR HADLEY: Or paying a fee... [LB547]

SENATOR KOLOWSKI: Yes, sir. [LB547]

SENATOR HADLEY: ...or something like that. [LB547]

SENATOR KOLOWSKI: Right. [LB547]

SENATOR HADLEY: And I just...I get concerned that there are maybe areas of poverty in Nebraska... [LB547]

SENATOR KOLOWSKI: Absolutely. [LB547]

SENATOR HADLEY: ...where they have school districts that are in areas of poverty... [LB547]

SENATOR KOLOWSKI: Um-hum. [LB547]

SENATOR HADLEY: ...that may not have the wherewithal to get that initial contribution that triggers the tax credit... [LB547]

SENATOR KOLOWSKI: Sure. Sure. [LB547]

SENATOR HADLEY: ...to do it. And that's just something we don't have to answer today, but that... [LB547]

SENATOR KOLOWSKI: But it's an excellent question, especially with the idea of scholarships or something else you might do to involve more students. I would think, in the Omaha area that I know, service clubs and other organizations are very responsible with scholarships and provides some things that could go to elementary, middle, or high schools where students do have the need beyond what's available through the school district. To involve students in such activities is the primary goal, get them connected, get them off the streets, get them out of situations that might be more conducive for negative behavior and get them into something that would be positive. [LB547]

SENATOR HADLEY: Okay. Any other questions for Senator Kolowski? Thank you. Are you going to stay for closing? [LB547]

SENATOR KOLOWSKI: Yes, sir. [LB547]

SENATOR HADLEY: Okay. [LB547]

SENATOR KOLOWSKI: I will be happy to. [LB547]

SENATOR HADLEY: We will start with proponents. Would the first proponent please come forward. If you state and spell your name to start, we'll... [LB547]

JEFF COLE: Great. [LB547]

SENATOR HADLEY: ...get going. Thank you for coming today. [LB547]

JEFF COLE: (Exhibit 8) Great. My name is Jeff Cole, C-o-l-e. And good afternoon. I said my name is Jeff Cole; I'm the network lead for the Nebraska Community Learning Center Network. That's a public/private partnership housed at the Nebraska Children and Families Foundation, where we know that our state's young people do best when surrounded by supportive communities and given rich educational opportunities from birth to adulthood. Thank you for the opportunity to testify. Actually, I thank the weather, as I was supposed to be traveling and sent each of you an e-mail with a letter of support for the bill, thinking that I would be spending today in Baltimore at a meeting of over 350 representatives of 57 cities that are building these kinds of citywide after-school systems. But I really am glad to be here today in person to show my support for Senator Kolowski's bill and to discuss with you the importance of after-school programs. Before Senator Kolowski's comments, were you aware that even when our youth are in their K-12 school-going prime years they spend less than 20 percent of their waking hours in formal classroom environments? Listening to all the national education debates about school management, choice, teacher quality issues, you would think that the school day's 20 percent is the only educational time that matters. As parents, we know that that's not the case. Young people learn everywhere and all the time. Growing numbers of policymakers are also starting to understand the importance of out-of-school-time programs. The Baltimore meeting of city leaders was just one example of a growing movement based on the simple notion that after-school cannot continue to be a policy afterthought. Two weeks ago I was in Washington at a meeting of the Statewide Afterschool Networks, which is the national organization supporting the Nebraska CLC Network. At that meeting, after-school advocates released this compendium of research studies illustrating the importance of expanded learning opportunities for participating youth, especially youth from low-income backgrounds. After decades of studies, researchers can say with confidence that when young people regularly participate in high-quality after-school and summer programs, positive measurable benefits accrue: they attend school more; they do better academically; and they have fewer behavioral issues. The introduction of Senator Kolowski's bill and other bills related to after-school show that policymakers in Nebraska also recognize the important role expanded learning opportunities play in the lives of thousands of Nebraska youth every day. As the senator mentioned, we are blessed to have strong programs built on school/community partnerships with groups like the YMCA, the Boys and Girls Club, 4-H Extension, and many others in places like Sidney, Kearney, Lincoln, Columbus, Omaha, indeed in communities all across our state, because the need for these programs knows no boundary. We recognize that these are unconventional programs. As a society, we are used to putting all the responsibilities for education on the backs of schools. Expanded learning opportunities create a strong community-based platform for supporting our youth outside of the school day and, as such, are eliciting unconventional new ideas for funding that can facilitate strong school/community/parent partnerships that we know, and research confirms, can make a powerful difference in the lives of all our children. I urge you to consider this unconventional tax credit-based approach to supporting this vital work. Such an investment will be leveraged many times over in communities across our state in support of broader futures for thousands of youth. [LB547]

SENATOR HADLEY: All right. Are there questions for Mr. Cole? Senator. [LB547]

SENATOR SULLIVAN: Thank you, Senator Hadley. Thank you, Jeff, for your testimony. Well, there's no doubt about it, I think everybody would be in agreement the value of these kinds of programmings. Has this approach, in terms of a tax credit for these efforts, been done in any other state, that you're aware of? [LB547]

JEFF COLE: My understanding is that they were modeled on an approach in Arizona that was used in conjunction with other educational options but has really facilitated funding for these kinds of enrichment activities, character education activities, a host of programs in the state of Arizona. I'm not familiar with other states' experience with tax credits for these kinds of activities, though. [LB547]

SENATOR SULLIVAN: So in Arizona it did result in expanded opportunities? [LB547]

JEFF COLE: It did. It did. It was a...they, unlike Nebraska, have charter school legislation. It was a tool that charter schools were able to utilize to promote some additional expanded learning opportunity programs within their structure. [LB547]

SENATOR SULLIVAN: Thank you. [LB547]

SENATOR HADLEY: Any other questions for Mr. Cole? Senator Schumacher. [LB547]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Thank you, Mr. Cole, for your testimony. The figure of the amount of time that kids spend in school seems fairly low. [LB547]

JEFF COLE: Yeah. [LB547]

SENATOR SCHUMACHER: In any of the seminars or things that you've gone to, has the discussion turned to doing what many European countries have done, go year-round and maybe, you know, lengthening the school day out and things like that? [LB547]

JEFF COLE: Yeah. Yeah, one of the growing kind of discussions in the field of after-school programs is that very question. It's extending the existing school day using existing school staff into later hours in the afternoon as well as the summer, or expanded learning opportunities. And what we're promoting through this bill is expanded learning opportunities, bringing in youth development professionals from organizations, as I mentioned, like the Boys Clubs, like the YMCAs, like 4-H, that can come in as a second team of educators working with youth but bringing a different set of skills. The research on extended-day programs, using existing school staff longer, is very suspect at best. It's...the basic question is, if you're not getting enough of the content during the traditional school hours, do you really think just extending that classroom environment another hour is going to gain you much of a different outcome? The research on this is not very compelling. The research on regular participation, sustained participation in high-quality programs run by a school/community partnership is much more compelling in terms of the outcomes. In terms of cost, it's a completely different ball game as well. These programs tend to cost a lot less. They're not focused on the entire school population but a subset of young people. And so the cost for expanded learning opportunities built on strong school/community partnerships is much lower than in an extended-day program. [LB547]

SENATOR SCHUMACHER: What would be the subset we're focusing on? I mean, I did...maybe I missed it in reading through the amendment, but... [LB547]

JEFF COLE: Right. [LB547]

SENATOR SCHUMACHER: ...I didn't see any language about...talking to a subset. [LB547]

JEFF COLE: Well, you know, for example, my children attend a Title I elementary school here in Lincoln, and they choose not to go to the after-school program. In an extended-day program, my children would be involuntarily included in that after-school program; so the entire school population would be there. This is a subset of students whose parents either...who enroll their young people in the program or who choose to participate in the program; so it's not a school-wide intervention, it's a program just for that subset of young people who choose to participate or their parents choose to participate in it. [LB547]

SENATOR SCHUMACHER: And what do you anticipate the demographics of that subset to be? [LB547]

JEFF COLE: Well, we, in Nebraska, we have a very effective program run by the Department of Education called the 21st Century Community Learning Center grant program. And those funds are granted by the federal government, and then they're regranted out by the Department of Education to schools whose population have to have no less than 40 percent of their young people on free and reduced-price lunch. So those 118 schools across the state that are working under the 21st Century program are all high-poverty schools by Nebraska standards. And...but that is just really the tip of the iceberg. We know that in every community in our state there is a need for out-of-school-time programs because of the huge number of Nebraska parents that work. We have one of the highest percentages of dual-career households in the nation. So we know that there's a huge demand for these programs that span the socioeconomic spectrum. But right now in those 21st Century programs we know that it's--the question that Senator Hadley mentioned previously--it's those low-income youth that are getting the additional interventions through these programs. [LB547]

SENATOR SCHUMACHER: And, quickly, the percentage of the student population, then, that we're talking about participating? [LB547]

JEFF COLE: It varies by building. Some buildings, it's a large percentage of the students. [LB547]

SENATOR SCHUMACHER: Are we talking 20 percent? [LB547]

JEFF COLE: You know, I'll have to...I think there are some other presenters who could probably speak to that point more specifically. [LB547]

SENATOR SCHUMACHER: Okay, because this... [LB547]

JEFF COLE: 20 percent. [LB547]

SENATOR SCHUMACHER: ...this proposes to spend $100 million, so, you know... [LB547]

JEFF COLE: Right. I think it's a...I'd love to see how that figure was reached. I think there are some assumptions there that probably...probably aren't valid for what the reality of this program would look like. [LB547]

SENATOR SCHUMACHER: Thank you. [LB547]

SENATOR HADLEY: Senator Pirsch. [LB547]

SENATOR PIRSCH: And thank you for your testimony; that's fine. I'm just kind of trying to clarify in my own mind the environment where we find ourselves now and kind of identify the need. But...so we talked about, you know, you had related, Title I schools, right, in Lincoln and Omaha...they have certain abilities right now, federal monies to provide after-school... [LB547]

JEFF COLE: Um-hum. [LB547]

SENATOR PIRSCH: ...care right now? Is...I mean... [LB547]

JEFF COLE: Yeah. [LB547]

SENATOR PIRSCH: Is it similar to these type of programs... [LB547]

JEFF COLE: Um-hum. [LB547]

SENATOR PIRSCH: ...then... [LB547]

JEFF COLE: Um-hum. [LB547]

SENATOR PIRSCH: ...in terms of educational content and whatever? [LB547]

JEFF COLE: That's correct. Yeah, Title I schools are eligible to apply for a state-run grant program. So not all Title I schools have the 21st Century grant. They do have opportunities within their federal funding to provide additional enrichment activities that extend after the school bell. [LB547]

SENATOR PIRSCH: Would it require a match by the state, of some sort, to participate? Is that why a school may not...I mean, is...so, obviously, there's federal monies. [LB547]

JEFF COLE: Right. [LB547]

SENATOR PIRSCH: Does it require the state not just to run it...I mean, are there state expenditures... [LB547]

JEFF COLE: Right. [LB547]

SENATOR PIRSCH: ...or matches? [LB547]

JEFF COLE: You know, currently Nebraska is one of the states that doesn't have any state dollars that go to matching those federal earmarks. Nebraska gets a percentage based on our population. We get around a $5 million allocation; about $1 million of that goes into new grants every year. And there's not a requirement that we have state matching dollars for those. [LB547]

SENATOR PIRSCH: You said $7 million, about? [LB547]

JEFF COLE: About $5 million total. And then $1 million in new grants every year. [LB547]

SENATOR PIRSCH: Those are only Title I schools, right, which... [LB547]

JEFF COLE: The eligible schools are...they have to have over 40 percent of their student population on free and reduced-price lunch. [LB547]

SENATOR PIRSCH: Oh. And that...and so that program is called the 21st Century... [LB547]

JEFF COLE: That's correct. [LB547]

SENATOR PIRSCH: ...Community Learning...okay. [LB547]

JEFF COLE: Yeah. And that is the only federal program exclusively targeting after-school programs. [LB547]

SENATOR PIRSCH: And that's after school. [LB547]

JEFF COLE: Right. [LB547]

SENATOR PIRSCH: Exclusive... [LB547]

JEFF COLE: Exclusive...yeah. [LB547]

SENATOR PIRSCH: Are there other programs that substantially... [LB547]

JEFF COLE: Um-hum. [LB547]

SENATOR PIRSCH: ...have added after-school programs, not, I mean, just tangentially or... [LB547]

JEFF COLE: Yeah. Yeah, over the last couple of administrations you've seen a willingness to use some other federal funds, like Title I dollars, to extend learning opportunities for youth outside of the traditional school day. But that's a choice of the district and, really, in a lot of cases, the individual building, how they use those federal dollars. [LB547]

SENATOR PIRSCH: And there's demands on those dollars in other ways... [LB547]

JEFF COLE: Exactly. [LB547]

SENATOR PIRSCH: ...is what you're saying? So you're saying, for most of those Title I-eligible schools, would you say...do you have an idea of the percentage who actually, then, have after-school programs based, I mean, based, I mean, that conceivably they could receive funding... [LB547]

JEFF COLE: Yeah. Yeah. [LB547]

SENATOR PIRSCH: ...in theory, but... [LB547]

JEFF COLE: Yeah, you know, I...on a statewide basis it's hard to say. I know in Lincoln...and I think you'll hear from some folks from Lincoln later... [LB547]

SENATOR PIRSCH: Maybe I'll ask them then, yeah. [LB547]

JEFF COLE: Yeah. They have...in all of their Title I buildings they've been able to develop after-school programs through a combination of 21st Century's. But as I said in my testimony, they've leveraged a tremendous amount of community dollars through foundations, parent fees... [LB547]

SENATOR PIRSCH: Okay. [LB547]

JEFF COLE: ...as this bill suggests, and... [LB547]

SENATOR PIRSCH: So it probably couldn't happen without that, and that doesn't exist in every community, is that what you're suggesting? [LB547]

JEFF COLE: That's correct, yeah. [LB547]

SENATOR PIRSCH: Okay. And I'm trying to get an extent of it. So in some schools it's a possibility, and in other schools it's not a possibility, is what you're suggesting. Is that, other than...so the Title I, which, in the broad sense...and then, in particular, 21st Century Community Learning Center program. What...is there any other major federal program out there that would...a school may look to... [LB547]

JEFF COLE: Right. [LB547]

SENATOR PIRSCH: ...to provide some sort of funding or... [LB547]

JEFF COLE: Well, there actually are a lot of different funding streams. As you were kind of going over the range of programming, you know, obesity-prevention dollars... [LB547]

SENATOR PIRSCH: Okay. [LB547]

JEFF COLE: ...there are some dollars you can tap into for after-school programs, to utilize those. The other main source of federal support comes from Health and Human Services childcare subsidies. [LB547]

SENATOR PIRSCH: Okay. [LB547]

JEFF COLE: So childcare subsidies are eligible for young people whose parents meet eligibility requirements, up to age 12, to participate in childcare after-school programs. So that's the... [LB547]

SENATOR PIRSCH: So is... [LB547]

JEFF COLE: ...that's actually probably the major source of funding for these kinds of activities. [LB547]

SENATOR PIRSCH: That is. Okay. And so I'm trying to get...so is your argument, then, that this creates a patchwork quilt of disuniformity, that you're saying you should have uniformity, too, through this bill? Or are you saying just in...I mean, toward that, do you know how many schools, in total, do have after-school...and, you know, kind of as a percentage? [LB547]

JEFF COLE: Yeah. [LB547]

SENATOR PIRSCH: All schools? [LB547]

JEFF COLE: Well, the first part, I would say, first part of your question, is we do advocate for a more comprehensive array of organization to after-school programs. We found...and the conference I mentioned in Baltimore is put on by an organization called the Wallace Foundation; they found remarkable savings when cities come together--and strong leadership from mayors, superintendents, and community leaders--to create an integrated system of out-of-school-time programs. Lincoln has done a great job of that here. And they've not only been able to achieve savings, but they've been able to increase quality and increase participation for young people who need these services the most. So we are very supportive of efforts that can bring those under one umbrella on a community-wide basis. Great work in Omaha. The Collective for Youth has done a phenomenal job at pulling those strands together. The second part: it's really difficult to say, because we know there are many more schools doing after-school programs through the hodgepodge of funding that's available than those that we can clearly track through the 21st Century program, because those are, you know, easily identifiable: they have to report on their outcomes; it's a much more quantifiable world. [LB547]

SENATOR PIRSCH: I'll ask you just some quick questions... [LB547]

JEFF COLE: Sure. [LB547]

SENATOR PIRSCH: ...with quick answers. So you...somebody had mentioned the President's emphasis, and he's proposing federal legislation geared towards the 0-to-5, I believe... [LB547]

JEFF COLE: Right. [LB547]

SENATOR PIRSCH: ...right? So is that...would that include monies for this type of endeavor, the after-school...? [LB547]

JEFF COLE: My understanding is that it wouldn't. [LB547]

SENATOR PIRSCH: Okay. And are there any--and I've asked this question before--is there...do you agree with this statement: This isn't geared towards any particular school-age child, whether it's in elementary, young elementary, or high school; you find the same need, it's not clustered towards one. And same with geography, whether it's an urban or...okay. [LB547]

JEFF COLE: Yes. [LB547]

SENATOR PIRSCH: And do you have a position with respect to the issue that Senator Schumacher brought up, with respect to parochial schools? Is this applicable? Could these monies be utilized by parochial schools? [LB547]

JEFF COLE: I do. I think the need is just as valid for parochial schools as public schools. [LB547]

SENATOR PIRSCH: And do you have a sense--you talked about you wanted the quality of programming, even of existing programs--but do you have a sense how many schools...you said, in Lincoln at least, you mentioned some high schools. But do you have a, you know, a percentage, guesstimate, that, you know, in terms of schools that don't even have...that have no after-school...no resources? [LB547]

JEFF COLE: I really don't. Like I said, it's very hard to...I mean, I know that there are after-school programs--they probably wouldn't call them after-school programs--existing in almost every school in the state of Nebraska. In some form or fashion, there's some extension of learning that happens when the end of...that school bell rings. There are additional learning opportunities going on. [LB547]

SENATOR PIRSCH: Okay. I thank you. [LB547]

JEFF COLE: Yeah. [LB547]

SENATOR HADLEY: Mr. Cole, did you hand this out, or is this...? [LB547]

JEFF COLE: No. [LB547]

SENATOR HADLEY: You did. Okay. Thank you. Okay. Seeing no other questions, thank you. [LB547]

JEFF COLE: Right, thank you. [LB547]

SENATOR HADLEY: Can I see a show of hands of how many proponents...we're done with proponents? Opponents? Neutral. Welcome. [LB547]

JERRY DEICHERT: (Exhibit 9) Hi. Good afternoon. My name is Jerry Deichert; that's J-e-r-r-y D-e-i-c-h-e-r-t. And I'm director of the Center for Public Affairs Research at the University of Nebraska at Omaha, and I'm here to provide neutral testimony on LB547. During the past three years I've been working with the Legislature's Planning Committee. And this year I prepared a policy brief that looked at early childhood education with all parents in the labor force. And Senator Kolowski asked me if I could do something similar to share some of the background information here. And my testimony is based on some of that additional information. In the handout, if you look at pages 2 and 3, you'll see that historically Nebraska has had one of the highest labor force participation rates in the nation, and, as a result, these tables show that a large portion of Nebraska's children have working parents. In 2011, 73.6 percent of Nebraska's children under 6 years old and 78.6 percent of Nebraska's children 6 to 17 years old had all of their parents in the labor force. And the percentage of the children 6 to 17 ranks sixth-highest in the nation. And if you look at table 2 on page 3, you'll see that almost all of our neighboring states also rank relatively high in that same category. The percentage of children with all their parents in the labor force has been increasing during the past decade, if you look at the chart at the bottom of the page. In 2005 the comparable value was 74.6 percent. But as a result of the recent recession, though, the percentage for 2011 is less than in the previous three years. If you go back to page 2, you'll see that for children under 6 years old the percentage of all parents in the labor force ranks fourth-highest in the nation and compares to the national average of 64.6 percent. Similar to their older brothers and sisters, this age group has seen an increase since 2005, when it was 66.7 percent. This age group has also been impacted by the recent recession. If you go through the rest of the report, you can see that we have comparable figures for all of the legislative districts. And those legislative districts, because the data were collected between 2007 and 2011, are still based on the old legislative district boundaries, so they're not up to date yet. Next year there will be some information for the new legislative districts, but these are still the old legislative districts. And on figures 3 and 4, we have those ranked by legislative district. So if we go to figure 4 on page 6, which looks at the children 6 to 17 years old, the primary school-age children, you can see the percentage of children with all their parents in the labor force ranged from a high of 87.7 percent in District 26 to a low of 68 percent in District 46. So there's a wide variety across the state as far as what percentage of the children have all of their parents in the labor force. And by "all of the parents," what that means is, if they have two parents, both parents in the labor force; and if they're in a single-parent family, that single parent is in the labor force. Then if you...beginning on page 7, we have that same information for all the counties. And if you go to page...the last page, which is page 11, we have the county maps, which is probably of more interest to some of you. And that looks at...we break the state into four categories: the red is the highest percentage of children with both parents in the labor force or all parents in the labor force, and the blue is the lowest percentage. And you can see that there are pockets in the state where there are high percentages, and there are pockets where there are low percentages. They're spread throughout the state; it's not in any one cluster in the state. So if you have any questions... [LB547]

SENATOR HADLEY: Any questions? Seeing none, thank you, sir. We appreciate this...the data. Next neutral. [LB547]

JEREMY MURPHY: (Exhibit 10) Good afternoon, Senator Hadley, members of the Revenue Committee. My name is Jeremy Murphy, J-e-r-e-m-y M-u-r-p-h-y. I serve as associate director for education issues for the Nebraska Catholic Conference. We are neutral on this bill. Consistently over many years the Catholic Conference and the Federation of Catholic School Parents have advocated for fairer, more just, and supportive tax policies for Nebraska families that fulfill the state's compulsory education law by enrolling their children in privately operated, state-regulated elementary and secondary schools because they deem such enrollment to be in the best interest for their children. We sincerely believe that these Nebraska parents and families have a priority claim on educational tax relief because they are paying twice for education and, in doing so, are saving the state of Nebraska hundreds of millions of dollars in costs every year. As recently as 2007, we have supported legislation proposing education-expense tax credits for actual costs, including fees. And we have supported tax credits for voluntary contributions to programs that support education, most notably support for education scholarship programs, as proposed this year in LB14, which you will hear on March 5. We have been steadfast in believing and advocating that these bills, not just LB14 but also its predecessors of both types, represent sound and just policy for encouraging and ensuring viability for an elementary and secondary education option for many Nebraska families and for assisting those who avail themselves of this option because they deem it best for their children. It would be disheartening for our parents and patrons if this committee supported and advanced legislation that was exclusively limited to payments made to public taxpayer-supported schools. Nevertheless, we do not oppose this bill, because in principle we support the concept it offers. As the Nebraska Catholic Conference, which represents the sponsoring organizations for the three largest systems of privately operated elementary and secondary schools in the state, and on behalf of the Nebraska Federation of Catholic School Parents, we respectfully request this committee show preference and priority for legislation that would recognize and address the tremendous financial burdens that many Nebraska families shoulder and the sacrifices they make in order to afford and provide the educational program they deem best for their children. In the alternative, if deemed necessary, we would ask and encourage you to consider an approach that would combine the general idea proposed by LB14 and the general idea of this bill. In other words, to establish a tax credit for voluntary contributions to specially established organizations that award private school scholarships and a corollary tax credit for voluntary contributions for educational enhancement programs such as character education or extracurricular activities undertaken by public school districts. I would point out, the reference to the Nebraska State Activities Association, that's an entity that includes private and public schools as far as athletics and other activities. This type of combined approach is being used in other states, including Pennsylvania. We would be open and willing to having discussion along these lines with Senators Kolowski and Krist as well as members of the committee. Thank you for your attention and consideration. [LB547]

SENATOR HADLEY: Any questions for Mr. Murphy? Seeing none, thank you. [LB547]

JEREMY MURPHY: Thank you. [LB547]

SENATOR HADLEY: Anyone else in the neutral? Senator Kolowski, do you wish to close? [LB547]

SENATOR KOLOWSKI: Yes, sir. Thank you. Senator Hadley and members of the committee, Senators, thank you very much for the opportunity to present this bill today. A couple of clarifications, I believe, on when we were talking earlier. If I mentioned preschool, that was...that's not the scope of this particular bill. It's K-12 oriented, just to keep that in mind, as far as the orientation, where we are. And also, the activities need to be linked to a school district. So that's probably as much of a quality control as well as the assurance to parents that the school districts do know who's in charge of these programs, that they've met the standards that were acceptable to the districts, so that all students involved would be safe and secure in what they're experiencing within those experiences, whatever they might be. I would also ask you to please read the submitted testimony that was sent in to all of you, if you...hope you all received that and have a chance to look that over. And, again, the fiscal note was a surprise to us. And our amended version was not in the Fiscal Office, and I think they were tacking on the entire nation's sequestered money on top of everything else on our bill somehow. So I'm a little shocked on how that came out. But I think it's going to be modified, and we'll have a much better stand on and understanding of where that fiscal note does fit. So I thank you for your time, and I'm open for any last questions. [LB547]

SENATOR HADLEY: Any questions for Senator Kolowski? Senator McCoy. [LB547]

SENATOR McCOY: Thank you, Chairman Hadley. And thank you, Senator, for bringing LB547 to us today. [LB547]

SENATOR KOLOWSKI: Yes, sir. [LB547]

SENATOR McCOY: I'd like...if you would, to comment on the last neutral testifier, Mr. Murphy... [LB547]

SENATOR KOLOWSKI: Um-hum. [LB547]

SENATOR McCOY: ...when he talked about...obviously, the hearing today is not on LB14, it is on LB547; but nonetheless the comparison was made to what's being done in the state of Pennsylvania in reference to a combination of the concepts which are contained in LB14 and LB547. Are...is that something you're willing to explore? [LB547]

SENATOR KOLOWSKI: Absolutely. I'm not...gotten into the other bill at this point in time, but I'd like to see what that contains. And if there's anything we could meld on and make it a stronger proposal, I'm very open for that, without any problem. [LB547]

SENATOR McCOY: Thank you. [LB547]

SENATOR KOLOWSKI: And we met this morning also, that gentleman and I, and we had a chance to clear the air on a couple of different things, including that amendment, because he did not have that at that time as well. So we had a good discussion on those points, and I repeated to him that we try to be more inclusive in all that we're trying to do, rather than exclusive. We're not trying to eliminate any particular group. [LB547]

SENATOR HADLEY: Senator Schumacher. [LB547]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Just want to ask you to share your thoughts a moment with us. [LB547]

SENATOR KOLOWSKI: Um-hum. [LB547]

SENATOR SCHUMACHER: In some of the activities of the Planning Committee that's been...the folks from the University of Nebraska at Omaha help research and work with... [LB547]

SENATOR KOLOWSKI: Um-hum. [LB547]

SENATOR SCHUMACHER: ...there seems to be identified, with regard to education, about three areas of concern. One you identified here today, you know, kids having too much time to kill after school and in the summer and sometimes getting into mischief or at least not being productive. [LB547]

SENATOR KOLOWSKI: Sure. [LB547]

SENATOR SCHUMACHER: The kids between 18 months and kindergarten, which some evidence indicates are high-impact years, that are basically not getting the education or the interaction that they need, because Mom and Dad both work at reasonably low-paying jobs in the economy of our nature. [LB547]

SENATOR KOLOWSKI: Um-hum. [LB547]

SENATOR SCHUMACHER: And then, finally, that because moms have to work--and I...it's usually moms but it could be dads--that they just are too tired, just don't have... [LB547]

SENATOR KOLOWSKI: Sure. [LB547]

SENATOR SCHUMACHER: ...the time, and we should be doing something to relieve that burden of work so that they could baby-sit the kids instead of it becoming a state function. Your thoughts. [LB547]

SENATOR KOLOWSKI: Well, I think the combination of all three of those things that you mentioned are extremely important. And I would go back to Senator Pirsch's comment on what we are learning and what we are trying to do in the learning community in the Omaha area, and that is to deal with the whole child and the whole family. It's a very important shift in paradigm, not just saying, here's this for this student at this time, and you throw money on into that particular silo without thinking of the broader range of family and community connections with that child. And I think we're much more powerful, and the research to date is very evident that the larger we expand the potential of the full array of support systems for that child at whatever age as you mentioned the whole spectrum and especially with early childhood education and it's much earlier than 18 months as well that we concentrate on the things right from prenatal to birth right through up to the kindergarten days. Those are all important for all of us. And I think the better job we do of connecting with parents and helping those parents with their parenting skills, with the understanding of how a child grows and develops, there's dividends with that that we have seen across the board in the preliminary research we're getting in the Learning Community operations as well as has been backed up by such activities as the Buffett educator facilities that are throughout the community, including one coming to Lincoln now, and the success of those early childhood interventions that really pay off dividends over a long run, all based on proven aspects of practice, excellent pieces that are getting great results. [LB547]

SENATOR SCHUMACHER: Thank you, Senator. [LB547]

SENATOR KOLOWSKI: Thank you. [LB547]

SENATOR HADLEY: Senator Kolowski, I have a question. [LB547]

SENATOR KOLOWSKI: Yes, sir. [LB547]

SENATOR HADLEY: I think you handed out... [LB547]

SENATOR KOLOWSKI: Right. [LB547]

SENATOR HADLEY: ...this. It looks to me like the majority of states do not give tax credits for extracurricular activities. Is that a fair statement if I read this correctly? [LB547]

SENATOR KOLOWSKI: Without having that in front of me, I think that was correct as we look at that. I saw that earlier, and we would be assisting a very particular need we think that exists, especially correlated with the professor's data that you saw, with a high correlation of working Nebraskans, mothers and fathers, both parents within families. We're at the very high end of that scale right now. [LB547]

SENATOR HADLEY: Okay, thank you. Thank you. With that we will close the hearing on LB547. And we appreciate your maiden voyage. (See also Exhibits 18-24.) [LB547]

SENATOR KOLOWSKI: Thank you very much. [LB547]

SENATOR HADLEY: Look forward to seeing you again. [LB547]

SENATOR KOLOWSKI: Thank you, sir. Appreciate it. [LB547]

SENATOR HADLEY: Next, Senator Scheer. Welcome, Senator Scheer. [LB468]

SENATOR SCHEER: Thank you, Senator Avery (sic). Good afternoon, Chairman Hadley, Revenue Committee. My name is Jim Scheer, S-c-h-e-e-r, and I represent the 19th District in the Nebraska Legislature. Today I'm here before you to introduce LB468. The purpose of LB468 is to allow for an income tax deduction for tuition payments made by recent graduates of postsecondary programs. The incentive would be in the form of a deduction from the gross income and would apply for taxable years beginning January 1, 2013. Probably that would have to be changed because I don't perceive this to be going too far too quickly under the current circumstances. But I...before I go too much further, I want to give you the reasoning behind the bill. And I will use just the state university system, and I'll use my daughter as the example. She went to the university system here in Lincoln. And she paid her portion, or I should say I paid her portion of the tuition, and the state, through its tax collections, paid for the remaining part, which was about three-fourths of it. So at about $15,000 a year for four years, the state paid, or had an investment in her future, of $60,000. Upon her graduation, she got a job opportunity and moved to Dallas, Texas. Now I understand that we have a legal commitment to have a high school education here in the state; we don't have a commitment to have higher education. And I'm not trying to imply that we shouldn't, but I think we have to start looking at how many dollars are expended on higher education and the return that we get as a society, based on that. We gave my daughter a wonderful education, great experience, and she went to Dallas, Texas, and to Texas to provide sales tax, property tax, and other forms of economic development in that area, based on her employment there. Nebraska recouped nothing at that point in time. Now, having said that, she just recently moved backed to Nebraska, so we are now trying to regain some of the lost revenues. But that's not always necessarily the case. So we have a large amount of students that are leaving the state after receiving a degree. And this legislation is not necessarily exclusive to a college degree; it could be a community college, it could be a artisan facility, anything that gives a postgraduate degree from secondary schools. It takes the tuition, whatever your actual tuition is, and you get to write 20 percent off per year from your gross income on the state basis. There is a maximum limit, however, that would be the highest tuition rate based on the university-Lincoln's undergraduate rate. And it's not necessarily, as well, for only public institutions. So if somebody was attending Creighton University and they stayed in the state of Nebraska, that's great. But I don't know exactly what their tuition is, but I think it's substantially higher than the university's. The only amount that that student would be able to deduct would be the amount that a corresponding student at the University of Nebraska was going to deduct. So there is a limitation. It's just not whatever you choose to spend. It also helps, I think, from a vantage point of our local economy and businesspeople; because if you are trying to entice someone to stay in the state, they may be offered a few more dollars, perhaps, in Kansas City or Denver, but if you know about this, you can also talk to that individual and say: Well, they may be paying you $1,000 more during...in a good year, but if you take into consideration the reduction in your income taxes, which we may or may not have, the possibility exists that that may indeed provide enough of an incentive for that person to take the job locally in Nebraska. It's not going to work every time. I will tell you that looking at the financial impact that is attached to this, I'm not exactly sure that that's right, I'm not exactly sure it's wrong. I will tell you that I don't think we have any idea exactly what it would be, because we don't know how many people would be taking advantage of this. And if they do take advantage of it, that means they're in Nebraska; they're working and producing income and buying things in Nebraska. And I think that's what it's all about, is trying to maintain and keep people, graduates, in Nebraska and not moving out. So the premise is just really simple: trying to keep as many people that graduate from any type of higher education, regardless if it's a technical school or a community college, a university system, private or parochial, in...staying within the state of Nebraska. It's no...there's no rocket science here. If you look at, sort of, statistics, people that settle in an area for about five years--oddly enough, this tax credit is for five years--usually stay in that community. They may change occupations, but they normally stay within that community. So, yeah, I just used logic in this. I understand there's a lot of other things on the palette of the Revenue Committee this year, and most of these items probably will be carried over. But I thought it was worth at least bringing forward to start a discussion on how we can go about trying to put some incentives on students after they graduate in Nebraska and trying to keep them within Nebraska and earning and learning. And with that, I would be glad to answer any questions. [LB468]

SENATOR SCHUMACHER: I guess he is gone. Okay. (Laughter) Any questions for Senator Scheer? Senator Sullivan. Wake me up. [LB468]

SENATOR SULLIVAN: Thank you, Senator Scheer. Just one clarification. To qualify, they would have to have received either a certificate or a diploma. [LB468]

SENATOR SCHEER: Either a diploma, certificate of completion. You know, I didn't want to put a terminology of "diploma," because perhaps there might be some type of a trade facility that doesn't necessarily call theirs a diploma. And I didn't want to get involved where semantics made the difference between somebody being eligible for that deduction or not. But, yes, they do have to finish and pass whatever program they are in. [LB468]

SENATOR SULLIVAN: Thank you. [LB468]

SENATOR PIRSCH: I appreciate your bill, and I think it's rightly aimed. But with respect to...so this would give you income tax deductions for...that would apply to the extent that you incurred tuition payments... [LB468]

SENATOR SCHEER: Correct. [LB468]

SENATOR PIRSCH: Would the income tax deductions fall forward after you graduate? Or would that be while you're producing Nebraska income at the time you're a student? [LB468]

SENATOR SCHEER: You start...the deductions start upon the completion of the program. So if you were going to the university, at Nebraska-Lincoln, when you graduate in May, that year you would be able to use the first year on the 20 percent of those deductions. You would not utilize it while attending college. [LB468]

SENATOR PIRSCH: While attending. So you know the individuals receiving this kind of tax, kind of deduction, will be Nebraska residents, postgraduate. [LB468]

SENATOR SCHEER: Correct. [LB468]

SENATOR PIRSCH: Okay, so... [LB468]

SENATOR SCHEER: That's the only way it works. They have to reside... [LB468]

SENATOR PIRSCH: Yeah. [LB468]

SENATOR SCHEER: ...in Nebraska in order to get the deduction. [LB468]

SENATOR PIRSCH: Well, and that's important. We had, you know, I...on the Child Behavioral Oversight Commission, you know, I think we had provided additional tuition monies in hopes that the class sizes of mental health providers would increase, and they did. But once they graduated, they went out of state, chased the... [LB468]

SENATOR SCHEER: Um-hum. Correct. [LB468]

SENATOR PIRSCH: ...higher salaries and more urban living. So in this way, you can, by tying it to the income tax, make sure that they stay in the state. [LB468]

SENATOR SCHEER: Correct. [LB468]

SENATOR PIRSCH: So thank you. [LB468]

SENATOR SCHUMACHER: Any other questions for Senator...? Senator Janssen. [LB468]

SENATOR JANSSEN: Thank you, Vice Chair. And I'll be quick. Thank you, Senator Scheer. This...you did...I think it is rightly aimed. I mean...and I think you realize the enormity of the task ahead of us in starting this discussion. But I just want to add this to it, is, what...was there any thought given to...because part of the problem is what you talked about, keeping our students here, but also...I think Senator Harr went out of state to go to college. And what if somebody were to return that was a Nebraska citizen? Because part of the problem is we can't get them to come back to Nebraska, as well, once they do leave. But, I guess, as I say that, it would probably help incentivize to keep them here too. I think it might be I answered my own question. [LB468]

SENATOR SCHEER: Well, certainly I would not be unamenable to an amendment by the committee if you wanted to let them use an out-of-state tuition. My only thought would be it still should be based on the highest...deductible should be only available to in-state students at the university system. I don't want to let you go to Duke or someplace... [LB468]

SENATOR JANSSEN: Right. [LB468]

SENATOR SCHEER: ...like that, that you're paying $75,000 to $100,000 a year. [LB468]

SENATOR JANSSEN: Or Notre Dame or something like that. [LB468]

SENATOR SCHEER: Yeah. So...well, I don't know what Notre Dame is, but, you know, I think we have to keep it in a realistic figure, and that was the only way I could do that. But I wouldn't necessarily be opposed to doing that. I mean, the point would be attracting or maintaining people to the state of Nebraska to produce income for us. [LB468]

SENATOR JANSSEN: Well, I think, actually, as I said, I think I answered my question as I was asking it. I think that would help to incentivize students, actually, from leaving the state, knowing that once they graduated they could get this. So I just wanted to recognize that. [LB468]

SENATOR SCHEER: Okay. [LB468]

SENATOR JANSSEN: I'll shut up because it's Friday and... [LB468]

SENATOR HADLEY: Further questions? Seeing none, thank you, Senator Scheer. [LB468]

SENATOR SCHEER: Thank you. [LB468]

SENATOR HADLEY: First proponent. [LB468]

MARY JANE EGR EDSON: Is he staying to close? [LB468]

SENATOR HADLEY: Hmm? [LB468]

MARY JANE EGR EDSON: Is he staying to close? [LB468]

SENATOR HADLEY: Senator Scheer, are you going to stay to close? [LB468]

SENATOR SCHEER: Well, I will try to stay for it. [LB468]

SENATOR HADLEY: Okay. [LB468]

TIP O'NEILL: Senator Hadley and members of the Revenue Committee, I'm Tip O'Neill; that's O-'-N-e-i-l-l. I'm the president of the Association of Independent Colleges and Universities in Nebraska. We have 14 colleges and universities located in the Nebraska cities of Hastings, York, Seward, Crete, Lincoln, Fremont, Omaha, and Bellevue. And we are delighted to have them there. And we tend to be supportive of proposals like Senator Scheer's that provide tuition tax benefits to families who pay tuition to support students in higher education. And so we are supporting LB468. Now it might surprise some of you, particularly Senator Hadley, to know that I was, actually, the chairman of the Commission on Tax Policy for the National Association of Independent College and Universities for several years and worked extensively on the federal tax provisions relating to higher education. And we have, of course, several tax provisions there. We have tax deductions for tuition and fees at the federal level. We have the American Opportunity credit there. We have the lifetime learning credit. We have student loan interest deductions. We have provisions like that. So we have several tax incentives at the federal level. And one of the balancing things you have to try to look at is that tax incentives tend to benefit middle-class families more than they benefit students from families of lesser means. And we think that's appropriate, because families from...middle-class families are also struggling to pay for higher education expenses. Now we think that one of the issues that you have to consider in LB468 is that this bill does limit the deduction to the person who actually receives the degree. And there's a question in my mind as to how many students who get an undergraduate degree or a certificate are going to be actually itemizing deductions in the year they graduate and in the four years subsequent to that graduation. I think the fiscal note is probably a little high, in my opinion, because I don't think there are very many students who get out of college and immediately start itemizing deductions because they get a high income and buy a house immediately. I just don't think that happens. You know, one of the things we do at the federal level is we allow the person who actually pays the tuition to take the deduction. And one of the things that I think maybe the committee should consider, which would raise the fiscal note considerably, quite frankly, is to maybe allow the person who pays the tuition or whatever to actually take the deduction, which would allow the parent to take the deduction in the case of a dependent student. And so that may be one of the issues you might want to consider. But we do support LB468. And I'd be happy to answer any questions you might have. [LB468]

SENATOR HADLEY: Mr. O'Neill, I apologize for having stepped out when Senator Scheer was opening. Is this...does this apply to a student, say, who would graduate from Creighton and leave the state? Would they...? [LB468]

TIP O'NEILL: Have to be a Nebraska resident. [LB468]

SENATOR HADLEY: Have to be a Nebraska resident... [LB468]

TIP O'NEILL: Absolutely. [LB468]

SENATOR HADLEY: ...in order to get it. [LB468]

TIP O'NEILL: Right, because it's on the Nebraska income tax return. [LB468]

SENATOR HADLEY: But if you changed that to the person who pays it, the tuition, that person may be a resident, and the child, or whoever it is, may have left the state.

[LB468]

TIP O'NEILL: Right. I think you'd have to, obviously, make that a condition precedent for... [LB468]

SENATOR HADLEY: Okay. [LB468]

TIP O'NEILL: ...being able to take the deduction. I mean... [LB468]

SENATOR HADLEY: Okay. [LB468]

TIP O'NEILL: ...so... [LB468]

SENATOR HADLEY: Thank you. [LB468]

TIP O'NEILL: ...we would certainly concur that the student who you were taking the credit on behalf of would also have to be a Nebraska resident. [LB468]

SENATOR HADLEY: Thank you, Mr. O'Neill. Further proponents. [LB468]

DENNIS BAACK: Senator Hadley and members of the Revenue Committee, for the record, my name is Dennis Baack, D-e-n-n-i-s B-a-a-c-k. I'm the executive director of the Nebraska Community College Association, here to speak in support of LB468. One of the things that you asked, Senator Sullivan, was about how we designate what they get, and you talked about whether a certificate or diploma. I think it maybe ought to just say that it's a postsecondary education credential. And that pretty well covers the gamut of those, because there are differing terms that are used for that. So it would seem to me that we might be able to cover the whole field if we use that kind of language, because there are...we do a number of, you know, training programs that are very short term and stuff, and we don't necessarily have certificates for every one or diplomas for every one. But there is some kind of a credential that they get that certifies to business and industry that they received certain skills. So I think that would help take care of that. One of the things that I will tell you, that, in our case especially for community colleges, probably going to impact a lot more of our students than anybody else because ours stay in the state longer. And they stay in the state; about 80-some percent of our students stay in Nebraska. They don't leave the state when they graduate from a community college. In fact, about 90 percent of those stay within the region where they're actually educated. So we keep most of our students within the state. So I think it would have an impact on them. And I think, like Mr. O'Neill said, you know, when he talked about the students who are going to stay here and the students that we have, some of the nontraditional students, the adults and stuff, they have a lot of barriers to getting higher education. This might be an incentive for them to, on their income tax, to be able to deduct some of those expenses and stuff; it might allow them to go on to get a postsecondary credential. So, with that, I'd be happy to answer questions. [LB468]

SENATOR HADLEY: Are there questions for Senator Baack? I have a quick one. In a previous year I had a kind of an outstate Nebraska bill about trying to incentivize people...graduates to come back and people to move back. And we talked a lot about the chicken-and-the-egg concept: Is it better to spend money by paying tuition...or giving credits for people's tuition to keep them in the state, or to spend that money to encourage jobs for these students? Which, you know, which one is...is there one that's more important than the other? Or is it a combination of both? [LB468]

DENNIS BAACK: Well, certainly I think it's a combination of both. But I certainly will tell you that in many fields that we educate students in...there are certain fields that we educate students in that there aren't very many jobs in Nebraska available for them. [LB468]

SENATOR HADLEY: Um-hum. [LB468]

DENNIS BAACK: There just aren't. And the pay is a lot different in some of the other states. So that certainly does make a difference in whether or not they stay in the state. It's bound to happen. Kids who...the traditional students that you're talking about, as they graduate from college, you know, if they can get $10,000 more in another state, they're not going to be looking at what the income tax levels are. They're not going to be thinking about that as much as they are the $10,000 more they're going to get if they go out of state to work. But I think we should try to do everything we can to incentivize them to stay. So I think you have to have a little bit of both to do it. [LB468]

SENATOR HADLEY: And you think Chicago might be a little more fun than Sumner or something like that for... [LB468]

DENNIS BAACK: Yeah. I would think so, yeah. Yeah. [LB468]

SENATOR HADLEY: Okay. (Laughter) Yes. [LB468]

SENATOR PIRSCH: Yeah. And so you recommended changing the language to...that which you're achieving to get the tax credit: postsecondary education credential? [LB468]

DENNIS BAACK: Right. [LB468]

SENATOR PIRSCH: Is that right? Would that seem to be more broad than what's included here? [LB468]

DENNIS BAACK: I think it is. I think it's broader, because it would include your schools of, you know, like barber schools and those, because you're getting a credential that actually allows you to do a certain thing. And in certain of the training programs that we do in community colleges, we simply give them a credential, which is a...and we're even looking at now trying to do a thing with the manufacturing association, looking at credentials for certain manufacturing skills. And those will simply be a credential that they have that they can give to an employer and say, we have skills A, B, and C. [LB468]

SENATOR PIRSCH: Is a credential a defined thing in law, do you know? I mean, you had proposed using that term, "credential." [LB468]

DENNIS BAACK: Yeah, I don't know, Senator Pirsch. I do not know if it is. It's something that we use in higher ed, but I don't know if it's ever defined in law. I don't know that. [LB468]

SENATOR PIRSCH: If I was going to...you said it would apply to, I think, within the barber industry, is that what you said? [LB468]

DENNIS BAACK: Yeah, it would apply to those. Sure. [LB468]

SENATOR PIRSCH: Would it apply to, say, bartending? If I were to go back and get a certificate in... [LB468]

DENNIS BAACK: I would guess if there's a school that has...bartending school that requires certain skills, it would certainly apply, because that would be a credential that they would get that they had the training. [LB468]

SENATOR PIRSCH: Okay. I'm...I... [LB468]

DENNIS BAACK: We don't happen to have any of those in a community college, by the way, but (laugh)... [LB468]

SENATOR PIRSCH: Yeah. No, and I understand that; I didn't mean to... [LB468]

DENNIS BAACK: ...we can maybe start one, I don't know, but... [LB468]

SENATOR PIRSCH: Yeah. I appreciate that. [LB468]

DENNIS BAACK: Yeah. [LB468]

SENATOR HADLEY: Thank you. Thank you, Senator. Appreciate it. [LB468]

DENNIS BAACK: You bet. [LB468]

SENATOR HADLEY: Any further proponents? Opponents? Neutral. [LB468]

JEREMY MURPHY: (Exhibit 11) Good afternoon, Chairman Hadley, members of the Revenue Committee. My name is Jeremy Murphy, J-e-r-e-m-y M-u-r-p-h-y, and I serve as associate director for education issues for the Nebraska Catholic Conference. We support the underlying concept of this bill in principle because it seeks to provide tax relief and encouragement for Nebraskans who make expenditures for education, namely, tuition. Private elementary and secondary school families can identify with that idea and purpose to be attained by it. Nonetheless, we think the priority claim for educational tax relief should be families who pay twice in order to fulfill the state's compulsory education requirement in the setting they deem best for their children. It would be disheartening for families that opt for privately operated elementary and secondary schools to see this committee advance a bill that would provide educational tax relief exclusively for postsecondary education. And while a case could certainly be made for expanding this deduction for tuition to include tuition paid for elementary and secondary education, our preference--and we think there is abundant justification for it--is for the scholarship tax credit as embodied in LB14. Thank you. [LB468]

SENATOR HADLEY: Questions for Mr. Murphy? Seeing none, thank you, Mr. Murphy. [LB468]

JEREMY MURPHY: Thank you. [LB468]

SENATOR HADLEY: Any further neutral? Is Senator Scheer...wish to close? [LB468]

SENATOR SCHEER: You know what, we've heard enough. [LB468]

SENATOR HADLEY: Okay. Senator Scheer waives closing. Thank you. You went up in our standing here, Senator Scheer. (Laughter) With that, we will go to LB53, and I will turn the gavel over to Senator Schumacher. Vice Chairman Schumacher... [LB53]

SENATOR SCHUMACHER: Welcome. [LB53]

SENATOR HADLEY: ...my name is Galen Hadley; that's G-a-l-e-n H-a-d-l-e-y. And I picked up the wrong folder. Just... [LB53]

SENATOR HANSEN: Thank you for coming, though. [LB53]

SENATOR PIRSCH: I believe he waives the closing. (Laughter) [LB53]

SENATOR PIRSCH: Thanks. Thank you. [LB53]

______________: It's not it either. [LB53]

SENATOR PIRSCH: We appreciate (inaudible). [LB53]

SENATOR HADLEY: Oh. [LB53]

______________: This is LB416. [LB53]

SENATOR HADLEY: Here it is; I got it. [LB53]

______________: You got it? [LB53]

SENATOR HADLEY: Okay. [LB53]

______________: Okay. [LB53]

SENATOR HADLEY: In the fact that it's a Friday afternoon, I'm going to keep my opening very brief. This bill deals with a seemingly contradictory two statutes in our law. And it has to do with bulk sales. And bulk sale is basically the sale of an entire business, vis-a-vis a bank coming in and foreclosing and selling it off piecemeal. And the question, basically, that we're dealing with here has to do with unpaid sales tax. And the idea is, where does the state stand in the line of creditors versus lenders, who also have a lien on the business, and where do they stand? And there are two different laws that seem to be contradictory to each other. And I think, from a policy standpoint, it is appropriate that this committee decide what is the appropriate way this should be handled. And with that, I know we have very learned people behind me, both pro and con in this discussion, and I would leave them to explain the details. [LB53]

SENATOR SCHUMACHER: Any questions for Senator Hadley? I guess we all take your hint. [LB53]

SENATOR HADLEY: Okay, thank you. [LB53]

ROBERT J. HALLSTROM: (Exhibits 12 and 13) Vice Chairman Schumacher, members of the Revenue Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB53. As Senator Hadley alluded, LB53 is designed to address what is seemingly contradictory provisions in two statutory provisions under current state law. The first one, under 77-3901, is known as the Uniform State Tax Lien Registration and Enforcement Act. And the second one, under Section 77-2704, is what I will refer to as the "successor liability statute," relating to unpaid sales and use taxes. And to give a little background on the statutory provisions, I've gone into more detail in my written testimony, but, simply put, when you look at the Uniform State Tax Lien Registration and Enforcement Act, it sets up what we would commonly refer to as a "first in time, first in right" system of priority. And what I mean by that is that if a lender files a deed of trust against real estate of a business or a financing statement against personal property, if that deed of trust or financing statement is filed prior in time to the time that a notice of tax lien is filed by the Commissioner of Labor or the Department of Revenue, then they will have a first lien. That first lien extends to future advances unless the department, after filing their notice of lien, provides specific written notice to the lender that has a prior perfected security interest. So that at any point in time, if you filed before the notice of tax lien, you are in a first lien position. And if that business happens to sell any assets on a piecemeal basis, the Department of Revenue, in this case, would stand behind you even though there may be some outstanding and delinquent sales and use taxes. By contrast, 77-2704, the successor liability statute, essentially says that if a business is being sold under what Senator Hadley referred to as a "bulk sale," lock, stock, and barrel, that, at that point, the seller has an obligation under the statute, under current law, to withhold sufficient proceeds, based on the purchase price of the business, to take care of any delinquent unpaid sales and use taxes. And unless they get a what they think the statute refers to as a tax clearance letter that would indicate "all clear on the western front," no taxes due, then they are responsible for withholding those funds. And if they don't, there is personal or successor liability. So the buyer of the business will step into it, so to speak, if they don't follow the statutory rules. From the lender's perspective, where we got involved in this, we got a call from a banker out in Kearney last summer. And I have handed out some written comments from Mr. Byron Hansen from the Platte Valley State Bank, who does a nice job of relating his experiences in this particular area. But we got a call from a banker in Kearney and, within less than a week, a banker from Ravenna, both indicating that they had the same type of issue or problem relating to the Department of Revenue. And the conversation went something like this: We have a first lien on business assets, and the department is behind us; we've got a sale lined up on this business, and they've now filed a notice of tax lien; and notwithstanding our first lien position, they're suggesting to us that they have first dibs or first claim on the proceeds from the sale; how can that be? Well, my initial thought was, I was aware at that time of the Uniform State Tax Lien and Registration and Enforcement Act, and I walked them through how that worked. And I said, you're in a first lien position; based on that, you shouldn't have any problem, but let me look further. Well, lo and behold, we encountered the 1967 law, the successor liability statute that I referred to, and that was the basis upon which the Department of Revenue was laying claim to a first lien...or a first right to the proceeds from the sale. Where the problem arises for that first lienholder...and I'll use an example that I put in my testimony. We can have business assets that are worth $100,000, and if the bank loan outstanding balance is $150,000 and the tax lien owed to the Department of Revenue is $75,000, if that business sells piecemeal any assets, as I said before, the lender is going to get the money, Department of Revenue won't squawk about it, and we go on with their business, as does the ongoing business. If, on the other hand, the loan goes south, the bank goes to foreclose on the property, the bank will sell the business, the bank would, say, recovers $100,000, in my example, that $100,000 goes directly towards the balance of their loan, and the Department of Revenue gets nada. And the reason is, there has not been a sale; there is not a successor liability under that scenario, and therefore the Department of Revenue gets nothing. So the concern that we have from a perspective of fairness is, in the examples I've walked through: Example number 1, the lender is sitting there at a point in time with a first lien priority, they still have a first lien priority if they foreclose; they foreclose, they don't pay anything towards the Department of Revenue delinquent sales and use taxes. But if they happen to sell that as an ongoing business to a new buyer, then all of a sudden the lender is indirectly going to end up paying for that sales and use tax liability. Because, in my same example, if the sale goes through, the buyer either has to withhold the funds or pay the funds directly off the top to the Department of Revenue. So in the example, the Department of Revenue will get $75,000 of the $100,000 proceeds, the bank will get $25,000. That's why I say "indirectly" the bank has paid for that sales and use tax liability, even though if they had foreclosed, they would have no liability for that indebtedness. And so that, in a nutshell, is where we think the policy argument lies. We think that the Department of Revenue, under the Uniform Registration Act, has ample authority. The thing to keep in mind, for the committee, is that the lien that the Department of Revenue gets is a continuing lien: it applies to all property of the seller, for property now owned or hereafter acquired. So they have that type of ability to extend into the future to chase after the seller of the business. And so we believe that in the interest of economic development, for example, keeping the Main Street business viable, having a new buyer come in and buy an ongoing business is better than having to foreclose and sell the assets in that fashion. And I would note, on page 5 in my testimony, we did meet with Commissioner Ewald. And we appreciated he and his staff's efforts to meet with us and determine if there was any middle ground. That was a year ago. And the problem still exists, so we came forward with legislation. But after that meeting, a staff person for the Department of Revenue put together an article that we ran in our NBA newsletter to let bankers know what the lay of the land is under current law. And, interestingly enough, when they were walking through what the successor liability provisions are and how they can be hazardous to the health of a buyer of a business in bulk or a lender, the last line of the paragraph on page 5 says, from the Department of Revenue, "Successor liability may be a deal killer in these cases." We think in promoting economic development we ought not to promote policies that are "deal killers," to keep businesses alive and vibrant on Main Street. And we think this is a good bill that the committee ought to give due consideration to. I would just certainly urge the committee to take a close look at Mr. Hansen's testimony. He walks through every step of his process. There were $75,000, I think is what he told me, in unpaid sales taxes that were due. That doesn't come about overnight in most businesses. And the deal to sell the business was signed and a purchase agreement...and some four or five months later, as Mr. Hansen had told me, the notice of liens were filed before the deal was consummated. And then the deal fell apart. And so I think he tells a compelling story as to why a change in the law should be strongly considered. Be happy to address any questions of the committee. [LB53]

SENATOR SCHUMACHER: Any questions for Mr. Hallstrom? Senator Janssen. [LB53]

SENATOR JANSSEN: Yeah, very quick. And we talked earlier about this. And something came to mind in your testimony. What if I owed $75,000 to the Department of Revenue, I'm kind of struggling with my business here, and I'm buddies with--I'll use Beau since I used you earlier--Beau and I are buddies, I'm, like, hey, if you buy this business from me, I can get out of hot water, I can give you a deal on it, and that scenario will play out; or even a familial...I don't know if that's covered in the statute, like, my brother is going to buy it now, and I'm going to get out from under it, my brother is going to get...is that...is that conceivable? [LB53]

ROBERT J. HALLSTROM: If I remember correctly, Senator, I think we might have actually had some of those conversations with the Department of Revenue. And perhaps the commissioner will express if he has any concerns on that issue. But I think the thing that guards against that is to keep in mind that in most of these cases, unfortunately, and as Mr. Hansen points out in his testimony, when there's enough money to go around, everybody is happy. And so that's not a problem. It becomes a problem when there's not enough money to go around. And if there's not enough money to go around, generally speaking, if not exclusively, you're going to have a lender who's taking some sort of bath or some sort of write-off of the loan. And that lender, I think, is going to be the front-line defense for the Department of Revenue against that, because the lender is not going to allow a sale for less than fair market value to go forward when they're going to write off part of that loan in any event. [LB53]

SENATOR JANSSEN: Would there be a situation where the lender would say, well, if we can get $78,000 for it right now, we don't have to deal with this process, yeah, that's fine. And I sell it to my brother or my close friend Senator McCoy? [LB53]

ROBERT J. HALLSTROM: They could. They could. I just...I don't... [LB53]

SENATOR JANSSEN: I'm just trying to play devil's advocate on both sides. [LB53]

ROBERT J. HALLSTROM: Yep. Yep. I understand. And I don't generally suspect that would be the case. I suppose you could put together a scenario where that might happen, but I wouldn't expect that to happen. And I think another thing to keep in mind, and it's...we've run into this in any other number of situations in different committees, when other creditors are coming in late in the game wanting to have a first lien priority. The thing I'd ask the committee to keep in mind is, and Mr. Hansen has pointed out, that the lenders are financing the engine that creates the jobs and sells the widgets to make sure that we have sales taxes to pay to the state and run the government. And while that's not the end of the story, what happens over time is we advance operating funds; if the department would put their liens on summarily and provide written notice to the bank, the bank would know that they're going to fall in line behind that lien if they continue to make advances, and they at least know that there's something up, that there may be a problem there, that the department has taken the step to file a lien. But also keep in mind that through all those years, part of those operating expenses have no doubt gone to make the Department of Revenue whole. Those funds have paid the Department of Revenue sales tax liability year after year after year. And then when we get to the end of the life of the business and they're selling out and there's not enough money to go on, then all of a sudden the Department of Revenue, under this statue, is allowed to step to the front of the line. And we think that's patently unfair. [LB53]

SENATOR JANSSEN: Thank you very much. [LB53]

ROBERT J. HALLSTROM: Thank you. [LB53]

SENATOR JANSSEN: Appreciate it. [LB53]

SENATOR SCHUMACHER: Any other...Senator McCoy. [LB53]

SENATOR McCOY: Thank you, Vice Chairman Schumacher. Thank you, Mr. Hallstrom. I've heard you, in my four years I served on the Banking Committee, I heard you talk about "first in time, first in right" on a number of issues, and so I appreciate that information again. Could you help...kind of go into a little more detail on the conflicts that you see in the statute? I'm trying to make sure I'm understanding correctly. And maybe you could go into a little more detail on when...I guess I should start out, when did you...was it just this, the example and the testimony that you've given us, written testimony from a Mr. Hansen of Kearney, was that when you discovered there was a conflict? [LB53]

ROBERT J. HALLSTROM: Yes. I had not had calls over the years on this particular issue. That doesn't mean that this same scenario had not occurred, but this was the first time that it was brought to our attention, that we looked into it in deeper detail and saw that, arguably, these two statutes--one enacted, I think, in 1967 when sales tax came into being, one in the mid- to late '80s--do have conflicting positions. [LB53]

SENATOR McCOY: So this would be something that was just discovered, I guess, in 2012, if I'm understanding this correctly, right, when Mister.... [LB53]

ROBERT J. HALLSTROM: Yeah, we were contacted by Mr. Hansen before last legislative session. We took the issue up. We had meetings, as I indicated, with the Department of Revenue, and decided at that time not to take any action. But it was brought up again before our government relations committee and board for consideration this year. And so decided to move forward with this legislation. [LB53]

SENATOR McCOY: So, in your view, this would be a conflict in statute that's been there, I guess, since the second statute would have been enacted in the late '80s, is what... [LB53]

ROBERT J. HALLSTROM: Yes. [LB53]

SENATOR McCOY: ...if I understand you correctly. Okay. Now would you mind again, I'm sorry, didn't mean to jump ahead, but would you mind trying to kind of walk me through again, if you would, briefly what you're talking about as far as what is the conflict, again, so... [LB53]

ROBERT J. HALLSTROM: Well... [LB53]

SENATOR McCOY: ...I'm a little more clear in my mind what you're...what you see as the conflict in the two statutes. [LB53]

ROBERT J. HALLSTROM: Yeah, the conflict, Senator, in our perspective, is that you have one statute that on its face says here is a methodology for determining priority of liens. And that says: first in time, first in right. If the bank files its deed of trust or financing statement before the notice of tax lien, they win, and they are in a first lien position. And I would suspect, without speaking for lenders or attorneys, there may have been some that have not been aware of this particular statute, the successor liability statute. But the good thing is that, in most cases, when businesses close, the sales and use taxes have been paid up, there's not a delinquency, there's not a problem; so the potential for malpractice maybe is minimized. But the conflict arises in that if you take the statute regarding Uniform State Tax Lien Registration on its face, at a particular point in time a lender has a first lien priority, and it's established statutorily vis-a-vis the Department of Revenue. While the successor liability statute does not create a lien in favor of the Department of Revenue, which would be a true conflict, it essentially does the same thing because it eviscerates the sanctity of the first lien position that the lender has, by saying, oh, disregard the fact that a moment ago you were in a first lien priority position because now that a bulk sale of the business has occurred, the Department of Revenue jumps to the head of the class, gets first in line, and gets the money right off the top. [LB53]

SENATOR McCOY: All right, so to make sure I'm following you: so you're saying, maybe a de facto conflict, in practice, but not actually be a statutory conflict? Or am I...my understanding...? [LB53]

ROBERT J. HALLSTROM: I think you could argue both ways. It "essentially" or "effectively" is a conflict because the normal routine, as we had in all those bills that we talked about over in Banking Committee, would be when any asset is sold, whether it's a partial asset sale. If the Department of Revenue wasn't involved, if this was just a first and a second lienholder--I don't care how the business is sold, piecemeal, or lock, stock, and barrel--the first lienholder gets the first dibs on the money, up to the amount necessary to pay off the lien, and then the second lienholder falls in line behind. This one, because the Department of Revenue is involved with delinquent sales tax liability, says we're going to disregard the normal protocol and we're going to allow a subordinate lienholder to jump ahead of the first lienholder and get all their money first, and eliminate the propriety of that prior perfected lien. [LB53]

SENATOR McCOY: Do you think it makes any difference if it's taxpayer dollars, to have that happen that way? I mean, does that become more important, less important? Does that matter? [LB53]

ROBERT J. HALLSTROM: Well, I don't want to steal the commissioners' thunder, because I would assume he's going to come up here and suggest that. In our conversations, the commissioner has suggested that those are trust funds of some nature and that as soon as they're collected they become the property of the state. And I understand and get that. But the fact of the matter is, the money is no longer there, theoretically; the bank may very well have expended the monies; and, as I said earlier, the bank over the years has paid the money that's allowed the department not to have a problem earlier. But in effect, the statute disregards all those good deeds; no good deed should go unpunished. And that's where we are. [LB53]

SENATOR McCOY: Okay. Thank you. [LB53]

SENATOR SCHUMACHER: Senator Harr. [LB53]

SENATOR HARR: Thank you, Senator Schumacher. I just want to follow up. So, really, there are two issues...follow up on what Senator McCoy was saying. First issue is, really, that the department jumps in line. So before, there's first in time, but now they jump in line. And then the other problem is that there is a hidden lien, I guess, is what I'd call it. Is that accurate? [LB53]

ROBERT J. HALLSTROM: Yeah, it is. And I think...and the department may express their rationale. And, from our conversations, I don't know that I exactly go along with the rationale, but they have expressed, in our conversations, a reluctance to file liens. Their fear, I think, as they expressed--and I don't want to speak for them--but their fear is if they put liens against folks, that, I think they even used the term, that could be the "death knell" for the business, to have a tax lien out there. But, at the same time, the ability to provide that notice, that's why we have a lien filing system, is to provide notice if there are competing interests and, in this case, particularly the ability of the department to file their lien even if they're a second lien position, so that there's something filed. The statute then says, and if they want to cut off future advances, which would be a welcome relief from a lender, to say: I don't want to continue to advance operating funds if this business is in trouble. And they have to give written notice if they want their lien to have a priority position over a prior perfected lien. So it's much like future advances in another setting, so that they provide me specific written notice. I can then decide whether or not I want to advance funds to that business, or maybe I want to advance the funds to that business to make sure that the sales tax liability, specifically, is paid off, which would be a help to the department. But they're reluctant to file those liens, and I can kind of see part of their rationale. But it creates a significant hidden lien problem. [LB53]

SENATOR HARR: Um-hum. Okay. Thank you. [LB53]

SENATOR SCHUMACHER: Senator McCoy. [LB53]

SENATOR McCOY: I'm sorry, begging indulgence, Mr. Hallstrom, I...that made me think of one final question I'll ask you. Going back to the two statutes, one from 1967, one from sometime, I think you said, in the late '80s, [LB53]

ROBERT J. HALLSTROM: Eighty, yeah. [LB53]

SENATOR McCOY: I'm just thinking, as a small-business owner myself, I would assume there's been thousands upon thousands of small businesses that have come and gone since, like, definitely 1967, but I'm sure since the late '80s too. Do you think...what do you think is the...do you think there's any particular reason that within a matter of, it sounds like, a couple of months you had two businesses that, kind of, came to your attention. How did we go so many years with that never having been an issue, all those years... [LB53]

ROBERT J. HALLSTROM: It may have been the amount... [LB53]

SENATOR McCOY: ...I mean, and then all of a sudden it was? [LB53]

ROBERT J. HALLSTROM: It may have the amount of sales tax liability. And again, I...Mr. Hansen isn't here, and he didn't include the figures in his testimony, but I was led to believe that one of the cases involved was $75,000, which is...it was a big chunk of change. I would also suspect, Senator, that in many small businesses that come and go, they just come and go in the dead of the night, and they're not bought or acquired. And so those may be cases where the Department of Revenue doesn't have a sale from which to pick up those funds, and there may not be a lender involved to compete. [LB53]

SENATOR McCOY: Do you think it's possible that maybe these were...is it possible these might have just been a couple outliers? And maybe this is really unusual circumstances and that that's why it didn't ever become...I'm just trying to think, in my mind, how...I mean, that's a lot of years to have gone by. [LB53]

ROBERT J. HALLSTROM: Yeah, it could be, Senator. And I think that cuts...that probably cuts both ways. You know, if there aren't a lot of cases out there, then good news for the Department of Revenue, because it doesn't happen very often. The problem from our lenders' perspective is, in any of these, is it means a lot to you when it's your case that you're involved with, you know, much like the livestock situation. If you sell your livestock and don't get paid for them, it may not happen very often but it's very, very important to the people who are on the wrong end of the stick when that happens. [LB53]

SENATOR McCOY: Well, no doubt... [LB53]

ROBERT J. HALLSTROM: Yeah. [LB53]

SENATOR McCOY: ...but it probably would also, in turn, be good news if those were outliers, in the case of the lenders'... [LB53]

ROBERT J. HALLSTROM: Certainly. [LB53]

SENATOR McCOY: ...perspective, too, where maybe this hasn't happened but just, possibly, but just a few times, maybe, in a matter of a great number of years, possibly. Anyway, I appreciate that... [LB53]

ROBERT J. HALLSTROM: Sure. [LB53]

SENATOR McCOY: ...follow-up question there. Thank you. [LB53]

SENATOR SCHUMACHER: Any other questions? I just have one, just so I think I've got this straight in my head now. Got a business, let's just say it's a liquor store. Bank's got a lien on the liquor store and all the bottles of beer on the wall. And the liquor store begins to lose money, doesn't send the sales tax in, certainly doesn't send this last month's sales tax in. So there's a bill due on sales tax. And it's not going well. And the banker sits down, and they find a new buyer for the business. But the amount the buyer is willing to pay and the fair value of the business is equal to or less than the loan. So a sale would take place, and normally the bank would get the money. [LB53]

ROBERT J. HALLSTROM: Correct. [LB53]

SENATOR SCHUMACHER: But, in this case, all of a sudden, oops, there's the Department of Revenue, and somebody has got to pay the sales tax bill, or they're going to say you can't give clear title. [LB53]

ROBERT J. HALLSTROM: Correct. [LB53]

SENATOR SCHUMACHER: And so either you've got to say we're going to foreclose on it, go through that process, at which time the Department of Revenue gets nothing... [LB53]

ROBERT J. HALLSTROM: Correct. [LB53]

SENATOR SCHUMACHER: ...or you've got to discount the amount of the loan because the buyer isn't going to want to get stuck with the sales tax bill. [LB53]

ROBERT J. HALLSTROM: Also correct. [LB53]

SENATOR SCHUMACHER: Okay. [LB53]

ROBERT J. HALLSTROM: And I might add, Senator, just for a point of emphasis, as the song goes, when there's 100 bottles of beer on the wall, we're okay; when there's 99 and 98 and we've only sold 1 at a time, we're okay; but if we just immediately, flash, cut to zero, we're in trouble. [LB53]

SENATOR SCHUMACHER: Okay. So that's where the difference is, is when there's a case that there's not enough to pay the creditors, or the buyer isn't smart enough to have caught that there's unpaid sales tax and he's buying it direct somehow, that that's where the...in that case, where the buyer just comes up and decides to buy direct and is going to...checks with the bank, and let's do it, and I'll just buy it by paying off the bank loan. The buyer, then, or his poor attorney, if he didn't check it out, all of a sudden would get a letter from the Department of Revenue saying, hey, you missed the sales tax on this. [LB53]

ROBERT J. HALLSTROM: That would be my understanding of how it would work. [LB53]

SENATOR SCHUMACHER: Okay. Thank you, Mr. Hallstrom. [LB53]

ROBERT J. HALLSTROM: Thank you. [LB53]

SENATOR SCHUMACHER: Any other questions? Thank you for your testimony. [LB53]

ROBERT J. HALLSTROM: Thank you. [LB53]

SENATOR SCHUMACHER: Any other proponents? Any opponents? [LB53]

DOUG EWALD: (Exhibits 14-17) Vice Chairman Schumacher, members of the Revenue Committee, my name is Doug Ewald, E-w-a-l-d, Tax Commissioner, Nebraska Department of Revenue. I appear before you today as an opponent to LB53. LB53 effectively eliminates successor liability by excluding preexisting liens, both tax and nontax, from the purchase price of a business. Since successor liability for delinquent taxes almost always arises when a business is struggling financially, there is almost always preexisting liens in these situations. Because LB53 provides that funds from the purchase price are available only after these liens are satisfied, and the purchase price generally is for no more than the preexisting liens, no additional funds would be available to satisfy these tax obligations. I would stress that these delinquent tax liabilities are almost always state and local sales taxes collected from the business's consumers. In other words, these are state and local sales taxes owed to the state of Nebraska by the customers of the business. Under Nebraska law, state and local sales tax collected from customers are held in trust for the state of Nebraska and are not and should not be considered business assets. Trust funds collected from customers should be paid to the state to satisfy tax obligations. They should not be diverted to satisfy a lien, no matter when the lien was filed. I think most taxpayers would be shocked if they knew that their state tax payments were being used by someone other than the state. Today Nebraska and 40 other states use successor liability statutes to hold purchasers of businesses liable for tax debts of the business that they are purchasing. Specifically, successor liability laws require a purchaser to withhold funds up to the amount of the purchase price for the business to satisfy the tax delinquencies of the business being purchased. The policy behind such laws is really easy to understand. The purchaser of a business has the funds to satisfy the tax delinquency. In contrast, the Department of Revenue is often unaware that the business is being sold until after the transaction has been completed, and recourse against the prior owner is often limited. LB53 not only jeopardizes collection of taxes held in trust by businesses on behalf of the state and its citizens but also fundamentally changes the way the department attempts to collect such taxes. Currently the department does not automatically file a lien against a business for tax delinquency until the department receives a request for tax clearance or otherwise determines that it will be unable to collect against the owner voluntarily. Today the department generally delays filing liens against a business to allow the business an opportunity to make those payments voluntarily because a nonconsensual tax lien can do serious damage to a business's credit rating and its reputation. By effectively eliminating successor liability, LB53 will force the department to file a lien against a business the moment a delinquency arises. This will not only have a detrimental impact on certain businesses, but it will also increase the department's costs associated with recording and tracking liens. Before I close, it's been suggested that the successor liability and lien statutes are in conflict. This is simply not true. The successor liability statutes only, and I repeat, only, apply when a business is sold in a private sale. It does not come into play when a bank forecloses its lien or security interest. A sale by foreclosure is generally open to the public, where public notice is given about that sale. As a consequence, the department normally has notice and the opportunity to file a lien to protect the state. In contrast, the successor liability statutes applies when a sale is done in private. Successor liability protects the state where there may not be any notice of the sale. In conclusion, the department opposes LB53 because it effectively diverts state funds paid by taxpayers to satisfy private debts while increasing costs associated with filing liens. That concludes my testimony. I'd be more than happy to address any questions. [LB53]

SENATOR SCHUMACHER: Any questions for Commissioner Ewald? Senator Sullivan. [LB53]

SENATOR SULLIVAN: Thank you, Senator Schumacher. And thank you, Mr. Ewald. Well, admittedly, this gets a little confusing. And I'm trying to find out and figure out where the conflict is. Okay, so we've got a business that has a sales tax liability. We've got a lender who has perfected a lien prior to the department's notice of a tax lien. Goes into foreclosure, okay? And the proceeds from that foreclosure take care of the lien. Well, or maybe they fall short of it. What does the department get out of that? [LB53]

DOUG EWALD: In a situation of foreclosure, that's different than a successor interest...you go through a foreclosure--and I think it's Senator Schumacher's question before--you go through a foreclosure. Whoever has those liens filed first, they are the ones that have priority. So if the department is second or third down the road and there's not enough money to get to us, we don't get any money. [LB53]

SENATOR SULLIVAN: That's right. Okay. So now let's use the other situation, where...that there is the tax liability that the business has, and it goes to a sale, not a foreclosure, tries to keep the business on Main Street. But in that situation, the department steps in and says, oh, we've got to take that liability, first, out of the gross purchase. Is that where the difference is? [LB53]

DOUG EWALD: That's correct. And that would be Senator Janssen's example that he alluded to earlier, where you get the private sale on the side, where we don't have any notice of. That's why the successor interest statute exists today; it's been there since the inception of sales tax, to protect against those situations, because what we do, see, is, okay, somebody didn't do their due diligence. And I think Senator Schumacher alluded to this. Okay, my attorney didn't do their due diligence; I didn't find out if there was a tax liability associated with this business; and we're going to try to shuffle this to the side and do it in a private sale on the side. And that's how the state protects its interest in that particular situation. So it's obviously different than a foreclosure. [LB53]

SENATOR SULLIVAN: Yes, but what I still don't see is, a lender with a prior perfected lien has to take a hit just because they go to a sale rather than a foreclosure. [LB53]

DOUG EWALD: They have to take a hit for dollars that aren't theirs, okay? Those are customer dollars. Those are trust fund dollars, sales tax dollars, due to the state of Nebraska, and they are not dollars due to the financial institution. [LB53]

SENATOR SULLIVAN: Even though the dollars that made it possible for those sales tax...tax revenue to be realized came from the dollars that were loaned by that financial institution and they had a perfected lien on that. [LB53]

DOUG EWALD: That's correct, but, at the same time, we can't protect the financial institution by making a bad loan, because that's what we're basically asking them. We're taking state dollars to make up for a bad...maybe a bad loan they made. [LB53]

SENATOR SULLIVAN: I don't think any lender ever, at the outset, ever starts out to make a bad loan. [LB53]

DOUG EWALD: I agree with you. [LB53]

SENATOR SCHUMACHER: Other questions? Senator Harr. [LB53]

SENATOR HARR: Thank you. And, Mr. Ewald, thanks for coming back to the Revenue Department (sic); it's always a pleasure to see you. So I alluded to earlier: I really think there are two issues. There's the...and I think you'd probably disagree with this phrasing but you understand what I'm trying to get at: the department gets to jump in line. And then the other is the problem with the hidden lien. So I'm going to address what I call "the department gets to jump in line." And I understand your point of view, but my question is...notice is very important; and by not filing these tax liens I understand you're trying to help the business, but at the same time I don't know if it does. So I guess my question is, why wouldn't the department be more diligent in filing these liens so that we avoid this, quote, unquote, hidden tax lien problem? I mean, you addressed that in your testimony, but I guess I don't know if I agree with that, because I...based on your experience, I would think you would know, at a certain point, when that business--if there's 60 days, 90 days--they're more likely to sell than, you know, if they didn't. Is there a point that you should file a tax lien, I guess? [LB53]

DOUG EWALD: There is. We try to...that's kind of a fine line. We work with those businesses. But I tell you what, our collection agents get calls weekly...I get calls several months...saying, "Okay, please don't file that lien; you file that lien, it's public notice; people aren't going to visit my restaurant, they're not going to come to my business." And these are calls that I get today, from that standpoint. "And on top of that, my financial institution isn't going to loan me any more money or extend my line of credit." [LB53]

SENATOR HARR: Yep. And I get that. [LB53]

DOUG EWALD: So we put them on a payment plan, from that standpoint, to get caught up. [LB53]

SENATOR HARR: I've never made a restaurant decision, by the way, looking at tax liens. (Laugh) [LB53]

DOUG EWALD: (Laugh) That's probably good. [LB53]

SENATOR HARR: So that's the problem, though, is, by not filing that, in essence, you're in cahoots with that seller, and that financial institution is out that money. I mean, if they knew about that, that there was a problem...now, I would say the financial institution has a duty to watch their loans, as well. But it would seem to me that you should probably provide some sort of notice to the banks. I mean, that's the whole idea behind the UCC and the "first in time," and the lien process, is notice, so everyone is on an equal playing field, so everyone knows all the information, there's transparency out there. So, yeah, that's my problem. [LB53]

DOUG EWALD: Well, I guess...I understand that, but I guess, at the same time, maybe the financial institution could require the business to let them know they haven't made their tax payment to the state... [LB53]

SENATOR HARR: That's fair. [LB53]

DOUG EWALD: ...you know, from that standpoint as well. [LB53]

SENATOR HARR: Does the department maintain a readily accessible...well, the information regarding the tax clearance letter, is that available on the Web site or anywhere? [LB53]

DOUG EWALD: Yes. And it's in the packet I handed out; there's a tax clearance application here. I've been through this process personally many times in my prior life, been through many mergers with Union Pacific. We bought companies that operated in many states, and you always want to make sure you have...you acquire 200 companies, do they all have tax clearance in all those states, from that standpoint? Or are we assuming certain liabilities associated with different taxes? So the tax clearance is out there. There's also a very good information guide, "Statutory Responsibilities for Collecting, Reporting, and Remitting Sales Taxes and Income Tax Withholding," talks about trust fund taxes there. So that's on our Web site. And then what Mr. Hallstrom referred to, the publication that George Kilpatrick authored for the Nebraska Banker back in March/April 2012 really talks about the differences of what we're talking about here today. [LB53]

SENATOR HARR: Okay. And then you talked about, in your testimony, about trust funds, that these taxes are basically trust fund money. Does or can the department require a business to maintain an escrow or a trust fund for the deposit of the sales tax? [LB53]

DOUG EWALD: I don't know that we can require...it's like requiring a bond, is that what you're saying, from that standpoint, or...? [LB53]

SENATOR HARR: Have a separate account, require that business to have a separate account to hold that trust money, to hold that sales tax money. [LB53]

DOUG EWALD: I don't know that...from that standpoint. I know there...the information guide might address...I guess I'm not familiar with that. I mean, that's what they're obligated to do, based on the statutes that exist today; they're obligated to hold that money and remit... [LB53]

SENATOR HARR: But they can commingle it with their own money; they're not required to keep a separate trust fund, are they? [LB53]

DOUG EWALD: Correct. They're not required. And I know that...here's a great example. I know there are some financial institutions out there that, basically for every sale, parcel off the sales tax into a separate account. And then they remit that... [LB53]

SENATOR HARR: Yeah. [LB53]

DOUG EWALD: ...you know, they hold it there for you, from that standpoint. I think First Data might actually do that, from that perspective, for its customers, give them that option, for every credit card that's swiped, so... [LB53]

SENATOR HARR: Can you require that, though? [LB53]

DOUG EWALD: Not today, I don't think. But maybe that's part of the policy discussion. [LB53]

SENATOR HARR: Yeah. And you were talking about security interests and...or bonds; that's interesting. Can the department require security for payment of the sale...of the sale and use taxes? [LB53]

DOUG EWALD: I don't know that we can. [LB53]

SENATOR HARR: Okay. Okay. Thank you. [LB53]

DOUG EWALD: Yeah. [LB53]

SENATOR HARR: Interesting. Thank you very much. [LB53]

DOUG EWALD: Um-hum. [LB53]

SENATOR SCHUMACHER: Senator McCoy. [LB53]

SENATOR McCOY: Thank you, Vice Chairman Schumacher. And thank you, Commissioner Ewald, for being here this afternoon. So I'm trying to...and I asked this question of Mr. Hallstrom earlier today actually when we had an opportunity to talk about LB53. So on one end you have the bankers association and others, I assume, who say, okay, you may have a chilling effect for economic development if a business is forced into a foreclosure instead of a private sale, so that...you know, and there's been some examples given on some...certain anecdotal stories on it. But...so instead of it going to foreclosure, maybe that restaurant or tavern, or whatever the case may be, is able to have a private sale, if there's a willing buyer there, and the business keeps on going. Maybe one night it closes, and the next day it opens under new ownership and keeps on going. So on one hand you have the eagerness on one side not to have there be a chilling effect on business and economic development. And on the other hand you have the Revenue Department, I think, maybe, perhaps, from your testimony, trying to accomplish the same thing with not wanting there to be a chilling effect on individual businesses because of tax liens. Is there...I think maybe we're talking around, perhaps, maybe the same thing. Clearly this has gone on...as you probably heard, because I think you were sitting here, a question...couple of questions I asked Mr. Hallstrom. I mean, this has been in existence for a while; it's not as if this just happened. So, number one, I guess, a two-part question, number one, is this a situation that happens very often? Or is this just one of those things that just...there just happens to have been a couple of examples, perhaps, and it finally became known this was going on? Or is there any sort of a middle ground that we can accomplish, not have there be a chilling effect to business but at the same time respecting those trust dollars that are taxpayers' dollars? Is there a way to accomplish all that? And I apologize for the two-part question, but there just happened to be two things that were...tracks that I was thinking about. [LB53]

DOUG EWALD: Well, I...good questions. Today I think that there's a potential way to maybe get to some sort of middle ground. Obviously, I'm tasked with collecting, you know, doing what I'm supposed to for the state, from that perspective. And it really becomes, yeah, do we prefer to see Main Street stay open? Absolutely. And I think that's why we're reluctant to file liens sometimes. But I guess maybe the compromise is, okay, is it better to have the business work with their financial institution and the department to say, okay, I might need an extension here, and I owe the department some money. All the players come to the table. We get all the players to the table, we're more than happy to accommodate that: Okay, we need to put you on a payment plan, to get you some more working capital, if your financial institution is willing to do that, from that perspective. That if we get all the players together at the table, I think we might be able to address both sides of the issue. What we...and I guess the first part is, does this happen? Yeah, it happens all the time, sometimes a little bit more than others, you know. If you have a financial institution involved, you might get the example we saw earlier; there was a...you know, they had to pay $75,000 out of their, you know, the proceeds, or it cost them $75,000 more because somebody maybe didn't do some due diligence with respect to tax obligations. But it does...it does happen between, you know...really, what happens is, primarily is between, honestly, what we're seeing, between related parties. So you'll see a son get in trouble, or something, and sell it to one of their parents, from that standpoint, for less than full market value. And that's where we don't have knowledge of that particular sale, and that's when the successor primarily kicks in. But if we could get everybody to come to the table with this and with their lender, if they have a lender involved, we're more than happy to enter into some sort of a payment arrangement to help them get caught up. [LB53]

SENATOR McCOY: I think that's helpful. I, personally, I'm involved in a family business, a couple of family businesses actually, and I'm sure that could be the case. I could see where that could happen. What...is there any way, then, I guess, to kind of go down that road a little further, and to go back to Senator Harr's question earlier, it seems to be mostly about notices and some way to, kind of, accomplish this. It would seem to me there ought to be some way--and maybe this isn't the forum to explore that--but to accomplish all of that. Is it...would it help if there was more of a statutory guidance as far as a time line for when there is a lien filed, so that there isn't as much...I don't want to say there isn't as much flexibility, but maybe there's some more clearly defined progression if they're, you know, those taxes aren't payable at this certain point, here's when we would file something? I mean, I'm trying to think through a way that we could accomplish everything here where you don't have that chilling effect, either from the...a sale being able to be made, as you said maybe a familial relationship, that that business is able to keep on going, or...rather than have to go to foreclosure, but at the same time we are making sure that those taxpayer dollars are held in trust. Is there any way there that that could be accomplished? [LB53]

DOUG EWALD: I suppose there is. You know, if we, you know, you think about it, I mean, you'd have to know all the players involved in that particular situation. You'd have to know...well, not everybody has a financial institution they may owe money to or have a lien on some assets or something like that. Is...what's the reporting requirement from the business to the financial institution to make sure they're current on their tax obligations from that perspective? So there's a lot of things that would be in flux in that particular situation that, you know, it forces a situation where everybody had full disclosure with respect to a business's financials or something like that, with respect to taxes or otherwise, I guess. So is it possible? I'm sure it's probably possible. I don't know how cost effective it would be, you know, from that standpoint. But it's worthy of some discussion probably. I mean, if you could get everybody to the table and say, okay, how are we going to get notice to everybody about these items we're talking about here so that everybody is aware? [LB53]

SENATOR McCOY: Thank you. [LB53]

SENATOR SCHUMACHER: Senator Sullivan. [LB53]

SENATOR SULLIVAN: Thank you, Senator Schumacher. Well, it seems, following up on that, then, that...and in terms of a financial institution doing their due diligence, the way they can do it is if they are aware and are given notice of this tax lien. And you're saying you withhold that information, just in your words, because the business says, oh, people won't go to my business, or my financial institution won't loan me any money. Well, they don't have any basis not to because they don't know, because you haven't filed notice. [LB53]

DOUG EWALD: I guess that's one way of looking at it. I mean, I guess, where do we draw the line in working with the business from that perspective, you know, when we get a sale that's not at arm's length or whatever? So if somebody is going to...I would agree with that, if we got notice of every sale, from that perspective. [LB53]

SENATOR SULLIVAN: Thank you. [LB53]

SENATOR SCHUMACHER: I've just got a couple of questions. First of all, this really only gets acute when the owner doesn't have any money, because either the banker could chase him or you could chase the owner. Is that correct? [LB53]

DOUG EWALD: That's right. You're talking the seller in that case... [LB53]

SENATOR SCHUMACHER: The seller, right. [LB53]

DOUG EWALD: Yes. [LB53]

SENATOR SCHUMACHER: Yeah, seller. [LB53]

DOUG EWALD: Yes, Senator. [LB53]

SENATOR SCHUMACHER: Okay. And now let's say the seller was an LLC or a corporation. Does the underlying shareholder...does the exposure pass through for sales tax to the underlying shareholder? [LB53]

DOUG EWALD: Yeah, so a corporate officer-type assessment? [LB53]

SENATOR SCHUMACHER: Right. [LB53]

DOUG EWALD: Yes. [LB53]

SENATOR SCHUMACHER: Okay. So, really, the underlying shareholder or the corporate business, they've got to be essentially broke before this comes into...is this dischargeable in bankruptcy then? [LB53]

DOUG EWALD: I don't know the answer to that, I guess. [LB53]

SENATOR SCHUMACHER: So are they...for an indefinite period of time at least the department could chase the trustee. [LB53]

DOUG EWALD: Well...and we do chase the responsible corporate officers today. [LB53]

SENATOR SCHUMACHER: Okay. All right. Now, you speak in terms of if we could get all players to the table, you know, to try to work out something in order to make it float, a payment schedule or something. At that table do you have authority to discount the taxes to come to a compromise? [LB53]

DOUG EWALD: I don't know that I do today. [LB53]

SENATOR SCHUMACHER: Okay. So... [LB53]

DOUG EWALD: I mean, I can with penalty and interest; I don't believe I can with respect to trust funds. [LB53]

SENATOR SCHUMACHER: The actual underlying debt. [LB53]

DOUG EWALD: Yeah, the actual underlying taxes. [LB53]

SENATOR SCHUMACHER: Okay. The...so what basically...in this time, where the...probably the final deteriorating three or four months, or whatever, of the business, what we're talking about is who should take the hit on that sales tax that disappears, basically: whether the banker should take the hit or the Department of Revenue. [LB53]

DOUG EWALD: Well, the banker or the state. [LB53]

SENATOR SCHUMACHER: Well, right. And...okay. Now it almost reminds me of the Russian meteor and the asteroid that happened within a few hours. When things happen in time, it sets off a question. Has there--this hasn't happened for years and years and years, and all of a sudden it's an issue of discussion here--has there been a difference in enforcement policy regarding this item? [LB53]

DOUG EWALD: I asked our folks today, and I don't believe so. [LB53]

SENATOR SCHUMACHER: So it's been a consistent enforcement policy throughout the years. [LB53]

DOUG EWALD: Correct. [LB53]

SENATOR SCHUMACHER: Okay. I don't have anything further. Senator McCoy. [LB53]

SENATOR McCOY: One more question, if I may; thank you, Senator Schumacher and Commissioner Ewald. The Form 36, the "Tax Clearance Application" from your department that you kindly gave us a copy of, I just want to make sure I understand this correctly then, because I, you know, I think there are, obviously, a lot of very good lenders across the state and...that are trying to help out small businesses and...is this...so to make sure I have it straight in my mind, would...in the course of a regular operating loan that a lending institution would be giving to a business, would they have the ability...would it be a tax clearance application? Or if a lending institution wanted to do--and I'm sure they do, and I'm not a lender--but if they wanted to check into that, if there was a tax liability that they weren't aware of, what would be the...do they have the ability to do that before they extend the extension of an operating loan, or before there's a...how would a lending institution...could you elaborate just a little more on that? How would a lending institution go about trying to determine that? [LB53]

DOUG EWALD: Well, what the...yeah. This, I think this ought to be in also everybody's checklist, I guess, for a loan closing, as part of your due diligence, from that standpoint. And the buyer is, basically, is asking, is, to say, okay, state of Nebraska, I'm going to buy XYZ, and are they in good standing with the state of Nebraska from a tax perspective? So... [LB53]

SENATOR McCOY: Correct. [LB53]

DOUG EWALD: ...the buyer or the, you know, the financial institution that is giving the loan, I believe, can inquire. [LB53]

SENATOR McCOY: Correct, on a sale, yes. I just want to make sure, though, on an ongoing basis... [LB53]

DOUG EWALD: Sure. Absolutely. [LB53]

SENATOR McCOY: ...so a regular operating loan, do they have the ability...is it a different form, or is there a different method? [LB53]

DOUG EWALD: I don't believe it's a different form. I think as long as they have a vested interest in the business of stock or goods or a loan against whatever, they're able to inquire at any point in time whether or not their customer is in good standing with the state of Nebraska. [LB53]

SENATOR McCOY: So I'll use my own business for example. Say we go to my banker and say, you know, we're going to, I don't know, open another office or whatnot, another branch office, and I want a bigger operating loan. That lending institution would have the ability to go in and check and make sure that my business doesn't have some outstanding tax liability, even though it might not be in the form of a lien yet or maybe...but they would have the ability to check that. [LB53]

DOUG EWALD: Correct. [LB53]

SENATOR McCOY: Okay. [LB53]

DOUG EWALD: Well, and they say, okay, I'm going to loan you $100,000; is all $100,000 going to what you say it's going for, or is $20,000 going to pay the state of Nebraska? I think, in your example. But, yeah, they would... [LB53]

SENATOR McCOY: Okay. [LB53]

DOUG EWALD: ...be able to find out, yes. [LB53]

SENATOR McCOY: All right. Thank you. [LB53]

SENATOR SCHUMACHER: Senator Harr. [LB53]

SENATOR HARR: And I guess I want to follow up on that because the issue is, when you have a change in circumstance, that's when you do the checklists. The problem is, is when you don't have a change in circumstance and there's a continuing...the bank just assumes, "Hey, we're getting our payments," not knowing that the business isn't paying; now, lo and behold, it becomes evident. What you have is, you have a problem where we have a conflict in public policy because the bank's vested interest is to go in and close that business up then, because then they're first in line. If it's a sale, even if it's a valid sale to an arm's length person, then they don't have that right to that money; you are first in line. And so we...that's where that conflict comes because we've created public policy where the incentive is to shut down a business, as opposed to continue to keep it going and the tax dollars continue; hopefully, as that business keeps rolling, we're going to have more money coming in from that...for you guys. And so that's the issue, I think, we really need to confront. And, you know, again, it...the other problem is, if I understand you correctly, if that borrower, slash, seller...let's say the seller of the business owes $50,000 in back taxes plus penalties and interest; you can't deduct from that $50,000, is that correct? If the three parties came down and negotiate and say , hey, bank says, hey, I want to keep this business going and I'm going to take a haircut; you, state, can you take a haircut? And it's your testimony that you can't take a haircut, other than waiving the interest and the fees. [LB53]

DOUG EWALD: Penalties, yes. [LB53]

SENATOR HARR: And so, again, now we've created a public policy where the incentive for the bank is to go in immediately and shut that business down. And that's what a bank would do. And then at the same time, we don't have a requirement for you to file a tax lien, so that bank really doesn't have a way to know about it. So you get the best of both worlds, in that sense, because you now, you have that ability to go in and get that money if you need it, and you don't have to give notice. So your idea...I mean, we've created a (inaudible) where it is almost to your advantage not to file a tax lien because if you do, that's when the bank comes in and closes, and you go from being first in line to last in line, or wherever you...yeah, most likely last. So we've got a real public policy issue. I think, if we're going to do this, with this way--and I don't think it's bad--I do think we have to put a requirement in that a bank has to file that tax lien within 90 days of that becoming delinquent, or something; because we've created all these perverse incentives where we really are kind of sticking it to the banks and not helping...and we're not...it's not...I don't think it's the best public policy, because...well, anyway, that's what I'd like to see, something like that. [LB53]

DOUG EWALD: I guess the question becomes, where do you want those trust fund dollars? Do you want them to offset...you know, do you want them to go to the lender, or do you want them to go to the state? You know, yeah. Yeah. [LB53]

SENATOR HARR: Well, that's the...that's exactly it. But we've also created a situation where you get to control everything, and the poor bank out there... [LB53]

DOUG EWALD: Well... [LB53]

SENATOR HARR: ...you're right, it's not their money. [LB53]

DOUG EWALD: Right. [LB53]

SENATOR HARR: You're right. But... [LB53]

DOUG EWALD: It's not their money. Right. [LB53]

SENATOR HARR: It's not their money. But at the same time, if they foreclose, it is their money. It becomes theirs because they're first in line. [LB53]

DOUG EWALD: Well...and I don't want you to get the impression that we don't file liens, because we do file liens today. [LB53]

SENATOR HARR: Yeah. Okay. And when do you generally first file tax liens? [LB53]

DOUG EWALD: It depends on...you know, if somebody comes to us, say, I need a payment arrangement, in that situation, and you fail your payment arrangement, boom, we're going to file a lien right away from that standpoint. [LB53]

SENATOR HARR: Okay. [LB53]

DOUG EWALD: Or you get...you know, it's kind of one of those things that you try to keep them in business... [LB53]

SENATOR HARR: Yeah. [LB53]

DOUG EWALD: ...as long as you can, from that standpoint, without doing...we could do a sales tax revocation as well and completely shut them down. [LB53]

SENATOR HARR: Yeah. I mean... [LB53]

DOUG EWALD: You know, in which case we do do those. [LB53]

SENATOR HARR: Okay. [LB53]

DOUG EWALD: We do those, you know, we probably do 20 of those a month, honestly. [LB53]

SENATOR HARR: And it would seem more...it would make better public policy to have you required to have them have a separate trust fund account for their sales tax. That would seem a better way of going at this than... [LB53]

DOUG EWALD: I wouldn't...I don't argue...disagree with you whatsoever. I mean, if you can do that... [LB53]

SENATOR HARR: Yeah. [LB53]

DOUG EWALD: ...and force them to do that and parcel it off, then...and Senator Schumacher's example we have is the liquor store. They're collecting sales tax, and what they're doing is they're buying their next round of liquor using the sales tax. [LB53]

SENATOR HARR: Yeah. [LB53]

DOUG EWALD: And that just continues to... [LB53]

SENATOR HARR: They're kiting. Yeah. [LB53]

DOUG EWALD: ...to pyramid, I guess. [LB53]

SENATOR HARR: Yeah, it's kiting. [LB53]

DOUG EWALD: Yeah, um-hum. [LB53]

SENATOR HARR: And if we're going to become more reliant on sales tax, which is what, you know, our Governor would like us to do, I think we have to have a better enforcement mechanism in there, or prevention, so that we don't run into this situation. Because if we become more reliant on sales tax, this issue is going to become more and more prevalent. So I think it's worthy of a review. [LB53]

DOUG EWALD: Right. And I know this statute, this bill, only deals with sales tax, but we do have trust funds for withholding and other things along those lines as well. [LB53]

SENATOR HARR: Yeah. [LB53]

DOUG EWALD: Um-hum. [LB53]

SENATOR HARR: Okay. Thank you. Thank you for coming. I appreciate the conversation. [LB53]

SENATOR SCHUMACHER: Let me just follow up on that a little bit, because I've got a fair amount of clients who are small businesspeople holding...that pay their sales tax and do the collecting and the paperwork and everything else. My gosh, how many businesses out there are collecting sales tax? Lots of... [LB53]

DOUG EWALD: A lot. [LB53]

SENATOR SCHUMACHER: Lots. Okay. And to require at the end of each day or at the end of each week, or some magic period, for them to break out the sales tax deposit and put it in a separate account, and their operating thing and put it in a separate account, I mean, I mean, they have a hard time just filing the forms with you and making their deposits... [LB53]

DOUG EWALD: Well, I think what Senator Harr is alluding to, Senator Schumacher, is today that's on the credit card swipe, okay? When you swipe a credit card, which is 90 percent of those retail transactions a day, you do that credit card swipe, and that money is parceling into the two separate accounts, from that standpoint. [LB53]

SENATOR SCHUMACHER: But lots of, particularly, smaller communities still deal in checks. And... [LB53]

DOUG EWALD: That's... [LB53]

SENATOR SCHUMACHER: And so that would be just a nightmare to have a credit card swipe system... [LB53]

DOUG EWALD: I never said tax compliance was easy. (Laugh) [LB53]

SENATOR SCHUMACHER: Well, maybe we should use the line that's been used so many times in this committee in the last few weeks: If we have to put up with this, we're just leaving the state. (Laughter) The one other thing...and I think Senator Harr's question highlighted it. It isn't a question of the bank getting the money in trust or the state getting the money in trust; the person who got the money in trust is that beer salesman who made that last delivery or that...the light company, who got the last bill. [LB53]

DOUG EWALD: They get the last check. [LB53]

SENATOR SCHUMACHER: And all of a sudden the state and the bank are sitting holding the bag. And even the owner is saying, "Oh, I'm just broke; I'm sorry." [LB53]

DOUG EWALD: Yeah. Fair enough. [LB53]

SENATOR SCHUMACHER: So thank you. [LB53]

DOUG EWALD: Thank you. [LB53]

SENATOR SCHUMACHER: Any other questions? Thank you for your testimony. Any other opponents? Anybody neutral? Senator Hadley. Senator Hadley is waiving away. That concludes the hearing on LB53. [LB53]