[LB592 LB613 LR17CA]

The Committee on Revenue meet at l:30 p.m. on Thursday, March 16, 2017, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB592, LB613, and LR17CA. Senators present: Jim Smith, Chairperson; Curt Friesen, Vice Chairperson; Lydia Brasch; Mike Groene; Burke Harr; Brett Lindstrom; and Paul Schumacher. Senators absent: Tyson Larson.

SENATOR SMITH: Welcome to the Revenue Committee public hearing. My name is Jim Smith. I represent Legislative District 14 in Sarpy County and I serve as Chair of the committee. The committee will take up the bills in the order posted on the outside of the room. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. To best facilitate today's proceeding, I ask that you follow the following procedures. First, would you please turn off your cell phones and other electronic devices so as to not interfere with the person testifying before us today. The order of testimony will be introducer of the bill, proponents, opponents, those wishing to testify in a neutral capacity, and then we will have closing remarks from the introducer of the bill. If you will be testifying, please complete the green form and hand that to the committee clerk when you come up to testify. If you have written testimony or exhibits for the committee and you would like to have those distributed to the committee, hand those to the page as well when you come up to the table and we will get those distributed. We will need 11 copies for staff and for committee members and if you need assistance in making those copies, we can certainly help you with that. Let us know. When you do come up to the table and begin to testify, we will need you to not only state your name, but also to spell your name so we can get it accurately into the record. We're going to use the light system today as we always do. For those of you who are not familiar with the light system, the green light is on for four minutes. It then turns to an amber color for the remaining minute during which time we ask that you wrap up your testimony. If you would like to have your position known, but you do not wish to testify, please sign the white form at the back of the room and it will be included in the official record. The microphone primarily records your voice to be part of the record for the transcribers. It doesn't project your voice very well or amplify your voice, so you will need to speak loudly enough for others to hear you. And the committee staff with us today, to my immediate right is legal counsel Mary Jane Egr Edson; to my immediate left is research analyst Kay Bergquist; and then to my left at the end of the table is committee clerk, Krissa Delka. We have pages with us today: Alexi Richmond from Milwaukee, Wisconsin, studying political science at University of Nebraska-Lincoln; and we have Alex Brechbill, from Aurora, Nebraska, studying political science at Wesleyan. We do have other members on the committee and I'm going to allow them to introduce themselves, some have obligations in other committees so will be joining us shortly or during the committee process, Senator Larson, Senator Groene.

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

SENATOR FRIESEN: Curt Friesen, District 34, Hamilton, Merrick, Nance and part of Hall County.

SENATOR BRASCH: Lydia Brasch, District 16, Burt County, Cuming County and Washington County.

SENATOR SCHUMACHER: Paul Schumacher, District 22, that's Platte and parts of Colfax and Stanton Counties.

SENATOR SMITH: And then Senator Burke Harr is part of the committee and he will be joining us a bit later. And we will begin our hearings today with the first bill, LB592, to be introduced by Senator Crawford. Relates to changing the tax incentives available under the Nebraska Advantage Act. Welcome back to the Revenue Committee, Senator Crawford.

SENATOR CRAWFORD: Thank you. Good afternoon, Chairman Smith and members of the Revenue Committee. My name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d. I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. I'm honored to be here today to introduce LB592 for your consideration. As written, the Nebraska Advantage Act allows businesses with qualifying projects and investments to receive tax incentives. These incentives largely come in the form of tax credits that can be applied to a number of different tax liabilities, including state income tax, state sales tax, and even local option sales taxes. LB592 modifies the Nebraska Advantage Act by eliminating the tax incentive options, allows businesses to receive credits for local option sales tax liabilities. This change would apply to all new applicants starting January 1, 2018. Local option sales taxes are approved by the voters for a specific local purpose. Voters of municipalities across our state have approved local option sales taxes to fund street improvement projects, irrigation systems, swimming pools, storm water mitigation system, city technology upgrades, improved park infrastructure, fire and police department vehicle upgrades, and other projects to benefit their communities approved by their voters. Currently we are delaying and impeding the funds for some of these voter approved projects to provide tax incentives for businesses under the Nebraska Advantage Act. I appreciate the attention that this committee and our Legislative Performance Audit Committee have given to examining the Nebraska Advantage Act and considering changes to improve the act. I introduced...I've introduced LB592 to put the question of the appropriateness of using local option sales taxes in this program on the table for our continuing conversations about the act. LB592 simply eliminates the local option sales taxes as an option for these business incentives. As the committee deliberates on a possible package of changes to the Nebraska Advantage Act, I urge you to incorporate LB592 to protect the integrity of local option sales tax law that allows voters to increase local sales taxes for a specific local purpose. Following my testimony, you'll hear from municipalities about their experiences with the Nebraska Advantage Act and the effect it had on their local sales tax revenues, local option sales tax revenues. As we move forward and continue to improve this incentive program, we need to think critically about whether to continue to include local option sales tax revenues. I appreciate the committee's attention to this issue and I'm happy to try to answer any questions you may have now and/or at closing. Thank you. [LB592]

SENATOR SMITH: Thank you, Senator Crawford. Senator Schumacher. [LB592]

SENATOR SCHUMACHER: Thank you, Chairman Smith, and thank you, Senator Crawford. When you talk local option sales tax, you're talking the whole basically 2 percent? [LB592]

SENATOR CRAWFORD: I'm talking about just the percent that they choose themselves and get voter approval to use. So it's the part that's in the local option...Local Option Revenue Act. So they may...they may pass additional sales tax if their voters approve for a specific purpose. And there are some specific purposes that it must be used for in the act as well. [LB592]

SENATOR SCHUMACHER: Is that what they call LB840, or is that...? [LB592]

SENATOR CRAWFORD: Well, some municipalities have used their local option sales tax for their LB840 projects. [LB592]

SENATOR SCHUMACHER: I guess I got...we've got like 5.5 percent state sales tax. Most places you pay, you know, 7 and 7.5 percent. Is that spread all local option or do you...? [LB592]

SENATOR CRAWFORD: No, so this is just talking about just the additional half percent or additional amount that the city chooses to get passed by the voters for a specific purpose. Only the local option part, not all the local sales tax. So you'd still...you would still use the remaining local sales tax, that's the regular local sales tax. This is just say, the local option sales tax that they approve with their voters for a specific local purpose pulling just that portion out, not the other local sales tax. [LB592]

SENATOR SCHUMACHER: Okay. Thank you, Senator. [LB592]

SENATOR CRAWFORD: Thank you. [LB592]

SENATOR SMITH: So, Senator Crawford, say La Vista has a 2 cent sales tax on the state. It's not the first penny and a half, it's the additional half a cent. [LB592]

SENATOR CRAWFORD: It's only the additional percentage that they got approved by their voters for a specific local purpose. Yes, thank you. [LB592]

SENATOR SMITH: Okay. Good. Other questions from the committee? I know there will be others following you to answer questions, but will you be able to hang around for closing? [LB592]

SENATOR CRAWFORD: I will stay for closing. Thank you. [LB592]

SENATOR SMITH: Very good. Thank you. We now move to proponents of LB592. Proponents, those wishing to testify in support. Welcome. [LB592]

TREVOR LEE: (Exhibit 1) Oh, thank you. Good afternoon. My name is Trevor Lee, spelled T-r-e-v-o-r L-e-e. I am the executive director for Valley County Economic Development and the Ord Area Chamber of Commerce. I'm representing both the Economic Development Board as well as the city of Ord, who I also serve in Valley County. I want to thank Senator Crawford for putting forth LB592 as it relates to the Nebraska Tax Advantage as well as the local option sales tax, which we have used the LB840. That's how it does affect us so that's what I'm going to talk about. That has been a critical tool and instrument for Ord and Valley County. Our program has 1 percent sales tax for economic development, have been in effect since 2002. The primary piece of this program has been loans for business start-ups, expansions, and transitions. We've also used the funds and the program itself to recruit businesses ranging from a hotel and convention center, ethanol plant, export-based manufacturing, as well as retail shopping centers and then your general mom and pop businesses as well. It has also served as leverage for grants that have resulted in infrastructure improvements, revolving loan pools, tourism promotion, capital improvements that have led to other economic development activities. It's also allowed us to be very economic development ready. We have a professional staff of two. We were Nebraska's first economic development certified community. We've been twice-since recertified. Since the program was initiated in 2002, we've leveraged $4.1 million in loans to small businesses which has leveraged twice as much capital because we could only lend up to 50 percent of these projects. This has addressed 52 local businesses and has really covered the entire range of industries in our local economy. Like I said, it's been critical. I think the key takeaway here for us, and then I hope I would leave you with is that the program has functioned just as Ord voters--and that's the key word, "the voters"--have approved and has functioned within the law through LB840, Local Option Municipal Economic Development Act. Although it's not perfect, I think there is some genius in LB840 and that is locally controlled, locally approved, and locally funded. The local option sales sale and the economic development plan both have to be approved separately and there a system of checks and balances that is required to monitor the program to ensure that it is functioning the way the voters approved and that's in the form of a Citizen Advisory Review Committee. The component that this bill addresses, as Senator Crawford indicated, allows for direct payments to qualifying businesses that is funded from local option sales tax and our concern is that that does strip the local control away from what is otherwise a locally approved tool. The problem is that the voters have not necessarily approved in the election the use of those funds for whatever this qualifying businesses' activity has been or this investment to date in the last ten years. A half a million dollars has been withheld from our sales tax collections from the Nebraska Advantage, which may not sound like a lot compared to some of the communities you hear from, but that's more than an entire year of collections in a town of 2,000 people, so it is a very significant number for us. We're not told to whom these payments are being directed. And I noted in here, if we did know, we would sit down with that business and first thank them for their capital investment. We'd also like to identify ways that we could locally incentivize additional capital investments in a way that can have some accountability and some transparency for the voters. The argument that I do occasionally hear is that communities need to have a local...local communities need to have a stake in these programs, some skin in the game, if you will. And I've listed in the last paragraph of my testimony just some information to prove that we do have skin in the game in our economic development efforts. I already touched on the $4.1 million portfolio of business loans. We have invested hundreds of millions of dollars in infrastructure, quality of life amenities, a new hospital, a new police station, a new city hall, a new fire hall, completely gutted and revitalized our central business district's infrastructure. We've shown that we are investing our people and place. We do so strategically and with the voters' intent. Our incentives focus on quality, permanent jobs and some of our--my opinion--Nebraska Advantage does not always focus on those things. I'll leave you with this. If...our program has been renewed twice, or approved once, renewed twice. If in the first 15 years of our program we spent LB840 dollars on temporary jobs that were low paying, would not have been renewed, and that is how the Nebraska Advantage has been spent in our community. With that, I'll take any questions you have. [LB592]

SENATOR SMITH: Thank you, Mr. Lee, for your testimony. Senator Schumacher. [LB592]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Thank you, Mr. Lee. Now, if the Advantage Act investment, whatever it is, factory or warehouse or whatever, is outside the city limits, does this affect you then? [LB592]

TREVOR LEE: I do not believe so. [LB592]

SENATOR SCHUMACHER: So it is somebody within the city limits of Ord that would have gotten the Nebraska Advantage? [LB592]

TREVOR LEE: That's correct. [LB592]

SENATOR SCHUMACHER: It'd be pretty easy to figure out who that is, wouldn't it? [LB592]

TREVOR LEE: We could narrow it down to a few based off of the capital investment. One of the biggest problems we've seen, and I think there's been some Band-Aids for this, is that the jobs are not permanent. So, let's say, a local elevator brings in...spends $1 million on this new piece of equipment and brings in 15 people to train for six months and then they leave, that does qualify. [LB592]

SENATOR SCHUMACHER: Tell us just a little bit because we're also considering the general whole scheme of Nebraska Advantage. You're saying that the jobs are kind of temporary. Is there a better way to spend that kind of money than Nebraska Advantage from your perspective? [LB592]

TREVOR LEE: Not necessarily and some of the introduced legislation this year. I think does some really good things, particularly in the rural Nebraska area, raises those minimum thresholds for wages. And that's very important to us. I don't know if there's anything about the permanency of these jobs. From our perspective, we would much rather work one-on-one with this business and incentivize their capital investment and job creation in ways that meet our goals and in line with our economic development program, whether those are high-paying jobs, certain sectors of local economy, etcetera. [LB592]

SENATOR SCHUMACHER: Does a businessman that's thinking about maybe setting up in a town like Ord, do they approach you guys, do you dangle the Nebraska Advantage out in front of them, or, I mean, are you involved at all in that part of the game? [LB592]

TREVOR LEE: I am. We don't...I've never promoted Nebraska Advantage in our community just because the current law or act, the thresholds of capital investment that those require, these just don't fit in Ord, Nebraska, all the time. They do occasionally, it's an ethanol plant for those larger, once a decade or every two decade, type of projects. We focus on LB840, we focus on sales tax loans, 2 percent loans, zero percent loans, tax increment financing, those locally controlled tools because then we can go back to our elected officials and our voters and say, these are how these funds have been used. [LB592]

SENATOR SCHUMACHER: For you to have been hit and docked some of your sales tax money, or your option money, somebody must have dangled the Nebraska Advantage out in front of somebody otherwise it wouldn't have happened. [LB592]

TREVOR LEE: Sure. It wasn't the city of Ord or Valley County. [LB592]

SENATOR SCHUMACHER: And they just don't get involved at that level? [LB592]

TREVOR LEE: No. [LB592]

SENATOR SCHUMACHER: Okay. Thank you. [LB592]

SENATOR SMITH: I see no further questions. Thank you, Mr. Lee, for coming and testifying today. [LB592]

TREVOR LEE: Thank you. [LB592]

SENATOR SMITH: Next proponent of LB592. Welcome. [LB592]

LANCE HEDQUIST: (Exhibit 2) Thank you, Chairman Smith, and members of the committee. My name is Lance, L-a-n-c-e, Hedquist, H-e-d-q-u-i-s-t. I'm the city administrator of the city of South Sioux City. On behalf of the city of South Sioux City, we do want to thank Senator Crawford for introducing this bill to the committee today. We think it's very important to understand the workings of the Nebraska Advantage Act and the impasse it has on the local economy and the voter approved sales taxes. South Sioux City, as you probably know, is in the corner of three states, Nebraska, Iowa and South Dakota and within three miles would be in any one of those three states, so we definitely compete for industrial development in our community. It's the Nebraska Advantage Act that has given us such a significant amount of private sector investment into our community. We have hundreds of millions of dollars of private sector investment in our community and Nebraska Advantage is a cornerstone of a lot of that activity. As I speak today, we have a hundred million dollars worth of private sector development occurring in our community and we're optimistic we're going to get two more investments of about $40 billion announced yet this year of people that want to invest in Nebraska and into South Sioux City. And the Nebraska Advantage is a key component of that. Our citizens when they approve sales taxes had it for specific purposes, property tax relief. They did it for capital improvements for a library coming into our community. We did it for public safety purposes. In fact, South Sioux City and Dakota County had the first countywide sales tax to occur in the state of Nebraska in which we provided 88 percent of all the funds for the construction of a jail that was actually in Dakota City, Nebraska. Our residents actually subsidized that development to occur. It was during that discussion with the county commissioners we had several months that we did not receive sales tax dollars, the county officials asked us, where did our money go? Why didn't we get any money this month? Our response was, well, we didn't get any. That the money was being withheld and we went several months without getting any sales tax receipts for projects that the public had voted for and had approved within our particular locale. And it's this rebate size side of the issue that we think is important. We've given back and noted in my pamphlet there, that we've given back $3.3 million worth of sales tax revenues and have been diverted from what the citizens had voted for when they voted for those sales taxes within our community. So, we think that the proposal here today is...provides more transparency. It provides an understanding of the city of what provisions of what things we're doing for the company coming in, and it also prevents double-dipping. But talk about double-dipping and Senator Schumacher asked about the sales tax dollars that you can actually provide some sales tax dollars to put a street or a water line extension if it's included in your LB840 plan. You could do that but then at the same time, 15 years later, they can come back and ask for their sales tax money back. So they can spend it up-front, but then they turn around and get it again on the backside. So, that creates a little bit of disharmony in terms of how that is looked at on the local level. And having us look at that open-eyed and in a transparent fashion, I think is beneficial for all. We clearly support the Nebraska Advantage Act. We clearly like what it does in terms of attracting businesses to our area and we hope to continue to use the Nebraska Advantage Act to be a major source of new companies coming to the state of Nebraska and expanding in the state of Nebraska. With that, Mr. Chairman, I'd be happy to answer any questions I can. [LB592]

SENATOR SMITH: Thank you, Mr. Hedquist, for being here today. Senator Schumacher. [LB592]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Thank you, Mr. Hedquist. What tier level in the Advantage Act have been the investments, generally, near to you? [LB592]

LANCE HEDQUIST: Almost all of them have been in tier one, two that have come into the area because of the size of the investment and the number of employees that are involved in those. [LB592]

SENATOR SCHUMACHER: So if Nebraska Advantage has brought in millions and millions of dollars of investment, assuming...and that should have some payroll associated with that and have some development property tax money of some sort, I mean, isn't $3 million a small price to pay? [LB592]

LANCE HEDQUIST: I...and I'll say this very clearly if I haven't said it already that we totally support the Nebraska Advantage Act. We want to see it continue, but in terms of the taking money away from what is the voter approved purposes is what is a concern that's...that is being expressed certainly by myself because the public voted for a library, they voted for a public safety program, and this money is diverted from doing what the public voted for. This way if you do it separately, it doesn't change the number necessarily, but the city is then much more aware of what's being applied, who is paying the funds for that company. [LB592]

SENATOR SCHUMACHER: Don't we have some program where you can go down to the Department of Revenue and send an agent down there and find out the inside scoop on where the money is and who is getting it and what timing is? [LB592]

LANCE HEDQUIST: No, we're not privy to that agreement between the state and the industry, so we can't find out. We don't know what the requirements are outside of the general requirements shown in the Nebraska Advantage Act. We don't see that agreement. If there's a way the city could be a signatory to the agreement, that would be maybe a different story because then we would understand what the ramifications are and what's being processed. We're not. We're not part of that agreement. [LB592]

SENATOR SCHUMACHER: I seem to remember a bill or some law that we went through where there's a procedure where someone from the city, sworn to secrecy and everything else, gets to sit down and look at the revenue so that you have an idea of when you're going to get docked. [LB592]

LANCE HEDQUIST: Not when we get docked. We came down to the Department of Revenue, one person within the city can go to the Department of Revenue and they can look at what business is and what those businesses are paying in terms of sales tax dollars, but the agreement on the Advantage is not privy to the city. I have no idea...we have at least 15 Nebraska Advantage applications ongoing as we speak today. I don't have a clue when somebody is going to pull the trigger to take and withdraw money from the city. Don't have an idea. [LB592]

SENATOR SCHUMACHER: And we don't spread those out over like a 12-month period? [LB592]

LANCE HEDQUIST: You give a 12-month notice in advance and that's been very helpful. When you took that action that was good. Gives us a little warning of what can take place and we keep track obviously on our ledgers about how much money is going to come back in subsequent years. So that was helpful. [LB592]

SENATOR SCHUMACHER: Thank you. [LB592]

SENATOR SMITH: I see no further questions. Thank you, Mr. Hedquist, for your testimony today. [LB592]

LANCE HEDQUIST: Thank you. [LB592]

SENATOR SMITH: Next proponent of LB592. Welcome. [LB592]

KEVIN POKORNY: (Exhibit 3) Thank you. Good afternoon, Senator Smith, and members of the Revenue Committee. I am Kevin Pokorny, K-e-v-i-n P-o-k-o-r-n-y, director of administrative services for the city of La Vista and I'm here to represent Douglas Kindig, mayor of the city of La Vista who could not attend today as he was called to jury duty. I appear before you today on behalf of the United Cities of Sarpy County which includes Gretna, Papillion, Springfield, and La Vista. I'm here today to support of LB592 which would eliminate the availability of refunds of sales and use taxes paid under the Local Option Revenue Act for applications filed on or after January 1, 2018. You have heard Mayor Kindig speak about Nebraska Advantage and its predecessor, LB775, the Employment and Investment Growth Act, on many occasions. Not only have we expressed concern about the lack of transparency in these programs, we have also made you aware of the impact they've had on cities such as La Vista. In the case of La Vista, since 2014 we have had, or are aware of approximately $6.5 million in sales and use tax revenue that has been, or will have been withheld from the city. Interestingly, to the best of our knowledge, at least one-third of this sales tax revenue was generated from a voter approved, one-half percent local option sales tax that was implemented for major street projects and capital improvements in 1990. The additional sales tax was extended by voters with the current sunset of 2025. In 2014, La Vista voters approved the additional one-half percent local option sales tax for the redevelopment of 84th Street corridor. We are obligated to use the revenue generated by the additional voter-approved sales tax for the purpose identified in each of the ballot questions. Our concern is that the state is utilizing these funds as an incentive for economic development projects they approve. Mayor Kindig has had citizens ask him specifically how the state can take away something that the voters approved for a specified purpose and, frankly, he does not have the answer. We have many discussions with legislators over the years regarding the public vote should be warranted, yet the voters approved a measure such as the additional optional sales tax, the state simply takes away the revenue it generates. We encourage your support on the advance of LB592. Thank you for your time and consideration this afternoon. I would be happy to answer any of your questions you might have. [LB592]

SENATOR SMITH: Questions from the committee? I see none. Thank you, Mr. Pokorny, for your testimony and give our regards to Mayor Kindig. [LB592]

KEVIN POKORNY: I sure will. [LB592]

SENATOR SMITH: (Exhibits 4-6) Next proponent of LB592. I see no further proponents. We do have a letter for the record sent in support of LB592 from Mayor Douglas Kindig, city of La Vista. We now move to opponents, those wishing to testify in opposition to LB592. We do have letters for the record, or I should say...yes, letters for the record from Bruce Bohrer, Lincoln Chamber of Commerce; and we have one letter that was signed by both David Brown, Greater Omaha Chamber, and Barry Kennedy of the Nebraska Chamber, again sent in opposition to LB592. We now move to neutral testimony, those wishing to testify in a neutral capacity. Welcome, Ms. Rex. [LB592]

LYNN REX: (Exhibit 7) Thank you, Senator Smith, members of the committee. My name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're here today in neutral testimony for two reasons: One, because we fully understand the concerns that have been expressed here by Senator Crawford and our cities. We have heard them over and over again and I will talk about those in just a moment. We also, though, appreciate the work of our partner with the state Chamber, Lincoln Chamber, Omaha Chamber, many other chambers all across the state who support us in tax with financing and the other efforts that we need to do in order to be effective in attracting and maintaining businesses and creating jobs in the local level. That being said, what is being passed out to you is the copy of the 222 municipalities in the state of Nebraska that do have local option sales tax. All of those went to a vote of the people with the exception of, essentially four of them which in the very early years, that would be Omaha, Lincoln, North Platte, and Bellevue. Their first one cent did not have to go to a vote of the people. Anything above that did after passage of legislation. We want to underscore that a very important piece of legislation passed last year introduced by Senator Crawford, she had several important pieces that passed last year, but one bill that was extremely important to us was LB1059. The bill that passed last year dealing with this issue in a different way requires now these companies to provide information to a municipality to say to them up-front, when you are applying for tax financing or when you're applying, most importantly for LB840 programs, are you also going to be applying under the Nebraska Advantage Act or another state incentive program. And the reason for that is what Lance Hedquist and others have already outlined to you, and that is that with the 68 municipalities that also have voter approved LB840 plans, that's the Local Option Municipal Economic Development Act, the constitutional amendment for that passed in 1990. That was a lead constitutional amendment that passed overwhelmingly across the state to enable the Legislature to allow municipalities to use local sources of revenue for economic or industrial projects or programs subject to a vote of the people. Sixty-eight of them have done that. And what they've done is basically on the front end, a company will come to them and say, here's...of course, that has to go to a vote of the people, you have to have a plan. It was modeled after the Nebraska Budget Act, so you have to have a plan first. It goes to the vote of the people. Then, in fact, any grants or loans are given to companies and businesses, qualifying businesses, pursuant to whatever the plan is. That being said, when you have a company that comes in on the front end and they get certain public benefits, if you will, roads, streets, whatever that they need to have in order to do...to create their business or maintain or improve it, then you find out later on the back end, they're coming back and getting more sales tax dollars on the back end because they have qualified. One thing that was...and I know that Mary Jane Egr here, your legal counsel, is more than familiar with this, but her predecessor or successor, Doug Ewald, when he was tax commissioner, appeared before this committee and underscored the fact that the time frame for filing is 22 years under LB775. So, we still have some cities looking at that right now. And that has been part of the issue is having companies get it both ways, on the front end and the back end. So essentially, I think that's another reason why Senator Crawford probably introduced this measure and we appreciate her doing so. But I just wanted to underscore that the 222 municipalities, anything above one cent certainly has to be approved by the vote of the people. In addition, except for those four municipalities, their one cent has to be approved by a vote of the people. It's just that early on, the Legislature did not require a vote of the people for them to have local option sales tax. The other element is not just LB840, but it comes down to the other issues that Lance has talked about and that is that there have been...when after passage of LB890 when Governor Kerry was Governor of this state, that's the first time municipalities were able to put on the ballot the purpose for which the funds would be intended. Prior to that, because cities cannot advocate for or against ballot questions, they could never say...I mean they could say it, but it was hard to communicate to a voter, here's the purpose. It's for a public library, or it's to restore our water field, or it's for certain elements dealing with a restructuring, building a police department, for example. You really...you could not say that on the ballot. After passage of LB890, almost after that bill, almost every city has indicated, here's how the funds will be used because it helps them get the ballot passed and people really want to make sure that they can, in fact, know where the money is going. So with that, we understand both sides of this question. We strongly support as an organization the Nebraska Advantage Act. It's done great things for the state of Nebraska as has LB775, but we do think there's a very, very legitimate issues and it's a trust issue with local government officials when, in fact, they go to the polls or they go to a vote of the people saying, here's how we're going to use your funds and then you find out, the funds aren't going there. And we've had several cities that have called us saying, oh, my gosh, what do we do now? We're getting calls from citizens saying, why is the money not going to the library? Because maybe the library foundation is telling people, we're not getting a dime from the city. Well, that's maybe because the city is not getting a dime because of refunds. So, it is really a trust issue and people don't understand on the local level that, in-fact, there are refunds that come out first. With that, I'm happy to respond to any questions that you might have. [LB592]

SENATOR SMITH: Senator Schumacher. [LB592]

SENATOR SCHUMACHER: Thank you, Chairman Smith, and thank you, Ms. Rex, for your testimony today. So a business, let's just say, gets a million dollars in Advantage Act credits. And it's got a number of things that it can claim those credits against, income tax, wage withholding tax, some sales tax, a number of things. If we say you can't claim them against the local option tax, like this bill proposes, and then are they able to claim it against other taxes? I mean, they don't just lose those credits, they have to pick up those credits and use them somewhere else, don't they? [LB592]

LYNN REX: Well, first of all, you can't do it retroactively, so this would have to be any contract prospectively. [LB592]

SENATOR SCHUMACHER: Right. Okay. [LB592]

LYNN REX: So my guess is and I would defer to your legal counsel on it and others in the room that are better informed, but my guess is that even if you passed this bill today, we're going to be having these tax...we're going to have local option sales tax refunds still coming out for another 15-20 years. If you passed it today, that's still going to happen. But prospectively, when the Department of Revenue and others sign those contracts, prospectively this bill would say, local option sales tax for prospective contracts is off the table. You will not get local options sales tax dollars. [LB592]

SENATOR SCHUMACHER: So those credits that brought all that development to that community instead of being claimed out of that community, are now disbursed over the entire state in income tax, in sales tax, and wage withholding, whatever, credits, and so the community that got the benefit is not...it's not docked against them, but somebody else has got to pay for it under the principle of no free lunch. [LB592]

LYNN REX: Under the current system, as I understand it, the company itself makes a decision if they want to go under income tax, if they want to go under sales tax, they get to decide how and when they do that if they need to...well, not if, when they meet the performance standards, then they make that determination right now, Senator, but... [LB592]

SENATOR SCHUMACHER: Some of them must be deciding to dip into the local... [LB592]

LYNN REX: Oh, there's no question. [LB592]

SENATOR SCHUMACHER: Okay. [LB592]

LYNN REX: There's no question. That's the case. That's why Senator Crawford, I'm guessing, introduced this bill and she can state that in her closing. That's why we were so appreciative of passage of LB1059 last year to acquire disclosure because I would bank my mortgage payment on the fact that if a company says to a city, yes, we are going to apply under Nebraska Advantage Act, they are not going to get LB840 funds because that city or village knows they're going to give it on the front end and they will be giving it on the back end. So if they're going to be giving it on the back end, they're not going to give it on the front end. Do you understand what I'm saying with that, Senator? [LB592]

SENATOR SCHUMACHER: Well, I think so, but I guess what concerns me is that to the extent that company has got credits, and going to claim those credits somewhere by saying you can't claim it out of this pot, we've made a community who didn't get benefit of the investment, or the general state taxpayer, pay for those credits. [LB592]

LYNN REX: Well, in a sense everybody gets a benefit because that company, it brings employees, that company is whether they're...however they do it, they're paying income taxes. That comes into the state coffers, not local taxes. But I understand your point, but our point is first and foremost to know upfront what's going to happen. And LB1059 last year certainly helps us in that regard, but only with respect to tax with financing, only with respect to LB840 plans, and at some point probably next year we would be coming in with a measure to expand that to, whether or not they're going...if they're going to apply for any local sales tax credits because almost all these 222 cities have already dedicated those funds for the purpose for which the voters approved it and they are bound by that. However, if they don't have the money coming in, they can't pay it. [LB592]

SENATOR SCHUMACHER: Thank you. [LB592]

SENATOR SMITH: Further questions? I see none. Thank you, Ms. Rex, for your testimony. [LB592]

LYNN REX: Thank you very much and appreciate Senator Crawford introducing it and we certainly understand her concerns. Thank you. [LB592]

SENATOR SMITH: Thank you. Others wishing to testify in a neutral capacity on LB592? Seeing none, we invite Senator Crawford back to close on LB592. [LB592]

SENATOR CRAWFORD: Thank you, committee members, and I appreciate your attention to this issue and I also appreciate the discussion that you heard from different municipal leaders.

Also the other aspects of the Advantage Act as well as you're working on this work before you to figure out how you would like to continue to improve the act so that it works well in our state and our communities. And I believe, as you've heard, we have worked to try to improve the ability of cities to anticipate when those tax revenues might come out and one part of that was LB209 passed by Senator Cornett in 2012. And as Ms. Rex mentioned, LB1059 that was passed in 2016, trying to help with that effort by the local municipalities to figure out, and understand what's happening with our tax revenues, and also how that can be coordinated with their efforts to provide incentives to companies that we're trying to recruit. And that includes, you know, incentives that they may provide to companies that are LB840 incentives or tax increment financing incentives where they're stepping out to say, you're coming to our community and providing contribution. Here's what we're going to do. And I think one of the concerns of municipalities is that there's a state conversation happening with those entities as well that they're not party to. And so there may be promises made to those entities that they're not party to that's going on and that takes, again. And also the other fundamental issue that we're dealing with here is the issue that if voters in a locality have approved taxes for a particular purpose, and those taxes are being used instead for a recruitment plan that's a state economic development recruitment plan, is that appropriate. And those are key issues that I wanted to bring attention to this committee...to the attention of this committee as you're talking about the Nebraska Advantage Act to make sure we think about what that looks like for the municipalities and I really appreciate the testifiers who were here today to try to help you see what that looks like from municipal standpoint in terms of the choices they make and in terms of their conversations with voters and trust that they have with the voters and that issue of what it means when the money that they've told voters would be used for a specific purpose, gets used for a different purpose. I do also want to clarify for the record that the Local Option Revenue Act, that act does also refer to that base rate and so if we were wanting to just carefully clarify that it would be local sales tax that has been approved for a specific purpose, we will need to narrow that language a bit to make sure is only including that local sales tax, if we were to move forward with this idea and want to incorporate the idea of excluding those taxes that were approved for a particular purpose. So those clarifications and context, I'm happy to try to answer any other questions that you might have. [LB592]

SENATOR SMITH: I see no further questions, Senator Crawford. [LB592]

SENATOR CRAWFORD: Excellent. Well, I appreciate your time and again I hope in the conversations about local option...about the Nebraska Advantage Act, that there will be some conversations about the municipal role in those conversations and some attention and thought to the way these specific taxes are handled in those Advantage Act discussions. And I'm happy to facilitate conversations with individuals from municipalities or happy to be involved in that conversation in any way that I can. Thank you. [LB592]

SENATOR SMITH: Thank you, Senator Crawford, for closing on LB592. [LB592]

SENATOR CRAWFORD: Thank you. [LB592]

SENATOR SMITH: We now move to our next bill of the day, LB613. LB613, to be introduced by Senator Wayne, relates to changing provisions relating to property tax exemptions under the Nebraska Housing Agency Act. Welcome, Senator Wayne. [LB613]

SENATOR WAYNE: Good afternoon, Chairman Smith and members of the Revenue Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent the 13th Legislative District in north Omaha and northeast Douglas County. I introduced LB613 at the request of the Omaha Housing Authority, but I also introduced it because this is an issue that we've been dealing with in the Omaha area. And last year LR489 in the Urban Affairs Committee, we looked at a couple on an interim study on housing authorities, and this bill is one of the results. We have two other bills that were already heard this year in Urban Affairs that deal...that came out of that interim study, LR...I'm sorry, LB304 and my bill, LB399. So we are asking the Revenue Committee to join a part of our team in Urban Affairs to make sure we can help OHA and help public housing authorities. This bill is designed to address a couple issues that have came up, a issue that came up with authority partners with private investors to aid in the construction of public housing. As the federal funding for new public housing construction has fallen over time, a greater emphasis have been placed on public-private partnerships to finance construction of public housing. The typical model involves a private investor who helps finance the public housing project through Low Income Housing Tax Credits, commonly referred to as LIHTC. After the public housing project is constructed, the private investor retains ownership of the property for over a 15-year period in order to access the federal tax credits. The housing authority holds all the operation, management, and maintenance responsibilities to the life of the project and after. County assessors, most notably Douglas County, have interpreted the current language of Section 71-1590 to say that because a private investor retains ownership interests, even though the investors do not maintain any control on how the property is used, managed, or etcetera, the property is not eligible for a full property tax exemption given to the housing authorities as a political subdivision. After a 15-year period, the investor exits the investment and the property becomes full part of the housing authority, which is tax exempt. However, during the 15-year period, the housing authority is paying taxes on those public housing units, spending public dollars that should be going to providing additional public housing services to public housing residents on those taxes. Because housing authorities do not have the ability to levy their own property tax, those taxes being paid on some of the public housing units are predominantly coming from rents charged to the other public housing tenants. LB613, by clarifying that these properties are exempt from property taxes from the beginning, ensures that housing authorities continues to have access to private capital to help reduce the costs associated with financing new housing and to conserve and preserve the supply of existing housing. Because it is maybe difficult for county assessors to determine whether a project is owned or controlled...or owned by a controlled affiliate is eligible for exemption, LB613 also requires the housing authority or the controlled affiliate to provide notice of the exemption to the county assessors on or before December 31st of the proceeding year in which the tax exemption is first sought. This is important because in Nebraska Housing Agency Act, passed in 1999, the act specifically encourages public-private partnerships and the U.S. Department of Housing and Urban Development also encourages new formations of innovative ways of developing public and private partnerships to ensure the long sustainability of public housing developments. LB613 is consistent with these goals and will make it financially feasible for housing authorities to continue to partner with private investors. LB613 does not deal with taxation of LIHTC projects generally, only specifically with those LIHTC projects that are owned and controlled by housing authority controlled affiliates and operated by the housing authority. While the issue raised by LB613 affects Omaha Housing Authority currently, other housing authorities throughout the state may also fall into this group. There are multiple housing authority representatives behind me who will talk more in detail about this, but I think as a body and as we continue to look at ways to make sure we public...we create public and private partnerships, we have to make sure it's still feasible for these public and private partnerships to work, and this is one way that I think we didn't think about when we were, in 1999, passing this act because the federal government Low Income Housing Tax Credit came a little bit after that as far as how it bloomed here in Omaha and in Nebraska. This is just a way for us to clean this area up to make sure these partnerships survive. And with that, I'll answer any questions. [LB613]

SENATOR SMITH: Thank you, Mr. Wayne...Senator Wayne. Have questions from the committee? I see none. [LB613]

SENATOR WAYNE: I will stay here for closing. [LB613]

SENATOR SMITH: All right. I know you have the next bill up as well. All right. We move to proponents of LB613, those wishing to testify in support of LB613. [LB613]

GEORGE ACHOLA: Good afternoon. [LB613]

SENATOR SMITH: Welcome. [LB613]

GEORGE ACHOLA: My name is George Achola, A-c-h-o-l-a. I am a commissioner of the Housing Authority of the City of Omaha. And prior to my commission being granted by the city, I was also the legal counsel for the housing authority for approximately 10-11 years, so I'm very intimately familiar with the details of the legislation that you're looking at. And Senator Wayne has done a pretty good job of trying to summarize a fairly complex project...process. Essentially what this is, is that the county assessor looks at the ownership entities that own these public-private partnerships. Federal law requires, because you have private entities that are the tax credit partners, that they become nominally, what I would call nominally, the majority owners of these, so the 99.9 percent owners of these tax credit projects, while the housing authority affiliate retains .01 control. But that is only in name only, because when you look at the operation of the project, the housing authority is the one that's operating. When you look at who has the role of the trustee for the project, the housing authority has that role. When you look at who has the right of first refusal to purchase those properties after those tax exemptions that Mr. Wayne talked about expire at 15 years, usually it's the housing authority or the housing authority's affiliate. And when the investor leaves, the housing authority ends up controlling these properties. Now the reason of this is reporting from a public policy perspective, is because the state of Nebraska itself does not generally provide any funding to housing authorities to build public housing. That is usually entirely a federal function. And what the federal government has said is we're not going to give you any additional federal dollars to build or repair housing, so you have to go out and look for public-private partnerships. The primary tool that most housing authorities use and most developers use is called the Low Income Housing Tax Credit and that with it comes the legalities that Mr. Wayne talked about. And when this body in 1999 amended the Housing Agency Act, they clearly did that with the foresight of allowing housing authorities to structure and to build properties using these types of complex financing tools. But I think what occurred was, you know, not completely understanding some of the nuances of how these structures work, as Mr. Wayne indicated, there was a little bit of a loophole left that subjected these properties to tax by the county assessors. And what I can tell you is in all shape and form these properties act and look and operated like public housing properties. There is no difference between public housing that existed prior to 1999 as opposed to public housing that is built post-1999 under these financing structures. The only thing that changed was, because of the legal requirements, the ownership structures--on paper only really, to be honest with you--had to be structured in such a way that these federal investors could get the benefit of the tax exemptions that they're claiming that would allow these properties to be built. And I'll just give you a very quick tutorial. Maybe it's immaterial, but the way these work is it's an IRS program. It is not a HUD program. Surprisingly, it is an IRS program, the Section 42 Housing Program. And essentially what occurs is NIFA controls those at the state level and they award those to projects across the state, and housing authorities are able to apply for those. And what happens is, depending on the size of the project, investors get a dollar-for-dollar reduction in their federal tax dollars, but those dollar-for-dollar reductions are passed through to these properties to allow them to be built. That's essentially how it works. But in order for those investors to be able to have some control of the dollars and to deal with the compliance issues, the way that the structures have evolved is they are required to have a 99.9 percent ownership structure of the LIHTC properties. They have no management rights. They're a limited partner. So they have no management rights, they have no operational rights. The only thing that they claim is the tax exemptions as well as some of the depreciation of these properties. So what we're essentially talking about is just a financing tool to build affordable housing by public housing authorities. And when you read the act in its entirety, and there might be other folks that can talk about it because I have a limited amount of time, it is clear that when this body passed the Nebraska Housing Agency Act in 1999 the provision of public housing was considered a public purpose and one that was important enough to allow housing authorities to have the right and the ability to do some of the complex financing structures that they do because, A, they don't have tax levy power and, B, they're not getting any of the money from the federal government to upkeep or to repair or to build the housing that they currently own. [LB613]

SENATOR SMITH: Senator Schumacher. [LB613]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Thank you for your testimony. [LB613]

GEORGE ACHOLA: Thank you. [LB613]

SENATOR SCHUMACHER: I'm trying to see how this works and who's getting the extra here. [LB613]

GEORGE ACHOLA: Okay. [LB613]

SENATOR SCHUMACHER: So you have an investor. [LB613]

GEORGE ACHOLA: Usually a large bank or insurance company, correct. [LB613]

SENATOR SCHUMACHER: Okay. So large, and they got to pay federal taxes... [LB613]

GEORGE ACHOLA: Correct. [LB613]

SENATOR SCHUMACHER: ...which they don't want to have to do. [LB613]

GEORGE ACHOLA: Correct. [LB613]

SENATOR SCHUMACHER: Okay. So they come in and they do a deal with the federal government? [LB613]

GEORGE ACHOLA: They do a deal with NIFA. Well, let me...I'll give you...I'll skip a step. What happens is NIFA...the IRS gives NIFA a certain pool based on our state's population, okay? And NIFA has an allocation of tax credits that they can allocate. And what occurs then is they can award those to a project like ours, okay, and then we have to go out and find investors in the market to buy those credits. And generally, that's done through a third party known as syndicators, and the one that we have in Nebraska is Midwest Housing Equity Group that is... [LB613]

SENATOR SCHUMACHER: And they get a cut of the tax credits. [LB613]

GEORGE ACHOLA: I'm not... [LB613]

SENATOR SCHUMACHER: And a percentage from...I mean they don't do it for nothing, right? [LB613]

GEORGE ACHOLA: They don't do it for nothing, no. [LB613]

SENATOR SCHUMACHER: Okay. [LB613]

GEORGE ACHOLA: No. [LB613]

SENATOR SCHUMACHER: So we've got NIFA gets a pile of monopoly money called tax credits. [LB613]

GEORGE ACHOLA: Correct. [LB613]

SENATOR SCHUMACHER: They then give some of that to your organization. [LB613]

GEORGE ACHOLA: Based on our projects, however. That's true. [LB613]

SENATOR SCHUMACHER: Then you chase down an insurance company or somebody who owns a tax bill. [LB613]

GEORGE ACHOLA: Yep. [LB613]

SENATOR SCHUMACHER: And you do that through the syndicator, who gets a piece of the action. [LB613]

GEORGE ACHOLA: Correct. [LB613]

SENATOR SCHUMACHER: Okay. Now we got the syndicator and they go write out a check to build a building. [LB613]

GEORGE ACHOLA: Over a ten-year time frame. It's not a check that is written in one fell swoop. So the tax credits, for example, if it's a $7 million project and I guess $7 million of tax credits, they get $700,000 for over ten years, correct. [LB613]

SENATOR SCHUMACHER: Okay. So they get tax credits but I mean somebody has got to pay the contractor so they... [LB613]

GEORGE ACHOLA: So when the money that they were otherwise pay in federal taxes are paid into the project so that's how those contractors and architects are paid. [LB613]

SENATOR SCHUMACHER: Okay. So then why would the insurance company want to get in the middle of this unless they make some money? So how do they make their money? [LB613]

GEORGE ACHOLA: They...they're getting a tax exemption. That's what they're getting. They're getting the tax exemption if it's an insurance company. And if it's a bank, they're getting the tax exemption so they're not... [LB613]

SENATOR SCHUMACHER: Exemption or credits? [LB613]

GEORGE ACHOLA: Credits, excuse me. [LB613]

SENATOR SCHUMACHER: Okay. [LB613]

GEORGE ACHOLA: They're getting the tax credits, excuse me. They're getting the tax credit so they're getting a dollar-for-dollar reduction on their federal tax liability. Or in some situations they're also getting credit for CNA. [LB613]

SENATOR SCHUMACHER: So when they decide to build this building, this housing complex, they've got to hire a contractor and they've got to pay that contractor. [LB613]

GEORGE ACHOLA: No, we do all that. We, as the applicant to NIFA, we submit a project. And if NIFA grants us the tax credits, it's our responsibility to hire the architect, hire the contractor. We do all of that, you know, from ground up. [LB613]

SENATOR SCHUMACHER: Do you sell those tax credits then to the insurance company or the whatever? [LB613]

GEORGE ACHOLA: No, those tax credits are allocated to the bank or to the insurance company. We don't sell those tax credits. But we... [LB613]

SENATOR SCHUMACHER: You pass them through. [LB613]

GEORGE ACHOLA: Exactly. Exactly. [LB613]

SENATOR SCHUMACHER: Okay. So they...and then you get your money to pay the contractor from whom? [LB613]

GEORGE ACHOLA: From the tax credits. [LB613]

SENATOR SCHUMACHER: From the... [LB613]

GEORGE ACHOLA: ...the bank or the insurance company that's bought the credits. [LB613]

SENATOR SCHUMACHER: Or the insurance company or whatever. [LB613]

GEORGE ACHOLA: Correct. Yeah. [LB613]

SENATOR SCHUMACHER: Okay. So...and then they get to cash in these tax credits over ten years. [LB613]

GEORGE ACHOLA: They get to reduce their federal tax liability over... [LB613]

SENATOR SCHUMACHER: Right, or cash them against their... [LB613]

GEORGE ACHOLA: Yeah. Exactly. [LB613]

SENATOR SCHUMACHER: Okay. And then do you...who owns title to this building then? [LB613]

GEORGE ACHOLA: That's the structure that causes the issue that we're here for today is because now the syndicator or the bank has a consortium that has to put together an ownership structure to make sure that their interests are protected. So what's generally created is what we call a limited liability structure, a limited liability company structure. Essentially the way that occurs is you create a corporate entity and the housing authority comes in or it's a housing authority's affiliate, in this case, comes in as the .01 owner of that corporation while, let's say, the bank's representative of a bank, if they want to do it directly, can come in as the 99.9 percent owner for the next ten years. But as a limited partner, they have no operational rights. [LB613]

SENATOR SCHUMACHER: Okay. So they've got a limited partner. Now in the end, ten years, does the housing authority buy out the bank? [LB613]

GEORGE ACHOLA: No. There's a structure in the partnership agreement that essentially for a nominal value, and generally the ones that I've seen from the housing authority is like for $10. We pay the bank $10 and we keep the property free and clear. [LB613]

SENATOR SCHUMACHER: So how does...why would a bank want to be involved in this? I mean do they get more tax credits than they have to give money? [LB613]

GEORGE ACHOLA: No, they get those tax credits up-front. That's the primary benefit. So that's the primary benefit that the banks or the insurance companies get, is they get these tax credits up-front. So they're getting a reduction in their federal tax liability. That's the... [LB613]

SENATOR SCHUMACHER: And how much then do they pay for it? Dollar for dollar do they pay for the tax credits? [LB613]

GEORGE ACHOLA: No. No. So essentially, they might buy it for like 80 or 90 cents on the dollars,... [LB613]

SENATOR SCHUMACHER: Okay. [LB613]

GEORGE ACHOLA: ...depending on... [LB613]

SENATOR SCHUMACHER: So that's where the juice is at. [LB613]

GEORGE ACHOLA: Correct. Yeah. [LB613]

SENATOR SCHUMACHER: Okay. I've got the picture now. [LB613]

GEORGE ACHOLA: Yeah. [LB613]

SENATOR SCHUMACHER: Thank you. [LB613]

GEORGE ACHOLA: Yeah. [LB613]

SENATOR SMITH: Senator Harr. [LB613]

SENATOR HARR: Thank you. And thank you for coming, Mr. Achola. I went to high school with a pretty good athlete named George Achola. Is that your son? [LB613]

GEORGE ACHOLA: (Laugh) Well, being that he's three, I hope not. (Laughter) [LB613]

SENATOR HARR: You need to work out a little more. [LB613]

GEORGE ACHOLA: Yeah. Thanks. [LB613]

SENATOR HARR: You got to stay in shape like Mr. Hale. [LB613]

GEORGE ACHOLA: I'm going to try. (Laughter) [LB613]

SENATOR HARR: So let me ask you this, because I heard what Senator Schumacher was getting at, and the question I have is...and I see someone in the audience out there who does it for nonhousing, does these LIHTC for nonhousing authorities. [LB613]

GEORGE ACHOLA: Correct. [LB613]

SENATOR HARR: You're able to sell yours at let's just say 87 cents on the dollar. [LB613]

GEORGE ACHOLA: That's pretty accurate nowadays. Correct. [LB613]

SENATOR HARR: Do you get a higher premium because you don't have to pay property taxes? Or is it that you are able to afford to give your tenants a lower rent than someone who's in a private LIHTC project? [LB613]

GEORGE ACHOLA: We don't get a high premium because of the properties. [LB613]

SENATOR HARR: Because we have cap rates, right? [LB613]

GEORGE ACHOLA: Exactly. [LB613]

SENATOR HARR: And we, everyone on this committee, we have a bill this year and we did a couple of years where there's a separate income-based cap rate, so. [LB613]

GEORGE ACHOLA: Yeah. Correct. Yeah. So, no, the property tax piece does not affect what we get. The bank, the syndicators who would run these programs have a very complex underwriting formula that they go through. [LB613]

SENATOR HARR: So who gets that spread between the private LIHTC that have to pay a cap rate property tax of let's say 4, and you who pay zero? Does that immediate...you're a nonprofit, so that would go back to your renters. [LB613]

GEORGE ACHOLA: Correct. That would come back to us, correct. [LB613]

SENATOR HARR: What's that? Does it go back? [LB613]

GEORGE ACHOLA: That will come back to the nonprofit, correct. [LB613]

SENATOR HARR: Okay. And what would you use that money for: to lower rent or for other programming? [LB613]

GEORGE ACHOLA: It would generally be, as a housing authority, of course be for affordable housing purposes, you know, to lower rent, to rehab the property, to maintain the property, because of the problem that you've got here is these deals are not structured to be big cash flow operational deals. They're because of a limited income, because they have rent restrictions, so each one of these properties has rent restrictions that you've got to... [LB613]

SENATOR HARR: And how long are those for? [LB613]

GEORGE ACHOLA: Those are for 30 years in most instances. [LB613]

SENATOR HARR: Sometimes more? [LB613]

GEORGE ACHOLA: Sometimes more. [LB613]

SENATOR HARR: Okay. [LB613]

GEORGE ACHOLA: So each one of these properties...so I can't come out here and charge a market rate for a property that I've built. Part of the deal that I make is I'm going to build it but then I'm going to restrict the incomes for that 30-year time frame. As a result of that, what's the number one driver for operational income, for income on these properties is rent, so my rent is restricted. So what you'll find is the rent is restricted by the...based on HUD guidelines. The rent is restricted and my operational costs of course will continue to go up every year, but my rent is not allowed to go up at the same rate. So these properties, when you look at the performance of these properties, they're designed to just barely cash flow because they're not designed to be cash cows for us as the operator of the property or any bank that may have an interest in the property. [LB613]

SENATOR HARR: And the individuals who live there, I couldn't just move in, could I? [LB613]

GEORGE ACHOLA: No. You've got to go through a strenuous income test which... [LB613]

SENATOR HARR: Is it, what, 30 percent of the adjusted gross income? [LB613]

GEORGE ACHOLA: You get up to 60 usually, but anyway, it's 60 and below. [LB613]

SENATOR HARR: Depending on if it's a 9 percent return or 4 percent, right? [LB613]

GEORGE ACHOLA: Correct. Correct. Yeah. [LB613]

SENATOR HARR: What is the 9 percent? Do you know? [LB613]

GEORGE ACHOLA: It's usually about 60 percent. You can elect 60 percent or you can elect 50 percent, 40 percent, or 30 percent, all below. [LB613]

SENATOR HARR: Okay. [LB613]

GEORGE ACHOLA: But to score well with NIFA on some of the tax credit agencies, generally you want to pick that you're going to serve a lower income. And for the housing authorities, given our situation, we're generally serving people anywhere from the 30 to the 50 percent range. So we're serving the poorest of the poor while somebody else who may be in a nonhousing authority LIHTC project may have a higher...they might be wanting to serve more the 60 percent of the AMI. [LB613]

SENATOR HARR: Okay. [LB613]

GEORGE ACHOLA: Yep. [LB613]

SENATOR HARR: Thank you. [LB613]

SENATOR SMITH: I see no other questions. Thank you for coming and testifying today. [LB613]

GEORGE ACHOLA: Thank you. [LB613]

SENATOR SMITH: Appreciate it. We continue with proponents of LB613. Welcome. [LB613]

JENNIFER TAYLOR: Good afternoon. Good afternoon, Senator Smith, members of the Revenue Committee. My name is Jennifer Taylor, J-e-n-n-i-f-e-r T-a-y-l-o-r, and I am currently chairman of the board of commissioners for the Omaha Housing Authority. I have been a commissioner for the Omaha Housing Authority for actually I think six years as of today was the day I was authorized by the city council. I have also served for the last six years as director and president of Housing in Omaha, which is OHA's wholly owned affiliate that actually undertakes many of our tax credit projects, our LIHTC projects. You've listened to Mr. Achola very effectively describe the process in probably much more detail that I am capable of. What I want to share with you today is kind of generally what I have observed over the six years of my time serving on both the board of commissioners and with HIO. One of the things Mr. Achola mentioned is that the intent of the Nebraska Housing Agency Act is to encourage or to allow us to redevelop, develop, rehab, preserve neighborhoods and affordable housing, and that's kind of the key to provide affordable housing in our areas. It also encourages us to use a variety of methods, entrepreneurial methods, public-private partnerships, ways that we can build affordable housing, public housing without being entirely dependent on federal funds. What I have learned and something my time on the OHA board I've learned a lot about how public housing is built and how it's run, and it's a rather complex area, but we are almost entirely federally funded. Unfortunately, the amount of federal funds that we get is rarely sufficient to maintain our properties, to actually provide the necessary amount of housing that we need, and also unfortunately those funds are routinely reduced on a regular basis. So we are encouraged as Mr. Achola noted, to go out and find other ways to finance building or providing affordable housing for the people in our communities that need it. In the time that I have spent on the HIO board, which is our wholly owned affiliate that handles many of our tax credit projects, I have always been amazed by how very small the margins are in that entity. At the end of the year, if we manage to generate a profit, it's oftentimes, you know, $5,000, $6,000, $7,000 at best. And some of the projects, again, if there's losses it's not a huge loss but your losses are $30,000 and $40,000. Oftentimes the spread between making a project in...a public housing project in that arena break even is the amount that we pay in property taxes. So to have the ability to have that funding go back into the project, not to have to borrow from OHA or to take from other public housing projects to cover the shortfalls that exist in our...in these public housing projects I think serves the intent of what the Legislature meant when they introduced the act in 1999 and encouraged us to go out and find other methods of financing these types of projects. As Mr. Achola noted and I've watched this over years, they are entirely operated by OHA. We run them. We maintain them. We lease them. The tenants that are in those projects are the same tenants we have in all of our other public housing projects. We don't get any additional funding for the LIHTC projects that we do over, you know, public housing projects. It's the same tenant. It's the same process and operation that we have across the board. Unfortunately, because we pay property taxes, which I think maybe wasn't the intent in 1999, we tend to have shortfalls in these areas. That takes then money from our ability to maintain these properties as well as we'd like to. Also takes money from our ability to provide programs and other sorts of ways of reinvesting back into our community. So giving this exemption, which I think was really the spirit and the intent to begin with, giving this exemption would only allow the agency to continue to reinvest in affordable housing projects in providing public housing and in providing public housing services that are very desperately needed in our community. And with that, I will go ahead and answer any questions you might have. [LB613]

SENATOR SMITH: Senator Schumacher. [LB613]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Thank you for your testimony. How much money are we talking about are you paying in property taxes? [LB613]

JENNIFER TAYLOR: Last year HIO paid about $115,000 to $120,000 in property taxes. [LB613]

SENATOR SCHUMACHER: Okay. So again using the principle of no free lunch, if you don't have to pay the hundred and some thousand dollars in property taxes, other property taxpayers will have to. Unless the city cuts some of their budget, somebody has got to pay that money. [LB613]

JENNIFER TAYLOR: Well, it would be a tax exemption that I think is...that the housing authority is entitled to based on the fact that we are performing... [LB613]

SENATOR SCHUMACHER: No. But if you don't have to pay this hundred and some thousand dollars and the city spending isn't affected by it, then some other property taxpayer will have to pay it. [LB613]

JENNIFER TAYLOR: Well, the city would be budgeting for that because, as Mr. Wayne, as Senator Wayne has indicated, they would be...that would be part of the budget. They would know that we are asking for the exemption for that property. [LB613]

SENATOR SCHUMACHER: Right. But unless the city cuts its spending someplace, putting it on the budget, if you're going to balance the budget, you just got to come up with the money from somebody and that's either property or sales tax. [LB613]

JENNIFER TAYLOR: I think the amount that they'd be looking at for the city would be actually rather minimal, where it's actually very important to the housing authority. [LB613]

SENATOR SCHUMACHER: Okay. So what we're doing basically is saying, your work is very important and we're going to make this adjustment so the city and other taxing folks are going to pay a little more so that you can have a little more. [LB613]

JENNIFER TAYLOR: I would also suggest that if we had the extra funds to reinvest back into our properties, we would have a lesser need for Omaha Police Department services and fire services and other such city services at our property. Reducing that need would actually then benefit the city. [LB613]

SENATOR SCHUMACHER: Thank you. [LB613]

SENATOR SMITH: I see no further questions. Thank you, Ms. Taylor, for your testimony today. [LB613]

JENNIFER TAYLOR: Thank you very much. [LB613]

SENATOR SMITH: Next proponent of LB613. Welcome. [LB613]

CHRIS LAMBERTY: Good afternoon. Thank you. My name is Chris Lamberty, C-h-r-i-s L-a-m-b-e-r-t-y. I'm the assistant director at the Lincoln Housing Authority and here also representing Nebraska NAHRO, which is an organization that represents all the public housing authorities across the state of Nebraska. We support this bill for a couple of reasons. There are public...federal public housing developments which is a specific federal housing program that serves the lowest income members of your communities. There are federal public housing developments in over 100 communities across the state of Nebraska. Every single one of those developments is property tax exempt under state law because they're owned by the local public housing authority. The only exception are a few developments in Omaha which, in order to replace some older public housing, they recruited private investment into the property, and that changed the ownership structure. So other than a specific quirky ownership structure of this federal public housing, it would be tax exempt like all other federal public housing in the state. And so we support it because we think federal low-income public housing should be property tax exempt. The Legislature made that decision years ago and it has operated that way since the beginning of its existence. In addition, in recent years and actually for a number of years now, these federal programs, as the prior testifiers talked about, are not particularly well funded at the federal level. And the strong, strong encouragement from HUD at this point is for local housing agencies, when they need to modernize their federal low-income public housing, is to go out and seek private investment and enter in these kind of arrangements that OHA has done. So the real possibility exists going forward that you can have a federal low-income public housing development in Grand Island or somewhere like that, that is currently property tax exempt, that needs to be...get new investment put into it to modernize it. There's not enough direct federal subsidy basically because at this point they encourage subsidy through the tax code, which Senator Schumacher has rightly sort of figured out, instead of direct spending. And so that's the direction we are being encouraged to go. And so in order to do that, sometimes the ownership structure ends up into these quirky little limited partnerships where the people getting the money in, get the money on the back end from their tax credits, but the local housing authority is still basically operating the same program and the same housing. And other than that quirky ownership structure, that property would be property tax exempt. So I would urge your support in resolving that issue. Thank you. [LB613]

SENATOR SMITH: (Exhibits 1 and 2) I see no questions. Thank you, Mr. Lamberty, for your testimony. Next proponent of LB613. Seeing none, we move to opponents, those wishing to testify in opposition to LB613. We do have a letter for the record in opposition to LB613 from Larry Dix, representing NACO. We now move to neutral testimony, those wishing to testify in a neutral capacity on LB613. Seeing none, we do have a letter for the record in a neutral capacity from Diane Battiato, representing the Douglas County Assessor/Register of Deeds. And we welcome Senator Wayne back to close on LB613. [LB613]

SENATOR WAYNE: While in 1999 I had just entered my first year of undergraduate at KU, the legislative history is clear about the Nebraska Housing Act which they never intended public housing to be taxed. And because of this ownership development that came from federal, I think the spirit of the law is still relevant that it never should be taxed. So I think if it should have never been taxed, it's unfair now today to say, well, how do we figure out how to use the money that's currently being taxed, who's going to pick up the tab? The reality is it should have never been taxed and that's the issue that we have. And the other reality I think I want to bring up dealing with this is that because this is a housing authority and federally owned, unlike me as a homeowner, unlike me as a businessman, I can go to the bank and use my land and my business as collateral. They can't. There's no really other financing mechanism out here except from this program that's been able to be used and they shouldn't be penalized and the development shouldn't be penalized because that's the only current mechanism. Now if we want to all go to federal law and try to change the federal law, I'll be happy to allow them to use collateral, but they don't have taxing authority so bonding really isn't an option because there's no base to do that and pay it back. This is one of the few ways. And as Omaha gets older and the housing authority and the buildings they own gets older, we have to have a mechanism. And we as a body have said, since 1999 and going forward, that public-private partnerships are the way to go. We should encourage this by making sure that there are the right tax exemptions that have existed and should have existed and have always existed until this quirky ownership came around to make sure that we encourage private partnerships, because that's what we as a body had decided since 1999, not just in public housing but throughout most of the things we do. We encourage public-private partnerships. And this is a way to make sure that we continue on that path. So with that, I appreciate you allowing me to testify and be here today and I would ask this committee to move this to General File. Thank you. [LB613]

SENATOR SMITH: Thank you, Senator Wayne, for your closing on LB613. I see no further questions. Oh, Senator Groene. [LB613]

SENATOR GROENE: I did have one. [LB613]

SENATOR SMITH: Go ahead. No. Senator Groene. [LB613]

SENATOR GROENE: So...thank you, Chairman. So I missed some of this so maybe I'm redundant here, but. So a private company, bank or something, comes in and invests in federal housing along with a partnership with the federal government, right? [LB613]

SENATOR WAYNE: Well, with the local housing authority. [LB613]

SENATOR GROENE: With the local housing authority. They build it? [LB613]

SENATOR WAYNE: No, the local... [LB613]

SENATOR GROENE: They finance building it? [LB613]

SENATOR WAYNE: No, the local housing authority builds it, but they do help partner with the financing. [LB613]

SENATOR GROENE: All right. And that finances is paid back by the housing authority? [LB613]

SENATOR WAYNE: No, that's a tax credit and they're making their money, which was talked about at length, and Mr. Achola can give you more better background because he's in...he does it every day. But they build it. They operate it. They maintain it. Only...the only ownership aspect of it is just for the legal requirement of meeting the federal Low Income Housing Tax Credit. But as far as the day-to-day operations, first right of refusal, after the housing tax credits run out, they assume ownership or they buy it from the individual or from the company. For all intents and... [LB613]

SENATOR GROENE: The housing authority does. [LB613]

SENATOR WAYNE: Yes. For all intents and purposes, it is a public housing authority building. It's just that 10- to 15-, or 7- to 15-year gap where they have to pay property taxes on it. But after that... [LB613]

SENATOR GROENE: When they...you're charging by income levels, I guess, payment, rent to the individuals living there, right? [LB613]

SENATOR WAYNE: Correct. [LB613]

SENATOR GROENE: Who gets that money the first seven to ten years? [LB613]

SENATOR WAYNE: The housing authority would get that. [LB613]

SENATOR GROENE: So the banks don't get any of it. [LB613]

SENATOR WAYNE: No, they're purchasing the tax credit so they can use the tax credit. That's it. [LB613]

SENATOR GROENE: That's it. They're just nonprofit, then they have a tax credit that the nonprofit can't use the tax credit but the free-enterprise person can. Is that right? All right. Thanks. [LB613]

SENATOR SMITH: Thank you, Senator Wayne. That is the closing on LB613. We now move to our next bill, LR17CA, to be introduced by Senator Wayne, relates to a constitutional amendment to eliminate requirements that property taxes be levied by valuation uniformly and proportionately. [LB613 LR17CA]

SENATOR WAYNE: (Exhibits 1 and 2) Good afternoon, Chairman Smith and members of the Revenue Committee. My name is Senator Justin Wayne, J-u-s-t-i-n W-a-y-n-e. I represent Legislative District 13, which is north Omaha and northeast Douglas County. This is actually a very complicated issue but once we start talking about it, it's not very complicated. LR17CA would provide a constitutional amendment to Article VIII, Section 1 of the Nebraska State Constitution to repeal the uniform, proportionate clause. In 2015, Urban Affairs Committee published a report on LR155, the committee's interim study designed to take a comprehensive look at the economic development tools available to municipalities in Nebraska in comparison to those tools available to municipalities in other states. One of the suggestions...suggested changes included in the LR155 report was authorizing some form of property tax abatement, but we can't even have that conversation until we first address the barrier of uniform and proportionate clause in our state constitution. The committee should have just received a handout from the Urban Affairs as part of the study--a table of contents from a booklet summarizing the development incentives in Kansas City in...Kansas City, Missouri, in 2004. Despite the fact that this is 13 years old, you'll see a number of development tools in Kansas City that Nebraska quite clearly cannot do, especially around tax abatement. Tax abatement is a prevalent incentive in most statements allowing state and local governments to exempt or reduce property taxes otherwise owed by businesses in order to induce/entice businesses to relocate, expand within their state or local government. Some of the instances contained in the Nebraska Advantage Act constitute a form of tax abatement. But since they are abatement in income and sales tax, the uniform and proportionate clause does not apply. While most states have some form of uniformity clause in their state constitution, Nebraska is fairly unique in that we also will have a proportionate clause. Just a little history of why that came about: As railroads went across the state in the 1865 and later, they did not like to be taxed differently as they went through states. So they went to all the local legislatures and said, if we get taxed property wise in Omaha, we want it to be the same in

Scottsbluff; just makes it easier for everybody to do accounting and we feel like each county should not charge us differently. Well, out of those states in which all the railroads would cross the country, only four still have some form of uniform and proportionality clause. Kentucky has both, but it's very unique and they interpret it completely different than the way we interpret it. Colorado has uniformity but does not explicitly have proportionality, but interpretations again are completely different. New Hampshire has...does not have an exclusive uniform and proportionality, but it still requires equal provisions across the state but it's not, again, as stringent as ours. And New Mexico also has one but, again, it's different because they break property classes differently. So they're still uniform and proportionate, but they're in different property classes, which we don't have necessarily. Aside from being one of the only states that still have both uniform and proportionate requirements, Nebraska's uniform and proportionate clause has been interpreted very, very conservatively, leading to the application in almost areas that sometimes do not even apply. After meeting with long-time experts...and many of you know that I truly believe that 70 percent of the social issues that I deal with in Omaha go away if people have good jobs, good-paying jobs. That means we as a body should do more to figure out how to grow our economy. So I immediately jumped in on how come we can't do tax abatement, and this is what I keep running into. If you look at the Attorney General's Opinions, you will see mounts of case law or Opinions regarding this issue and why they can't do things. And after meeting with many experts on Nebraska taxation, it was clear that this is an issue that we have to deal with, and probably the best way for us to start figuring out how to deal with things. When you look at the clause itself, there are five exceptions and I want to note the exceptions: greenbelt properties, agricultural properties, homestead exemptions, historic preservation. And you can actually include TIF, although I would argue TIF is not an exception because it's still taxed. It's just the tax dollars go somewhere else. But if you notice why there are exemptions, particularly agriculture, is because agriculture 30-40 years ago did not want to be taxed the same way as maybe Omaha did at 95 percent of their valuation. So now currently agriculture is taxed about 75 percent. I'm not saying that's right or wrong, but there is a reason there is an exemption because there should be some differences. And that's what the farmers in the state said, it should be different. And I'm saying we should maybe go a step farther. Committee members should have also received a copy of my amendment, AM629. This amendment to the green copy makes two changes. First, the bill addresses the concerns that my office received from several agriculture groups regarding the language that was struck. The reason we struck the language dealing with agriculture is because if we get rid of the uniform and proportionate clause, there's no need for the exception. But I understand their concern so we made sure that we kept the language allowing agriculture and horticulture land to be classified separately in a distinct class of property as an exemption to the uniform and proportionate clause. Again, my thought originally was if there's ability not to be uniform and proportionate, then there's no need for that exemption. But we wanted to...we understood their concerns. The amendment attempts to retain the language to make sure that we keep it separate. The second is the amendment strikes an additional reference to uniform and proportionate requirement which was not struck in the original bill. And here's the other reason why this is important. Regardless of where you're looking at certain exemptions or not, one thing I ran across is that in addition to property tax abatement, our Attorney General, not just the current one but throughout the years in case law, says that this reason, this clause right here, prohibits putting a hard cap on property tax increases because they have to be uniform and proportionate across. So some of you who may favor a hard cap increase cannot because of this provision, and that's another reason why we should look at it. It's also been cited as a possible...the possible reason why we cannot do circuit breaker tax credits. So this affects a lot of things and it's time for us as a body to look at it and say we maybe need to move forward with it. So right now I believe we have one hand tied behind our backs when it comes to economic development and LR17CA is one way that we can start the process of creating new economic development tools across the state and had...and be able to compete better with our neighboring states. I know Senator Groene and I have had plenty of conversations about TIF and things we can do different with TIF. Part of the reason I introduced this bill is because of those conversations. In order for us to relieve the pressure of TIF, because right now that's one of the few financing tools we have for economic development, we have to figure out different ways to do property tax abatement and allow the local jurisdictions, under the guise of some guidelines, to be able to do that. And I'm going to cite one example. If a company wants to come in with 1,000 student or 1,000 mass-producing jobs to produce widgets, they can go to Tulsa right now, meet with their city council, their school board, and their county board, and some state representatives, and decide to get three years of tax abatement if they all agree. For the first three years they're bringing that. We can't even have that discussion because we can't do it. And all I'm saying is let's have a discussion so maybe we can have further economic development tools as we, as a body, start having a conversation around economic development. And with that, I'll answer any questions. [LR17CA]

SENATOR SMITH: Senator Groene. [LR17CA]

SENATOR GROENE: Thank you, Chairman. So right now, with the uniformity law, rule in the constitution, if we said all new construction that we ease you into your property taxes--the first year you pay 10 percent, the next year 20 percent of the value, 30 percent--we could not do that now, could we? [LR17CA]

SENATOR WAYNE: No. No, sir. No, no, no, we cannot. [LR17CA]

SENATOR GROENE: Or we could say, to offset costs, instead of TIFing things at the first two years after construction you pay no property taxes so that you can get in to competitive mode of operating your business without that cost. We couldn't do that now. [LR17CA]

SENATOR WAYNE: We could not have that conversation right now. [LR17CA]

SENATOR GROENE: Thank you. [LR17CA]

SENATOR SMITH: Senator Schumacher. [LR17CA]

SENATOR SCHUMACHER: Thank you, Chairman Smith. And thank you for your testimony today in introducing this bill, Senator Wayne. I prioritized a bill somewhat like this a few years ago. One of the reasons it went nowhere was because you have the large utilities--phone companies, pipe companies, railroad companies--who were pretty insistent that if you take out the uniformity and proportionate clause that we would gang up on them and we would tax them at a higher rate of tax than we would tax homes, small business property, ag land, and pretty much put a screeching halt to the idea. How do you deal with that problem? [LR17CA]

SENATOR WAYNE: Well, I did research that bill and researched some of the testimony at the hearings and I understand their concerns, but they're able to operate in 48 other states. Well, in this case, 46 other states and they could do so just fine. But I do understand their concern. I don't think there should be carve-out divisions for railroads. One, it probably violates the special class. But we as a state have to get serious about how do we figure out the best economic development tools. And right now we can't even have the conversation, a full conversation. So I say we take it head-on and we have to have a conversation because, like I said in my testimony, we are literally operating right now with one hand tied behind our backs. [LR17CA]

SENATOR SCHUMACHER: Now a couple of years ago we got stung pretty bad. We decided we were going to allow, what was it, dead horse racing, and the dead horses could race. [LR17CA]

SENATOR WAYNE: (Laugh) Dead horses. [LR17CA]

SENATOR SCHUMACHER: And we were going to create an exception to the gambling law to allow dead horses to race, and then we were going to take the money and apply it...maybe it was to property tax relief or something. I forget what. And the Supreme Court, applying some petition law, whopped us aside the head and said, no, can't do it; you got two subjects in your constitutional amendment. And pulled it off the ballot. As I go through here, I see...oh, if I were a railroad company I would argue that there probably is ten subjects in here. Number one, what if I want it to be uniform but not proportionate? You know, every time you see uniform or proportionately it's like two subjects. What if I want this rule to apply toward real property but not personal property, or vice versa? That's two subjects. So now I'm up to four subjects, two times two. And now, one, you're messing with the agricultural thing, so that arguably is an extra subject. And then I see again uniform, proportionate, so...in that line, that's two subjects. And then I see where the United States, if they'd give a franchise, we're changing that, so that's another subject. And then there's a paragraph on the end talking about taxes and how they're levied on intangible property, so that's another subject. And so we would have to put, if we were going to be conservative and not waste our time, at least several amendments on the ballot to try to do what you're doing in one because we're, as a voter, I don't want to have to vote the package. I want to be able to pick and choose where my...I like some of this, don't like other parts of it. So...and this is, incidentally, the same problem why a petition drive to change property tax or something else is doomed because it has way too many petitions that would have to be filed in order for it to make sense. So how do we deal with that problem? Unless we simplify, if you had to just choose one subject here and get rid of everything else so that we could get this on the ballot, how would you do it? [LR17CA]

SENATOR WAYNE: I would answer a couple way...or I'd answer it this way. One, as an officer of the court, being a good attorney, I will use the Supreme Court as a guideline to answer that question. But I would submit to you that the difference between the dead horse racing...it took me, to figure out what you were talking about. But once I figured out (laughter) what you were talking about, I understood what you were saying. That dealt with different provisions in the constitution. And I would submit that this is one provision of the constitution and it is one subject. But I understand why they might...why the court might say it's different. But the beauty of where we're at today is we don't have an election until 2018 and so I believe with this committee and the legal counsel on this committee, we can come up with an amendment to figure out how to deal with all those and put it on the ballot. But I do think this is one of the most important issues for economic development that we're facing. So in not answering your question but answering your question, I will do my best to follow the guidelines of the Supreme Court to make sure that we are in order and so we don't be challenged. But the reason on day ten this bill was introduced, as I didn't have an office for the first four days, and we were arguing about how to make this better was because it did give us the time over the year to figure out how to make this better to meet all those requirements instead of trying to introduce a bill next year, get it through committee, and get it on the floor in a short session, to have it ready for a November election. This gives this body time and myself time to figure out the right amendments to make sure we can get this done. [LR17CA]

SENATOR SCHUMACHER: And then one final question: Who actually was involved in the drafting of this? Was there some big high-powered Omaha firm involved or...? [LR17CA]

SENATOR WAYNE: Not after all the reasons why you said it would fail, I would not tell you that a high-powered law firm in Omaha was behind this. But this was actually, and I don't want to throw anybody under the bus, so I'm going to say I came up with this and legal counsel did the best to figure out how to get this to a bill so we could have this conversation. Trevor did the best he could with my guidance to figure out how to have this conversation this year so we can tweak it over the year because we knew it was a big conversation. [LR17CA]

SENATOR SCHUMACHER: Well, of particular curiosity, in your amendment, page 2, line 6, there's an interesting change there that somebody was detecting, and I never read it this way. But maybe there is something there. You're changing the word "taxing" to "valuing," and that's really kind of interesting if you look at those two words being different in the context of some of the property tax thinking you might do. So I just was curious of who detected the nuance there between valuing and taxing and what the thinking was on why those words need to be changed. [LR17CA]

SENATOR WAYNE: That will be a conversation that I'll have with Bill Drafters because we knew what we were trying to do and they did that word. So if it's a good thing, they should get all the credit. If it's a bad thing, it all falls on me. So I don't know why that word was changed. But we were in the conversation in the amendment, that's the word they decided to use. [LR17CA]

SENATOR SCHUMACHER: If it just turns out to be an interesting thing, who gets the blame? [LR17CA]

SENATOR WAYNE: Blame would be me. Credit would go to them. [LR17CA]

SENATOR SCHUMACHER: Okay. All right. Thank you, Senator. [LR17CA]

SENATOR SMITH: Senator Friesen. [LR17CA]

SENATOR FRIESEN: Thank you, Chairman Smith. Thank you, Senator Wayne, for bringing this. It is kind of interesting when I get to looking at it and thinking about it, but it does bring up when we talk about some big changes into how we fund things. Because when you start talking about giving different properties different values and everything is based on school funding, the TEEOSA formula, it all starts to tie it together. And so it makes a very interesting combination when we start looking at changing how we fund schools. Are you open to that discussion with this bill? Is that... [LR17CA]

SENATOR WAYNE: Absolutely. And it may be somewhere where we just eliminate "proportionate" and keep "uniform." It may be something where we keep "uniform" but eliminate "proportionate." Or maybe we tweak how they're in the section. And that's what other states have done. [LR17CA]

SENATOR FRIESEN: Because everything ties back to the TEEOSA formula when we use values or we start to affect that. It's like TIF financing, using the base formula or the base value instead of the real value. So look forward to that discussion. [LR17CA]

SENATOR WAYNE: And again, this has been...because of the Urban Affairs Committee work on the LR155 study and then because of the Auditor's report, I immediately--and Trevor will back me on this--I immediately kept saying, Senator Groene is not completely wrong. What's the issue? And what I keep hearing is this is the only economic development tool we have is TIF. And the reason we don't have any other thing dealing with property taxes is because of this section. And so we immediately tried to draft something for this year so that we can have a conversation over the next year and figure out what's the best way to go. [LR17CA]

SENATOR SMITH: Senator Schumacher. [LR17CA]

SENATOR WAYNE: I did say that for the record: Senator Groene is not completely wrong. I just wanted... [LR17CA]

SENATOR SCHUMACHER: Thank you, Chairman Smith. Just following up on that, I think you're on to something here in that the uniform, proportionality clause stops us from doing a lot of things that probably could be done, like the property tax. One of the big obstacles to property tax changes is if we take a pot of money we're going to use it for property tax, real property tax relief, then the largest landowners get the largest chunk of the pie. And that's probably not where our sympathy lies. It lies probably with the smaller owner. But if we got rid or tinkered with this properly, we could say, look, your first X amount of acres or X amount of valuation you're going to be taxed at this rate, but the bigger you get the higher your tax rate on your property, so that the larger landowners do not get to pig out on the appropriation of tax relief that we give for land. And it would enable a graduated property tax system where the more wealth you have, the higher rate you pay. [LR17CA]

SENATOR WAYNE: That is one possibility. I think it's...and I just think in order for us to even have that conversation, we have, you know, exactly, we have to start here. [LR17CA]

SENATOR SCHUMACHER: Right. [LR17CA]

SENATOR SMITH: Senator Groene. [LR17CA]

SENATOR GROENE: Did you look into some other states? Is it a mishmash of a whole bunch of different valuations across county lines, different? How do you keep it so it is a little bit uniform when you do cross it? Depending on who you elected for assessor, in the old days the assessor had a lot of power and could give out papers. [LR17CA]

SENATOR WAYNE: So... [LR17CA]

SENATOR GROENE: Now who sets some guidelines? Is it local then because property taxes are local or is it the statewide...unless you get rid of "uniformity." [LR17CA]

SENATOR WAYNE: So that's just it. Once we remove it from the constitution, does not mean this body still can't set a statewide guidelines. It's just right now we can't even have the conversation about what those guidelines are because they have to be the same except for those exemptions. So typically, like Colorado, they have uniformity but they have...their uniformity is interpreted different by courts and their statutes have tweaked it to somewhat do what Senator Schumacher has said about allowing different classes. Well, we can't even have that conversation of what those classes look like because of this. So just because we remove it from the constitution does not mean we still can't say...we still can't set statewide policy. We still can, but we may want it to be different than uniform and proportionate across the entire state except for the five exemptions that are currently listed. So it will require us to work and that's what I think this body is wanting to do. [LR17CA]

SENATOR GROENE: Thank you. [LR17CA]

SENATOR SMITH: (Exhibits 3, 4, 5, 6, 7, and 8) See no further questions. That is the opening on LR17CA and we now move to proponents of the bill. Seeing no proponents, we move to opponents, those wishing to testify in opposition. We do have letters for the record in opposition: Scott Brettmann representing the American Society of Farm Managers and Rural Appraisers; Rocky Weber, the Nebraska Cooperative Council; Diane Battiato representing Douglas County Assessor/Register of Deeds; Troy Stowater, Nebraska Cattlemen; and Steve Nelson, Nebraska Farm Bureau. Those letters were sent in opposition to LR17CA. We now move to those wishing to testify in a neutral capacity, neutral. We do have a letter for the record in a neutral capacity and that is from Lynn Rex representing the League of Nebraska Municipalities. And, Senator Wayne, you're invited to close. [LR17CA]

SENATOR WAYNE: I'll be really brief. In those letters of opposition, that's what that amendment was addressing. What we heard was from particularly agricultural groups the original striking out that exemption, and again my thought process is if we got rid of the clause we don't need exemptions and...but I do understand their concern and that's why we've added the amendment to address the concerns that were in those letters. So with that, I appreciate your time. [LR17CA]

SENATOR SMITH: And that was a question I had for you, so thanks for clearing that up. Further questions from the committee? I see none. Thank you. And that's the closing on LR17CA and that concludes our hearings for the day. Thank you. [LR17CA]