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Revenue Committee  
January 26, 2007

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[LB22 LB106 LB364 LB403 LB537]

The Committee on Revenue met at 1:30 p.m. on Friday, January 26, 2007, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB106, LB537, LB403, LB22, and LB364. Senators present: Ray Janssen, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Abbie Cornett; Don Preister; Ron Raikes; and Tom White. Senators absent: Chris Langemeier. []

SENATOR JANSSEN: Good afternoon ladies and gentlemen. Welcome to the Committee on Revenue. A few things we're going to go through here kind of the rules that we do, but first I will introduce the members of the committee that are here. To my far left is Senator Burling from Kenesaw. Senator Preister hasn't joined us yet. And to Senator Burling's right is Senator Cornett from Bellevue, and to her right is the vice chair, Cap Dierks from Ewing, Nebraska. To my far right is Erma James, the committee clerk. Next to the committee clerk is Senator White from Omaha. My immediate right is George Kilpatrick, legal counsel for the committee. Senator Raikes is not here yet and Senator Langemeier I don't believe will be here today. He's gone somewhere. Marcus is our page, our permanent page. A couple things I'd like to tell you. Turn off your cell phones now. And I'm not going to get as drastic as Senator Johnson did in Health and Human Services. If we hear a phone ring, why, that's going to be real bad. I won't use the term he used, get shot at sunset, but we won't get that far, but there was one that went off yesterday and it is annoying. So let's make sure that they are off. There are sign-in sheets by each door in the back. Please have those ready if you're going to testify. And as you come up to testify drop them in that little box right in front of Erma. I think that just about takes care of everything, and do we have Senator Engel here for the first bill? Senator Engel, the floor is all yours. [LB106]

SENATOR ENGEL: Thank you very much, Senator Janssen. Thank you, Senator Janssen and members of the Revenue Committee. I am Senator Pat Engel, spelled P-a-t E-n-g-e-l. I represent the 17th District in northeast Nebraska, and I'm here today to introduce LB106. LB106 changes the method used to impose an excise tax on snuff which is commonly referred to as moist, smokeless tobacco or we'll refer to it MST. The current tax of an MST is 20 percent of the wholesale price. Under LB106 the tax would be set at 50 cents per ounce with fractional parts of an ounce taxed proportionally at the same rate. Products weighing less than one ounce would be taxed at a minimum of one ounce. Although I do not endorse the use of tobacco products, I do support a fair tax system. As you know, cigarettes are taxed by the pack, yet smokeless tobacco is taxed on an ad valorem basis. This method gives an unfair tax advantage to the less expensive brands of MST which are growing at a faster pace than name brand products. The industry has realized this tax loophole and they have taken advantage of it by developing the lower end quality product; therefore, although this less quality product is less expensive, it is also artificially cheaper due to the way we tax this particular product. For example, some cans of snuff are sold for 49 cents, meaning that

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excise tax is just a couple of pennies. Compare this to a name brand can of snuff selling for more than \$4.00 with an excise tax of approximately 60 cents. The generic brand product sells for less than the amount of the excise tax on the name brand. However, the harm caused by a unit of tobacco is essentially unrelated to its price, as all tiers of MST's contain virtually the same amount of nicotine. A \$6.00 can of premium smokeless tobacco does no greater harm to the user or to society than a \$2.00 brand of generic smokeless tobacco. But under the current system in most states, the premium brand can be charged a tax three times or more than that of the generic brand. And much of the effect of this ad valorem tax is merely to encourage more consumption of the inexpensive brand. An added advantage of the tax change would be that the 49 cent cans of snuff may not be as tempting to our youth if the tax pushes the price to over \$1.00 and that's what we're trying to discourage, use of all tobacco products. As a member of the American Legislative Exchange Counsel, I became interested in this tax equity issue when ALEC adopted a policy last December regarding tax equity for smokeless tobacco products. The resolution opposes ad valorem excise taxes on most smokeless tobacco products and this states that while all 50 states collect excise taxes on products such as gasoline, beer, wine, spirits, and cigarettes, all of these taxes are imposed on a unit or volume basis--a gallon of gas, a liter of wine, a barrel of beer or a pack of cigarettes. Most smokeless tobacco, however, is one of the few products that are subject to an ad valorem tax or a tax based on price. Excise taxes unlike sales taxes are intended to tax consumption. Forty states currently impose ad valorem excise taxes on moist, smokeless tobacco products and the ALEC resolution urges policy makers in these states to repeal this outdated discriminatory tax policy in favor of an excise tax based on weight. The resolution was passed unanimously by the Commerce, Insurance, and Economic Development Task Force of ALEC and similar legislation is being introduced across the country this year. I urge you to consider the merits of taxing MST by weight. The method would be easy to administer as the weight is already listed on the cans and much fairer as it taxes based on consumption not on an arbitrary price. If you have any questions I'd be happy to try to answer them and I appreciate your consideration. [LB106]

SENATOR JANSSEN: Any questions? Senator Preister. [LB106]

SENATOR ENGEL: Senator Preister. [LB106]

SENATOR PREISTER: Senator Engel, I appreciate what you're looking at doing here. My question to you would be would you consider it a friendly amendment to your bill if this committee were to add an amendment that would increase the price above the 50 cents that you've got? [LB106]

SENATOR ENGEL: Well, I wouldn't object to that. I'm just looking for equity right now is what I'm looking for. [LB106]

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SENATOR PREISTER: Sure, but in addition to that. [LB106]

SENATOR ENGEL: Yeah, I'd have no problem. [LB106]

SENATOR PREISTER: Okay, thank you. [LB106]

SENATOR JANSSEN: Any other questions? Senator White. [LB106]

SENATOR WHITE: Senator Engel, did they look at all at removing ad valorem taxes on loose tobacco and other things? [LB106]

SENATOR ENGEL: They did not. You know, you've got your cigarettes, cigars, and cigarillos, and so forth, but I think we're taking this in steps. The tobacco sales, other than cigarettes, 63 percent of the sales are in moist tobacco. The others I think would be a little harder to figure out how to do it as this point in time, I really do, because you know, the different sizes, different qualities. [LB106]

SENATOR WHITE: Thank you. [LB106]

SENATOR JANSSEN: Any other questions? [LB106]

SENATOR ENGEL: Yes, sir. [LB106]

SENATOR JANSSEN: I don't see any, Pat. Are you going to stick around? [LB106]

SENATOR ENGEL: Yes, I will. [LB106]

SENATOR JANSSEN: All right. Can I see a show of hands of those in support of the bill so we know how many people we're...those opposed to the bill? About the same amount. Okay. Thank you, Pat. [LB106]

SENATOR ENGEL: Thank you very much. [LB106]

SENATOR JANSSEN: Um-hum. We'll have the proponents first, followed by the opponents. [LB106]

ROBERT L. SHEPHERD: (Exhibit 1) Mr. Chairman, members of the committee, my name is Robert Shepherd, S-h-e-p-h-e-r-d. I'm here in favor of LB106. I'm here representing UST Public Affairs which is the government relations portion of UST. I'm a partner in a national consulting firm specializing in tax, but more particularly in tobacco tax and regulatory topics. My personal background, I worked for New York State for a total of 25 years. I was a police officer for seven years, an assistant district attorney in the Bronx for seven years, and for 11 years I was the deputy commissioner at the New

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York State Tax Department where tobacco products, regulations, and taxes were a large part of my responsibility. I'm here in support of LB106 because it fixes a problem with the tax on snuff. The system is broken and it needs to be fixed. I think by the end of all the testimony here, everybody in this room and certainly the members of the committee are probably going to have more information on smokeless tobacco than you ever wanted to know. You've taxed cigarettes in Nebraska since 1947. They're currently taxed at a rate of 64 cents a pack. It's done by the pack. That fits in with the overall excise tax philosophy of a consumption tax or a tax based on a unit of measure. It's the same as beer that's taxed by the six-pack, wine that's taxed by the bottle, or gasoline that's taxed by the gallon. An excise tax is generally a unit of measure. It's a consumption tax. In 1988, Nebraska decided to tax OTP. OTP is generally anything other than cigarettes. And when they started doing it, the first tax rate was 15 percent and in 2002, you bumped it up to 20 percent. When you first did it, you did it the way just about every other state in the union has done it. You did it as a percentage of the manufacturer's price or the wholesale price. Now you have to understand that that was the right thing to do back then because the category is very diverse. There's snuff, cigars, pipe tobacco, chew, plug, roll your own. Some of it is prepackaged, some of it is not. So a percentage price was the right way to do it. And back in 1988, the product that we're here talking about--snuff or moist, smokeless tobacco--was all manufactured and sold at the same wholesale price. So basically everybody paid the same. And I would have to assume that one of the things that went into the minds of the Legislators back in 1988 was that everybody ought to pay the same. Another thing that I'd like to state just at the beginning is we're only talking about snuff. We're not talking about anything else in the OTP category. The reason that we're talking about snuff is for one thing, to get to Senator White's earlier question, that represents 63 percent of the OTP collections. That's the part that's broken and that's the part that you can fix. 63 percent of the OTP collections just come from snuff. I'd also like to emphasize that we're talking about an excise tax, not a sales tax. There are three different taxes on moist, smokeless tobacco. One is at the federal level and that's done at the manufacturing plant and that's by the pound or by the weight. The second tax is the state excise tax that LB106 applies to. That's collected at the wholesale level and right now that's 20 percent of the wholesale cost. And the third tax is the sales tax. That's done at the retail level. The sales tax is normally a percentage of the price. If you buy a more expensive product, you pay more in sales tax. That's the sales tax philosophy across the board, but it's different from an excise tax. In 1995, the first moist, smokeless company came out with what they called a price value or a discount product, and today we refer to it as tier two. That product started selling faster than the Wall Street and industry marketing gurus thought that it should have. And when they looked at it and they started to look at why they realized that not only was the product itself cheaper, but because the tax across the country was based on an ad valorem nature the tax also became cheaper, the excise tax. So it sort of had an artificial lowering of the price. So what does industry do when they find a loophole? They exploit it. And in year 2000 the industry came out with what they called sub-price/value or deep discount or what we refer to as tier three. And that has caused

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an explosion of down trading, people trading from the premium brands down to the cheaper brands. And the reason that that's a problem is because the tax is based on the price. Down trading has caused a problem with the revenues. Cigarettes are basically declining in tax and sales across the country. On a national decline it's about 2-3 percent. In Nebraska, pack sales are also declining. Snuff, on the other hand, is increasing. Nationally it's anywhere from 2-8 percent a year. In Nebraska, the growth rate is approximately 3 percent a year. So what that means is every year you're selling less packs of cigarettes, but every year in Nebraska more cans of round snuff are being sold. Since you're selling more you're bringing in a little bit more money every year and when the fiscal people look at the monies that are generated by OTP they see an increase in money every year and therefore they don't think that there's a problem. It's an invisible problem. Although Nebraska is a landlocked state, you're like the Titanic steaming full-bore towards an iceberg. The lookouts might see a few strange things on the horizon, but it doesn't look like a threat because the threat is invisible. The threat is underneath the surface. The threat below the surface is down trading. Cheap tobacco means a cheaper wholesale price and that means a lower excise tax or sin tax. With cigarettes you don't have that problem. Cigarettes come in premium, mid-tier, and low end. This sells for anywhere from \$3.25 to \$4 at retail, this sells at retail for about \$2.27, and at the low end sales were about \$1.87 at retail. However, the state gets on each of these 64 cents in excise tax. So each time a pack is sold the state has no economic interest in where along the pricing scheme the consumer chooses to go. That's an industry problem, it's a company problem, but it's not a state revenue problem. That's different with moist, smokeless tobacco. Today because of the three tiers that are involved, there are actually seven different pricing points from high end to low end. And because there's seven different pricing points, and by pricing points I mean wholesale prices, there are seven different excise taxes that are associated with this. At the high end, the most expensive product carries an excise tax of 62 cents. And as the wholesale prices move down along the line so do the excise taxes. So it goes from 62 cents, to 60 cents, to 44 cents, to 39 cents, to 26 cents, to 24 cents, and finally at the low end to 22 cents. Forty cents in difference between the high end and the low end and that means 40 cents in tax less that the state collects depending on--or up to 40 cents--depending on where the customer chooses to buy it. As the market shifts downward, less tax per can is being collected. And one of the slides in the handout that I've provided you shows you, I think, from 2002 to 2005 that you're actually collecting less tax per can on average, and that's on average. Because of the pricing scheme and the ad valorem nature of the tax, you're also subject to market manipulation. This brand, Timber Wolf, in November of 2004, cut their wholesale price by 30 percent. When they did that they also cut the taxes by 30 percent, because the taxes are tied to the wholesale price. So in November of 2004 the company that manufactures this ended up giving themselves in Nebraska a 30 percent tax break. You didn't get a chance to vote on that. They just did it and you were stuck to live with it. That doesn't happen if LB106 goes through. Back in April of 1993, Philip Morris, the makers of Marlboro, reduced their price. Across the country states didn't even blink an eye because the taxes remained

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the same, because they're by the pack or by the stick. But you felt it when Timber Wolf was reduced by 30 percent. The other gimmick, and market pricing is not a gimmick, but it has an effect on your taxes, but there are a number of gimmicks that are used. One of them is very popular. It's called two-for-one. Now in states outside of Nebraska they actually say buy one get one free. In Nebraska you can't do that. So in Nebraska what's sold, and I bought this in Lincoln, it says two cans for a special low price. Now in this box are two cans of this product. This product has a wholesale price of \$2.20 a can. That means it has an excise tax of 44 cents on this one can. I bought these two cans at the special low price for a total of \$2.65 retail. That means, basically, that I bought one and got the second one free. They got around the law by changing some of the wording. If LB106 went through you'd pay the excise tax on two cans. If they have promotions on cigarettes you pay the tax on both packs of cigarettes. There would be no such thing as a buy one get one free. The other thing that this avoids is what Senator Engel referred to in his opening remarks were the 49 cent cans. This is a normal can of Grizzly that has a wholesale price of \$1.20 or would carry 24 cents in excise tax under a normal condition; however, it's being marketed here in Nebraska as well for 49 cents--49 cents. That's the retail price. That includes all of the excise taxes that are going to be paid on it which only amounts to a couple of pennies. The maker of this product, Longhorn, also has the same thing. Longhorn has a wholesale price of 81 cents resulting in an excise tax of 22 cents a can, except when they market it at 49 cents retail. These are both on sale today in Nebraska. Now I actually did not buy these cans in Nebraska. I bought them in another state. When I drove into Lincoln last week I drove to a tobacco outlet and asked if they had 49 cent Longhorn or Grizzly. They said no, they sold them out right away. They knew them. They have had them in the past. They get them. They sell them out right away. That's how popular they are. They literally can't keep them on the shelves. That's the kind of thing that LB106 addresses very seriously, because quite frankly my client thinks that that is just not a good thing. Tobacco industry has enough problems with its image the way it is. This just makes things much, much worse. The other aspect of the 49 cent can is the social cost involved. One of the purposes or one of the stated purposes of an excise tax is to help pay for the social cost of whatever the product is. Well, can you tell me if the social cost on a 49 cent can is any different from the social cost on a \$4 can? I can't tell the difference. But an excise tax that was equal on both of these would at least go more to addressing that social cost. That's also something that LB106 would take care of. Basically, companies ought to be able to fight it out or slug it out based on the quality of their product and the price that they choose to pay for it. They shouldn't have to compete based on a tax philosophy or a tax subsidy. That's the same with, you know, Campbell's soup versus Progresso soup, Coke versus Pepsi, Gallo wine versus Beringer wine, Marlboros versus Sonomas. Companies battle it out all the time, but there shouldn't be a tax subsidy involved and that's what LB106 does is removes the tax subsidy. That way everybody would pay the same sin tax or excise tax just like you do with a gallon of gas, a six-pack of beer, or a bottle of wine. LB106 also raises revenue for the state. We estimate that you would add about a million dollars a year, and that's caused by bringing the low end products up to the high end.

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So if you did that, basically retroactive to January 1 of this year, for 2007 you'd pick up about a million dollars and we only project out about five more years, but in those five years you'd pick up roughly about a million dollars every year. Now the fiscal note that's attached to this bill recognizes that there is money at first and then also says it would appear that later on, in the later years, it might lose money. And what they're getting at is what's called the automatic escalator of a tier one product. Every time the wholesale price goes up the tax goes up a little bit. And what they're looking at is if you cap it when the wholesale price goes up, if it goes up, you don't capture that little bit of extra tax. But I would submit to you that an awful lot of that is going to be immediately captured by picking everything up to the premium level, because when there's 40 cents a can difference between the high end and the low end right now, that's 40 cents right now that you're going to capture immediately. So will the lines cross? They might somewhere in the next 10 to 40 years. I can't tell you exactly when. It also depends on an awful lot of market assumptions. It assumes that there's going to be a price increase every year. It assumes that nobody changes from tier one down to tier three. It makes an awful lot of assumptions, but if that's a concern you always have the option of revisiting the tax amount just like you've done with cigarettes. Since you implemented a cigarette tax, you've adjusted that cigarette tax 11 times. You also have the option of adjusting this in the future if you see that there's a problem. One of the other things that you'll notice in my handout is a sheet that talks about the four companies that manufacture this product. There are four companies. The only company that is in favor of LB106 is my client, US Smokeless Tobacco. The other three companies do not support it and my understanding is that they're against it. The sheet that I've given you shows you a little bit about each company. The message that's being sent there is none of them are small. There is no such thing as a little tobacco company. None of them are the little guy. They're all in one way or another, they're all big companies. The other thing that you'll notice on that chart, the very bottom part of each one, is something that refers to the Smokeless Tobacco Master Settlement Agreement. That's a settlement agreement with the state attorney's general. It's almost a mirror image of the Cigarette Master Settlement Agreement in that it restricts an awful lot of advertising, promotions, brand marketing policies and things like that. The one difference is that under the Smokeless Master Settlement Agreement, payments are made to a group called the Legacy Foundation which provides grants to states on education and antitobacco efforts. There are no monies that come directly into the state funds the way they do with cigarettes. My client, U.S. Smokeless Tobacco, is the only company that has signed that. We did so voluntarily. A little tongue in cheek, we thought we were going to be the first ones to do it and everybody else was going to follow suit. The other companies have refused to do it, but that is a difference between all of our companies. In summation, I urge you to favorably report on LB106. It fixes a broken problem. It lets companies compete based on the value of their product and without a tax subsidy. It also increases revenues to the state of Nebraska. And with that, Mr. Chairman, I would be happy to answer any questions. [LB106]

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SENATOR JANSSEN: Thank you, Mr. Shepherd. Are there any questions? Seeing none, thank you for being here. [LB106]

ROBERT L. SHEPHERD: Thank you. [LB106]

SENATOR JANSSEN: First proponent, please. [LB106]

BOB DILL: Good afternoon, Chairman and Revenue Committee members. My name is Bob Dill, that's D-i-l-l, and I represent the board of directors of the Nebraska Association of Tobacco and Candy Distributors. We represent the wholesalers who collect the tax in the state and we support this bill. I might add that the company that I work for, AMCON Distributing, we have a branch in North Dakota, and North Dakota has this system in place and we've had no problems with the collection of the tax. Everything works just as well. So with that if there's any questions. [LB106]

SENATOR JANSSEN: Any questions? I have one. Do you think that you will see a decline in the use of this tobacco if they're all the same price or the tax on all of them are the same? Will it make the lower end a little higher and you may see people not using it as much? [LB106]

BOB DILL: It's true it will raise the price of the lower tier products, but I think the overall retail price will dictate whether there will be a drop in usage or not. [LB106]

SENATOR JANSSEN: Now you are a wholesaler. Is that correct? [LB106]

BOB DILL: Yes. [LB106]

SENATOR JANSSEN: Have you seen a rise in smokeless tobacco? The usage of it? [LB106]

BOB DILL: Yes in certain areas, but that has more to do with people switching from other forms of tobacco use such as smoking. [LB106]

SENATOR JANSSEN: Okay. [LB106]

BOB DILL: That's where that increase comes from. I don't think it has anything to do with pricing or taxation. [LB106]

SENATOR JANSSEN: All right. Thank you. Thank you for being here. [LB106]

KATHY SIEFKEN: Chairman Janssen and members of the Revenue Committee, my name is Kathy Siefken, S-i-e-f-k-e-n, here in support of this bill today which is really unusual, because we generally don't support any kind of a tax increase. However, this

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does level the playing field and those of you that know me understand that we like level playing fields. We think that it's important that the people should be able to compete fairly with each other. And I also understand that since this is an issue that's been brought forward by ALEC that other states are also going to be adopting this. We're always concerned about the border bleed issue and the Omaha-Council Bluffs area. So we would support the 50 cent per ounce, but anything over that then puts us at a disadvantage with the Council Bluffs stores and that chases our money out of state. So we do support this bill in its current form, but if it were amended to a higher tax we would probably oppose that for that reason. So if you have any questions I'd be happy to try to answer them. [LB106]

SENATOR JANSSEN: Senator Preister. [LB106]

SENATOR PREISTER: Kathy, do you know if Iowa, I assume, and the other states are looking at making their changes, too, if what they're looking at in terms of pricing for the tax? [LB106]

KATHY SIEFKEN: I'm not sure what Iowa is doing, but I've talked to my counterpart over in Iowa and they are talking about raising tobacco taxes over there. Now I don't know specifically about snuff. [LB106]

SENATOR PREISTER: Which ones and which amounts? [LB106]

KATHY SIEFKEN: Which ones and how much. [LB106]

SENATOR PREISTER: Sure. Okay. [LB106]

KATHY SIEFKEN: I don't know that, but it was his opinion a couple of months ago that those tax increases may go through, but even if they do they're still going to be lower than Nebraska's. There's such a drastic difference between Iowa and Nebraska right now. It won't close the gap, but it will bring it closer. [LB106]

SENATOR PREISTER: Okay. Thank you. [LB106]

KATHY SIEFKEN: Um-hum. [LB106]

SENATOR JANSSEN: Any other questions? Kathy, if I heard this right, Bob said something about that South Dakota has this now? [LB106]

KATHY SIEFKEN: North Dakota. [LB106]

SENATOR JANSSEN: Or North Dakota does. All right, all right. Do you know if there are any affiliated stores in North Dakota? [LB106]

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KATHY SIEFKEN: Yes, there are. [LB106]

SENATOR JANSSEN: There are? [LB106]

KATHY SIEFKEN: Would you like me to... [LB106]

SENATOR JANSSEN: Yes, if you could get for us some records from the North Dakota stores that are with the number one wholesaler in this state and in the Midwest. We could do a little comparing then. And I'm sure they would have those records on the amount of tobacco that's being sold in North Dakota. [LB106]

KATHY SIEFKEN: Okay. Before and after the increase? [LB106]

SENATOR JANSSEN: Before and after, yes. [LB106]

KATHY SIEFKEN: Or the change? Okay. [LB106]

SENATOR JANSSEN: Yes, um-hum. If you could do that. [LB106]

KATHY SIEFKEN: Um-hum. I will. [LB106]

SENATOR JANSSEN: Any other questions? Seeing none, thank you for being here. [LB106]

KATHY SIEFKEN: Thank you. [LB106]

SENATOR JANSSEN: Next proponent. Any other proponents? Seeing none, we'll take the opponents. [LB106]

BOB MAPLES: (Exhibits 2, 3, and 4) Good afternoon, Mr. Chairman and may it please the committee. My name is Bob Maples, that's M-a-p-l-e-s. Sorry, I'm from the south. Some people misread that. It's like a maple tree with an s. And I appear today on behalf of Swisher International Incorporated. We're a manufacturer of price value smokeless tobacco products. Swisher is opposed to the proposed conversion from the current ad valorem to a weight-based tax, because as you've already heard it is a tax increase on the consumers of price value products and because it is, quite frankly, with all respect to Senator Engel, it's special interest legislation which places a tax cap--and we're going to come back to you, Senator Preister--a tax cap on the products of the sole proponent of the legislation. And it's ultimately intended to increase their market share and reduce competition. By way of introduction, you're going to hear more than you want to hear about smokeless tobacco today, but I am currently a senior advisor in government relations for the law firm of Dickstein Shapiro LLP in Washington D.C. and I'm a retained

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consultant to Swisher International. I have been associated with the tobacco industry for more than two decades, both the federal and the state level. I worked for the Smokeless Tobacco Council which was an industry trade association for 10 years, from 1993 to 2003. I was its president from 1998 to 2003. From 1993 to 1996, going back a little bit, I worked closely with UST as it was known then, and actually it was good to see Mr. Radcliffe in the audience. He used to represent us until 1996 when UST was a member of the STC. The proposal to convert to a weight-based tax system is a tax increase on adult consumers of price value and you've already heard MST, and would place the cap on premiums. All too often in this discussion of attempted good tax policy, the adult consumer--the adult consumer--who will pay the tax is forgotten. These hard working, tax paying citizens, your constituents, are only attempting to get the best products for the lowest price. You may have heard arguments that the tax system is broken. I've heard it before, other states, and that the price value products are receiving a subsidy, but the truth is the system works just fine as it is. It has given the consumer a choice in the market place and adjusts to market changes to actually increase the tax on smokeless tobacco products, as you've heard, as inflation and other market factors increases the value of the product. A conversion to a unit or a weight-based tax would break the progressive nature of the ad valorem tax and provide a tax cap on future tax levels. A weight-based tax system will require separate legislation to increase the tax. The proposal to convert the tax, as I said, is special interest legislation intended to impede what we first have now is a robust and competitive market and to increase one company's sales. The problem is not the tax. The problem is the price the proponents choose to charge for their products. The price gap that is alleged to have resulted occurred over time and grew primarily from a lack of managerial vision to see the growing gap and to effectively manage the situation. The proponents have never really faced competition in this category until, I believe it was 1994 when I was there, with the introduction of Timber Wolf by a competitor. Over recent time, other products have entered the category with lower price points than dominant premium brands, and the literal monopoly in the moist snuff category has ended. This legislation is intended to limit that competition, raise taxes on your constituents, and put a cap on their products--plain and simple. The proposal to convert this tax ignores James Carville's old adage, the raging Cajun. When asked when President Clinton won his first election, what's this all about. He said it's the economy, stupid. All of us in this room, when we're faced with rising prices look for ways to save money and cut costs. I was struck recently when an expert for the proponents, Mr. Shepherd, was on a Mississippi talk radio show when a caller called in and made the following point: some premium moist snuff products just cost too much. That statement pretty much sums it up. Proponents can lobby, they can create fancy charts, create numbers, they can talk about on and off the table. We can all zig and zag, but at the end of the day the issue is competition in the market place, not changing the rules to give one dominant company a competitive advantage. The current tax is agnostic. It chooses neither winners nor losers. Manufacturers make independent business decisions based on all economic factors and decide to enter and compete in the marketplace based on those factors. It's not the

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tax; it's the economy. Now I've got a couple of other things I'd like to submit and I was told that it would be best to do it like one at a time. Just two documents, Mr. Chairman. And just walk them through real quick. [LB106]

SENATOR JANSSEN: Okay. [LB106]

BOB MAPLES: The first document I'm handing out, as it's being distributed, is a two-pager of a company that couldn't be here today, but was created by a company called Conwood Company. And I really just want to bring two things to your attention. One is to the question of all OTP. I mean, if a picture says a thousand words--you've seen these--look at the picture of...this is just one beauty shot of a select number of these products. You're talking about hundreds of products in this category. And you are talking about singling out one product out of what are five or six, because you do have...and I'm sorry. I'm not from Nebraska. I don't know if people chew plug tobacco here or twist tobacco here or, and I even throw out dry snuff, because I'm not clear under LB106 because most states tax two forms of snuff--moist snuff and dry snuff. So we've had problems in other states and I go back to Kentucky in particular where wholesalers were left trying to figure out how to tax dry snuff because it's not really addressed in the bill. Set that aside. You're talking about a very broad category that's not, as the Federal Trade Commission once said, unlike cigarettes it's not homogenous. They are not like cigarettes. Somebody gives you \$5 and says go down to the local "Git-Go" here and get me a pack of cigarettes. You'd have a general idea of what you're asking for. You go into the retailer and they kind of know. It's 20 Class A cigarettes, okay? It's in a pack. Now you forgot to ask the brand and all that, but okay. A smoke is pretty much a cigarette. But you give me \$5 and say go down and get me some chew. I go to that retailer. That retailer is going to say, uh-oh, I've got some questions to ask you. They're going to ask well, what are you talking about. Chewing tobacco? Are you talking about dip tobacco? Are you talking about granny snuff? Are you talking about twist? Are you talking about plug? So it's not a homogenous product. It's a very broad category and I think that's the reason 40 of the states continue to tax it as ad valorem. On the second page, UST in their own words makes...I think the hardest question you could ask me today is what is this all about. And I think on the second page, when you get down to it, it's a competitive issue. You know, drawing just from the 10K from UST, the excise tax on smokeless tobacco products could affect consumer preferences and have an adverse effect on the sale of the company's products. It goes further, but I think that kind of tells you. From the UST in their own words, from their Chairman and CEO, they know they have a price gap problem and this is a part of it, okay? But the bigger benefit here is to cap this tax, because if you're a manufacturer and you want to increase your price of your product, you want to make more profit. Technically, you don't want your tax. You don't want the state to have anymore of your product. You want to cap that. Okay, so that's what this will do. The second sheet that I handed out, and I apologize. If you could all just put that away and as we do smokeless tobacco 101 here. The second one is a letter from a wholesaler which is Cash-Wa Distributing Company.

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Mr. Tom Henning, the president and CEO. And I think, I just draw this to your attention because I really hope...I mean, we are an industry. We're in a circular firing squad right now and I apologize for that, but we're an industry. And as an industry we ought to be working with our wholesalers to make sure they all understand the ramifications of this. Now Mr. Henning says look, he likes the current system. It's easy from a compliance standpoint. If you adopt LB106, please think about your Revenue Department first, because they're going to have to come up with new papers and new procedures. And then please think about the tax collectors and remitters. They're going to need some education. You're going to have to give them a little time. They're going to mess up because they're going to start...now you get an invoice and you basically say you've got this much product from this company times .20. That's what you submit. Now you're getting into ounces. So somebody in these poor wholesalers better be really good with a calculator, because in some states there's civil penalties that apply to distributors that...and I'm sorry. I'm not conversing here. I apologize...whether Nebraska does, but I know some states have penalties for wholesalers that don't turn in the right numbers and collect the right tax. Of course, they're always subject to audit so that's that. That's the cost of doing business. But I just simply say, you know...Mr. Henning said it better than I can. It's a compliance matter. You know, you're going to have to do this calculation. We're going to have to get new systems and software. And several distributors in Nebraska, I've learned, do business in other states. So you're going to have to have one set of books now and one computer program for Nebraska, and then different programs and sets of books for other states. And I leave it to them to say whether that's a competitive problem, but I would think that it would be. Now, Mr. Chairman, in the testimony there were some things that were said that I feel like I just have to address. I can't let them stand. The alleged gimmicks of two for one...and I'm speaking to my colleague in the back of the room, because I want to make sure that we get to this committee the taxes paid on two for ones. It's my understanding in most states taxes are paid on two units. So we're going to check that for you, but it's my understanding that taxes are paid, if it's a two for one, buy one get one free, that taxes are paid. And as to the matter of the Smokeless Tobacco Master Settlement Agreement, the badge of honor that is fairly tarnished. I was president of the Smokeless Tobacco Council when UST voluntarily, I think it was referred to, agreed to a settlement of some \$100 million with the State Attorney General. That was litigation. There wasn't anything too voluntary about that. UST was sued. The other companies were not. So they are the only signature because they were the only ones sued. You can draw your own conclusions from that. I tried to get a copy of the Nebraska AG Settlement, but your state is one of about seven that I can't publicly get them. I have to pay somebody to go to the court house and all that kind of hullabaloo, but if you're interested in this issue any further than today, please contact your Attorney General and simply ask for a copy of the Smokeless Tobacco Master Settlement Agreement and I'm sure that he can provide that for you. Other states, North Dakota, let's see, North Dakota this week considered a repeal bill. North Dakota did pass the weight-base under my watch at Smokeless Tobacco Council, and this week they were considering a bill to repeal that. Now it's in

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the process. So far, just to give you a scorecard, so far Wyoming, the house has, they voted on third reading voted the weight-based bill down. Virginia tabled the bill, and as I understand it, the chairman told everybody to go off and study it and come back in '08. So as I understand it Virginia's down. There's going to be other bills. This is part of a national campaign. I'm sorry that Nebraska is in the mix, but we're going to see these bills everywhere. So with that, Mr. Chairman, I've enjoyed visiting Lincoln and you all have been very nice to listen. If you have any questions I'll be happy to try to answer them. [LB106]

SENATOR JANSSEN: Any questions? Don't see any, you're off the hook. [LB106]

BOB MAPLES: Thank you, Mr. Chairman. I'm enjoying Lincoln. [LB106]

SENATOR JANSSEN: Thank you. [LB106]

BOB MAPLES: It's warmer than D.C. [LB106]

SENATOR JANSSEN: The next opponent. [LB106]

JAMES MOYLAN: Mr. Chairman, members of the committee, I'm Jim Moylan, J-i-m M-o-y-l-a-n, appearing today on behalf of Reynolds American, Inc. formerly R.J. Reynolds Tobacco Company. We're here in opposition to that. As you know, Reynolds also engages in the smokeless tobacco business. I'm not going to repeat everything that Mr. Maples said, but there are just a couple of points I want to point out--using the tax system for a competitive advantage. May I submit, number one, rather than using the tax system, if they don't feel they're competitive lower their price to meet the prices of the other brands, then they don't have to get into the tax system? That would probably be the wise way to approach it. Number two, our whole system in the state is ad valorem. You take your real estate, your motor vehicles, insurance premium payments--8, 10, 12 of them. They're all based on ad valorem. Probably, you know, the most fair system that there is. If it's charging that much they ought to be paying that much. Our sales tax totally ad valorem in the state. Oh, and raising the taxes. Of course, as you know, if it's just a flat tax, you know, as Mr. Maples mentioned you're going to have to come back periodically and raise that. Now you notice your fiscal note states that yes, it is going to raise some money to start with, but in the long run it's probably going to drop. That comes right from our Revenue Department over there who's probably closest to the fiscal aspect of this, you know, of anybody. Next, why take moist snuff out of the statute and tax it differently than all the rest of the tobaccos other than cigarettes, which are by the stick? I suggest if there's any fairness in it, let's put them all in there on ad valorem. It's going to make it much easier for the wholesalers, for the manufacturers, and for everybody. Put them all in there. And there's about 11 categories of them here. It's all the same type of thing. They're all different prices. So let's put them all in there. It would be the easiest way, probably, to handle it and would

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probably eventually, you know, raise more money, you know, than what is being done now. The master settlement agreement, I think you know that Reynolds American was a big part of that tobacco settlement years ago in proportion to the number of cigarettes that they sold in the company and they continue to pay into it. And it's a sizable amount for the state of Nebraska also. The last aspect I would say would be throw them all in and if it's a, you know, a finance issue with the state, double the tax. Make it a dollar an ounce. That's probably the thing to do. Then everybody's treated alike. You're all on a weight-based, you're all paying according to your weights, and it's fair for everybody. If there's any questions I'd be happy to try to answer them. [LB106]

SENATOR JANSSEN: Any questions for Mr. Moylan? I have one, Jim. [LB106]

JAMES MOYLAN: Yes. [LB106]

SENATOR JANSSEN: You said that we have a little loss of revenue on tobacco products because...you don't suppose that's because of less use of tobacco with the campaigns that are out about the harm of tobacco? [LB106]

JIM MOYLAN: You mean your fiscal note? [LB106]

SENATOR JANSSEN: No, no. You said that there is a loss of revenue. Revenues have dropped on tobacco. And I'm saying it's probably because of the campaign against tobacco products and the harm they will cause. Maybe people are quitting the use of tobacco. That could be the loss of revenue. [LB106]

JIM MOYLAN: Yeah. That's right. I wasn't referring to that. I was referring to the fiscal note and the fact that they say there would be a reduction in income the first few years on this bill. [LB106]

SENATOR JANSSEN: Um-hum. [LB106]

JAMES MOYLAN: No, an increase the first few years--two, three years--and then eventually a reduction and that's when you'd have to come back in the Legislature and raise that from 50 to 60 or whatever it is. [LB106]

SENATOR JANSSEN: Well, hopefully they do use less tobacco so the revenues do drop. [LB106]

JIM MOYLAN: That's a good question. [LB106]

SENATOR JANSSEN: All right. Thanks, Jim. [LB106]

JAMES MOYLAN: I'm not a user anymore. I wish I was. I always liked it, you know, but

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I'm not. So, thank you. [LB106]

SENATOR JANSSEN: Any other opponents? I thought I saw more hands up there than that, but anyone in a neutral capacity? Senator Engel to close. [LB106]

SENATOR ENGEL: Thank you very much for listening, again, today. But I'm going to stick to what I said in my introduction. I have never promoted or never will promote the use of tobacco in any form or represent any particular company. To me, it's an equity issue, a fairness issue, and I think everyone will start out on even playing fields and let the marketplace handle the rest of it. So that's why I'm doing this. And there will still be a--they talk about the difference in price--still always be a different price between the low and the high end because of the pricing and the sales tax. So you're always going to see a disparity there, so it'll always be there. (Inaudible). This just starts out on a level playing field. So that's all I have to say and I appreciate your time and I'd appreciate your advancing this to General File. Thank you. [LB106]

SENATOR JANSSEN: And thank you, Mr. Chairman. [LB106]

SENATOR ENGEL: Thank you. [LB106]

SENATOR JANSSEN: That ends the hearing on LB106. Senator Schimek is here with LB537. Let's wait until the room clears out a little bit, Senator. [LB537]

SENATOR SCHIMEK: I was just thinking, Senator Janssen, Mr. Chairman, I might like to become an ex officio member of this committee. It's about 10 degrees warmer than it is in Judiciary today, so consider yourself lucky. [LB537]

SENATOR JANSSEN: That's because we have these hot issues, Senator. [LB537]

SENATOR SCHIMEK: Yeah, right. [LB537]

SENATOR JANSSEN: Now you can start. They're all gone. [LB537]

SENATOR SCHIMEK: (Exhibits 5 and 6) Okay. Thank you, Mr. Chairman and members of the Revenue Committee. It's a pleasure to be with you today. I don't often get the opportunity to come before this committee. But I am here to introduce LB537 which I could probably explain in one sentence, but I will take just a little bit more time with it than that. It was brought to me by representatives of the Ponca Tribe and the Nebraska Indian Commission. As you already know probably, the Ponca Tribe is the only tribe in Nebraska that does not have what is commonly known as a reservation. Instead, they have lands held in trust which in short means that they have land in Nebraska held in their name by agreement with the federal government. Despite this difference between the Ponca and the other tribes, LB537 aims to enable the tribe to negotiate an

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agreement with Nebraska concerning the collection and dissemination in the motor fuel tax, and that would have to be done on lands held in trust by the Ponca. Separate agreements currently exist between the state and the Winnebago, Omaha, and Santee tribes; however, these three tribes have been established for a longer period of time and have reservations with defined boundaries. Typically these types of agreements affirm that it is in the best interest of the state and the tribes to cooperate and negotiate and provide revenue for the tribes to deliver services to its members. However, Section 66-741 has effectively kept the Ponca from being able to reach such a deal with the state because they have no Indian reservation. This bill amends that specific section by adding lands held in trust to the section. And actually I have a little bit of an amendment to that. The amendment actually comes from the Commission on Indian Affairs and it particularly references the Ponca instead of lands held in trust, because I believe there are other lands held in trust by other tribes who are not federally recognized tribes of Nebraska. So you'd be opening a whole can of worms if you went in that direction and didn't add that it specifically applied to the Ponca tribe. While the U.S. government has not yet acquired the entire 1,500 acres that the Ponca Restoration Act allows, a few parcels of land have been acquired and are held in trust status for the Poncas. And those are mostly in the Knox County area by Niobrara. A tribally-owned gas station could be built on these trust lands or other lands could be acquired for purposes of building a gas station. And so the fact that the Ponca have no reservation would not prevent the tribe from asserting sovereign immunity against state taxes imposed against the tribe on trust lands whether currently held or acquired in the future. Not only will LB537 authorize the Ponca tribe to negotiate an agreement, but it will ultimately clarify current statute which will ultimately improve relations between the state and tribal governments. And I could have said...my one sentence introduction would have been we need to do what the Poncas, one of the four recognized tribes in Nebraska, what the other tribes already have that was provided by the Legislature. So I do have a copy of the amendment that would be suggested. I also do have maps of the land held by the Ponca in case there are questions about what land we're actually talking about. Thank you, Mr. Chairman. [LB537]

SENATOR JANSSEN: Questions? Ron. [LB537]

SENATOR RAIKES: Senator Schimek. [LB537]

SENATOR SCHIMEK: Yes. [LB537]

SENATOR RAIKES: The wording already says for a federally recognized Indian tribe, so land held in trust for a federally recognized Indian tribe. Would there be any other tribe that could meet that? [LB537]

SENATOR SCHIMEK: Yes, I think that it could apply to the Sac-Fox and there may even be one other tribe. [LB537]

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SENATOR RAIKES: And there's a reason that the other tribe you mentioned should not be granted this? [LB537]

SENATOR SCHIMEK: They're not officially designated a Nebraska tribe. So I don't think we have the same kind of concern. They're generally...you find them in Kansas, I believe. I could be wrong on that. I shouldn't even say that, but I think that maybe they're federally recognized in Kansas. [LB537]

SENATOR RAIKES: Does the Ponca tribe currently retail gasoline? [LB537]

SENATOR SCHIMEK: You'll have to ask a representative of the Ponca tribe. I do not know. [LB537]

SENATOR RAIKES: Okay. Thank you. [LB537]

SENATOR JANSSEN: All right. Now, Senator Schimek... [LB537]

SENATOR SCHIMEK: Yes. [LB537]

SENATOR JANSSEN: ...this is the area on the map, down in Richardson County. Is that correct? [LB537]

SENATOR SCHIMEK: It's up in Knox County area, right up there. [LB537]

SENATOR JANSSEN: Oh, okay. All right. [LB537]

SENATOR DIERKS: That's the Santee. That little one right there. [LB537]

SENATOR JANSSEN: All right, all right. They do have a small parcel on land alongside the Santee. [LB537]

SENATOR SCHIMEK: Yes. [LB537]

SENATOR JANSSEN: All right. So that would be the land... [LB537]

SENATOR SCHIMEK: That we're talking about. [LB537]

SENATOR JANSSEN: ...that we're talking about. [LB537]

SENATOR SCHIMEK: Yes. [LB537]

SENATOR JANSSEN: Now they do have a little parcel of land here in Lincoln... [LB537]

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SENATOR SCHIMEK: Yes, they do. [LB537]

SENATOR JANSSEN: ...but that was never held in trust? Is that correct? [LB537]

SENATOR SCHIMEK: I think that is correct, but even if it were held in trust the zoning laws of Lincoln would not allow a gas station at that particular point. It's on B Street or... [LB537]

SENATOR JANSSEN: It's right over here. I don't know what street. [LB537]

SENATOR SCHIMEK: ...right over here a couple blocks. [LB537]

SENATOR JANSSEN: Yes. Um-hum. Okay. Any other questions? Don't see any. [LB537]

SENATOR SCHIMEK: Thank you. [LB537]

SENATOR JANSSEN: All right. Can we have proponents, please? Anyone in favor of the bill? All right, well you come on up and get up here and get ready to go. [LB537]

LARRY WRIGHT, JR: (Exhibits 7, 8, 9, and 10) Good afternoon, Chairman, members of the committee. I'm the elected chairman of the Ponca Tribe of Nebraska, and I'm pleased to be here this afternoon. Thank you for the opportunity to testify this afternoon in support of LB537. [LB537]

SENATOR JANSSEN: Would you please state your name? [LB537]

LARRY WRIGHT, JR: I'm sorry. My name is Larry Wright, Jr. [LB537]

SENATOR JANSSEN: All right. [LB537]

SENATOR PREISTER: Spell it. [LB537]

LARRY WRIGHT, JR.: Last name is W-r-i-g-h-t. [LB537]

SENATOR JANSSEN: Go ahead. [LB537]

LARRY WRIGHT, JR: Thank you for the opportunity to testify this afternoon in support of LB537 amending Section 66-741 of the Nebraska statutes. Section 66-741 currently permits the state to enter into agreements with federally recognized tribes in Nebraska to split motor-fuel taxes collected on Indian reservations in the state. But because the Ponca Tribe of Nebraska does not have a reservation, the statute does not clearly

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authorize the Governor to enter into such an agreement with the Ponca Tribe. The purpose of this bill is to explicitly authorize the Governor to enter into a tax agreement with the Ponca Tribe of Nebraska for motor-fuel taxes collected on lands held in trust for the Ponca Tribe. The Ponca Tribe is a federally recognized Indian tribe, but its history is quite unique. The Ponca Tribe was the last tribe in the United States to be formally terminated by federal legislation in 1962. The termination resulted in dissipation of the tribe's land base and economic disaster for many tribal members. Thanks to the efforts of tribal members, Congress realized the devastation that termination had wreaked upon the Ponca people and passed the Ponca Restoration Act in 1990. The Restoration Act restored the Ponca's status as a federally recognized Indian tribe, but it did not restore the tribe's reservation. Instead, the Act mandated the Secretary of the Interior to take up to 1,500 acres in Knox and Boyd Counties into trust for the tribe, and authorized the Secretary to take lands elsewhere in the tribe's aboriginal homelands into trust under the usual fee-to-trust procedures in the Indian Reorganization Act. Since the tribe was restored, the Secretary has accepted approximately 170 acres into trust for the Ponca Tribe. The tribe possesses jurisdiction over these lands as though they were within the boundaries of an Indian reservation. Indeed, the U.S. Supreme Court has found that there is no legal difference between the reservation lands and trust lands when it comes to a tribe's ability to exercise jurisdiction over those lands. But because the Ponca Tribe's trust lands are for all intents and purposes the same as reservation lands, it makes sense for the legislature to amend Section 66-741 to authorize the Governor to enter into a motor-fuel tax agreement with the Ponca Tribe. Section 66-741 was enacted because the U.S. Supreme Court has said that states lack authority to impose motor-fuel taxes on Indian lands, and the Ponca's trust lands fall within that prohibition. This bill would fix what is ultimately just a semantic oversight. The Poncas are a federally recognized tribe and the state lacks authority to impose taxes on them just as it does over reservation lands in the state. That's essentially my statement here today. I guess I could reply to a question Senator Raikes had earlier about do we operate any facilities currently. No, and that's what brought this to our attention last year when LB1003 was being brought before, when we realized we were moving down that road with purchasing some facilities to operate fuel stations. When we realized that we were being left out of this ability to enter into a fuel compact, we had to back off of those at the last minute, because ultimately we wouldn't be able to take the same benefits as the other reservation tribes. So, no, we don't currently, and so that's why we don't at this time. [LB537]

SENATOR JANSSEN: Any other questions? I don't see any, thank you, Larry. [LB537]

LARRY WRIGHT, JR: Thank you. [LB537]

SENATOR JANSSEN: Next proponent [LB537]

FRED LEROY: Mr. Chairman and members of the committee, my name is Fred LeRoy,

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L-e-R-o-y. I'm the former chairman of Ponca Tribe. I was the first elected chairman serving eight years, but more importantly I started the Ponca Restoration 20 years ago to this date and I followed it through to its completion. During that time, Congressman Doug Bereuter added language that prohibited a reservation, a residential reservation, or reservation language. That has really caused problems with the Ponca Tribe. Now he did write a letter to us a couple years ago saying his intent wasn't to discriminate against the tribe and to give us the same services that all the other tribes received. About seven years ago we ran into the same issue when we were denied funding for mental health and alcoholism because we didn't have a reservation. At that time we were able to get Senator Maurstad to go on Appropriations to get us some money and to amend that statute to put in comma service areas, because we don't have a reservation. We have service areas to provide services to the tribal members. And like was mentioned here, we do have a building in Lincoln, Nebraska that is in trust. That was done seven or eight years ago and we've had no problem with the state. We've worked very well with the state and the counties. And so I'm here just to provide any information on actual restoration. [LB537]

SENATOR JANSSEN: Okay. Any questions? I don't see any. Thank you for being here. It's good to see you again. Next proponent. [LB537]

MITCHELL PARKER: Good afternoon, Mr. Chairman and members of the Revenue Committee. My name is Mitchell Parker, last name is P-a-r-k-e-r. I represent the Omaha Tribe of Nebraska. I serve as the tribal chairman for our tribe and we have a reservation located in northeast Nebraska. And we're here to support LB537 as introduced by Senator DiAnna Schimek. Our reasons for support. The state already has authorization to enter into agreements with tribal governments for the collection and dissemination of motor-fuel taxes generated on the Indian reservations. The state has an agreement with the Omaha Tribe as well as the Winnebago and Santee Sioux Tribes. The Omaha Tribe's agreement has worked out very well with several benefits. Some of the benefits include accommodating the respective taxing jurisdiction of the tribe and the state, leveling the playing field for motor-fuel retailers, providing additional revenue for both the tribal and state governments. Tribal jurisdiction extends to trust lands so authorizing an agreement on such lands makes sense. Underlying authority for state tribal agreements does not change. It only proposes an expansion to include Indian lands held in trust, but not necessarily on a reservation. Although this would not affect any motor-fuel retailers at this time, it would pave the way for equitable treatment for the Ponca Tribe. The state and motor-fuel taxes imposed must be identical insuring fairness to all. I'd like to say thank you for allowing us to provide some testimony here and that concludes what our position is in support of this LB537. [LB537]

SENATOR JANSSEN: Senator Raikes. [LB537]

SENATOR RAIKES: Yes, sir. A question or two about how this actually works. Now you

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have motor-fuel retailing operations on your tribal lands or your reservation? [LB537]

MITCHELL PARKER: We do. The tribe operates one in the state of Nebraska and there are other retailers within our exterior boundaries. [LB537]

SENATOR RAIKES: And those retailers then submit their fuel tax to the state which in turn, under this agreement, remits it back to you. [LB537]

MITCHELL PARKER: Exactly. [LB537]

SENATOR RAIKES: And are you responsible then for all your own road maintenance and that kind of thing? [LB537]

MITCHELL PARKER: A portion of it. Currently, we are responsible for the roads on trust lands through an agreement with the Bureau of Indian Affairs that the county does provide some for us, not very much. [LB537]

SENATOR RAIKES: Do they keep a portion of the tax revenue then collected on the stations on the reservation in order to provide that or not? [LB537]

MITCHELL PARKER: I'm not sure, but I believe that it is collected by the state and we are responsible for disseminating our own, what is identified within the exterior boundaries. [LB537]

SENATOR RAIKES: Okay. All right, thank you. [LB537]

SENATOR JANSSEN: Mitchell, how many miles of roads do you have in that area? [LB537]

MITCHELL PARKER: I'm not sure. I didn't bring the documentation with me. [LB537]

SENATOR JANSSEN: Okay. It doesn't look like there would be that much. [LB537]

MITCHELL PARKER: No, there isn't. There was a new inventory that was generated here, I believe, last September. And that inventory was conducted in conjunction with the Bureau of Indian Affairs with the Omaha Tribe of Nebraska. That's why I did not bring the information that you just requested. [LB537]

SENATOR JANSSEN: That's fine. That's fine. Do you have some equipment? [LB537]

MITCHELL PARKER: Yes, we do. [LB537]

SENATOR JANSSEN: Yeah, all right. So you have the means to take care of the roads

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within your reservation? [LB537]

MITCHELL PARKER: On trust lands, yes we do. [LB537]

SENATOR JANSSEN: Yeah, okay. [LB537]

MITCHELL PARKER: That's the current arrangement. [LB537]

SENATOR JANSSEN: All right. Okay, any other questions? I don't see any. Thank you for being here today, Mitchell. [LB537]

MITCHELL PARKER: Thank you very much. [LB537]

SENATOR JANSSEN: Any other proponents? Any opponents? [LB537]

TIM KEIGHER: Good afternoon, Chairman Janssen and members of the committee. My name is Tim Keigher, that is K-e-i-g-h-e-r. I appear before you today on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. I guess after listening to the previous testifiers and reviewing this a little further I don't have a problem with their fairness issue. Other tribes get to do this. My concern is that the compact that we currently have in place, they get to keep 75 percent of the fuel tax. If this is going to apply to trust land, is it not only just in the area that they're speaking about or is the example that was given, Lincoln...you know, while there may be places within the state that are currently in trust that may not have the proper zoning, could that zoning be changed and at some point could we have a gas station in Lincoln that is on trust land and thus they would have a 75 percent competitive advantage on the tax rate. I guess those are my major concerns. I mean, I do understand that they want it to be fair with what other tribes get. I don't have a problem with that. My concern is how widespread could this get. So with that I'd be happy to answer any questions. [LB537]

SENATOR JANSSEN: Any questions? Tim, I'm sure they would have to follow any zoning laws also. Talking about the building here in Lincoln... [LB537]

TIM KEIGHER: Correct. I'm not arguing that they don't have to follow zoning regulations. I'm just saying could those zoning regulations be changed. [LB537]

SENATOR JANSSEN: Well, I wouldn't think they could be but I'm no attorney. So, Ron. [LB537]

SENATOR RAIKES: Do you know if additional lands could be brought into trust or is the amount of land that is held in trust fixed? [LB537]

TIM KEIGHER: To my understanding it is not fixed, but it is difficult to do to bring into

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trust. [LB537]

SENATOR RAIKES: It would seem that would be likely then, if you had a concern that some land that was zoned that it could be put into a retail fuel outlet would come into trust and then could be... [LB537]

TIM KEIGHER: And I don't know if there are other properties within the state that are already in trust that could be zoned for retail gasoline. I don't know that either, but that would be my concern. [LB537]

SENATOR RAIKES: Well, I would assume that some of it in Knox County would qualify for that. The zoning wouldn't prohibit that. [LB537]

TIM KEIGHER: Um-hum. [LB537]

SENATOR RAIKES: Otherwise there would be little reason to consider this on their part. [LB537]

TIM KEIGHER: True. [LB537]

SENATOR JANSSEN: Any other questions? I don't see any. [LB537]

TIM KEIGHER: Thank you. [LB537]

SENATOR JANSSEN: Thank you, Tim, for being here. Any other opponents? Opponents? Anyone in a neutral capacity? Seeing none, Senator Schimek to close. [LB537]

SENATOR SCHIMEK: To close and then to open, right? [LB537]

SENATOR JANSSEN: Yes, yes, you're up next. [LB537]

SENATOR SCHIMEK: Okay. I just want to be brief. I just talked with the members of the Ponca Tribe and the property here in Lincoln is the only other land they hold in trust right now besides the Knox County area. And when they put the land in trust they had to make agreements with the city of Lincoln, so they would not be able to build a gas station right over there at whatever that address is. In addition to that I was told--this is what I thought--but whenever land is put in trust, it has to be worked out between the parties. For instance, if it's in the city of Lincoln, Lincoln has to be involved in putting that land in trust. If it be the county of Adams, they'd have to, you know...you'd have to work with the governmental bodies in that area. So I don't think it should be of concern to the committee at all. [LB537]

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SENATOR JANSSEN: Is that your closing? [LB537]

SENATOR SCHIMEK: That was for information only. [LB537]

SENATOR JANSSEN: Okay. [LB537]

SENATOR SCHIMEK: I guess I should say I think this is simply a catching up on the bill that was passed last year and I think it was just an oversight, frankly. So, thank you. [LB537]

SENATOR JANSSEN: Okay. All right. Thank you. That ends the hearing on LB537 and Senator Schimek to open on LB403. [LB403]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman and members of the Revenue Committee. For the record, and I'm not sure I said this last time... [LB403]

SENATOR JANSSEN: Why don't you wait just a minute. We've got... [LB403]

SENATOR SCHIMEK: Yes. [LB403]

SENATOR JANSSEN: You can go ahead there if you want to. They're in an orderly fashion. [LB403]

SENATOR SCHIMEK: Thank you, Mr. Chairman. I was just starting to say I don't think I said last time, but for the record my name is DiAnna Schimek and I'm from the 22nd Legislative District here in Lincoln. [LB403]

SENATOR JANSSEN: Yeah, I think you did. [LB403]

SENATOR SCHIMEK: Did I? Good. [LB403]

SENATOR JANSSEN: I think so. [LB403]

SENATOR SCHIMEK: Okay. I introduced LB403 to put in the mix of all the kinds of issues that we're going to be talking about this year. And the purpose of it was to change the distribution of motor vehicle sales tax funds to increase the distribution of funds to cities and counties. And I'm sure that this committee is well aware of the fact that Lincoln is feeling a lot of stress right now on keeping up with its road construction, and this was one way they thought might help them. But let me begin by informing you that yesterday I introduced an amendment to LB403 that simplifies and changes or clarifies the purpose, and LB403 would not raise taxes. As amended it would build on the actions that the Legislature approved last year when it approved LB904 that directed .5 percent of motor-fuel taxes to be directed to the Highway Allocation Fund to be

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divided between the cities and counties. This amendment and what would become the bill with the amendment would simply direct another .5 percent to the motor-fuel tax that would go through the Highway Allocation Fund just as LB904 did last year. The result of this change, of course, would be to provide more road and street construction funds to the cities and counties. I think that the formula used to distribute the gas funds to cities and counties should be looked at, should be maybe modernized or updated concerning the population and the roads that certain areas need. But having said that, I am pleased that Senator Raikes has introduced an interim study which--or a task force actually--to examine ways to update and improve the fairness of the gas tax distribution formula. I also recognized that the Nebraska on the Move Report indicated that cities and counties across the state have great needs for local road construction that is not being funded and is increasing every year. LB403 will direct more funds to local road construction because we feel that the financial resources are short for cities and counties to meet this demand. That concludes my remarks. [LB403]

SENATOR JANSSEN: Questions? Any questions? [LB403]

SENATOR SCHIMEK: I believe the city of Lincoln is here to testify. [LB403]

SENATOR JANSSEN: All right. Don't see any so we'll take proponents. LB403, those in favor of the bill. [LB403]

KARL FREDRICKSON: (Exhibits 11 and 12) Mr. Chair and members of the Revenue Committee, I am Karl Fredrickson, the director of Public Works and Utilities for the city of Lincoln. I am here on behalf of the city of Lincoln to testify in support of LB403 as amended. As I testified last Wednesday when I was before the Revenue Committee, Lincoln continues to face the challenge of trying to meet and keep up with the needs of street infrastructure. The city of Lincoln has an estimated shortfall of more than \$100 million in meeting construction needs and maintenance needs for city streets. About 60 percent of that figure is on existing streets in Lincoln. The other 40 percent is for new streets that would match growth in the next six years. While Lincoln is growing and adding jobs, street construction funds are not keeping pace with the demands of infrastructure. The gap does hamper economic development and job creation efforts that we undertake here. You have likely heard Mayor Seng say infrastructure is key to attracting jobs. Without adequate street infrastructure, communities will find it more difficult to retain and attract new industry. The state's cities contribute to driving the state's economic engine. If Lincoln's economic development begins to suffer because of lack of infrastructure, the state will also feel the ill effects as well. Lincoln is a major contributor to the state revenues. The motor vehicle sales tax and the state's gasoline sales tax collected from Lincoln are important to the state's financial health. Under the current state gas tax distribution formula the city of Lincoln receives back about 29 cents of each dollar collected from Lincoln through the Highway Trust Fund formula. The bottom line is Lincoln does not have adequate sources of revenue to deal with the

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problem. The state collects from Lincoln much more gas tax than Lincoln receives back in the Highway Trust formula. The Mayor and elected officials hear loud and clear that we should get our dollars by seeking changes that would provide a more fair return in the state formula and that is why we support LB403 as amended. It does not cause a tax increase and does help improve the return to cities and counties in road construction funds. The additional .5 cent of motor vehicle sales tax would benefit cities and counties equally and it would help communities provide infrastructure that creates economic development in the state. In closing, I urge the committee to advance LB403 to the floor of the Legislature. It would be a positive step towards improving the fairness and distribution of state highway trust funds. I would also add, the second handout I handed out, this graph. This is Lincoln's monthly Highway Allocation receipts, which it's a rolling average, which shown in blue is the actual receipts. What's shown in pink or magenta is adjusted for inflation over time. The sharp increase seen in 2001, which with left scale is approximately \$100,000, is a federal census, and by formula a percentage that gets distributed to cities is by population census and so that spiked. But if you would notice the trend before that and after that, it's either level or decreasing. And costs are not going down and the city continues to grow. So with that I'll answer any questions if I can. [LB403]

SENATOR JANSSEN: Thank you, Karl. Any questions? Ron. [LB403]

SENATOR RAIKES: You mentioned that Lincoln receives less back than what it pays in. Would there be any city in the state for which that isn't true? [LB403]

KARL FREDRICKSON: There are probably several cities of smaller communities throughout the state that may receive more than that. Upwards a half or greater than what is contributed. There are those that are small enough that probably may receive actually more than what they receive back or more than what they would actually do that. In a bill... [LB403]

SENATOR RAIKES: So the larger the city the more adverse the payback? [LB403]

KARL FREDRICKSON: Yes, and it's similar on a federal level. Nebraska used to be a donor state to some extent to send them out, Montana, for example, or something, because you had to get beef cattle from there to Florida and more rural populations--North Dakota--so populous states contributed or subsidized the federal system within the country to those who were less populated. Lincoln's no different and we're not looking to get back every dollar that we contribute. We know that Nebraska has needs all over the state. [LB403]

SENATOR RAIKES: What is fair? [LB403]

KARL FREDRICKSON: I think what we had looked at two sessions ago was

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approximately 45 cents on the dollar. And at that time we had introduced a bill that would have increased the gas tax to hold harmless cities and counties so they would receive no less than what they did at that time. And I think we were looking at approximately a 45 cent return on the dollar as something more fair. [LB403]

SENATOR RAIKES: Okay. Thank you. [LB403]

SENATOR JANSSEN: Any other questions? I don't see any. Thank you for being here today, Karl. Other proponents? [LB403]

BRUCE BOHRER: Good afternoon, Chairman Janssen, members of the Revenue Committee. For the record, my name is Bruce Bohrer appearing on behalf of the Lincoln Chamber of Commerce. I'll make this very simple. We wholeheartedly agree with the comments provided by the city. It really does come down to a point for us of hampering our economic development efforts as Karl alluded to. We saw a bright spot in what generally is a pretty dismal outlook for a revenue stream here last year when you passed LB904. And this essentially comes back and opens that provision up and adds another half cent of the auto sales tax to it. We leverage that here locally for \$27 million in highway allocation monies. We still, as Karl noted, have a pretty significant gap. So for us this is one of our key legislative objectives, to try to find increased allocations for cities and counties. And frankly also, it would probably be to find increased revenue streams for the state as well. My only caveat there would be we would wait until we take a look at the formula as been suggested by Senator Raikes' proposal for a task force before we would, as a Chamber, sign off on any kind of revenue enhancements. Finally, I would just say the local effort through the city of Lincoln has been very strong as well. We haven't come to the state with hat in hand and said we want more from you. We've also imposed a wheel tax increase over the last several years and also an impact fee for road construction that I believe has raised about \$10 million over the last four years. And that's all money out of the private sector. So it's not as if we've not made the local effort, if you will, but we do see this as an area statewide that is very closely tied to economic development. And we need to find some way to get more money into this part of our budget. I would be happy to answer any questions you might have. [LB403]

SENATOR JANSSEN: Any questions? Ron. [LB403]

SENATOR RAIKES: Bruce, the Chamber, I think almost by definition is in favor of lower taxes. Would you oppose a reduction in the state sales tax rate from 5.5 to 5? [LB403]

BRUCE BOHRER: Would we oppose it? Well, at this point I think we may just say leave it where it's at. [LB403]

SENATOR RAIKES: So that's yes, you would oppose a tax reduction. [LB403]

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BRUCE BOHRER: Now overall burden we would say we need to work on our overall burden, but this is one specific area. And I'll just read for you our policy statement that we've talked about. We do understand spending decisions need to be prioritized in order for us to have sustainable tax relief, but we look at key economic assets to and this is one area that we see as an area that we may need to enhance revenue streams. As I referenced earlier, it is so closely tied to economic development and we see this as an investment, truly an investment that will help build our economy and grow jobs. [LB403]

SENATOR RAIKES: Okay. [LB403]

SENATOR JANSSEN: Any other questions? Thank you, Bruce, for being here. [LB403]

BRUCE BOHRER: Thank you. [LB403]

SENATOR JANSSEN: Next proponent. [LB403]

LARRY HUDKINS: (Exhibit 13) Good afternoon Senator Janssen and members of the Revenue Committee. I'm Larry Hudkins, a county commissioner for Lancaster County here. And Lancaster County is faced with competing challenges of meeting its increased demand for road infrastructure, while at the same time controlling the growth of property taxes. Yet during the five-year period between 2001 and 2005, property tax support for the Lancaster County Engineer's Road and Bridge Fund has increased 24 percent. So we've maintained our local effort and increased it by that amount. During this same period, support from the state's Highway Allocation Fund has increased only approximately 6 percent. Additionally, the county continues to fall behind in essential new projects and existing maintenance needs. For example, since 2003 the county has only been able to add one-half mile of new paving each year. According to national standards, the county should be paving an additional four to five miles of gravel each year. On top of this, the innovative new Rural to Urban Transition for Streets, or RUTS program as we call it, and the protection of the East Beltway corridor will compete for dollars from a funding source that is not adequate to meet existing needs. LB403 will help address these issues by providing much needed additional revenue from the Highway Allocation Fund. The additional half cent motor vehicle taxes would help cities and counties provide infrastructure that creates economic development in the state, while at the same time reducing the burden on the property tax. For these reasons Lancaster County strongly supports LB403 and urges the Revenue Committee to advance it for full consideration of the Legislature. And our county board of commissioners unanimously supports this position. Questions? [LB403]

SENATOR JANSSEN: Any questions? Don't see any, Larry. [LB403]

LARRY HUDKINS: Thank you. [LB403]

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SENATOR JANSSEN: Thank you for being here. Any other proponents? [LB403]

LYNN REX: Senator Janssen, members of the committee, my name is Lynn Rex representing the League of Nebraska Municipalities. We are here in support of LB403 to the extent that any bill will provide more money for cities and counties with respect to streets, roads, and infrastructure. We desperately need these funds. The Nebraska on the Move study that was done back in, I think, three years ago at Governor Johanns' request which you may know as the Governor's Transportation Task Force Report, indicates that we are hundreds of millions of dollars in deficit in terms of the types of programs that are needed out there, and the deficit in funding that's out there for these vital programs. And it is directly tied to economic development. By that, I would also tell you we also support additional funds for the Department of Roads. I'd be happy to answer any questions that you may have. [LB403]

SENATOR JANSSEN: Questions? [LB403]

LYNN REX: And thank you for your smile, Senator Raikes. (Laughter) [LB403]

SENATOR JANSSEN: Thank you, Lynn. Proponents? [LB403]

JACK CHELOHA: Good afternoon, Senator Janssen, members of the Revenue Committee. My name is Jack Cheloha, last name is spelled C-h-e-l-o-h-a. I'm a registered lobbyist for the city of Omaha. I'd like to testify in support of LB403 as proposed by the amendment. I don't want to be redundant so I'll just try to pinpoint my facts towards Omaha. According to studies by our metro area planning authority, Omaha has shortfalls in roughly about the \$300 million range. That's almost three-fold of what Lincoln testified to. In terms of return, I didn't bring my statistics in terms of Omaha, Douglas County, what we pay in. I want to say it's also in the 20 cent factor for every dollar contributed. So, you know, along those lines we want to look at the formula. We think it needs to be revisited. I think the formula was put in place in 1969 and that's a long time ago. 38 years, I think, is what I calculated. So it's probably time to look at that. But with this bill as proposed would add money that essentially flowed down to cities and counties and that would be helpful to us. And we support it for that reason. [LB403]

SENATOR JANSSEN: Okay. Thank you, Jack. Any questions? [LB403]

JACK CHELOHA: Thank you. [LB403]

SENATOR JANSSEN: You're a me too, Jack, right? [LB403]

JACK CHELOHA: Right. Me too. Exactly. [LB403]

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SENATOR JANSSEN: Okay. All right. Thank you. Any other proponents? Any proponents? Any opponents? [LB403]

MIKE HYBL: Senator Janssen, members of the Revenue Committee, my name is Mike Hybl, spelled H-y-b-l. I'm the registered lobbyist for the Nebraska Trucking Association speaking in opposition to LB403, both as drafted and with the proposed amendment, amendment 81. Last session there was, I think, a consensus that came together between, I think, a number of the entities that advocate on behalf of highways and the Revenue Committee about how we were going to apply to road purposes the half cent sales tax. That was an issue that had been before the committee for a number of years. And I think last spring we did get a fairly broad consensus about how to address that. At that time I don't recall we had any serious discussion as far as moving deeper into the state portion of the motor vehicle sales tax, as far as putting that money into the Highway Allocation Fund. As drafted, the bill would take that half cent over 5 percent and essentially treat it as the other 5 percent is now, which as I read the bill would result in all things being equal that the variable fuel tax would go down as long as the construction budget stayed essentially where it is. As proposed with the amendment, it would move more of that motor vehicle sales tax over 4 percent, exclusively to cities and counties. If the construction budget for the state system would remain constant it would cause an increase in the variable. We would encourage the committee to essentially retain the way we distribute the sales tax as determined by LB904 last year. We've been allocating money under the LB904 change not quite four months yet. Senator Raikes does have his proposal as far as a task force to look at, I think, funding on the whole scope, I think that's probably a reasonable thing to do now. I understand the needs that the cities and counties have for roads. It's also seen on the state side. The dollars that are being budgeted for state highway purposes have also declined over the last couple of years in terms of real dollars that we are putting into highway construction. So we have needs on both sides of the equation for roads. With that I'll close and take any questions you may have. [LB403]

SENATOR JANSSEN: Any questions? Thank you, Mike. [LB403]

MIKE HYBL: Thank you. [LB403]

TIM KEIGHER: Good afternoon Senator Janssen, members of the committee. Again, my name is Tim Keigher, that's K-e-i-g-h-e-r. I appear before you today in opposition to LB403 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. I guess briefly everything that Mr. Hybl said I'm in agreement with. My concern, I don't really care how the money gets divided up as long as it doesn't cause any increase in the variable tax. I'd like to clarify something that I had talked about last Wednesday as where we rank as far as fuel tax goes. What I was looking at was a chart that was put together by the Nebraska Department of Roads and it strictly looked at the

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fuel tax, not any additional taxes that are on motor fuel like underground storage tank fees. The state of California has 12 cents for a lot of other purposes. So my eighth ranking as far as motor fuel tax is correct and what also was said, we rank seventeenth as far as total taxes on motor fuel is also a correct statement as well. So I just wanted to clarify that. But as far as this bill goes anything that would potentially raise the variable tax we must oppose because of the differentials between our surrounding states at this point. So with that I'd be happy to answer any questions? [LB403]

SENATOR JANSSEN: Questions? Don't see any, Tim. Thank you for being here. [LB403]

TIM KEIGHER: Thank you. [LB403]

SENATOR JANSSEN: Any other opponents? Anyone in a neutral capacity? [LB403]

LARRY DIX: Senator Janssen, members of the committee, for the record my name is Larry Dix. I'm the executive director of the Nebraska Association of County Officials and today taking a neutral position. Many of you may be saying why in the world would the counties take a neutral position on a bill like this that gives additional funds to the counties. As you've heard me testify before earlier this week I believe it was, when we look at this we look at it as a system and we don't believe that shifting money from the stateside over to the cities and counties side necessarily is the solution to the problem. And we certainly sympathize with Lincoln and Omaha and Douglas County and Lancaster County, but if you'll listen to the underlying theme that's there, to solve the problem there needs to be more money in the system. That's the only way we're really, really going to get at this problem. Simply shifting from the stateside to the cities and counties we don't believe is really the way that we should go about it. So certainly we would be here to say yeah, we would love to have additional funds in the county side, but we don't necessarily know that this is the solution that would be in the best interest of everybody involved in the Highway Trust Fund. I'd be happy to answer any questions anybody may have. [LB403]

SENATOR JANSSEN: Questions? Seeing none, thank you, Larry. Anyone else in a neutral capacity? Neutral? Ends the hearing. Did Senator Schimek waive closing? Okay, Senator Schimek waived closing. That ends the hearing. We'll go to LB22, Senator Wightman. Welcome, Senator. [LB22]

SENATOR WIGHTMAN: (Exhibits 14, 15, 16, and 17) Chairman Janssen, members of the Revenue Committee, I'm John Wightman, spelled W-i-g-h-t-m-a-n, representing District 36 and I'm here to introduce LB22, a bill to increase exemption levels of the county inheritance tax and to expand exemptions under that bill. And I probably should mention at this time and the page would have passed them out, I apologize. I thought I had more copies of a proposed amendment to LB22 and I think the page is going to get

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you some more copies. But I apologize for that. My count wasn't very good. At any rate, LB22 would amend three sections of the Nebraska statute. Section 77-2004 would be amended to provide that in case a close relative, death of close relatives including descendants, ancestors, brothers, and sisters that the exemption of \$10,000--which I might mention was established in the year 1901--be increased to \$50,000. Section 77-2005 which provides for inheritance taxes in the case of an inheritance by uncles, aunts, nieces, or nephews and lineal descendants of that same class be expanded from \$2,000 to \$5,000 and also would change the bracket amounts from \$60,000 to \$100,000. Under that section there are only two brackets. Currently it's up to \$60,000. It would be expanded to \$100,000 under the proposed law. Statute 77-2006, which is the inheritance tax rate for people more remote than those under 77-2004 and 77-2005, would be expanded from \$500 to \$5,000. And there are several brackets under that and each of those brackets would be expanded. As you will note by one of the handouts that we have prepared, the exemptions for the county inheritance taxes have never been increased since the year 1901, believe it or not, the year the law came into existence. Now I'm not sure I know of any other bill or any other law that was set exemption amounts that hasn't changed in 106 years, but that is the case with this one. My primary reason for introducing LB22 is because it's reasonable and rational to increase exemptions that if adjusted for inflation would be substantially larger. And as you can see, there's also a handout of a couple of pages that shows what the inflation rate would have been since 1913. Now I would go back to 1901 with the consumer price index as near as I can tell didn't start until 1913. So I can't get to 1901. And so you may wonder why we aren't expanding it more than--the exemption amount--more than we're talking about here, because that statement coming from the federal reserve board would indicate that it would be \$204,000 by today's standards. Actually at the time I first considered this bill, I thought it had been amended in 1959. Well, it had, but it did not increase the exemption amount. So we would be talking about increasing the exemption amount in each of the various categories. I do recognize that if LB22 is passed would decrease revenues to the county. So I am, for that reason, asking that the amount be smaller than would be for inflation. I'm also proposing a amendment to LB22 which would change Section 77-2010 of the Nebraska Revised Statutes. And my reason for the amendment is this: I do a lot of this type of work in my law practice. I can tell you now that this law is not being enforced. I would guess that close to 50 percent and it may well be much higher than that, of people who would owe an inheritance tax under today's law are not even paying that tax, never filing. And let me give you an example. Today, if a mother and a son owned a joint CD that was--it could be \$10,001, I'll use \$11,000 for my illustration--that was \$11,000, there would be a tax of \$10 on that. To the extent it exceeded \$10,000 it would be subject to a 1 percent tax which would be \$10. To determine that tax, the beneficiary or one of the beneficiaries would have to go to an attorney. He would file a petition in the county court. They would have to file an inventory or an attachment in the form of an inventory to their inheritance tax petition. The court would then have to enter an order. They would then have to carry that order, together with a check for \$10, to the county treasurer of whatever county the person

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died in. Now that reaches the point of approaching the ridiculousness at this point and I know for a fact that some attorneys, and some CPA's, and some accountants tell people well, there's no way of enforcement of that tax. And if you're going to try to enforce it then you ought to try to enforce it on a reasonable amount rather than on \$10 on an \$11,000 estate. Now that may be an extreme example, but it could be worse. If somebody owned a \$500 CD or a \$600 CD with somebody unrelated, maybe the domestic partner or whatever it might be, that doesn't qualify for the \$500 exemption under 77-2006. If they owned a \$600 CD they would have an obligation to go through all the same proceedings to determine inheritance taxes and pay it. Well, you can see why people aren't bothering to pay it. So now in the event of real estate, if the decedent owns real estate there's a pretty good method of enforcement of that, because you can't pass title to that real estate unless you've determined the inheritance tax, because that lien is a potential penalty against real estate. So today, the only enforcement we have in effect is a 14 percent interest rate one year after the decedent's death. I am proposing the amendment as a means of enforcement. And so I apologize, again, and hopefully the page will be back with more copies of that, but in addition to the 14 percent I am proposing that we add to Section 70-2010 (sic) for failure to file an appropriate proceeding for the determination of the tax within 12 months after the date of death of the decedent there shall be added to the amount due a penalty of 5 percent per month up to a maximum penalty of 25 percent of the unpaid taxes due. Now it is something to at least try to enforce the tax that would be in place, but I'm not sure if they only owed \$10 that even that would scare them very much, because 25 percent of that would be \$2.50. LB22 also would provide transparency in county budgets since proceeds from the inheritance tax, I would say usually certainly are not frequently taken into account when building a budget, but used rather for reserve fund or extraordinary expenses. So remember I'm not asking the committee to eliminate the tax, just adjust it. I probably should, at this point, explain that when you're going to be talking about the state death taxes you're not talking about this county inheritance tax. That's a state death tax that kicks in at \$1 million at the present time, and you're going to hear more on some other bills with regard to that, but the county inheritance tax is a completely separate tax from the state death tax. Or at least the state estate tax. So all I'm doing is asking that the committee modify in somewhat modest manner, to take account of some of the inflation. If the committee would see fit to increase it to \$100,000 I would not have a problem with that, but perhaps we ought to consider that at some later date. We are going to be eliminating a little bit of revenue from the county. I think the counties could make up an awful lot of this difference just by enforcement of the tax even if they have a larger amount, because I am certain there are people that have \$100,000 estate that are not paying that inheritance tax if they do not own any real estate at the present time. I might also explain another situation that frequently arises today. And that is with a mobile society and oftentimes the children living at a site far away from where the parents are living when they sell that home it's not unusual at all for the elderly person to move to the city where at least one of the children live. They may go into assisted living or a care home. At that point, if they've sold their home they're probably not a resident of the

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county in which they'd previously been a resident. And so they really fall through the cracks as far as any enforcement of this inheritance tax law, because they may well become a resident of another county that they're not even known in. So it seems to me that we do need some compliance enforcement, and I don't know what the method of that would be. Maybe county attorneys be required to assign someone in the office--and that's easier said out in Lexington, Nebraska than it is Lincoln or Omaha--to clip all the death notices and funeral cards. You could do it out in Lexington. I don't know how likely it is that that would ever be done in Lincoln or Omaha. And maybe six months after death maybe they write who they know the relatives are. If they have any kind of an obituary they might know that. But at any rate, the problem with enforcement is almost impossible so we would ask that the committee consider and report out this bill, because I do think that it's a law that's presently not enforced. It invites, I think, noncompliance with the law. I'd be glad to take any questions that the committee might have. [LB22]

SENATOR JANSSEN: Ron. [LB22]

SENATOR RAIKES: John, I noticed you call this a county inheritance tax, but you refer to the state death tax. Why isn't this the county death tax? [LB22]

SENATOR WIGHTMAN: We can call it either one. The estate tax is normally called... [LB22]

SENATOR RAIKES: But typically we don't. Death tax sounds worse, doesn't it? [LB22]

SENATOR WIGHTMAN: What? [LB22]

SENATOR RAIKES: Death tax sounds worse. [LB22]

SENATOR WIGHTMAN: Well, it might. My reason is just to differentiate it, because all of the publicity that the Governor's bill to repeal the death tax is aimed at this Nebraska estate tax. [LB22]

SENATOR RAIKES: I understand. [LB22]

SENATOR WIGHTMAN: And so I'm differentiating it only for that reason. They're both death taxes. One of them, the state tax is imposed upon the entire value of the estate. The inheritance tax is imposed at the beneficiary level. So... [LB22]

SENATOR RAIKES: And actually this is deductible on the estate tax. So if you reduced the inheritance tax then there would be a little more estate tax there typically. [LB22]

SENATOR WIGHTMAN: It is really more than a deduction, it's a credit toward the state

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death tax at the present time. So it's more than a deduction, but... [LB22]

SENATOR RAIKES: Well, my other question is you describe this as a tax that is somewhat arcane, out of date, at least in terms of the rates, next to impossible to enforce, and the proceeds of this are not budgeted. They are monies that go to counties and are not put into budgeted uses by the county. The argument being is that well it's so uncertain that we really can't budget it. So, you know, excusing the phrase that I'm sure there will be arguments against that, it goes into a county slush fund, which you could argue is probably not an appropriate use of taxpayer money. So my question is rather than try to fix this, why don't you suggest eliminating it? [LB22]

SENATOR WIGHTMAN: Well, partly because it seems to me that it might be better phased out, which perhaps it could be done. I would think maybe as I say, if I'd have known that it had not been amended since 1901 I probably would have suggested \$100,000, and I'd have no problem with a committee amendment to that effect. I'm not necessarily proposing that at the present time. But the counties obviously have used these funds, and then that was my reason for not suggesting a total repeal of this tax. Now it may well be that if it were passed in the form I'm suggesting or at an increased level of \$100,000 per beneficiary, that you might want to look, after the counties have had a little chance to adjust their budget a couple of years down the road, to look at a repeal, but I'm not suggesting that at this point. The \$100,000 might well make sense at this point. [LB22]

SENATOR RAIKES: Okay, thank you. [LB22]

SENATOR JANSSEN: Any other questions? Don. [LB22]

SENATOR PREISTER: Senator Wightman, the counties have a primary responsibility for health care for the indigent, other things for the indigent. They don't always have money for that for roads. We put them under some spending limits, lids. When we continue to take that money away from them and take that discretion away, where does the money then come from for dealing with those who can't take care of themselves? [LB22]

SENATOR WIGHTMAN: And I think those funds are usually budgeted. My understanding is that a great majority of the counties are not bumping up against their lid limit at this point. Their 50 cents. I think this money has normally been kept for extraordinary projects in most counties, such as building reserves, probably for other purposes, but I don't know enough about county budgets to know. And that is an additional reason that maybe that source of revenue should not be completely eliminated at this point, but it does seem to me that we ought to bring it in to the twentieth century at least. I guess 1901 was the twentieth century. [LB22]

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SENATOR PREISTER: Thank you. [LB22]

SENATOR JANSSEN: Any other questions? Thank you, John. [LB22]

SENATOR WIGHTMAN: Thank you. [LB22]

SENATOR JANSSEN: Take proponents. [LB22]

DUANE SUGDEN: Senator Janssen and members of the Revenue Committee, I am Duane Sugden, that's S-u-g-d-e-n. I am a farmer from Sterling and I serve on the Nebraska Farm Bureau board of directors. I appear today on behalf of the members of the Nebraska Farm Bureau Federation in support of LB22. Nebraska Farm Bureau policy calls for the elimination of county inheritance taxes, but it also states that until these taxes are eliminated we will continue to support efforts such as LB22 that attempt to limit the impact of inheritance taxes on Nebraska farmers and ranchers. The county inheritance tax only adds to the burdensome and costly process faced by producers who hope to pass their family operations onto younger generations. Farm and ranch operations by their very nature require a great deal of capital investment and most operators work their entire lives to acquire the land and machinery needed to maintain a successful farming business all in hopes of someday turning their operation over to the next generation. The inheritance tax only serves to diminish the inheritance that these producers can pass on. Some families have avoided the impact of inheritance taxes by using estate planning tools. While they are sometimes effective at reducing the tax burden faced by the family operation, estate planning methods are oftentimes expensive and drain resources that could be better used by the producers to upgrade and expand their operations. Lastly, it is our understanding exemptions for inheritance taxes have not been changed over 100 years. While we recognize some things improve with time, this is not one of those cases. Surely at the very least the Legislature can see fit to update the exemptions to better reflect today's economic realities. As a farmer, our capital investments on machinery and our land, we really put out some dollars, huge investments. We would surely like to pass as much as we can back to our children and families. I think this would help. A lot of it is about the dollars and more dollars that they could have coming back to them would really benefit them. So again, I reiterate our support for LB22 and ask that it be advanced to General File. Thank you. [LB22]

SENATOR JANSSEN: Any questions? Seeing none, thank you John, for being here today. Next proponent? [LB22]

ROBERT J. HALLSTROM: Senator Janssen, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the National Federation of Independent Business. We represent a significant number of small business owners in the state of Nebraska. Our organization has been consistent in its opposition to the death tax at both the federal, state, and county levels. And we want to

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reiterate that support today. Senator Wightman did a nice job of going through thoroughly the inheritance tax and the issues that are there, and making a change to the exemption levels of some nature is long overdue. I'd be happy to answer any questions of the committee. [LB22]

SENATOR JANSSEN: Any questions? Seeing none, thank you, Bob. [LB22]

ROBERT J. HALLSTROM: Thank you. [LB22]

SENATOR JANSSEN: Next proponent. Any other proponents? I don't see any. Any opponents? Opponents? [LB22]

JERRY McCALLUM: Good afternoon, Chairman Janssen and members of the Revenue Committee. It's a pleasure for me to sit before you and testify on LB22 which I will be testifying in opposition to. My testimony this afternoon, the concern I guess of my testimony this afternoon is... [LB22]

SENATOR JANSSEN: Would you give your name, please? [LB22]

JERRY McCALLUM: Oh, McCallum. Jerry McCallum, pardon me. [LB22]

SENATOR JANSSEN: Spell that. [LB22]

JERRY McCALLUM: Jerry McCallum, Madison County commissioner, president of NACO. [LB22]

SENATOR JANSSEN: Would you spell your last name? [LB22]

JERRY McCALLUM: M-c-c-a-l-l-u-m, pardon me. [LB22]

SENATOR JANSSEN: That's fine. [LB22]

JERRY McCALLUM: I apologize for that. My testimony for this afternoon I guess is...my main concern about LB22 is the adjustment of the first exemption from \$10,000 to \$50,000. I don't think anyone in the room can actually testify or justify how much loss that will be over the long term to the counties. It's automatically going to eliminate the second, third, and fourth levels, because if the state is exempt in the first place it eliminates everything in that estate. [LB22]

SENATOR JANSSEN: Um-hum. [LB22]

JERRY McCALLUM: I am sure there will be millions of dollars lost over the long term in that situation. And I think all of us have to be conscientious of real estate property tax. If

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we start lifting things as the inheritance tax which has been a very, very intricate part of county government's budget--very important. It's been with us a long time. It's part of it. It's in our budget in Madison County. It's in every one of you guys' counties that you represent. And if it's taken away it will literally devastate and cripple counties. Let me give you an example of how Madison County uses their inheritance tax. First of all, we buy our levy down with it every year. What we acquire through the inheritance tax we buy our levy down to stay under the lid. We'll buy down \$500,000-600,000 a year. In our county, one mill draws about \$180,000 so I suppose we draw down four mills every year. We also use that inheritance tax fund to do capital improvements. We had a roof go bad on the court house--\$200,000. We used inheritance tax. We did not have to levy to the public for inheritance tax. I guess we're giving it back--the inheritance from the estates--we're giving it back to the public, not using it foolishly, managing it well. We also use our inheritance tax for the possibilities of economic development, infrastructure in our county. Governor Heineman's platform was economic development. We have no way, Senators, we have no way of acquiring any money extra for economic development unless we could have the inheritance tax or some other avenue of revenue that we can acquire to do what it needs to do for us to grow. Okay, Senator Dierks, you can allude to the next thing I'm going to tell you about. You are my neighboring senator. About four years ago, Madison County was struck with the devastation of four murders a in bank robbery. That murder cost us about \$750,000. We used not all of it, but we used a lot of inheritance tax to take care of that bill. And that would have come in a 16 month period which we didn't have time to recover anything. Hearings were starting, lawyer fees were coming in, we had no way. If we would not have had inheritance tax, Madison County would be bankrupt. So I think before we tweak the inheritance tax, and before we cut any part of it, mess with any part of it, it's working now. We don't fix a tire if it's still not flat. So if there is no reason or any other avenue that we can acquire funds to replace that, do you know what it's going to do to all of us? All of us represent the landowners, and the real estate owners, and the household people. It's going to raise their property tax. There is no if's and and's about it. And to determine how much loss as a result of what we're talking about here, I don't think anyone, there is not anyone in this room that can tell us what the loss will be because you don't know how many estates are going to be settled. But I do know if we raise it to \$50,000 we are going to miss out on a lot of estates and a lot of money, especially in your higher populated areas. So I guess I've spoken my opinion to you. It's been very privilege for me to testify before you. I apologize for not giving you my name and, Senator Dierks, welcome back to the thing. Thank you very much. And I appreciate testifying for you. Just be careful when you start messing with those funds on the county level that are so dear to all counties--every county in the state. I don't care if it's Douglas County to Arthur County. We all use them as part of our budget. Thank you very much. Any questions? [LB22]

SENATOR JANSSEN: Jerry, I have one. Is Madison County up against their levy?  
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JERRY McCALLUM: No, we're not. As a result of inheritance tax we're not. We buy it down every year. [LB22]

SENATOR JANSSEN: Um-hum. Where are you at? [LB22]

JERRY McCALLUM: We're at 39. [LB22]

SENATOR JANSSEN: 39. [LB22]

JERRY McCALLUM: That's our county levy. [LB22]

SENATOR JANSSEN: Yeah. All right. Yeah, that's the one I was concerned about. [LB22]

JERRY McCALLUM: I carry my little card, but yeah the county levy is like 39.9, but if we couldn't buy it down we'd be right up against the lid. [LB22]

SENATOR JANSSEN: Um-hum. Okay. Any other questions? [LB22]

JERRY McCALLUM: I hope I made myself clear. [LB22]

SENATOR JANSSEN: Sure. You did a fine job. [LB22]

JERRY McCALLUM: Thank you very much. [LB22]

SENATOR JANSSEN: Thank you. Any other opponents? [LB22]

JOE HEWGLEY: Chairman Janssen, members of the committee, my name is Joe Hewgley, that's spelled H-e-w-g-l-e-y. I'm a 22 year member of the Lincoln County Board of Commissioners, their current chair. And I serve as the NACO vice president this year. Sort of regenerated. This is my second time around through those offices. We had a legislative meeting down here this morning. I drove in from North Platte for that. I called and spoke with our county clerk. We have \$6,537,000 is what the property tax is in Lincoln County, real estate tax. \$1,185,678 inheritance tax revenues. Like Jerry and Madison County, we use it to buy down about 3 cents of our levy. We take about a cent and a half and put it into roads and emergency things that can happen on our roads. We had a individual go through a bridge this last year that we didn't have anything budgeted for, because you don't plan on people going through a bridge. Inheritance tax paid for that bridge 100 percent. It's critical in my opinion to, you know...and today when we're talking about property tax relief and we have so many new senators here, and I think that at least my take on it is that everybody sort of heard that as that's sort of number one with what people are wanting to do. Property tax relief, property tax relief. You

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know, I'm preaching to the choir. It's a heck of a way to try to do it if you're going to take away, in fact, from those individuals responsible for property tax. Senator Raikes, with all due respect, you said why don't we just eliminate it. Why don't you just eliminate the state estate tax? That's something that affects you. Let counties, for God's sakes, keep the few things that they have. It's not going into my pocket. It's not going into the county clerk's pocket. It represents everybody in that county. And you know, it's tough enough today so I would just respectfully ask that you think about the counties when you do that. I'd be glad to answer any questions. [LB22]

SENATOR JANSSEN: Any questions? [LB22]

JOE HEWGLEY: Thank you very much. [LB22]

SENATOR JANSSEN: Thank you. [LB22]

TIMOTHY LOEWENSTEIN: Senator Janssen, committee, my name is Timothy Loewenstein. I spell that L-o-e-w-e-n-s-t-e-i-n. I'm a 16 year member of the Buffalo County board. Over the last few years as I've become more involved in the process down here, I've heard questions asked about what do we do with this money. I've heard the comment about a slush fund and that kind of twinges me a little bit. So my purpose in being here today is to share with you a picture through the eyes of Buffalo County. How have we used the money that we're received through this inheritance fund? I would suggest to you that all the examples I'm going to give you did, in fact, have a direct reflection in not having raised property tax to pay for these things. The question has been brought up about budgeting it. I really don't see if you would take an honest and really--and I don't mean that you're dishonest--but I mean if you take a detailed look at the county budgeting process, I don't really see how you can place this into that budgeting process because it really is a roller coaster. It really is. Even in a county like Buffalo County, it is. What we have done over the last 16 years is used it for capital improvements, for large improvements that otherwise would have been placed on the public as property tax charges. We had to replace our Highway Department facility and we paid for that \$1.3 million entirely out of inheritance tax. We had to, like my colleague, we had a quite large bridge which was damaged with a reckless vehicle and we had to replace that. This was not budgeted and this was a farm-to-market road, and the work had to be done right now. So we used that money to pay for it. As right now, Buffalo County is currently has earmarked funds from our inheritance tax account to purchase land upon which our new jail will sit, and we're just now finishing negotiations for that, and to pay for phase 1-A of that project which will be about \$2.1 million combined--those two events. And again, \$2.1 million that will not be placed on the tax rolls whose property tax requirement of our taxpayers. I guess I feel very strongly that we recognize where this money came from. And that we try very hard to use it in its most appropriate means and not in anyway treat it lightly. Is there any questions that I could answer for you? [LB22]

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SENATOR JANSSEN: Any questions for Tim? Ron. [LB22]

SENATOR RAIKES: I do have one. [LB22]

TIMOTHY LOEWENSTEIN: Yes, Senator. [LB22]

SENATOR RAIKES: You mentioned that the difficulty with budgeting is the variability. That one year it's up, one year it's down. Yet, two or three years ago or maybe several of the last years, we've had a proposal before the committee that would've evened that out, would not have--at least one of them--would have not reduced overall but just simply smoothed out and not even required budgeting of it. But yet, you oppose that. Why wouldn't it be better for counties to have a more dependable, reliable stream than to have this roller coaster? [LB22]

TIMOTHY LOEWENSTEIN: If we're speaking philosophically I would not disagree with you. Getting rid of the roller coaster would be a good thing. I wanted to tell you, Senator, that I don't have an immediate recall knowledge of what you're proposing in detail... [LB22]

SENATOR RAIKES: Fair enough. [LB22]

TIMOTHY LOEWENSTEIN: ...so I feel a difficulty in responding directly to that proposal to you. There's no question. If you could say here's a way we're going to plan this and you're going to be able to know, of course, that makes life better. I mean, really. [LB22]

SENATOR RAIKES: Okay. [LB22]

TIMOTHY LOEWENSTEIN: We both know that. But I can't speak directly to what you're saying... [LB22]

SENATOR RAIKES: All right. Fair enough. [LB22]

TIMOTHY LOEWENSTEIN: ...because I don't have a personal knowledge of that. [LB22]

SENATOR RAIKES: Thanks. [LB22]

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Tim. [LB22]

TIMOTHY LOEWENSTEIN: Thank you very much. [LB22]

SENATOR JANSSEN: Next opponent. [LB22]

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LARRY DIX: (Exhibits 18 and 19) Senator Janssen, members of the committee, for the record my name is Larry Dix, D-i-x. I'm executive director of the Nebraska Association of County Officials. I'm here in opposition to LB22. Right now you're being distributed a letter on behalf of Lancaster County in opposition to LB22. That's going to be followed up by a sheet of paper that, and probably I'm going to want one of those sheets back, that is going to be followed up by a sheet of paper that details...in the last year we took members of our staff and went out and examined inheritance tax, I believe in about 13 counties. And through that process we were able to come up with some figures. Now this is not a process that we want to get involved in every year. When we go through this, some of these counties we would have staff members sitting in the county for almost a week trying to gather all this information, because you literally have to find each and every case, pull it, make copies of it, then come back and assimilate the information. So there's a tremendous amount of time that we spent in doing that assimilation. And now that you all have that, I want to go through there and want to touch on the counties that you'll see there. You'll see Blaine, Box Butte, Brown, Buffalo, Sarpy, Gage, Hamilton, Valley, Webster. We tried to take a look across the state so we would get geographically all counties represented, and from a size-wise all counties represented. The next column will show you the number of cases that were filed along with the net value of the estate. And then we break down the Class 1's, Class 2's, and Class 3's so you can see in tiers where that money comes. And I'd call your attention down to the bottom of Class 1's. You'll see from the Class 1 taxpayers, inheritance taxpayers, 42 percent of the money in inheritance tax, out of these counties, came in that location. Now we believe this is going to be a pretty representative sample across the state. Class 2's represent 48 percent. Class 3's represent 9 percent. Now I would call your attention, as it relates to LB22, the second column from the right which is the loss of revenue in the Class 1's. As you'll see under the guidelines of what Senator Wightman is introducing there would be--out of just these counties--what that represents is about a 29 percent loss of revenue. So when we were talking about how much revenue does that really represent, we have a pretty good understanding that in this representative sample we would see a loss of 29 percent. When you get into the Class 2's you can make the assumption that it's going to be very similar because we're raising the threshold to the same level. We're raising that up, in essence, on those Class 2's, but to get the information on the Class 2's you would literally have to go back through each and every one of these cases. And so we know that in general we're going to lose 30 percent of Class 1's. Our estimation is we're going to lose close to that on the Class 2's. They make up the lion share of the inheritance tax, Class 1's and Class 2's, because as you'll see from our study there's about 9 percent that go into the Class 3 category. Now I have not seen the amendment that Senator Wightman introduced. From what I hear from his definition of it, I think we would be in support of that. I don't think that we would oppose that amendment, but again, I have not seen it. One of the things that what you look at with LB22 and if you raise that threshold and you have Senator Wightman's amendment, you still of course will have somebody that's just on

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the other side of the threshold. So you will have somebody that has the \$51,000 estate which in effect still brings back the \$10. So wherever you raise that you're still going to have somebody that's always on the other side of that threshold. What I would tell you and what you heard today certainly the number one reason that we are seeing is that counties are buying down the tax rate. They're buying down property taxes in each and every one of their estates. The second highest usage of that is for bridge and roads which really I'm a little bit concerned about the ag sector, and I understand why they would support this, but I've got to tell you there's a tremendous number of bridges that are developed, and Senator Raikes, you mentioned it the other day on the floor of the Legislature when we were talking about the additional weight going across those roads. There's a tremendous amount of inheritance tax that is going to build new bridges to take the ag product from farm to market, and that one we can certainly provide you with the information of that. When we look at this, the fiscal note states that at a minimum we're going to lose \$4 million. That's very, very conservative. We believe it's going to be closer to around \$9 million statewide. I would tell you over the past four years the amount of inheritance tax that comes into the counties has been very flat. Over the past four years, statewide, it has been right around \$30 million. As we know that estates are growing, somebody would say well why isn't that number increasing. Well, the number is not increasing because people are figuring out ways to avoid paying this tax and be it through financial planners or whatever. It's a flat stream of revenues. Senator Raikes' address in previous years brought forth a bill to take that money, bring it to the state and average it out and then send it back to the counties. Well, one of the things that, historically and for as long as I've been here, our track record hasn't been very good when the state gets their hands on some of our money. We have seen reduction in state aid historically, and so I think that's probably why there's a little resistance to doing that. When I do talk to a number of counties, the counties can do the same thing. They can take that money and let it build into a fund over five years and generate a little bit of a static revenue stream. I would tell you Douglas County does that today. I would tell you that Lancaster County does that today. Any of the larger counties do that today, because they can pretty well tell you that year after year they can pretty well depend on the amount of revenue that is coming from that. Senator Janssen, I provided you with proof in Dodge County. There's a certain threshold that they know they're going to get every year. Just statistically with the number of people that we have in those counties. So those are some of the things that I wanted to bring up. The last thing that I would leave you with, and Senator Wightman alluded to it that this has been on the books for, I don't know, many, many years. And Senator Wightman I apologize. I can't remember the date that you said that. I would tell you that, historically, wouldn't it be nice if all of our fees would be tied to a cost of living increase. We have brought bills in front of this committee year after year to increase fees that counties charge on property. Haven't had a whole lot of success, but man, wouldn't it be nice if those fees just gradually increased each and every year. That isn't the case. The other thing that I would leave you with, one of the things that has been on the books, maybe has been on the books longer than ever touching the threshold on the inheritance tax is something in our

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constitution. That counties are tied to a 50 cent levy limitation that has been in our constitution. We know for a fact that that has not been amended, touched, since 1920. We have a belief it may have been back there, which we'll do more research, since about 1875. So that isn't the only thing that hasn't changed as far as a threshold for counties being able to increase revenue. I'd be happy to answer any questions that you may have. [LB22]

SENATOR JANSSEN: Questions? Don't see any. Thank you, Larry. [LB22]

LARRY DIX: Thank you. [LB22]

SENATOR JANSSEN: Any other opponents? Anyone in a neutral capacity? Seeing none, Senator Wightman to close. [LB22]

SENATOR WIGHTMAN: Thank you, Senator Janssen, members of the committee. I'd like to address one item before I forget it and that is that Mr. Dix talked about the constitutional provision that limited to 50 cents and it hasn't been changed for many years, but I want you to realize that that's acting upon larger and larger estates. This \$10,000 was set in dollar amounts and has, while inflation has grown, that dollar amount has stayed exactly the same, but you're acting on a tax base at the 50 cents that grows. So that adjusts itself somewhat for inflation. Several things I'd like to, at least, review again with you. Number one is the item of enforcement. There is no item of enforcement and you're not going to have enforcement as long as you keep this exemption at \$10,000. I can't believe a county attorney anywhere is going to go out and use very strong enforcement measures. So in effect, you're just inviting noncompliance and totally not considering the law that's in effect. And I think we're in a dangerous area when we do that. And if we put it up at \$50,000 and there are three children in a family, it would take an estate of \$150,000. Might be a typical family. There's some reason maybe to try to enforce that, but if somebody has a \$10,000 CD, nobody's going to know that. So it gets down to the honest people or those that are fearful, maybe not quite as honest as they are fearful that they might have to pay the 14 percent penalty are going to be the ones that pay. And I don't think that's good law when only a few are paying it. I don't know the number. I don't know whether it's 50 percent, but I would truly be surprised if 50 percent of the estates are complying with the law as it now stands. And I think if you got it up to where it was \$50,000, \$100,000, \$150,000 at least you would have some basis for enforcement of that law. With regard to the fiscal note I know Mr. Dix addressed that. You have it before you. It suggests, and all of this is conjectural, that they might lose 30 percent of the money on Class 1. I think Mr. Dix gave us a figure that that represents 14 percent of the total amount collected. So if you lost 30 percent of that, that might be 4.2 percent of the total amount collected. Senator Raikes had asked me why I didn't suggest that the bill be repealed. And of course after you heard all of the contestants you probably--or opponents--you some idea why I didn't ask that it be. But I think we need to put it on a basis that invites enforcement rather than invite people to

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totally ignore the law. And the last thing I'd like to point out is I submitted to you how other states are handling inheritance tax. And it shows that only eight states currently impose them. I think maybe only one is left that doesn't provide a total exemption for Class 1. There may be two tax rate per Class A beneficiaries. In Indiana is \$100,000. I guess Pennsylvania might be out of step a little bit. It's \$3,000. And Tennessee is \$1 million for anyone except the spouse. That's the exemption level. So we're talking about one state that is even in the category that we are so it doesn't seem to me that it would be unreasonable to expand the exemptions and to expand the bracket amount. But the best information I have is what comes from the fiscal office and they're saying that you might lose 30 percent of the total revenues for Class 1 beneficiaries and their suggestion is maybe about \$4 million on the rest of it. Again, I don't know the figure as to how much is raised across the entire state, but I assume it's a pretty high level in view of the fact that one of the opponents testified that in Lincoln County, I think it was--that was Madison County, I think--\$560,000 raised in that one county. So we're not talking as big a loss of revenue. And if you did go forward with the amendment, I think it might well be that you would pick up as much as you lost--or the counties would--and would certainly provide a lot better tool for enforcement. So I appreciate your consideration. [LB22]

SENATOR JANSSEN: Thank you, Senator Wightman. That ends the hearing on LB22. Senator Flood here? Senator Flood, you're up. LB364. [LB22]

SENATOR FLOOD: (Exhibits 20 and 21) Thank you, Mr. Chairman, members of the Revenue Committee. My name is Mike Flood, F-l-o-o-d, and I represent the 19th Legislative District which includes all of Madison County, Nebraska. LB364 proposes to amend Section 77-2014 which sets forth how inheritance taxes are apportioned among Nebraska's counties when a decedent owns real or tangible personal property in a county other than the decedents county of residence. Before I get too far I want to hand out the amendment which is being done right now. I believe that it sets out what I want to accomplish in a more clear fashion. My intent put most simply is to ensure that whether the estate assets are subject to tax or not subject to tax, all assets will be used for purposes of calculating the inheritance tax allocation among the counties where such assets are located. Section 77-2014 currently provides that "the total inheritance tax assessed against the estate shall be apportioned among the counties in the ratio that the value of the gross property subject to tax located in each county bears the gross value of all property reportable for Nebraska inheritance tax purposes." Apparently, this language means different things to different counties. I have been advised that the majority of counties in our state consider the value of property not subject to tax and exempt property when applying this allocation formula. If, for example, a non-Cherry County decedent had made a specific charitable devise of all of this real estate in Cherry County, Cherry County would still be entitled to a portion of the inheritance taxes collected. However, at least two counties do not apply the tax allocation formula the same way. Going back to my example, assume that the decedent

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held property in both Douglas and Cherry Counties. And again, assume that the decedent made a specific charitable devise of all of his real property in Cherry County. A recent Douglas County court case says that in this situation Cherry County would get nothing. Apparently Lancaster County reads the statute the same way. And if I'm incorrect in that I'm sure I will be corrected, but it's my understanding that both Douglas and Lancaster Counties have this view of the law. I would also hand out this transcript from 1974. I want to mention two things. First, it looks to me that LB364 is consistent with what was intended to be accomplished when Section 77-2014 was last amended back in 1976. Apparently, the Judiciary Committee of this body conducted a comprehensive study of our inheritance tax laws in the mid-1970's. They produced a report which is dated December 1974, a copy of which has been handed to each of you. In this report, you'll find language similar to this bill. The committee noted that language similar to this bill "avoids a distortion of the amount received by counties caused by the effects of deductions and expenses." That is the distortion we are, again, trying to avoid. Secondly, I want to note how important this is to rural counties like Cherry County and Madison County which I represent. As more and more folks who own land in rural areas decide to move to one of our metro areas as they enter their golden years, those rural counties have an incentive to discourage charitable devises of such land. This is something we certainly do not want to see happening. With LB364 we can eliminate that problem. I recognize this is kind of a complicated technical bill and my example may not be the exact best to explain the situation. I will offer this. Legal counsel for the Revenue Committee has been very helpful in working through this problem. Also present today, Andrew Loudon, a lawyer here in Lincoln who initially alerted me to this issue. And I've discussed the same with several folks that practice in this area and Madison County. And so to the best of my ability I would be happy to answer questions. If I'm unable to answer them I'm sure that one of the lawyers following me will have one, a better answer. Thank you, Mr. Chairman. [LB364]

SENATOR JANSSEN: Senator White. [LB364]

SENATOR WHITE: No, Cap's got one. [LB364]

SENATOR JANSSEN: Oh, Cap. [LB364]

SENATOR DIERKS: Senator Flood, when you talk about gross value is this the assessed valuation of the property? [LB364]

SENATOR FLOOD: Whatever the value of the real or tangible personal property would be at the date of death. So I don't know that you can necessarily use assessed value... [LB364]

SENATOR DIERKS: I'm talking about the real estate. [LB364]

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SENATOR FLOOD: A lot of times they would have an appraisal done that would value it as of the date of death. So it's not necessarily the assessed value. That may be a nice ballpark number, but it's really...the judge has to make sure, I'm sure, in a court hearing that the property was valued properly at the time of death. A lot of times in a ranch situation an appraisal would be obtained by the personal representative of the estate of the decedent. [LB364]

SENATOR DIERKS: And then I think they also include the obligations that are against that land in the way of loans and so forth. [LB364]

SENATOR FLOOD: That would be a deduction. [LB364]

SENATOR DIERKS: That wouldn't be a gross, though, that would be a net. [LB364]

SENATOR FLOOD: That would be a net, yes. I guess when I talk about the value it would be the net value of what the real estate would be valued at the time of death. [LB364]

SENATOR DIERKS: Um-hum. [LB364]

SENATOR FLOOD: If I'm incorrect, I would be corrected. [LB364]

SENATOR DIERKS: Thank you. [LB364]

SENATOR FLOOD: Thank you, Senator. [LB364]

SENATOR JANSSEN: Any other questions? [LB364]

SENATOR FLOOD: Yes. [LB364]

SENATOR WHITE: Mike, if you would give me the help working through this. [LB364]

SENATOR FLOOD: Okay. [LB364]

SENATOR WHITE: The law as it exists now states that gross property subject to tax located in each county bears to the gross value of all property reportable from Nebraska inheritance tax purposes. There's a difference there? Gross property subject to tax versus all property reportable? [LB364]

SENATOR FLOOD: Yes. I guess the way that I think this 1974 report that I handed out views the word...you know, subject to tax on its face I can see where a lawyer and a county attorney in Lincoln or Omaha would see that and say wait a second. Subject to tax for inheritance tax purposes. That would seem to exempt the situation in Cherry

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County from allowing that to be calculated for purposes of the apportionment. [LB364]

SENATOR WHITE: Was a ranch not subject to... [LB364]

SENATOR FLOOD: Inheritance tax? [LB364]

SENATOR WHITE: Right. [LB364]

SENATOR FLOOD: Not specifically, no. The ranch would not, because it was for a charitable purpose. The value of that ranch was not given at Cherry County per se or wasn't paid an inheritance tax because it was given for charitable purposes. [LB364]

SENATOR WHITE: Well, let me ask you this. May I? [LB364]

SENATOR JANSSEN: Sure. [LB364]

SENATOR WHITE: Let me ask you this question. Wasn't the purpose of the law to say those counties that contribute value to the inheritance tax collected will get back the proportionate value that they represented? In other words, Cherry County contributed property worth \$100 to it, Douglas County contributed property worth \$200 to it. Total taxable value is \$300. Cherry County gets \$100 of it, Douglas County gets \$200. Correct? [LB364]

SENATOR FLOOD: Right. [LB364]

SENATOR WHITE: In this case what you're saying is because they gave the ranch to charity there was no tax collected on it. [LB364]

SENATOR FLOOD: No inheritance tax collected on it. [LB364]

SENATOR WHITE: But they still want part of the sugar those generated in taxable property located in other counties. [LB364]

SENATOR FLOOD: Yes. Your use of the word sugar I may differ with, but... [LB364]

SENATOR WHITE: So what happens is Cherry County got the bad luck that they gave away the county or they gave away the ranch that would have generated value for the inheritance tax... [LB364]

SENATOR FLOOD: Correct. [LB364]

SENATOR WHITE: ...but since that didn't generate any inheritance tax, Cherry County was out of the poker game, but they want to ante up saying well... [LB364]

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SENATOR FLOOD: I would differ with you in this regard. Here we have somebody that's paid taxes on, you know, has been a property holder in Cherry County for, let's say, 50 years, and have paid property taxes and have contributed to the political subdivisions. [LB364]

SENATOR WHITE: Oh right. No, I... [LB364]

SENATOR FLOOD: And so I think what my vision of the inheritance tax is looking at the decedent's entire estate inventory as of the date of their death. Prior to the day they died that land was theirs, you know, fee simple. Nobody else had any right to it. Maybe a bank had a lien on it. And I think I'm looking at the big picture saying well, Cherry County is entitled to, in your example, want 33.3 percent of the entire amount of inheritance tax paid because we're looking at the value of the entire estate. Not necessarily any specific device. We don't want to "disincentivize" people...you like that (laughter)...from making charitable devises in their estate planning. [LB364]

SENATOR WHITE: Yeah, but you know it could go differently, too. For example, the same ranching county could give a block of downtown Omaha... [LB364]

SENATOR FLOOD: Um-hum. [LB364]

SENATOR WHITE: ...away to a charity and then Cherry County gets the money because they said look, they could lose a third or half of the value of the ranch that was subject to inheritance tax. I mean, it really changes fundamental distribution system. I'm not saying which way I'm at on it. [LB364]

SENATOR FLOOD: Right. [LB364]

SENATOR WHITE: I mean it's not a tweak. There was a concept that the counties that had property that paid into the pot, pulled the money back out according to what they put into the pot. Mike's people ran into a situation where because some of it was given to charity that county didn't get to go into the pot. So as law is interpreted right now, they don't get anything back out. And that could go either way though. I mean any county could get rolled on any time. [LB364]

SENATOR FLOOD: And for what it's worth, Senator, I did not introduce this bill because I wanted to foreclose Douglas or Sarpy County or Douglas or Lancaster County from getting any tax revenue. [LB364]

SENATOR WHITE: No, I understand that. Yeah, and that's why I raised that. [LB364]

SENATOR FLOOD: Yeah. [LB364]

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SENATOR WHITE: I want to make it clear. It's just, it's not a rural versus urban. It's kind of what do we do with charitable gifts that take you out of the split. [LB364]

SENATOR FLOOD: And if I may with the indulgence of the committee, share the following. I think that there's some clarity issues with the current statute. And whichever direction you go, I think that practitioners across Nebraska would like a better signal from the Revenue Committee and the entire Legislature as to how they want this done, because right now two counties are doing it one way and, presumably, 91 other counties are doing it another. So whichever way you go, obviously I have my opinion, but I think it's good to clarify it. [LB364]

SENATOR WHITE: Did you think that they should have read it differently. That's just a technical question, one (inaudible)? [LB364]

SENATOR FLOOD: When I first read it I've got to admit I had trouble understanding why 91 counties were doing it the way they're doing it. Not to prejudice against my own bill; however, when in practice it's done that way, after looking at the policy considerations, I can see the reason behind doing it the way it's proposed in my bill. [LB364]

SENATOR WHITE: Yeah, I mean, I don't think that...maybe they have the better policy. But that's not our problem. I was just curious if I was missing a (inaudible). [LB364]

SENATOR FLOOD: No, when I read it I had to read it four or five times. And your legal counsel has been a gem and a giant of a guy to work through this with us, because it's very technical. [LB364]

SENATOR WHITE: You think this is more fair? Your proposal? [LB364]

SENATOR FLOOD: I think it's more fair because it looks at what the decedent had prior to the date of their death and the investments they had by county. And because they make a charitable devise does make it different as to what they ultimately pay in inheritance tax, but I think it's a true apportionment of where their holdings were. [LB364]

SENATOR WHITE: Just so you know and I'll just close. I see Douglas winning in this, because if people had stock in things they're more likely to donate that than they are the ranch or the farm. They're more likely to pass the farm on, I would think, and donate an appreciated stock. If they're living in Douglas County then Douglas County gets in for part of the ranch value. I mean, that would be my guess. [LB364]

SENATOR FLOOD: And I'd be completely fine with that. It's wherever the decedent

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wants to live where the estate's filed. And you're probably right when you think about it that way. I think when you think about real estate as an investment most people would have the ranch in Cherry County as opposed to a ranch in Douglas County, but I see what you're saying. And I want to stress this is nothing aimed at one of our metro areas. [LB364]

SENATOR WHITE: No, no, and I appreciate that. That's why I'm pointing it out. Is again, Mike, I didn't think of what else. [LB364]

SENATOR FLOOD: Either direction. [LB364]

SENATOR WHITE: Yeah. [LB364]

SENATOR JANSSEN: Any other questions? Seeing none, thank you. [LB364]

SENATOR FLOOD: I will waive closing. [LB364]

SENATOR JANSSEN: You'll waive closing? Okay. [LB364]

SENATOR WHITE: Oh, come on. (Laughter) [LB364]

SENATOR JANSSEN: Proponents. [LB364]

SENATOR FLOOD: I'd always waive opening arguments in a jury trial if you were there, Tom. (Laughter) [LB364]

SENATOR JANSSEN: Proponents of LB364. [LB364]

ANDREW LOUDON: Mr. Chairman, members of the committee, good afternoon. My name is Andrew Loudon, that's L-o-u-d-o-n. I'm an attorney with the Baylor Evnen law firm here in Lincoln. 1248 O Street, Suite 600. As an attorney I specialize in estate planning and administration. More importantly than that, 11 years ago I married a gal from Hooper, Nebraska and as I left the house this morning, Mr. Chairman, my wife said say hello to Ramie. So on behalf of the former Anne (phonetic) Stockfleth, daughter of Ron and Jane (phonetic) Stockfleth, your neighbors, I say hello. I do not appear here as a lobbyist or on behalf of any clients, but rather on behalf of myself in favor of this bill. As Speaker Flood mentioned, this addresses the apportionment of the inheritance tax between counties. Two classes, and I think this will get to your point, Senator White, two classes of interest are not subject to the inheritance tax--marital and charitable. Simply put, when you leave something to a spouse or to a charity those interests are not subject to the tax. It's not an exemption. They're simply not subject to the tax, but that property is reportable to the county attorney and the county court so that both can determine that the tax is being calculated correctly. The confusion comes with 77-2014

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which tells us as practitioners how to apportion that with the difference between reportable and subject to tax. Currently, the language does direct us to include all property that's reportable. The case in Douglas County was in 1992. It was the estate of Ethel Abbott (phonetic) and it was Bill Lindsay's estate. And that case involved the scenario that Speaker Flood was mentioning and that was an Omaha decedent and a Cherry County ranch. The Cherry County ranch being left to charity. In that case, the court found that although the Cherry County ranch was reportable for inheritance tax purposes, Cherry County did not get to share in the inheritance tax that was paid. For what it's worth, Bill Lindsay, the attorney in that case, asked me to convey to you that he supports the change that's embodied in LB364. That case was not appealed from the county court so it has no precedential value. The Douglas County attorney and the Lancaster County attorney have chosen to follow that. From what we can tell as practitioners, 91 counties have felt the other way and have not chosen to follow it. Personally, I feel the Douglas County court did get it wrong and to answer Senator White's question to Speaker Flood, I do read the statute the way it's currently written to support this proposal. One of the main reasons I believe that is looking at the legislative history from the 1976 amendments to this statute that are embodied in a report that the Judiciary Committee commissioned in 1974. Speaker Flood has distributed that to you and I think it shows clearly that the intent of the Legislature at that time was not to deprive a county like Cherry County in the Douglas County court case from its revenue due to the property being located there. This bill which is a revenue neutral bill and does not change the amount of tax, but rather changes the apportionment between counties would make it clear that Cherry County not Douglas County, in that example, would receive its fair share of the inheritance tax. And you're absolutely right, Senator White. The roles could be reversed. I would be happy to answer any questions. [LB364]

SENATOR JANSSEN: Any questions? Don't see any. Thank you for being here, Andrew. Next proponent. [LB364]

JON EDWARDS: Good afternoon, Mr. Chairman, Senators. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm with Nebraska Association of County Officials. We are here in support today of this particular bill Speaker Flood has brought. Simply from a practical standpoint that it appears that it will provide clarity in the way the inheritance tax is figured in these types of cases. And we certainly support that clarity and think that it will benefit all parties interested in the end. So just as a practical matter, not in a technical sense, we support this bill. [LB364]

SENATOR JANSSEN: Okay. That's short and sweet. [LB364]

JON EDWARDS: You bet. [LB364]

SENATOR JANSSEN: Any questions? [LB364]

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JON EDWARDS: It's getting close, isn't it? [LB364]

SENATOR JANSSEN: I don't see any. Thank you for being here, Jon. Any other proponents? Proponents? Seeing none, any opponents? Anyone in a neutral capacity? Senator Flood waives closing. That ends the hearing on LB364 and ends the hearing for the day. [LB364]

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Disposition of Bills:

LB106 - Advanced to General File, as amended.

LB537 - Advanced to General File, as amended.

LB403 - Indefinitely postponed.

LB22 - Indefinitely postponed.

LB364 - Advanced to General File, as amended.

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Chairperson

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Committee Clerk