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Revenue Committee  
February 28, 2007

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[LB501 LB502 LB507 LB662]

The Committee on Revenue met at 2:30 p.m. on Wednesday, February 28, 2007, in Room 1524 of the Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB501, LB502, LB507, and LB662. Senators present: Ray Janssen, Chairperson; Merton "Cap" Dierks, Vice Chairperson; Carroll Burling; Abbie Cornett; Chris Langemeier; Don Preister; Ron Raikes; and Tom White. Senators absent: None. [LB501]

SENATOR JANSSEN: Good afternoon, ladies and gentlemen. Welcome to the Revenue Committee. We're here today to hear four bills. With that, I would like to introduce the members of the committee that are here with us. We just got through with an exec session so a lot of the members went to the restroom and so on and so forth, but we're going to get started. Senator Preister is to my far left. To my far right is Erma James, the committee clerk, and next to her is Senator Tom White from Omaha. And the two fellas that are sitting right here--Ron Raikes to my far right and George Kilpatrick, the legal counsel for the Revenue Committee. Our page today is Marcus. I'd like to have you...if you have a cell phone, make sure you turn it off. Sign-in sheets are by each back door. If you're coming up to testify, drop them in the box right alongside of the clerk, right to the left side of the testifying table. There are clipboards back there if you want to just sign in on that in support or opposition to a certain bill. You're very welcome to do that. I don't know whether I introduced myself. I'm Ray Janssen from Nickerson, Nebraska. I kind of ramrod this committee. Senator Mines is here to tell us all about LB501. Mick, it's all yours. [LB501]

SENATOR MINES: Thank you, Mr. Chairman. For the record, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District and I am the principal introducer for LB501. This bill requires a direct seller to be licensed to sell cigarettes at retail and to collect excise taxes, as well as verify the age of the consumer. The direct seller is defined in the bill as any person receiving orders over the Internet, mail order, or other means, and delivering cigarettes or contracting another or otherwise causing cigarettes to be delivered to a consumer located in Nebraska. Packages containing cigarettes that are shipped or delivered in the state would be required to be marked with the word cigarettes on all sides of the package. LB501 would also prohibit common carriers from accepting cigarettes from shippers unless the shipper is licensed by the state of Nebraska. Let's see, we had a couple drafting errors that were picked up late and I would just note those now. I don't have an amendment to make those corrections, but let me just note. First, on page 19, lines 14 and 17, the bill requires direct sellers to receive certification that the purchaser is at least 19 years of age. Cigarettes are not for persons too young. Excuse me, well, that's an error, because Nebraska's age is 18. The second error can be found on page 20, line 22. It says tobacco products are mentioned and this should simply state cigarettes, as it's the intention of this bill that only cigarettes shall be determined or applied. With that, I have testifiers behind me that can more fully

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explain this legislation and I would entertain any questions, Mr. Chair. [LB501]

SENATOR JANSSEN: Thank you, Senator Mines. Any questions? Senator Preister. [LB501]

SENATOR PREISTER: Senator Mines, I like your bill. In Section 18, you prohibit unstamped cigarettes from being delivered anywhere in the state, and maybe somebody else is better to answer this... [LB501]

SENATOR MINES: I'm going to defer that, but that's an exactly correct statement. Right. [LB501]

SENATOR PREISTER: I was just wondering if there currently are any unstamped cigarettes that can be sold, but maybe somebody else... [LB501]

SENATOR MINES: I believe that's true, but let me defer to the following testifiers. [LB501]

SENATOR PREISTER: Fine, thank you. [LB501]

SENATOR MINES: Thank you. [LB501]

SENATOR JANSSEN: Okay, thank you, Mick. [LB501]

SENATOR MINES: Thank you, Mr. Chair. [LB501]

SENATOR JANSSEN: We'll take proponents. How many proponents do we have on this bill? One, two...opponents? Don't see any. Anybody neutral? Okay. [LB501]

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 am here today in support of LB501 as a registered lobbyist for Altria Corporate Services who provides legislative services to Philip Morris USA, as well as a registered lobbyist for the Nebraska Petroleum Marketers and Convenience Store Association. First of all, I would like to thank Senator Mines for introducing this legislation. As excise taxes drive up the price of cigarettes, many smokers are seeking lower priced cigarettes through a variety of alternative venues and channels, many of which are illegal. The illegal trade includes counterfeit, illegally imported, untaxed, undertaxed, and stolen cigarettes. Additionally, the trafficking of contraband cigarettes through nontraditional channels, specifically Internet, is a growing problem. The illegal trade in cigarette deprives governments of revenues, tax revenues, harms legitimate trade channels, and hinders efforts to prevent youth access to cigarettes based upon age verification. In addition, when adult smokers unknowingly purchase substandard counterfeit cigarettes, which illegally use the brand

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names of, i.e. Philip Morris USA, they cannot authenticate brands and which they believe are authentic, it can have a negative impact on those companies trademarks, the manufacturers. I guess the purpose of this bill is to try and provide an equal playing field for everyone involved in the sale of cigarettes--the manufacturers, the state in collecting the state taxes, and in the retailers and wholesales in distributing and selling those to the public. While maybe some people think this bill isn't the perfect solution, I guess, you know, I'm here to say let's have a discussion about this. There are other states that have tried some things like delivery prohibition, only where they are requiring the common carriers--mainly UPS, DHL, and those type of people--to acquire a signature and verify age of the person who's receiving the cigarettes. You know, other ways of doing it are obtaining them through credit cards. Hopefully not as many underaged people have credit cards, etcetera. So I guess that's the main purpose of the bill. Senator, to answer your question, untaxed cigarettes would only be able to deliver to licensed people within the state of Nebraska. Basically, the wholesalers or maybe in the case of retailers who have their own distribution. You know, several of them are licensed to stamp cigarettes as well. So plain and simple that's pretty much the purpose of the bill. I'd be happy to try and answer any questions if I could. [LB501]

SENATOR JANSSEN: Any questions? Ron. [LB501]

SENATOR RAIKES: Tim, you said this is not the perfect bill. What's the perfect bill? What does this lack? [LB501]

TIM KEIGHER: Well, I don't know what the perfect bill is. As the fiscal note said, there's some concerns with the constitutionality of it, how it plays with the Jenkins Act. Understand that it's going to be difficult to try and track down these Internet sellers if we don't know who they are. But I think that maybe a solution to that is to just take and put the delivery portion in there. We're requiring that the cigarettes are labeled cigarettes and that those delivering them, you know, get a signature and verify that the person is of age. And that's what they did in Michigan and New York. And I forget if it was in Michigan or New York, seen an increase in tax revenues of roughly \$15 million. Now I don't think we'd see that drastic of an increase here, but you know, we don't have as many sales of cigarettes. But you know, from the retailers perspective I have a member in Omaha who got on the Internet just to see how easy it was going to be to buy cigarettes and ordered--I don't know--15 cartons of cigarettes over the Internet. He doesn't know where they came from. He paid for them with a credit card, and they were delivered to his door. So, I don't know what the perfect bill is, but... [LB501]

SENATOR JANSSEN: Tim, how does this work with the tribes? Do they pay that tax? [LB501]

TIM KEIGHER: Well, my understanding is they are exempt from paying the tax from sales to their own members. But my understanding is they have to pay the tax if they're

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selling it to non-tribal members. [LB501]

SENATOR JANSSEN: If they sell to...okay. All right. [LB501]

TIM KEIGHER: That's my understanding. [LB501]

SENATOR JANSSEN: Okay. Well, I remember that but I can't remember exactly how that played out. Any other questions? I don't see any, Tim, thank you. [LB501]

TIM KEIGHER: Thanks. [LB501]

SENATOR JANSSEN: Next proponent. [LB501]

KATHY SIEFKEN: Chairman Janssen and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association here in support of LB501. And we would like to thank Senator Mines for introducing this legislation. We support it for a couple of reasons. Number one, it would level the playing field. There's a lot of taxes that are going uncollected that the state of Nebraska should be collecting. It helps all of us out. Those tobacco products would then be sold at the same rate instead of a lower rate and competing with our members. In addition to that, there's a concern that minors are able to get ahold of tobacco products without showing an ID. And I know that Oregon passed a law similar to this. It's been, I want to say, three or four years ago, and without a law on the books, you can't do what Oregon did, and what they did was there was an Internet provider that resided in the state of Oregon. And they busted that company and stopped a lot of the shipments that were taking place. And I think that's why we need the law because you have to start someplace. And so this gives us at least a starting point and I think it's important that you collect those taxes and that you keep it out of the hands of minors. And as far as unstamped product, there are some retailers that are selling unstamped tobacco products. It's not legal. And whenever Revenue finds them, they are confiscated, but I know that they do have a problem out in Kearney. And anytime you can put more teeth into the law to try and get those unstamped tobacco products off the market so that every pack that's sold taxes are collected on, it's better for all of us. So with that, if you have any questions I'd be happy to try to answer them. [LB501]

SENATOR JANSSEN: Kathy, where are those tobacco products coming from then? You say that they are selling their unstamped? [LB501]

KATHY SIEFKEN: They are tobacco products that don't go through a typical wholesaler. An example would be, in our industry... [LB501]

SENATOR JANSSEN: I thought you said there were wholesalers that were selling... [LB501]

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KATHY SIEFKEN: No, it's not wholesalers. It's retailers that are selling them within the community. [LB501]

SENATOR JANSSEN: Unstamped cigarettes. [LB501]

KATHY SIEFKEN: Unstamped cigarettes. Because they're not coming through the normal chains. [LB501]

SENATOR JANSSEN: Would they be coming through the Internet then? Possibly? [LB501]

KATHY SIEFKEN: They could be. Could very possibly be. [LB501]

SENATOR JANSSEN: And then just shipped in? [LB501]

KATHY SIEFKEN: Um-hum. And I know it's a recurring problem out in central Nebraska. [LB501]

SENATOR JANSSEN: Why would it be in central Nebraska, be that area? [LB501]

KATHY SIEFKEN: I'm not sure. That's what I've heard just within the last 30 days that that seems to be the hot spot. [LB501]

SENATOR JANSSEN: Well, they're in the central part of the state. You know, they can go all over the state, too. [LB501]

KATHY SIEFKEN: Um-hum. It seems to be the hot spot right now. [LB501]

SENATOR JANSSEN: Okay. All right. Any other questions? Thanks, Kathy. [LB501]

KATHY SIEFKEN: Okay, thanks. [LB501]

SENATOR JANSSEN: Any other proponents? [LB501]

JACK MOORS: Chairman Janssen, members of the committee, my name is Jack Moors, M-o-o-r-s. I'm registered lobbyist for the Nebraska Association of Tobacco and Candy Wholesalers. We are here in support of LB501. We fully realize that Internet sales are here to stay and that Internet sales are our new competition. We just hope to find a way to get them licensed and have them respond to the laws in the same manner that we do as wholesalers. There's a problem with underage sales on the Internet. There's a problem with packages that are not stamped, but there are some that are stamped. We have been able to buy both and I guess the thing is we'd like to get a

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discussion started as to some way to at least let them become licensed as we are. The question is well, how do you know it's hurting you? We don't. We do know on the border of sales our sales are down in Omaha. Our sales are down along the Iowa border, but I think that's about to stop from what I've heard. So I can't come up here and tell you that we're losing sales, but we know they occur. So it's a very difficult problem. The whole issue of Internet sales has been discussed many times here I'm sure and this is just one product. But we would just ask that we get a discussion started on this. This is a big problem for us. That's all I have. [LB501]

SENATOR JANSSEN: Questions? [LB501]

JACK MOORS: Yes? [LB501]

SENATOR JANSSEN: Senator Langemeier. [LB501]

SENATOR LANGEMEIER: Chairman Janssen, thank you. I apologize for being late. I was in another hearing, Jack. Iowa's looking at upping their tax pretty sizably correct? [LB501]

JACK MOORS: Yes, they are. The word we have received is--I shouldn't bring that message to this committee--but they're going to raise their tax a dollar a pack. [LB501]

SENATOR LANGEMEIER: That was my... [LB501]

JACK MOORS: That's the rumor. Well, I'd like to report it as a rumor, not a fact. [LB501]

SENATOR LANGEMEIER: That's kind of moved along a little bit. [LB501]

JACK MOORS: It really has. [LB501]

SENATOR LANGEMEIER: Okay. Are any other states around us looking at going up? [LB501]

JACK MOORS: Not bordering states. Minnesota went up last year. [LB501]

SENATOR LANGEMEIER: Okay. [LB501]

JACK MOORS: And that's the only one we know. That's the one that's been hurting us, but... [LB501]

SENATOR LANGEMEIER: So if we encourage them to go up we don't need this so much. [LB501]

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JACK MOORS: That would be just fine with us. [LB501]

SENATOR LANGEMEIER: Okay, thank you. [LB501]

JACK MOORS: It's really been hurting, but that's fact of life. [LB501]

SENATOR LANGEMEIER: Okay, thanks. [LB501]

SENATOR JANSSEN: Any other questions? I don't see any, thanks, Jack. [LB501]

JACK MOORS: Thank you. [LB501]

SENATOR JANSSEN: Any other proponents? Any opponents? Anyone in a neutral capacity? Senator Mines to close. He waives closing and that ends the hearing on LB501. Senator Mines has the next bill, LB502. [LB502]

SENATOR MINES: (Exhibit 1) Thank you, Chairman Janssen, members of the committee. Again for the record, my name is Mick Mines M-i-n-e-s. I represent the 18th Legislative District and I am the principal introducer for LB502. We're going to talk about inheritance taxes. As you all know, inheritance taxes are paid by people that are dead or their descendants. And those monies go to the local county and I don't propose to change any of that. What I propose that we change is the amounts that are collected in inheritance tax. We have three classes of inheritance tax in Nebraska established in 1901. Under LB502, the rate for Class I tax, for transfers to immediate family members is 1 percent of the clear market value of the property in excess of \$10,000 received by each person. So anything in excess of \$10,000 received Nebraska...we charge 1 percent inheritance tax that then is collected by the county. Class I includes immediate family members and those include a father, a mother, a grandfather, grandmother, brother, sister, son, daughter, child, legally adopted children, and any lineal descendent or descendent legally adopted as such in conformity with the laws of Nebraska. LB502 would change that 1 percent to, rather than \$10,000, to \$100,000. Again, this amount was set in 1901 at \$10,000. We also propose to change Class II and III. You see, the intention is not to remove revenues in total from our counties. They rely on these dollars. What I propose is shifting the dollars from our lineal descendants and those immediate family members, shifting the amount that is paid from \$10,000 to \$100,000, and then we will increase the amounts that are paid on Class II and III and let me explain those. So ultimately I intend to keep counties' revenues whole from inheritance taxes. So Class II and the rate of transfer to remote family members would change from 6 percent of the clear market value of the property received in excess of \$2,000 to 10 percent in excess of \$25,000. So we're increasing it from 6 percent in excess of \$2,000 to 10 percent in excess of \$25,000. And just as clarification, remote family members include uncles, aunts, nieces, nephews, related to the deceased by blood or legal adoption. Class III, in LB502, would also change the transfer rate for all other classes

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simplifying the process so the new tax rate would be 18 percent on the clear market value to the beneficial interest in excess of \$25,000. During this last interim we worked with the Nebraska Association of County Officials and they provided us with a survey of, oh I think it was about 10 different counties across the state. It is impractical to collect data on inheritance tax on an annual basis from all counties and try and determine which class those revenues came in from. You'd have to go back to court records in each county and NACO did just that and provided us with information on just a scattering of counties around the state. We took that information...it might be interesting to note, again, you've got three classes. The Class I which is immediate family members in these test counties represented about 42 percent of the revenues received in inheritance tax. Class II which is remote relatives was about 48 percent. And Class III, those that are not related, was about 9 percent. I guess on my presumption early on was the immediate family members would be a much larger percentage and that was not the case. Based on the numbers we received from NACO and working through a process--again, trying to keep the counties revenues whole--we devised this new rate schedule and we believe that it would be more fair to our immediate family members thus keeping if the intent to maintain our generational transition of wealth by increasing that rate to \$100,000. I've also got a letter that I'd like the page to distribute from the National Association of Insurance and Financial Advisors. They are in support of LB502. With that, I'd be happy to answer any questions. I appreciate your time, Mr. Chairman. [LB502]

SENATOR JANSSEN: Questions? I don't see any, Mick. [LB502]

SENATOR MINES: Thank you. [LB502]

SENATOR JANSSEN: How many proponents do we have? Two proponents? Okay. [LB502]

JERRY STILMOCK: Afternoon, Senators. Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, testifying on behalf of the National Federation of Independent Business in support of LB502. It appears the World-Herald picked a heck of a day to run their article on inheritance tax concerning Mrs. Buffet's estate. And I don't know how the numbers might turn out if LB502 were to be in place, but it stated in the article if you had a moment in your busy mornings to look at that, that \$5.2 million went to Douglas County for inheritance taxes, but it didn't say the details of whether that was a Class I, Class II, or Class III or the different people that made up those different classes. But historically, our client has always been very interested in this issue in order to see the transition of assets from one generation to the next. And realizing that the committee has already taken action on a different Senator's bill, but hopefully this one trips your trigger and we'd certainly express our support and encouragement to move this bill on to General File. Thank you. [LB502]

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SENATOR JANSSEN: Any questions? Don't see any, Jerry, thank you. [LB502]

JERRY STILMOCK: Thank you. [LB502]

SENATOR JANSSEN: Next proponent. Any other proponents? Opponents? [LB502]

DEAN T. LUX: (Exhibit 2) Senator Janssen, members of the committee, I'm Dean Lux from North Bend, L-u-x. I'm a member of the Dodge County Board of Supervisors and I'm here representing the Dodge County Board of Supervisors. We oppose LB502 because we claim it's a shift of taxes from inheritance to property tax. The counties need the money that was raised by inheritance and there's only one way to get them and that's to put it on property tax. Now our county clerk...there's a lot of numbers in the back of that, but if you have any questions on those numbers call our county clerk. But he did; he checked every estate that was handled in the year 2006, and Dodge County would stand to lose 27 percent of their inheritance tax. In other words, \$220,006 is what we would have lost in 2006 if this LB502 was in effect. I've talked to a Fremont attorney that handles estates. Asked him if any of the people had any comments and he said the only comment they have is they can't believe it's that little, the tax. And he's handled several estates. So I think that's about all. I've been on the county board, this is my 31st year and we depend heavily on inheritance taxes. I was told by another attorney that this only affects the top 1 or 2 percent of the population. In other words, they get the break and the rest of the people get it tacked onto their property tax. That's all I have, Senator. [LB502]

SENATOR JANSSEN: Okay. Tom. [LB502]

SENATOR WHITE: Are your feet still dry out there in North Bend? Water going down yet? [LB502]

DEAN T. LUX: Well, west of North Bend we've got a channel that's in the wrong place, but it's south of the UP tracks and it's just going through a corn field. [LB502]

SENATOR WHITE: Town is okay? [LB502]

DEAN T. LUX: Yeah, yeah. [LB502]

SENATOR JANSSEN: Don't see any other questions, Dean. Thank you. [LB502]

DEAN T. LUX: Um-hum. Thank you. [LB502]

JERRY MCCALLUM: (Exhibit 3) Good afternoon, Chairman Janssen and members of the Revenue Committee. This is like a broken record, I believe. I've been here so many times you already know what I'm going to say before I start. My name is Jerry

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McCallum, J-e-r-r-y M-c-C-a-l-l-u-m. I'm a Madison County Commissioner and I've been commissioner for...I'm in my third term. I am president of NACO and I represent NACO statewide and they are also taking opposition to LB502. And I just passed around a letter from the Lancaster County board which also are standing opposed to LB502. Let's go into a little different situation and kind of telling you about maybe people complaining about inheritance tax. I've been a county commissioner now for almost 10 years and I don't believe I remember of anyone sending me a letter complaining to me about inheritance tax. I would like to see the senators in this committee's file on how many people complain about inheritance tax. They complain about property tax. And Senators, if anything is tweaked on this inheritance tax thing or taken away from the counties, your property tax will raise extremely high, because most of the counties are buying down their levies with inheritance tax. We are. We have a recipe for our inheritance tax. We're using it also for economic development. We're using it for infrastructure and things like this. Senator Mines means well. I understand that with his bill, but I think the big killer to counties is the \$100,000 exemption. That is where the loss is going to be. I think maybe we got a possibility of losing about \$18 million statewide. I think there's a \$30 million or \$31 million intake in the inheritance tax. That's \$31 million out of our economy and out of our pockets as far as property tax. Not good. It's been a part of our budgets for many, many years. Since 1901 I believe Senator Mines...and that's a long time guys. But I'll tell you what. It's been a stable thing. It's a tax base stability for counties where they can plan on doing some things that they don't have to levy against their people for. I've talked to some people that have wealth in my county and most of them will tell me it's a tax that we have sucked our fortunes out of Madison County. We're going to leave this back there, but Jerry, you spend it wisely. It's not going to go to Lincoln. It's not going to come back to us with 25 or 30 percent of it gone for handling charges. Take care of it. And we do. These counties are...we micromanage our money. And with the lids that are imposed upon us and the things we have to do to wiggle around these lids so we can build and grow, we need it. I hope you all are listening to me closely, because do not cripple our economy with taking away inheritance tax or even tweaking it until we find an avenue where we can replace that revenue other than on property tax and I think all of us are sitting around this table, I hope, are looking at your constituents property tax, because it's a tax shift. And I just sat down here for about a week now and we had a jail reimbursement thing. These things are all shifted back on the counties. Two million dollars on a jail reimbursement. Guys, just don't take it away from us. Leave it as it is. Leave it just exactly like it is until we have another river of money coming in, okay? Thank you for listening to me. I appreciate that. I hope I changed my story a little bit from two or three years ago. Thank you. Any questions and I'll answer them for you. [LB502]

SENATOR JANSSEN: Any questions? Don't see any, thank you. Oh, I'm sorry, Don. Wave that hand. [LB502]

JERRY MCCALLUM: Sure, Senator. [LB502]

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SENATOR PREISTER: I appreciate your testimony. Would you give your testifying sheet to the clerk over there? Thank you. [LB502]

JERRY MCCALLUM: Thank you. See, I'm on a roll. When I get that I forget my paper. [LB502]

SENATOR JANSSEN: Thank you for being with us, Jerry. [LB502]

JERRY MCCALLUM: You bet. Take care. [LB502]

SENATOR JANSSEN: Okay. Any other opponents? Did I miss any opponents out there? Senator Burling thought I missed one. Okay. No other proponents? Anyone in a neutral capacity? Senator Mines, close. [LB502]

SENATOR MINES: Thank you, Chairman Janssen, members of the committee. The nice thing about introducing and closing is you get the last word. And I have a last word on a couple of issues, particularly Commissioner McCallum. The sky is not falling if this bill is advanced. There is no intention to reduce any revenues to the counties in the state of Nebraska. If he was paying attention he would have noted that we're going to, on the back end in Class II and III, we will increase the rate on those two classes. And in the examples that I have been given of counties, in about half of them it does increase the total net value of what these counties are going to receive. You know, let's be very frank. Inheritance tax is not a dependable form of revenue and when Mr. McCallum suggests that they use it to routinely reduce their property taxes or maintain property taxes that cannot be true, because you can't depend on inheritance tax. I also would take issue, it's not a wealth issue. A wealth issue, if you take that as a basis, \$10,000 in assets is not a wealth issue. I'm just simply raising it from \$10,000 to \$100,000. And oh by the way, on Classes II and III we're also increasing the amount that the counties would receive. You know, a lot of general statements were made. My general statement is I believe the counties are kept whole under this formula and I would take exception...and we're not trying to deplete anybody's revenues. And by the way, I figured out, Susie Buffett, if she left all of her money to...if it was lineal descendants, the county lost out on \$900 as opposed to however many millions they just happened to suggest. There was also a comment about the loss of \$31 million to the counties or something else. Again, I think that's a supposition. I don't know that there's any base of fact. And I would just urge the committee to advance the bill and give us a chance to let people keep some more of their money. Thank you. [LB502]

SENATOR JANSSEN: Any other questions? Don't see any, Mick, thank you. [LB502]

SENATOR MINES: Thank you very much. [LB502]

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SENATOR JANSSEN: That ends the hearing on LB502. LB507 is Senator Burling's, change of provision relating to ethanol production incentive tax credit. [LB507]

SENATOR BURLING: Thank you, Senator Janssen, members of the Revenue Committee. My name is Carroll Burling, B-u-r-l-i-n-g. I represent District 33 in the Legislature and I'm here today to introduce LB507. The purpose of LB507 is to modify the Statute 66-1344 by adding diesel fuel to the forms of tax credit certificates available to licensed petroleum distributors in taking ethanol production incentive credits. Tim Keigher, the executive director of the Nebraska Petroleum Marketers and Convenience Store Incorporated, will follow my testimony, but I will try to answer any questions that I can. It's pretty simple. The bill has said vehicle tax and it's been interpreted to mean only gasoline and the desire here is to add diesel fuel along with gasoline to the credits available, and Tim can answer more technical questions. Any questions for me? [LB507]

SENATOR JANSSEN: Okay. Any questions? Don. [LB507]

SENATOR PREISTER: And maybe this is a question for Tim and maybe if I looked at the fiscal note it would tell me, too, but what does that do to the fund if we add the additional credits? [LB507]

SENATOR BURLING: Well... [LB507]

SENATOR PREISTER: And maybe Tim can answer that. [LB507]

SENATOR BURLING: ...the Department of Revenue issues credits to the ethanol producer. I can't tell you what it does to the fund. If I understand your question I don't think I can answer that as well as he could. [LB507]

SENATOR PREISTER: That's fine. He's sitting there just waiting to answer. (Laughter) [LB507]

SENATOR JANSSEN: Any other questions? I don't see any, Carroll. [LB507]

SENATOR BURLING: Thank you. [LB507]

SENATOR JANSSEN: Sure, yeah. Proponents? [LB507]

TIM KEIGHER: Good afternoon again, Chairman Janssen, members of the committee, my name is Tim Keigher, that is K-e-i-g-h-e-r. I am here in support on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. I mean, this bill simply allows...I guess I'll go through the process. Currently, an ethanol plant, if they're eligible for production incentive credits, they cannot redeem those credits directly. They

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need to go through a licensed distributor. The ethanol plant and the licensed distributor negotiate on what the distributor will buy that certificate for. The plant produces the ethanol, applies for the credit to the Department of Revenue, Department of Revenue verifies that they are eligible for the credit, verifies that there is money in the EPIC fund so they can redeem the credit. The credit is then issued to the licensed distributor who currently can only use that against his gas tax liability. He then pays the ethanol plant 99.7 cents on the dollar for that certificate and then when he remits his motor fuel tax on gasoline to the state, he simply subtracts whatever that credit is, okay? Then the EPIC fund reimburses that amount so that the Highway Trust Fund stays whole. So there is no...the net effect is there is no loss to any fund, either the EPIC fund--well, I mean, the EPIC fund is paying the credit--but to the Highway Trust Fund there is no loss. So all we're asking is that they can use diesel liability when redeeming these credits. What's happening is some of my larger members who the ethanol plants like to go to because they can deal with one distributor as opposed to 10 in redeeming the credits, they're running out of credits with the number of ethanol plants that are out there. And simply just saying we have diesel tax liability that we can't use. We would like to use that. I'd be happy to try and answer any questions. [LB507]

SENATOR JANSSEN: Questions? Don. [LB507]

SENATOR PREISTER: Tim, the Highway Trust Fund is maintained and it's kept whole, but I'm still not certain whether we're having problems with the EPIC fund now and the Governor is suggesting transferring another \$15 million into it and that still isn't going to make it whole. If we do this, isn't that going to further deplete the EPIC fund and we're going to have an even bigger hole that we have to fund? [LB507]

TIM KEIGHER: No, and the reason is...I mean, what could happen now is that an ethanol plant applies for their credit and there is not enough money in the EPIC fund. The Department of Revenue won't issue the credit to the distributor, but in the current scenario if Distributor A runs out of gasoline tax liability, all the ethanol plant is doing is going to Distributor B, C, and D to redeem those credits. So there is no net effect on...I understand what you're saying. I don't think I'm doing a very good job of explaining it, because the EPIC fund...yes, some say it is short of money. It needs more money in it. I'm not here to argue that. All I'm here to say is the way in which they redeem the credit, if the money is there, we can only do it on gas tax liability. So what I'm asking to do is not going to increase or decrease the need for money in the EPIC fund, because it's only the way in which they can redeem what money is there. [LB507]

SENATOR PREISTER: Okay. [LB507]

TIM KEIGHER: Does that make sense? [LB507]

SENATOR PREISTER: I think I understand what you're saying. [LB507]

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SENATOR JANSSEN: Senator Langemeier. [LB507]

SENATOR LANGEMEIER: Chairman Janssen and thanks, Tim, for your testimony. Basically the way I look at this bill is the ethanol plants want to be able to go to one big boy and give all their tax credits to him, but then they can't use them because they don't sell enough gas. So they could use the diesel to help take in some of those credits versus going to them, giving all the credits they can to match the gas they sell, then going over here and giving them all the credits to match the gas they sell and so on and so forth. It would allow them to pick one big guy that sells gas and diesel and get rid of them all at one spot. Would that be it? [LB507]

TIM KEIGHER: Correct. Yes, that is exactly what it is. [LB507]

SENATOR LANGEMEIER: Okay, thank you. [LB507]

SENATOR JANSSEN: Don't see any further questions. [LB507]

TIM KEIGHER: Okay, thank you. [LB507]

SENATOR JANSSEN: Thanks, Tim. Next proponent. [LB507]

LORAN SCHMIT: Mr. Chairman... [LB507]

SENATOR JANSSEN: Morning. [LB507]

LORAN SCHMIT: ...members of the committee, my name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I appear here today as a lobbyist for the Nebraska Ethanol Producers in support of LB507. I believe that between Mr. Keigher and Senator Langemeier they've adequately explained the bill. There's no adverse fiscal impact upon any funds, Highway Trust Funds or otherwise. There's a very simple example. If an ethanol plant had run \$100,000 worth of tax credits and went to a petroleum dealer and that petroleum dealer had \$50,000 worth of tax liability on the gas tax, they could only buy \$50,000 worth of those tax credits. If the petroleum dealer has another \$50,000 worth of tax liability on diesel fuel, as Senator Langemeier explained it, the petroleum plant could redeem their entire \$100,000 certificate with one dealer. It has no impact on the money owed or received. It simply adds diesel fuel tax as a item that can be redeemed with the fuel tax credits. So I'll be glad to answer any questions. [LB507]

SENATOR JANSSEN: Any questions? Don't see any, Loran. Chris. [LB507]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. Would this in any way...I'm trying to think of how to word this. Would this allow the ethanol plants or the petroleum

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dealers have anymore market edge in the market or leverage, by taking all your credits versus...I mean, could that be used somehow "leverageable" in the market if you could take them all? [LB507]

LORAN SCHMIT: It's a negotiable item, Senator. But I believe that the charge by the petroleum dealers for handling those certificates are very, very modest. And if an ethanol plant has an established relationship with the XYZ petroleum dealers they just like to do business with them and pretty well establish that situation. So I don't think it would give the dealer anymore of a hammer or the other person anymore of a hammer. [LB507]

SENATOR LANGEMEIER: Okay, thank you. [LB507]

LORAN SCHMIT: Thank you. [LB507]

SENATOR JANSSEN: Any other proponents? Proponents? Opponents? Neutral?  
Senator Burling to close. [LB507]

SENATOR BURLING: I just thought of one thing I don't think was brought out and that is that I understand the original intent of this whole credit process was--and it says in the bill--vehicle fuel. Department of Revenue interpreted that to mean gasoline. The drafters of the bill thought that meant both diesel and gas. That's the reason I'm here today. [LB507]

SENATOR JANSSEN: Just clarifying intent. Okay. [LB507]

SENATOR BURLING: Thank you. [LB507]

SENATOR JANSSEN: Don't see any other questions, thank you, Carroll. That ends the hearing on LB507. Senator Hudkins here? There she is. LB662. Good afternoon, Senator Hudkins. Welcome to the Revenue Committee. [LB662]

SENATOR HUDKINS: Good afternoon, Senator Janssen and members of the Revenue Committee. I am Senator Carol Hudkins, C-a-r-o-l H-u-d-k-i-n-s, and I represent the 21st Legislative District. I'm before this committee asking you to reflect upon the impossible situation that our state, cities, and counties find themselves when it comes to finding revenues to construct and maintain our transportation infrastructure. LB662 will allocate to the Highway Trust Fund and the Highway Allocation Fund the sales tax collected from the sale of road and general purpose construction and maintenance machinery not designed or used primarily for the transportation of people or property. In looking for a connection between the tax and the purpose for which the revenue is to be used, the relationship between road construction and maintenance and road and general purpose construction and maintenance machinery has a very close link. Without the use of these

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types of equipment, construction and maintenance of our road system would quickly revert to horse-drawn equipment. The principal purpose of these types of machines including road graders, bulldozers, scrapers, pavers, and so forth is for the express purpose of constructing and maintaining our road system. It would make sense that if motor vehicle sales tax is to be allocated as set forth in LB662, then the sales tax on equipment and the machines that are used to construct and maintain the roads that motor vehicles travel upon should be allocated in the same fashion. With the ever uncertain price of fuel, it's downright impossible for the state, cities, and counties to budget effectively, to maintain any kind of coherent road development and maintenance plan as preferred under the statutes that require a one and six year road plan. Thank you for your time and I would attempt to answer any questions. [LB662]

SENATOR JANSSEN: Any questions? Senator Raikes. [LB662]

SENATOR RAIKES: Senator, is there...how do you account for this? Now if, okay, vehicles, when you buy a car you go pay the sales tax at the county and then there's sort of a distinction. With road equipment, you pay the sales tax to the Department of Revenue, you as a dealer, along with a whole bunch of other stuff. So how does the sorting process happen? [LB662]

SENATOR HUDKINS: Okay, my understanding, Senator Raikes, is that the 5 percent of the sales tax would go to the Highway Trust Fund, and you know we have a 5.5 cent sales tax, the other half cent sales tax would go to the Highway Allocation Fund. The Highway Allocation Fund is divided between cities and counties and it has to be used for roads. The Highway Trust Fund is cities, counties, and the state, and it doesn't necessarily have to go to maintenance and construction of roads. [LB662]

SENATOR RAIKES: Okay, my question was a little bit different is that a dealer sells a road grader and a bulldozer and a something else that's not used to build roads... [LB662]

SENATOR HUDKINS: That's not used to build roads? [LB662]

SENATOR RAIKES: Yeah. [LB662]

SENATOR HUDKINS: Okay. [LB662]

SENATOR RAIKES: And so when that dealer remits the sales tax to the state, you know, how does it get properly labeled? [LB662]

SENATOR HUDKINS: Okay, I understand your question now. I'm sorry I didn't before. All of this equipment that we're talking about could be used to build roads and if it isn't, when you are moving this equipment to do whatever you're going to do--maybe you're

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going to put in tile--then you are having to transport that equipment on another vehicle which uses the roads. Maybe that's a little stretch, but that's...we see it as this large machinery because it is not used to transport people or property is heavy equipment and it's our idea that this heavy equipment, that sales tax on that should be used to further the construction and maintenance of roads. [LB662]

SENATOR RAIKES: So if it was a stump saw, for example, it would still go to the... [LB662]

SENATOR HUDKINS: Well, if that's included in the list of equipment, yes, I don't think that a stump saw was included, but maybe there's those that are behind me that can explain this a little better. [LB662]

SENATOR RAIKES: Okay, thanks. [LB662]

SENATOR JANSSEN: Chris. [LB662]

SENATOR LANGEMEIER: Thank you, Chairman Janssen. Senator Hudkins, I'm looking for more education here. If I'm a farmer, have a feedlot, and I go buy a big scraper, I don't pay sales tax. I put it on my personal property as my farming entity. Do many of these people even pay sales tax? Wouldn't they do the same thing? Take it as personal property into their corporation and depreciate it and do personal property tax? [LB662]

SENATOR HUDKINS: I had not thought of that. Probably, if they are going to put it on their depreciation schedule maybe that's different. Should it be? I don't know. [LB662]

SENATOR LANGEMEIER: I'm just thinking a lot of people might do that. They're big ticket items so you could really get the depreciation. [LB662]

SENATOR HUDKINS: Well, if someone from Peter Kiewit or Kiewit Construction, or who are the big road people? I don't know. [LB662]

SENATOR LANGEMEIER: Right. [LB662]

SENATOR HUDKINS: If they come in and buy a piece of equipment, chances are it's going to be used for roads. If Senator Raikes comes in and buys something, chances are it's going to be used in his tile business. [LB662]

SENATOR RAIKES: The check will bounce. (Laughter) [LB662]

SENATOR LANGEMEIER: Yeah. [LB662]

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SENATOR HUDKINS: The check bounces. [LB662]

SENATOR LANGEMEIER: But my question is okay, Peter Kiewit comes in and buys a big piece of road equipment--and I don't know how this works, I maybe totally wrong--but they may not pay sales tax because they take it as personal property and depreciate it on their tax schedule and not pay any sales tax as I would do with a farming piece of equipment in my farming operation. [LB662]

SENATOR HUDKINS: And I don't know how the construction companies are allowed to do that. [LB662]

SENATOR LANGEMEIER: Right. [LB662]

SENATOR HUDKINS: Again, hopefully, somebody can answer those questions. [LB662]

SENATOR LANGEMEIER: Yeah, I asked you so they can be thinking about it is kind of why. Thank you very much. [LB662]

SENATOR HUDKINS: Make me look dumb, but that's all right. (Laughter) [LB662]

SENATOR LANGEMEIER: That was not the intent. [LB662]

SENATOR JANSSEN: Senator Hudkins, you never give us that impression. [LB662]

SENATOR HUDKINS: Oh, thank you. [LB662]

SENATOR JANSSEN: You're welcome. Any other questions? Seeing none, thank you. Proponents? [LB662]

LARRY RUTH: (Exhibit 4) Senator Janssen and members of the Revenue Committee, my name is Larry Ruth, R-u-t-h, and I'm appearing today on behalf of the Associated General Contractors Nebraska Chapter in support of the bill. And there are a couple of things I think I could add to the answers that Senator Hudkins gave. Let me give just a little bit of background first. Why are we here today? Well, we're here to find additional sources of revenue for the Highway Trust Fund. I want to be perfectly frank here. This is not to clear up any ambiguity. It's not to do anything except to find additional sources of funding for the Highway Trust Fund and the reason we're doing that is pretty easy. We're approaching a cliff here in the state of Nebraska. We're about ready to have some significant problems with the funding of the state construction program. Senator Raikes was at the Telecommunications and Transportation Committee yesterday and gave a rather eloquent presentation of the cliff we're about ready to fall off. Senator, that was in the Journal Star this morning. And just to say a few things that you said, just to

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pass that on, I think you said that if the state continues to rely heavily on the fuel tax and if it continues to spend a similar amount of money on road building and maintenance, the result will be substantially higher fuel taxes. And then you've got a very large number of different scenarios to show that the fuel tax could go up into the forties or 50 cents a gallon by 2030. Senator Raikes also said as--this is paraphrasing--as costs for road building materials rise and as fuel efficient cars and trucks keep fuel use down, they'll be increasing pressure on the fuel tax to make up the difference. And then finally, he predicted that if we stick with the status quo quote, so now here's a quote--very good English, too, Senator--there wouldn't be anyone able to build new roads anywhere. So that's good, though. I like that, because I think that's really the position we're in. Director of the Department of Roads said it a little bit differently, but when he presented his presentation to the joint meeting of the Appropriations Committee and the Transportation Committee last November. And in that meeting he said that we're just approaching, with where we are now, we're approaching a system preservation mode. And that to him meant that number one, our first priority would just be simple preservation of the system. The second would be several capital improvement projects, but not very many. Third would be six-lane reconstruction of the interstate not proceed as rapidly as expected, and I think you might have seen from Lincoln to Grand Island I think it's expected in 2036 now. And finally, an expressway system that is currently under contract. Those current contracts would be completed, but don't anticipate letting any new contracts for any new expressway projects. Now he gave reasons for that and the reasons deal with what Senator Raikes was referring to yesterday, and that is revenues are declining. There's lower fuel consumption. The state sales tax on new and used motor vehicles are down because of fuel prices. Core federal funds are down and are expected to go down further in two years. The federal Highway Trust Fund is expected to be at zero and our numbers are going to go down dramatically. And so we're really looking at a cliff effect as to how we're going to be financing roads construction over the future. Now that's why...what did we do? Well, what do we do now? The roads program is funded with three elements. One is the motor vehicle fuel variable tax. So we pay that when we go to the pump. The second source of funding for the Highway Trust Fund is the sales tax from the sale of used and new vehicles. And we know about that. And the third is some part of the registration fees of vehicles. So it's been limited to and looking at those who use the roads pay for the roads through gas tax, registration, and through the purchasing of vehicles. Now what we're looking at here is a bit different notion, but it's a related notion. The notion is to expand to give similar treatment to propelled equipment and machinery that is closely related to highway construction, and namely that is used in highway construction. At least, could be used in highway construction. Now let me give you a bit of a reason for why the language is the way it is. I have a handout here, please. When you look to the section of law that says that the sales tax will be on motor vehicle sales, that section of law is, of course, what we have in the bill, but it uses a section of law that defines what a motor vehicle is. And a motor vehicle is defined somewhat in the negative. A motor vehicle is defined as any vehicle propelled by any power other than muscular power. In other words, a propelled

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vehicle. And then it lists a number of exceptions and the exceptions make a lot of sense. Wheelchairs, for example. Mopeds. But along around number seven is an interesting exception from the definition of motor vehicles and that exception is road and general purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property. That's where the language comes from in LB622. Is that the right number? LB662. Now that definition does go a little bit further and explains what those kinds of machinery and equipment are. And it says including but not limited to ditch digging apparatus, asphalt spreaders, bucket loaders, leveling graders, earth moving carryalls, power shovels, earthmoving equipment, and crawler tractors. It's those kinds of pieces of equipment that we're suggesting when a person purchases them that that sales tax goes to the Highway Trust Fund. Now as to your question, I think Senator, the question was how would this be determined? How would this be done physically? I merely turned to the fiscal note and suggest that that is something which is probably anticipated down at the bottom--or at least it seems to me that it is somewhat anticipated--one-time implementation costs are estimated to be \$50,000 for computer programming. My assumption is that it would not be difficult for the receipts that go in from Nebraska Machinery or some other major dealer to give the information as to what the equipment is and that it would be tooled in such a way through the computer to identify that. And then it's very simple at that point. The Department of Revenue simply transfers that money over to the Highway Trust Fund and you work on through the process. I don't see that as a major issue. It may be. I'll be happy to look at it, but I think that that is something that would be fairly easy to do. As it relates to your question, Senator Langemeier, would you repeat that again, because I wanted to...oh, yes go ahead. [LB662]

SENATOR LANGEMEIER: I can repeat it, but I got the answer. [LB662]

LARRY RUTH: Okay. [LB662]

SENATOR LANGEMEIER: My question was is in the farming world you get to not pay sales tax on your equipment. I was informed that in the construction world you have to pay sales tax. So you can't exempt out like you can in farming. [LB662]

LARRY RUTH: Yes. Right. That's correct. So if you bought... [LB662]

SENATOR LANGEMEIER: So would that mean that if I went to buy a dirt scraper from Nebraska Equipment like you talked about, I could get my tax excluded because I'm going to take it as personal property to clean my feedlot pens, but Joe Contractor that comes in and buys that same scraper wouldn't, because he's not using it for farming? So that would take care of that. [LB662]

LARRY RUTH: That's exactly my understanding of the law that Hawkins Construction isn't going to be able to depreciate it. It's going to have to pay sales tax on it at the time.

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And so you have a nice way there. A very nice way of dividing up that equipment which is going to be used for road building and that equipment which is not going to be used for road building. And it seems to work to me. Now I want to anticipate a question, because I think it's absolutely reasonable to ask the question, yes, but we are expanding the universe a little bit of the rationale as to how the Highway Trust Fund is funded. It would not be strictly on a user basis, but it would be looking at a user basis plus that equipment which goes into the construction of highways. It's a move. I'll make no bones about it. It's a move in that philosophy. It's a move from the philosophy of only user basis, but I'm suggesting that when you have the needs that we have in front of the state of Nebraska as to how to fund roads, that that is probably a reasonable extension of where we go. Otherwise, it's going to be strictly and continue to be on those three sources--registration, sales tax, and the variable. And we just see the situation with the variable tax being intolerable for the future as it raises to high numbers. Now Senator, you made some very good points yesterday about how you just don't look at revenue coming in. Look at product going out. And we would agree with you 100 percent. There are different changes which are going on out at the department right now, which will hopefully make it less expensive to build roads. For example, having narrower shoulders. Some other aspects of it which they expect to...for example, the number of counts you have to have before you build. All these things go to what they consider to be their needs. It doesn't go to the question of the cost per mile or anything like that, but as to how you look at the needs of the state. We just look at the state highway needs assessment for 2006 that was given to that joint committee last year and we look at the things that are in the current budget, and we want to bring it to your attention because this is something that's going to happen on everybody's watch here, including I think those who are term limited. It's happening now. Bring it to your attention and ask that you support this bill. [LB662]

SENATOR DIERKS: Thank you. Any questions for Larry? Senator Raikes? [LB662]

SENATOR RAIKES: Larry, I'll repeat my offer this morning. I think that most people who build plants and buy manufacturing machinery and equipment would agree that roads are very important and probably would be more than willing to contribute to road building. So how about we expand the sales tax base back to include manufacturing machinery and equipment and then devote that to the Highway Trust Fund? [LB662]

LARRY RUTH: Senator, I think that decision has been made by the body and I don't think I would want to revisit... [LB662]

SENATOR RAIKES: I'm giving you a chance here. [LB662]

LARRY RUTH: I know you are. [LB662]

SENATOR RAIKES: Well, let me suggest a different way then. We know rather than go

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through all the accounting here about keeping track of all these little items from each dealer, why don't we just say that a certain percentage of the sales tax base is road building equipment? We can establish that. But then that's the amount that goes to the Highway Trust Fund is a certain percentage. Then that way, whenever there's an effort to narrow the sales tax base, the Highway Trust Fund has an interest in not doing that. [LB662]

LARRY RUTH: What would you like me to say? That I would support that? I think I'd have to look at it and think about it and talk to the client obviously, but I see your point. [LB662]

SENATOR RAIKES: Okay. That was well said. Thank you. [LB662]

SENATOR DIERKS: Other questions for Larry? Guess not, thanks Larry. [LB662]

LARRY RUTH: Thank you. [LB662]

SENATOR DIERKS: Appreciate it. Further proponents? Are there other proponents for LB662? Does anyone want to oppose LB662? Opponents for LB662? Neutral? Senator Hudkins, would you like to close? Senator Hudkins waives closing. That ends the hearing on LB662 and the hearings for the day. [LB662]

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Disposition of Bills:

LB501 - Held in committee.

LB502 - Advanced to General File, with amendments.

LB507 - Indefinitely postponed.

LB662 - Indefinitely postponed.

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Chairperson

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Committee Clerk