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Revenue Committee
February 04, 2011

[LB165 LB537 LB562]

The Committee on Revenue met at 1:30 p.m. on Friday, February 4, 2011, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB165, LB562, and LB537. Senators present: Abbie Cornett, Chairperson; Dennis Utter, Vice Chairperson; Greg Adams; Deb Fischer; Galen Hadley; LeRoy Loudon; Dave Pankonin; and Pete Pirsch. Senators absent: None.

SENATOR CORNETT: Good afternoon and welcome to the Revenue Committee. My name is Senator Abbie Cornett from Bellevue. To my left, Vice Chair Dennis Utter from Hastings; to his left, Senator Deb Fischer from Valentine; and Senator Greg Adams from York. On my far right we are joined by Senator Pankonin from Louisville; Senator Pete Pirsch from Omaha. And Senator LeRoy Loudon will be joining us and Senator Galen Hadley. They're in other committee hearings at the moment. Our research analysts are Stephen Moore, to my right, and Bill Lock will be joining us later. Committee clerk is Matt Rathje. Our pages are Marilyn Buresh and Amara Meyer. Before we begin today I'd advise everyone to please turn your cell phones to either the off or the vibrate position. Sign-in sheets for testifiers are by both back doors and need to be completed by everyone wishing to testify. If you are testifying on more than one bill, a sheet needs to be completed for each bill. Please print when completing the form prior to coming up. When you come up to testify, please hand the form to the committee clerk. There are also clipboards by the back doors to sign in if you do not wish to testify but wish to indicate either your support, opposition, or neutral testimony to a bill. Only the introducer of a bill will be allowed closing remarks. We will follow the agenda posted at the door. The introducer or representative of the bill, followed by proponents, opponents, and neutral testimony. Only, again, the introducer will be allowed closing remarks. As you begin your testimony, please state your name and spell it for the record. If you have handouts, we need ten copies of those handouts. If you do not have them, the pages can make them for you. When you come up, please hand the handouts to the committee clerk. With that, we will begin the Revenue Committee meeting. Senator Fischer, you are recognized to open on LB165.

SENATOR FISCHER: (Exhibit 1) Good afternoon, Senator Cornett and members of the Revenue Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I'm the senator representing the 43rd District here in the Nebraska Unicameral. I appear before you today to present LB165. LB165 proposes several changes to the telecommunications occupation tax. The first, to phase out the ability of municipalities to impose an occupation tax on telecommunications services by 2018. Second, from the effective date of the act through 2017, the bill limits existing occupation taxes to telecommunications services. Equipment and taxes or fees will not be taxed. Number three, if a municipality wants to increase an existing or impose a new telecommunications occupation tax before 2018, the issue must be voted on by the people of that municipality. I introduced this bill to have a broader discussion on tax

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policy. While the Legislature has placed limits on other taxes, there is currently no limitation in our statutes with respect to the occupation tax imposed on telecommunications. I believe limitations are needed for a variety of reasons. The rate at which municipalities levy a telecommunications occupation tax varies from 1.5 percent up to 6.25 percent. Some municipalities charge the tax on both land and cell phone service, while others just levy the tax on landlines. Recently, Lincoln made the decision to extend the occupation tax beyond that tax on services to also tax equipment, making them the first and only municipality to do so. This variance in tax policy causes me great concern. I'm concerned the citizens of our state might be confused by this policy and I worry that our municipalities might simply go too far in levying this tax. I know the Governor is focused on creating job opportunities and making Nebraska more attractive to businesses, as many of us are. I would hope this goal applies to our telecommunications companies as well. In July 2010, Nebraska was ranked by the Committee on State Taxation as having the highest taxes and fees on wireless services, at over 18 percent. To have the highest tax rate in the country for everything, or anything, in my opinion, is simply not where this state wants to be. I've provided you a sample cell phone bill so you can see how this works, and I'd like to take a moment to list all of the taxes and fees placed on telecommunications services. There are six. The first is the state sales tax. On wireless, it's 5.5 percent, and it's the same for the landline. We have a local sales tax: on wireless, 1.5; and landline, 1.5 percent. City business and occupation tax, which is the telecom occupation tax determined by the city: on wireless and landline it varies between the 1.5 percent and 6.25 percent. The E-991 fee: for wireless, it's 1 percent; landline, 3.75 percent. The relay system--and that is for the deaf or hard of hearing: it's .10 percent on wireless; .35 on landline. The state Universal Service Fund is 4.37 for wireless; 6.95 percent for landline. The federal Universal Service Fund is 5.05 percent and it can be up to 15 percent on the landline, and the changes seem to happen every quarter depending on the type of line. The occupation tax, as it is imposed now, is imposed on the service, and then the sales tax is levied on that occupation tax. I know we're dealing with this issue in other bills, but a tax on a tax shouldn't be okay with us. That is not responsible tax policy, especially in the economic state our country and state is currently facing. I want to be clear: I understand the financial stress our municipalities are facing. I know that budget cuts made at the state level are going to affect our local governments throughout the state. I understand that Omaha generates approximately \$16 million per year on this tax, and Lincoln generates around \$8 million from this current occupation tax on telecommunications. I know these communities are here today to tell you that they will have to raise property taxes if this bill is passed. I don't know if that is so. People have asked me why I've introduced this bill if it won't help the state's budget situation and it may actually hurt the budget if you refer to the current fiscal note. I introduced this bill because I have a serious problem with the way this tax is levied and the broad authority municipalities have in levying this tax. In my mind, it is simply not appropriate and it needs to be analyzed. The revenue this tax generates is carried on the backs of our citizens. Plain and simple, they need to be able to hold their local governments responsible for these decisions. Thank you, and

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I'd be happy to answer any questions. [LB165]

SENATOR CORNETT: Thank you, Senator Fischer. Questions from the committee? Seeing none, before we open the committee up for testimony, I wanted to let everyone know that we are implementing the light system today. You will have three minutes to speak. When the light turns yellow that means you have one minute left. Thank you very much. [LB165]

LYLE WILLIAMSON: (Exhibits 2 and 3) Got it. I found the light. Thank you, Madam Chair, Senators. My name is Lyle Williamson, L-y-l-e, Williamson, W-i-l-l-i-a-m-s-o-n. I am an employee for Verizon. I am based in Denver, Colorado, though I am responsible for the state tax policy in about nine states throughout the western region. I am appreciative of your time limits; I will try to be brief. I, first of all, would like to thank Senator Fischer for bringing this bill forth. In Verizon's perspective, looking across this country and considering places to invest and places to employ people, this tax is an important issue to be debated--and we will hope, go away. We know that cellular services in particular, mobile services, have become just essential to people's lives, whether it's the senior at home and needing connection to her daughter or her doctor's office, or whether it's the farmer out in the field connecting to the world market via his cell phone, or whether it's exercising good parenting and staying in connection with our teenagers on Friday nights, we know that in many respects the wireless industry, in particular, has become just a lifeline to people throughout the state and throughout the country. I'm here for Verizon on behalf of more than 1,000 employees in Nebraska, most of them working at a call center here in Lincoln, but active in a number of ways in the community. And when we come in and suggest that a tax is worse than others and it needs to eventually go away, we are citizens of this state as well and concerned about schools and libraries and good services throughout the state. This tax is not just excessive and not only does it put Nebraska near the top in a rather bad way, it is also operating in a discriminatory manner in terms of its application. It is also growing in a number of respects in that the extension into equipment sales, for instance, is looking to us as a not very good development, in fact, working against the intention in some ways of people buying services and phones in the city of Lincoln. And we are concerned that more and more cities will view this as a lucrative field for revenue. When I mention that it's discriminatory, Verizon is in competition with the Googles, with the Apples, and it's not simple phone service anymore. And I was just going to demonstrate my smartphone, but I'm not sure I need to do that by telling you the accessibility through your smartphone is ever important to our folks in the state of Nebraska. So the point I would make in closing is that it's an important matter of economic development to Verizon. We view it as a bill that we'd like to work with the cities over a course of six years to remove the tax, if possible, to have it less and less of impact, and we don't necessarily think the outcome should be closed libraries or higher property taxes. We hope over time we could work with the cities in a way that allows them to have sustainable revenues but in a nondiscriminatory tax method. So I'll pause, take

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questions, and I do have a handout if we can get that out to people--two handouts actually. [LB165]

SENATOR CORNETT: Thank you. Questions from the committee? Senator Adams. [LB165]

SENATOR ADAMS: Thank you, Senator Cornett. Given your experience with tax policy in other states regarding your service that you provide, give me an idea: How do other states handle this? Are there occupation taxes in other cities in other states on your services? [LB165]

LYLE WILLIAMSON: Senator, a handful of states, not a whole lot of them--I can't give you the number off the top of my head--but a number of other states do similar. Sometimes they are remnants of the franchise method. A number of Oregon cities do a similar kind of tax on gross revenues of the companies operating in that city. And so that's another one of our priority states that we're trying to work to eliminate or discourage from any further growth in that area. [LB165]

SENATOR ADAMS: So I guess what I'm asking, and maybe you've answered that, is what Nebraska is doing--well, I can't really say. Let's pick on Lincoln for a moment. Is what they're doing more common or uncommon as you look? [LB165]

LYLE WILLIAMSON: Oh, I get it, Senator. Uncommon. Absolutely uncommon in our view. Sales taxes are more generally applied. We see sales taxes and believe that to be a preferred way to go, frankly, in taxing our industry. So an occupation tax like this, in our view, picks on one particular industry, that being our telecommunications industry. And not many states are doing that, so in that sense it's abnormal, sorry to say. [LB165]

SENATOR ADAMS: Okay. [LB165]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB165]

LYLE WILLIAMSON: Thank you. [LB165]

SENATOR CORNETT: Next proponent. [LB165]

STEVE MERADITH: Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Steve Meradith; the spelling is S-t-e-v-e, last name M-e-r-a-d-i-t-h. I'm vice president of state government affairs for Windstream Communications here in Nebraska. And I also echo Mr. Williamson's appreciation for Senator Fischer bringing this bill before the committee. We join many of our colleagues in support of the committee's effort to reform and to ultimately repeal the telecommunications occupation tax. And while the matter is being examined, we believe

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that some of the proposed changes could be put in place immediately. First item: Windstream supports applying the tax solely to telecommunications services as defined in Nebraska state Statute 77-2703.04(7)(aa). Further, Windstream supports inclusion of provisions in LB165 that make it abundantly clear the telecommunications occupation tax is not to be applied to telecommunications equipment, surcharges, fees, or taxes that are legally required to be applied to telecommunications service such as sales tax. And I've got an example of a pyramidal application of the tax that I'd like to just run by you briefly. Currently, Windstream is required to collect and remit a 911 surcharge, telecommunications relay service surcharge, Nebraska Universal Service Fund surcharge. And for that, we're required to--and actually this is by the city of Lincoln--to apply a 6 percent occupation tax to those fees, to those surcharges and fees. On top of that, we're then required to bill the state and city sales tax, totalling 7 percent, on top of the 6 percent on the fees. And you will maybe recall a recent article in the Lincoln paper where they talked about a tax on a tax. I think Senator Fischer alluded to this concept earlier. The example I just provided, you have a tax on a tax on either a fee or a surcharge, whatever you want to call it. And, you know, Windstream believes and hopes that the Chair and the committee members will agree that's not sound public policy. You know, we also have concerns about the expansion of the occupation tax by municipalities and the burden it places on one industry. For example, during the 2010 calendar year, the city of Lincoln increased the rate, effective January 1, from 5.5 to 6 percent, and then on October 1 of this past year they expanded the scope to include equipment and other nontelecommunications services such as installation, maintenance, late payment fees, telephone calling cards, and other ancillary services that are not really telecommunications services we don't believe. The bottom line is, these actions have increased taxes upon Lincoln businesses and the residents that purchase telecommunications services or equipment. And given the current economic environment and the need of city governments to generate additional tax dollars we have concerns that other municipalities and cities may take similar actions similar to Lincoln. Secondly, Windstream supports requiring that any increase in occupation tax rate or any change to the taxable base prior to the implementation be put to a vote of the people. We think requiring a vote of the taxpayers would require municipalities to fully explain and justify to voters why that increase is necessary. We believe more people are likely to go to a voting booth than appear in front of a city council meeting at which a tax increase is proposed. The occupation tax is essentially a hidden tax on telecommunications consumers. If an occupation tax rate increase is required to be submitted to a popular vote, a broader percentage of taxpayers would know beforehand that their monthly phone bill is going to go up and would also further help them recognize a company such as Windstream, we're just merely collection agents for the municipality and are not charging the tax for the company's benefit. The third point I'd like to make, Windstream also would support a moratorium on any rate increases until the issue of whether or not to repeal the occupation tax is resolved. We're aware that state and local governments are experiencing revenue shortfalls due to the poor economy. Luckily, it's improving. Nevertheless, Windstream opposes any efforts by

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municipalities to further increase telecommunications occupation tax rates or expand the taxable base. The occupation tax is already a burden in its current form and any efforts to increase the tax rate or extend the tax base beyond a reasonable definition of telecommunications service only causes further detriment to our already fragile economy. And with that, that concludes my remarks and I would be open to accept any questions. [LB165]

SENATOR CORNETT: Thank you. Questions from the committee? Senator Louden. [LB165]

SENATOR LOUDEN: Yes, thank you, Senator Cornett. You're with Windstream? [LB165]

STEVE MERADITH: Yes, sir. [LB165]

SENATOR LOUDEN: When you talk about occupation tax, now are you talking about the tax...do they tax you on the poles and the lines and stuff running up and down the alleys to serve those households? [LB165]

STEVE MERADITH: I believe, Senator, and that would be subject to check, I think that's really under a different statute. I don't believe the occupation tax is for that purpose. [LB165]

SENATOR LOUDEN: Okay. Well, we're getting some mail that some of the towns are considering that's part of the purpose. Then your occupation tax is on that phone hookup that goes into that residence or business or whatever? [LB165]

STEVE MERADITH: In Lincoln, yes. It's...today it's applied on telecommunications services and equipment and there's...I guess part of our concern is the definition of telecommunications services. We believe there's...we believe it needs to be...we have a statute that we believe narrowly defines what telecommunication service is. [LB165]

SENATOR LOUDEN: Now when you say an occupation tax on equipment, is that new equipment? If I go down to Best Buy and buy a telephone, do I have to pay a sales tax and an occupation tax, both on that phone that I buy? [LB165]

STEVE MERADITH: Yes, sir. Yes, sir, you do. And that brings up, if I may, a competitive aspect as well. If you go to Best Buy in Lincoln and buy that, for example, a cordless phone, you would be charged the 6 percent occupation tax as well as the 7 percent sales tax. If you go to Omaha, you would not be charged the occupation tax, that 6 percent occupation tax on that phone. [LB165]

SENATOR LOUDEN: In other words, I could buy it for 6 percent less in Omaha, the

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same thing. [LB165]

STEVE MERADITH: Yes, sir. [LB165]

SENATOR LOUDEN: Okay. Thank you. [LB165]

SENATOR CORNETT: Senator Adams, then Senator Utter. [LB165]

SENATOR ADAMS: Mr. Meradith, at one point you referred to the tax as a hidden tax. On the Windstream bill, do you specifically identify line item occupation tax, city occupation tax? [LB165]

STEVE MERADITH: We do, Senator. We do. [LB165]

SENATOR ADAMS: Okay. Then how would you call it a hidden tax? [LB165]

STEVE MERADITH: I think really the definition...the reason we would say it's a hidden tax is because the consumer doesn't have an opportunity. Well, I should say...I guess the consumer has an opportunity to go to a city council and oppose either the implementation or a rate increase in that tax. But, most generally, that doesn't happen. It's not done by a consumer vote, so they're less likely to realize that that tax is there. [LB165]

SENATOR ADAMS: Okay. Thank you. [LB165]

SENATOR CORNETT: Senator Utter. [LB165]

SENATOR UTTER: Same question that Senator Adams asked the previous testifier, Mr. Meradith. What kind of taxes other than sales taxes does Windstream experience in their other markets? [LB165]

STEVE MERADITH: You know, I think it's similar to what Mr. Williamson testified to. You know, we see some franchise fees in different markets and that type of thing. You know, I would offer... [LB165]

SENATOR UTTER: Might be the same kind of a tax, only by a different name. [LB165]

STEVE MERADITH: You know, I can't say for certain, Senator. [LB165]

SENATOR UTTER: Do you classify a franchise fee as the same thing as an occupation tax? [LB165]

STEVE MERADITH: You know, not necessarily, because sometimes for a franchise fee

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you get the opportunity to place facilities in rights of way and that type of thing. You know, it varies by municipality and by state. [LB165]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB165]

STEVE MERADITH: Thank you very much for your time. [LB165]

SENATOR CORNETT: Next proponent. Are there any further proponents? [LB165]

JIM OTTO: (Exhibit 4) Senator Cornett, members of the committee, my name is Jim Otto. First name J-i-m, last name O-t-t-o. I'm president of and a registered lobbyist for the Nebraska Retail Federation, and I'm here today to testify in support of LB165. My real purpose today is to just demonstrate to you the impact that the recent 6 percent increase in occupation tax on telecommunications equipment has had on Lincoln's retailers. And in order to do that, I first must just talk a little bit about the fact that merchants are the collectors of sales tax, the primary collectors of sales tax in Nebraska, and for all practical purposes get practically nothing for it. Prior to 2002 there was something. After 2002, it's a maximum of \$75 a month or \$900 a year per merchant. And what I just passed out or what was just passed out to you is a copy of the fiscal note on LB186, which was introduced in 2009 and didn't go anywhere. But the only thing this did was offer to reimburse merchants for the amount of sales tax they do not collect as a result of credit card fees. In order for you to understand that, if you have a \$100 charge, 7 percent tax--\$7 tax--that \$7 goes on the credit card statement. Approximately 2 percent of that tax goes to the credit card company. So 14 cents of that \$7 will not be collected by the merchant on a net basis, yet the merchant remits \$7. So in order to quantify this, that bill was introduced. And the state of Nebraska is saying in that fiscal note that Nebraska merchants are, in fact, remitting somewhere between \$8 million and \$9 million more annually than they collect on a net basis. So with that just as a background, we are requiring Nebraska merchants to collect sales tax. They are, in fact, remitting \$8 million to \$9 million more annually than they collect on a net basis. Then when the city of Lincoln enacts an occupation tax of 6 percent, that's a different sales tax for what, as cumbersome as it may be or costly to the merchant, it is set. It is collected. It's already in the computer. It goes to the state Department of Revenue. However, the occupation tax is totally different. It has to be set, a different calculation on specific purchases and sent to a different place. It doesn't go to the state Department of Revenue. It goes to the city of Lincoln. There is no reimbursement to the merchant for collecting it. So I'm just trying to emphasize the impact of that besides the competitive situation that was mentioned earlier between purchasing telecommunications equipment in Lincoln and purchasing it somewhere else, that it is not just a competitive situation. We are asking every day at these point-of-sale fees for the merchants to become our tax collectors, and we aren't giving them anything for it. In fact, we're taking at least \$8 million more away from them than they remit. Now I'm not here to say that the city of Lincoln doesn't need the money, but the Legislature must...if in fact the city of

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Lincoln could raise the sales tax, they may have done that. But they know that's impossible because the Legislature will not allow them to raise the sales tax. So something has to be addressed here. If we want to address raising sales tax, that may be it, but this is not a good solution. With that, I will quit. Any questions? [LB165]

SENATOR CORNETT: Questions from the committee? Senator Louden. [LB165]

SENATOR LOUDEN: Yes. Thank you, Senator Cornett. Why, Jim, getting back to this going down here at Best Buy and buying this telephone, and I'm paying 13 percent sales tax evidently. If I go down there at Best Buy and buy a, say, a Garmin to find my way around this world, that occupation tax isn't on that piece? [LB165]

JIM OTTO: I can't answer that. The city of Lincoln has defined and I think it's a question as to which things are on that and which things...which things do...in other words, is a fax machine...? The same question. Is a fax machine a telecommunications equipment since it's now a printer. A fax machine is not just a fax machine; it's a printer, a scanner, everything else. It's kind of a gray area. I don't know the answer to your question. [LB165]

SENATOR LOUDEN: Then how do those merchants know which ones to charge and which ones don't. Do they... [LB165]

JIM OTTO: Basically, they ask the city. [LB165]

SENATOR LOUDEN: They give them a list, or what? [LB165]

JIM OTTO: I would encourage you to ask any testifier from the city that question. I don't know for sure. [LB165]

SENATOR LOUDEN: Okay. Thank you. [LB165]

JIM OTTO: Thank you. If I may say one other thing, Senator? You referred to them as a total of a 13 percent sales tax. In the purchaser's mind, it is a 13 percent sales tax. In the legal description by the state, it's a 7 percent sales tax and a 6 percent occupation tax, but the purchaser sees no difference. [LB165]

SENATOR LOUDEN: I could add one thing to it. If I think it's a 13 percent sales tax, you've got to remember, I'm the one that does the voting. [LB165]

JIM OTTO: (Laugh) That's very good, Senator. [LB165]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB165]

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JIM OTTO: Thank you. [LB165]

SENATOR CORNETT: Next proponent. [LB165]

RON SEDLACEK: Madam Chair, members of the Revenue Committee, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce. And we have reviewed the legislation and talked with a number of our members who are carriers as well as retailers who have essentially given us the same argument that this committee has heard today, so I won't be repetitive and read prepared remarks. Rather, our concern is the policy of tax pyramiding. And our policy is that there should not be a tax on a tax. That smacks of unfairness. And so from that angle we would certainly appreciate and focus on Section 4 of the bill which discusses that particular issue. And with that I'll close. If there are any questions, I'd be happy to answer them. [LB165]

SENATOR CORNETT: Questions? Seeing none, thank you, Ron. [LB165]

RON SEDLACEK: Thank you. [LB165]

SENATOR CORNETT: Next proponent. [LB165]

DEONNE BRUNING: Good afternoon, Senator Cornett and members of the committee. My name is Deonne Bruning; that's D-e-o-n-n-e, Bruning is B-r-u-n-i-n-g. I'm appearing today as a registered lobbyist on behalf of United States Cellular Corporation; you know them as U.S. Cellular. They operate in 34 states, including Nebraska, and they are here today supporting the bill and thanking Senator Fischer for bringing it forward for discussion. I won't repeat because I think Windstream as well as Verizon have already conveyed many of the concerns of the telecommunications industry, but I'll be happy to answer any questions you may have. [LB165]

SENATOR CORNETT: Seeing none, thank you. [LB165]

DEONNE BRUNING: Thank you. [LB165]

SENATOR CORNETT: Next proponent. [LB165]

MIKE FRIEND: Good afternoon, members of the Revenue Committee. Madam Chair Senator Cornett and members, my name is Mike Friend, M-i-k-e F-r-i-e-n-d, and I'm the state director for the Americans for Prosperity-Nebraska chapter. Americans for Prosperity is a grassroots organization committed to limited and transparent government and free market principles and ideals. I'm here to testify in support of LB165. And thank you for your time and I also will be brief. Nebraska has the highest

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average state and local tax fee imposition on wireless services in the nation, at the rate in excess of 18 percent. And to me and a lot of the taxpayers and citizens in this state, that's outrageous. It's a rate more than double the rate imposed upon other goods and services provided in the state. There are six different taxes and fees imposed upon wireless services provided in this state, creating a significant burden on consumers. State sales tax, local sales tax, city business and occupation tax is what we're talking about. State USF, wireless 911, TRS, total transaction tax of 18.64 percent. In addition to the state and local sales tax, cities are allowed to levy a tax on this, in the guise of a business and occupation setup at rates that vary anywhere from 3 percent to 6.25. And the characteristics of this include that it's not applied to all business entities. That's discriminatory. I don't like discriminatory taxation. I think it's ridiculous. And there's no...there's really absolutely no reason for it. The tax, in addition to state and local sales tax and...which also could be considered a double taxation in a lot of consumers' views. It doesn't require a vote of the people, technically. To initiate an increase in the tax are typically pass the thing and it can just slide through city councils, and that's where some of that transparency issue comes into play. One other thing: It's been expanded...it's my understanding it's been expanded by the city of Lincoln beyond basic communication services, as some of the folks mentioned, to include communications equipment and other downloaded applications being sold by communication providers. I just wish I would have had this idea when I had the opportunity to actually do something significant about it by pushing a green or a red light. And that's all I had today. [LB165]

SENATOR CORNETT: I think I'm going to go first. Mike, since you were here and you're fairly familiar with the occupation tax, this summer we heard quite a bit with the restaurant tax in regards to, "Is it a fee or is it a tax?" We hear frequently that this is a fee placed on the businesses and not a tax. Having been in the Legislature, you know the occupation tax is somewhat of a hybrid between a fee and a tax. How would you respond to the argument that it is a fee? [LB165]

MIKE FRIEND: What do people like to use, the cute term, if it's a duck...if it walks like a duck and quacks like a duck. Look, not to be cute, there is a significant difference, okay? But I'm not sure, Senator Cornett, the restaurant tax was... [LB165]

SENATOR CORNETT: It's an occupation tax like this. [LB165]

MIKE FRIEND: It's an interesting analogy. This situation here...and I think if I'm not mistaken, because I was just looking at some bills the other day, it pretty much lays it out. I mean there's some transparency on the bill. Senator Adams brought this up earlier. The problem is that it's a lot different than property taxation. And municipalities have the ability and the wherewithal to tax its citizens. They have that power. But sometimes--there would be an argument whether you call it a fee or a tax--that some of this stuff has, you know, taken the path of least resistance. I would deem this the path of least resistance. A lot of people will pay their phone bill, move on with life. You get that

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property tax bill, and it's up around \$10,000, \$12,000, \$15,000--a little bit different story. [LB165]

SENATOR CORNETT: Senator Pankonin. [LB165]

SENATOR PANKONIN: Thank you, Chairman Cornett. Senator Friend, after I sat in front of you for three years, I've missed that loud talking. (Laughter) [LB165]

MIKE FRIEND: I don't really...was I that loud? [LB165]

SENATOR PANKONIN: Yes. (Laughter) [LB165]

MIKE FRIEND: At least I didn't say "time." I would never do that to you. [LB165]

SENATOR PANKONIN: Not today. Anyway, the question is, I assume we're going to hear from the city of Omaha later, and this is a significant source of revenue. And you just made the analogy that if you don't have this revenue, you look to property tax. So is that the point you're making? You'd rather see it on property tax as a source of revenue than this tax? [LB165]

MIKE FRIEND: No. They have taxing authority; they can do that. I'm a property owner in Omaha. I don't want my property taxes increased. I think they had the ability to go in and make decisions as a local governmental subdivision to reduce the tax burden on me as a consumer and all the other people in the city of Omaha. Just because they say they need it doesn't necessarily mean to me that it's a need. It might be a want. That's my view. It's probably not much different than it would have been about three or four years ago. [LB165]

SENATOR PANKONIN: A follow-up question to that would be, as you know, I've been on the Retirement Systems Committee here and, even though the state has no jurisdiction on the situation in Omaha, you've got a lot of...if I remember right, you've got a lot of friends and relatives that have been in the police department and fire service and done great duty. But obviously that's one of the big issues for Omaha is the cost of those pensions. So where does Omaha get the money? [LB165]

MIKE FRIEND: They...I don't know...they are supposed to have a...after the first of the year, they were supposed to have \$3.3 million extra to pump into that fund. So this short-term restaurant tax was supposed to have helped. Let me answer that this way. As a consumer, I don't know...they have taxing authority and I don't care. All I know is...and I don't mean to be mean about this. I understand there are a lot of people depending on this from the standpoint of, you know, public employees and everything else. I get that. What I have a problem with is I'm not sure that, under all circumstances considered, that these cities are doing everything that they possibly can to analyze

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these situations with the consumer frame of mind at heart. [LB165]

SENATOR PANKONIN: Okay. Thank you. [LB165]

MIKE FRIEND: Sure. [LB165]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you, Senator Friend. [LB165]

MIKE FRIEND: Thank you. Nice seeing you. [LB165]

SENATOR CORNETT: Next proponent. [LB165]

BILL MUELLER: Senator Cornett, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of AT&T and Viaero in support of LB165. We too thank Senator Fischer for introducing the bill. I'm not going to repeat what others have said. If the committee members would look at the bill, on page 6 of the bill, lines 12-15, you see generally the Legislature's policy instruction to local subdivisions about an occupation tax--and again, I'm on page 6, line 12. I'll start in the middle of that sentence: "...the city council shall have power to raise revenue by levying and collecting a tax on any occupation or business within the limits of the city and regulate the same by ordinance. All such taxes shall be uniform in respect to the class upon which they are imposed." And then it goes through and gives exceptions to that, that I'm guessing the Legislature has adopted through the years. Our position is the Legislature should decide what occupation taxes a local subdivision may levy, as opposed to having each political subdivision, be it the city of Lincoln, the city of Omaha, decide what they're going to tax. Mr. Otto, for the retailers, I think described for you well the difficulty that a retailer has in deciding what is telecommunications equipment. Is it a fax machine; is it not? And the difficulty that we encountered--and I was involved when Lincoln amended its ordinance recently to expand its occupation tax to include equipment. We attended the city council meeting where the ordinance was introduced. We made our case. We then sat down with councilmembers, as we could, to try and go through the definitions: What is a telecommunications equipment? Is the tax imposed on fees and surcharges or is it not? And what I found--and I don't mean to be critical of the city of Lincoln--that process just does not lend itself to a full discussion about public policy ramifications. That's what the Legislature does. You're here having a hearing. You have professional staff. You have a Bill Drafting office that helps us coordinate this statute with other statutes. Then there are three rounds of floor debate. We debate language; we offer amendments. A city council is just not very well positioned to do that. When it comes to a city ordinance that has the effect of law--it is a statute--language matters. Definition matters. And I just...my client believes that this is the forum to decide what authority you are going to give local subdivisions on occupation taxes. I see the light has gone on. I'd be happy to answer any questions that the committee may have. [LB165]

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SENATOR CORNETT: Senator Louden. [LB165]

SENATOR LOUDEN: Yes. Thank you, Senator Cornett. Bill, we're talking about cell phones and we're talking about landline phones. How should they be regulated or taxed, because, I mean, we're...that cell phone is quite...it can be fluid or something like that. Actually if I lived in Lincoln I could probably get a cell phone number out of Seward or York or some other town like that, and I come into Lincoln and would it be...would there be an occupation tax on it then? [LB165]

BILL MUELLER: I'm sure that there is a rule, and my guess is it would be the address on your account when they're imposing this occupation tax. But you could certainly buy your telephone outside the city of Lincoln and not pay this occupation tax, and you would not owe a use tax. Again, this is not a sales tax or a use tax--it's an occupation tax. If you go to York, you're not going to pay this 6 percent. So that's the difficulty. Unlike the state sales tax, the decision that the local has, based on a vote of the people, is: Are we going to impose the state sales tax on our local residents or on those who purchase things in our city? They're not deciding what is and what is not taxable. That's what the Legislature decides. [LB165]

SENATOR LOUDEN: The one question that I... [LB165]

BILL MUELLER: Senator Utter, you asked a question...may I answer a question you asked? You asked about franchise fees. I'm told that companies pay a franchise fee on top of this occupation tax. Now again, I'm not certain that my wireless clients pay that, but I know that the landlines offering telecommunications services pay this franchise tax--and we're not talking about that today. This is another tax--just the occupation tax. [LB165]

SENATOR CORNETT: Senator Louden. [LB165]

SENATOR LOUDEN: The question: I guess I can get my cell phone and I can go to Alliance and buy my cell phone and have my number and everything out here, and I can come down here and talk all over Lincoln all the time I want to and I won't pay an occupation tax on that cell phone. Is that right? [LB165]

BILL MUELLER: That's my understanding. That's my understanding. [LB165]

SENATOR LOUDEN: So I'm wondering, as fluid as cell phones are, if they should be regulated different than your landline. Because that occupation tax on that cell phone, the only reason they got them trapped in town is because they bought it and pay their bill in town. It isn't necessarily, I mean, their system is out of town. There aren't any poles or wire running up and down the street as there is with your landline. That's where

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my problem comes in. [LB165]

BILL MUELLER: When it comes to taxation, the Revenue Committee deals with those issues. When it comes to regulation, Senator Fischer's Telecommunications Committee deals with those issues on a statewide basis. We think that's more appropriate here. [LB165]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB165]

BILL MUELLER: Thank you. [LB165]

SENATOR CORNETT: Next proponent. [LB165]

KATHY SIEFKEN: (Exhibit 5) Senator Cornett and members of the committee, my name is Kathy Siefken; Kathy with a K, S-i-e-f-k-e-n. I'm the executive director and lobbyist for the Nebraska Grocery Industry Association. And the reason I'm here is because the communications issue did affect our grocery stores. We do sell long distance phone cards and we sell TracFones in our stores. But the bigger picture is the occupation tax, because not only was it the communications equipment, it's also the sales tax that both Omaha, Lincoln, and perhaps Grand Island has assessed so that they can get the new arenas or whatever special things that they want. And, first of all, we're not opposed to communities adding those taxes on to get those special things like the arenas. The problem that we have is, on the handouts I gave you--and the top one is my...I deciphered the handwritten note because I could hardly read it--to show you the problems that these kind of occupation taxes cause to the front-end systems in grocery stores across the state. The first one is from a tiny little store. They're going to collect a total of \$150 taxes per month in Lincoln, Nebraska. It's going to cost them \$50 in labor and they're going to have to keep track of it manually because their front-end system isn't sophisticated enough to be able to track this stuff electronically. These things cause all sorts of troubles and problems in the front end of the grocery store. The second letter that I've got here is from a multiple store location, and it sets out all of the different things that they have to do to their computer system to try to figure out how to tax a tax on a tax...or how to compute a tax on a tax. And basically what they're saying is we only have so many keys that can provide for a tax on a tax. So they had to back-door their system. And eventually everybody figured out how to get it done, but it was very, very difficult and cumbersome. And when you're tracking it manually, as the small store is going to, they're going to miss some of that stuff. And so it's a problem in our grocery stores and we think that the occupation tax is a big enough deal where the Legislature really needs to talk about it. So if you have any questions, I'd be happy to try to answer them. [LB165]

SENATOR CORNETT: Thank you, Kathy. Questions from the committee? Seeing none,

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thank you. [LB165]

KATHY SIEFKEN: Thanks. [LB165]

SENATOR CORNETT: Are there any further proponents? We'll move to opposition testimony. May I see a show of hands of the number of people here in opposition? Okay. [LB165]

SENATOR UTTER: Good afternoon. [LB165]

DAN HOINS: (Exhibit 6) Good afternoon, Senator Utter. My name is Dan Hoins. I'm the city administrator for the city of Papillion, Nebraska. Today I'm speaking on behalf of the United Cities of Sarpy County, along with the city of Papillion. In case you're not familiar, the United Cities of Sarpy County is a coalition of five cities, all within Sarpy County, that meets to discuss areas of mutual interest. We represent almost 100,000 people that live within the corporate city limits within Sarpy County. We're here today to oppose--and as this letter makes it way around, you can see the opposition of this, of LB165. Why do we oppose it? We rely on the revenue generated through the imposition of an occupation tax onto telecommunications services. Not only are we experiencing the effects of the nationwide economic crisis, we continue to face increases in operational costs beyond our control--for example, utilities, health insurance premiums. As we strive to provide municipal services in our growing communities, we become increasingly concerned with potential losses in revenue which are needed to fund essential municipal services. We are further concerned that when limits such as this bill proposed are put into effect, it will open the door for continued exemptions or limits, ultimately leading to the demise of this essential revenue that we depend on. These losses will ultimately impact our residents via reductions in municipal service and/or increased property taxes. While we recognize the motivation behind this proposal to provide consumer and provider relief, municipalities that have adopted occupation taxes rely significantly on the revenue generated through the imposition of this tax. We did provide for you in the letter some numbers and how this would negatively impact just the United Cities of Sarpy County. In the particular chart, I just call your attention to the fiscal year 2009-10. Last year alone, that equaled \$1.9 million in our five cities. The previous three years was over \$5 million worth of revenue to the five respective cities. In Papillion, for example, one penny equals about \$130,000 worth of property tax. There are two cities that are up against the lid in Sarpy County, that if this revenue goes away they would not be able legally to even raise that revenue to replace that particular service. And I'd just conclude my testimony by saying that I listened to some of the proponent testimony, and I spent 15 years in city government, 10 in this position, have worked for four mayors. I've never really seen anything fly through when it comes to taxes. Every mayor I've worked for has not wanted to raise taxes, and I think they go to great effort in the community that I work in and in those that I work with to do the very best they can. And one of the goals has been not to raise property taxes. We would like

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to view the state as a partner in that effort and not something that makes it more complicated for us. With that, I'd conclude my testimony. I'd be pleased to answer any questions. [LB165]

SENATOR UTTER: Thank you very much. Right on the light. Good for you. Questions? Senator Adams. [LB165]

SENATOR ADAMS: Thank you for being here. Let me ask you, based on your 15 years' experience, I want to get away from the revenue stream for a moment, and I realize, having been a mayor myself, it's pretty hard to get away from it. All right? Property tax is that: a tax on property. Sales tax: tax on sales. In your opinion, how do we define occupation tax? And I'm using the word "occupation" in my head here and wondering how to define it. How would you define it? [LB165]

DAN HOINS: Senator, a tax is a tax. I think we all agree with that. We're not trying to avoid that particular definition. Sales and property tax--certainly from a property tax standpoint, we all know that it's the homeowner. The sales tax is shared by others from outside our corporate boundaries. And I would classify occupation tax as similar to that particular tax, where it assists the city of Papillion providing those services and not on the back of the homeowner. [LB165]

SENATOR ADAMS: And I can't disagree with you, and maybe I'm asking you to do my work. From a tax policy standpoint I'm trying to justify, and to do that I'm going back and trying to define what occupation tax is. So if I threw this example out to you, if I said that an occupation tax might be premised on, well, you've buried line in the city right of way so we're going to tax you for having occupied that right of way, or you have hung wires and put up poles in the city's alleyway, so given that you're occupying the alleyway, we tax you for that occupation. Am I getting anywhere? [LB165]

DAN HOINS: Yeah. I think that makes perfect sense, Senator. I would agree with your analysis. [LB165]

SENATOR ADAMS: Okay. Thank you. [LB165]

SENATOR CORNETT: Further questions from the committee? Senator Utter. [LB165]

SENATOR UTTER: Let's take it just one step further. Then how do you...assuming the wireless age that we're in, how do you carry the answer that you gave to Senator Adams into the wireless age where there's no telephone poles, no wires in the alleys, and nothing buried in the right of way? [LB165]

DAN HOINS: There's certainly some infrastructure. They have...for instance, in Papillion, they've got antennas on our city water towers. They put big poles up

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throughout the community. So there is some imposition into the city in that regard, Senator. [LB165]

SENATOR UTTER: And are they taxed or is there any type of a fee in Papillion, for example, for putting something on the water tower... [LB165]

DAN HOINS: Yes, there's lease agreements. [LB165]

SENATOR UTTER: ...or for erecting the tower, a radio tower? [LB165]

DAN HOINS: I can't speak to the other areas, but the water tower, there is a lease agreement where they do pay a fee for that--a monthly fee. [LB165]

SENATOR CORNETT: Any further questions? Seeing none, thank you. [LB165]

DAN HOINS: Thank you, Chairman. [LB165]

SENATOR CORNETT: Next opponent. [LB165]

RANDY GATES: (Exhibit 7) Good afternoon. Randy Gates, finance officer with the city of Norfolk. These telecommunications occupation taxes aren't a new thing. The city of Norfolk imposed a occupation tax on telephones back in the sixties. There was a 3 percent occupation tax. At that time I don't think anybody ever envisioned cell phones, and we went along quite well with our 3 percent occupation tax until around 2000, when cell phones started becoming very, very popular and people started substituting cell phones for landlines. At that time we noticed a sharp decline in our occupation tax revenue and also our 911 surcharge of \$1 for a landline. That tax peaked, as I said, in either 2000 or 2001, depending on whether we're looking at the surcharge or the landlines, and has continued to fall since then. We realized in 2006 that if we were going to continue to have that revenue source of any significance, we were going to have to expand the definition. So at that point in time we expanded the definition of the services that were subject to that occupation tax, and that included cell phones as well as landlines. And the city council, at that point in time, since both the occupation tax and the surcharge on 911 surcharge were declining, voted to put one-third of that in the general fund and two-thirds of that in the 911 fund. The city receives approximately \$320,000 a year from this expanded telecommunications tax. And if we are going to have to replace this with property tax, it would mean a 2.86-cent increase in our tax levy or \$28.65 on a home with \$100,000 assessed valuation. And this comes at a time when the Legislature is looking at cutting our revenue sources in other areas. This committee voted out LB383, and that would put another big hole in our revenues. If you combine the revenue we'd lose if we lose our state aid with the revenue we'd lose if we lose our telecommunications occupation tax, that would be over a half-million dollars to the city of Norfolk--a very big hole to try and fill. And if we fill that with property tax, that would

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be a \$45.80 increase on a home valued at \$100,000. We have tried to listen to the citizens, listen to the senators, and we thought we had been hearing over the last number of years that property taxes are something we should try and go easy on. And by doing that, we've tried to utilize other revenue sources. For instance, we just passed a \$16.4 million bond issue in November. The citizens at that time realized that was going to be not a property tax increase but paid for with occupation taxes, and they voted for that handily. So our citizens are telling us directly and indirectly, both at the ballot box and when we talk to them anecdotally, that they want us to hold the line on property taxes, and that's what we've tried to do. We won't be able to do that if our other revenue sources are taken away from us. And one other point I wanted to make is an occupation tax is a tax on a business. These businesses have chosen to pass that along to the consumer by itemizing it on the bill, but it's a tax on the business. It's not like a sales tax where it has to be passed on to the consumer. So that's a point I wanted to make also. I see my time is up and I'll answer any questions. [LB165]

SENATOR CORNETT: Senator Hadley. [LB165]

SENATOR HADLEY: Thank you, Senator Cornett. Mr. Gates, I apologize. I was introducing a bill in another committee, so if I ask a question that's already been answered, I apologize. It seems like, you know, we are limiting the cities' ability to raise income as we go along, or at least we're looking at actions that way. What would your thoughts be on either allowing a city an additional half-cent, for example, sales tax, or a municipal income tax with the obligation that they reduce these other kinds of occupation taxes and property taxes? [LB165]

RANDY GATES: I hadn't thought about that until you just asked this question. I think probably, in general, citizens would prefer something like that to a property tax, but this is very off-the-cuff. But, yes, I tend to think that would be, from what I'm hearing, preferred by most of the citizens. [LB165]

SENATOR HADLEY: I guess I say that from the standpoint that I...you know, we do catch...I know it's surprising that people do write us and tell us what they think of us. Quite often, we can't share those because they're so bad, (laughter) but otherwise we are in a position that we don't have to levy property taxes. We can impact the way property taxes are levied, but our sources of income are in income tax and a sales tax. And I'm in my third year and I've never heard a complaint about our income tax yet. Now maybe somebody I will. I've heard complaints about our sales tax that, you know, it's either too broad or it's too narrow or we tax the wrong things or the right things. But it certainly doesn't generate the level of intensity that property taxes do. So I appreciate your thoughts on that, and it's just something I've been thinking about, whether we need to look at what we do allow our local political subdivisions to tax, from a tax policy standpoint. [LB165]

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RANDY GATES: And I confess, I haven't been given that particular thing much thought, so very off-the-cuff. [LB165]

SENATOR CORNETT: Senator Louden. [LB165]

SENATOR LOUDEN: Yes, thank you, Senator Cornett. Well, as I look at your testimony here, what does the city of Norfolk tax for their occupation tax? Do you tax the sales of telephones at one of your local markets or... [LB165]

RANDY GATES: As it relates the telecommunications occupation tax, we've tried to base our definition on pretty closely to tie the state's definition of telecommunications services that are subject to the sales tax. And we did the same thing with the occupation tax that we implemented to pay for debt service on a \$16.4 million bond issue. It's on lodging and prepared foods and beverages and alcoholic beverages. We tried to tie that closely to the state's definition of prepared food and beverages, the state's definition of what lodging is, so businesses don't have to go out there and try and figure out, okay, is this subject to tax or isn't it. They can look and see that their hotel business is subject to the lodging tax, it's in there in the city of Norfolk, it's subject to our occupation tax. If they're in the restaurant business and it's subject to the state sales tax, it's subject to our occupation tax. So in all cases we've tried to tie it pretty closely to an existing definition that they're working with so it's easy for them to implement, it's easy for us to implement. And I think that's worked pretty well and that's the same thing we did with our telecommunications. [LB165]

SENATOR LOUDEN: Then your occupation tax on telecommunications is more a tax on that service rather than some of the equipment or utensils or whatever you want to call them, so (inaudible). [LB165]

RANDY GATES: That's exactly right. [LB165]

SENATOR LOUDEN: Okay. Then your definition of an occupation tax is probably different than what Lincoln's is? Or what you're taxing, I guess (inaudible). [LB165]

RANDY GATES: Yes, I believe that's correct. [LB165]

SENATOR LOUDEN: Okay. Thank you. [LB165]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. Next opponent. [LB165]

JAY VAVRICEK: Good afternoon, Senator Cornett and members of the Revenue Committee. It's a pleasure to address you once again. And my name is Jay, last name is Vavricek, V-a-v-r-i-c-e-k, representing the people of Grand Island as mayor and

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also--I'll just remark and I'll touch on comments--also probably representing 80 percent of the people in Hall County. And I look forward to this opportunity. And I'll give you a glimpse and I've heard the testimony and I'd like to respond, one part of me, to a lot of different things. But let me just share what Grand Island has enacted. And I'm going to tell you a story, and I don't know if anyone really knows this but they will now. I served as mayor four years, and the last four years I've been on the sidelines. Well, there was a decision made back in November 2006, and it was: Should we go ahead and broaden our occupation tax on cell phones? And our finance director, Mary Lou Brown is here, and she's hearing this for the first time too. And I said, no, I don't think I want to do that. I don't think we need to go ahead and levy that tax. So the first meeting after I was out of office, a 3 percent taxation was unanimously approved by the city council. And there wasn't one peep in our community about that. So I thought, boy, I really learned a lesson, that indeed maybe there isn't that sensitivity to that. But since that time--and I will defend the practice and I am opposing LB165 as it is written today, but I very much appreciate why this is being brought forward and the discussion that you're undertaking right now, because this...and I think it gets back to some of the comments. But what Grand Island is using on the 3 percent cell phone tax, which is only on services, so unlike Lincoln it's not on equipment, the rate is 3 percent--well within the mid cap of maybe what cities are assessing, from 1.5 to 6. And that 3 percent is generating about \$633,000 a year. When you add that, along with our E-911 landline assessment of \$250,000, we're getting close to a million dollars. And what those funds then are earmarked is this: It funds the city's share of emergency management and communications. That department is about \$1.4 million, and after Hall County chips in their \$400,000, we're able to go ahead and balance our books. So the tax that's being assessed on customers is interlinked with telecommunications. And I don't think any of us would go ahead and not want a 911 service. We need the communication with emergency responders, with our police, but also when you look at the GPS applications of finding where you get lost in a snowstorm or any number of different things, I think it justifies the asking of our citizens to support that. So the purpose, at least within Grand Island, is defined as emergency management and communications to offset that. And if we didn't have that resource, then just like every other city, every other person that's got a pocketbook, then you determine do you do without or do you go ahead and find other revenue. Cities, historically, obviously are following the lead that you implore each one of the cities in terms of policymaking direction. And I believe in local control. And so when you look at the fact that I'm here, much like you...I mean the compensation of a mayor is \$13,000 a year. It's very similar to what you folks invest in leadership, but we're all doing it for the right reason. And so that's why I wanted to bring up the fact that the purpose--and I appreciate the red light and I'll extinguish my comments. But I would reserve an opportunity to address any questions. It comes down to what the purpose is, and the purpose is for strong neighborhoods, strong economic development, municipal services within a city, and it's a revenue source that, at least in Grand Island's case, and I think a number of small cities appreciate, short of looking at other revenue opportunities. [LB165]

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SENATOR CORNETT: Thank you. Questions? Senator Utter. [LB165]

SENATOR UTTER: Thank you, Senator Cornett. Mr. Mayor, welcome again to Revenue. [LB165]

JAY VAVRICEK: My pleasure. [LB165]

SENATOR UTTER: Describe for me the other occupation taxes that Grand Island now imposes. [LB165]

JAY VAVRICEK: Sure. Well, when you look at the state statute--and it's a fairly wide statute--basically you can apply an occupation tax on any person, LLC, corporation, as long as it's uniform in class, and when you look at the statute here--and I'll answer your question--it enumerates a lot of different things that don't really occupy space, when you talk about peddlers, auctioneers, innkeepers, telegraph, insurance. So in answer to your question, I think it's been the case that we've looked at...the cities looked at occupation taxes that fit a purpose. We have two others, and one I definitely would appreciate the opportunity to elaborate more on, LB562, later on today. Two occupation taxes. One was enacted in 2008 on food and beverage, and that is applied within city limits to providers that provide meals, soft drinks, that type of thing, and it's consumed. So...and that fund is going to a dedicated revenue stream of a particular project that's near and dear to many of Nebraska. Secondly, we have an occupation tax on lodging. So any overnight lodging is also assessed a city occupation tax, and that is being used to offset maintenance and operational costs of the Heartland Event Center. So we have three that have been enacted by city council, but there's other occupation taxes, about \$3 million in our revenue every year. [LB165]

SENATOR UTTER: Is the occupation tax actually applied twice on some of the food and beverage and lodging institutions? They're actually paying two occupation taxes? [LB165]

JAY VAVRICEK: Well, when...I would love to defer to Mary Lou Brown specifically, finance director, but I'll take a stab. When I would go to have a meal, you'll pay the sales taxes like you would any other consume...and then there's the additional 1.5 percent occupation tax on food and beverage. [LB165]

SENATOR UTTER: Those that are close to the State Fair--and I assume that's what you were talking about--those close to the State Fair, there's an area in there, or is it for the whole city of Grand Island? [LB165]

JAY VAVRICEK: It's citywide. When a city of the first class enacts an ordinance, it has the power to provide an ordinance within the city limits. Yes, sir. And what you are

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referring to--and I will elaborate under LB562 to fully answer that question as it relates to the State Fair. [LB165]

SENATOR UTTER: So, Mr. Mayor, in looking at tax policy and looking at the fact that the primary source of tax revenue for cities is certainly property tax, number one; secondly is the city's portion of sales tax if they have elected to do that. How do you see going down the line, from a tax policy standpoint, what are in your mind the appropriate taxes, the appropriate sources of taxes for cities? [LB165]

JAY VAVRICEK: Well, cities follow the lead of state legislation. And at this point, when you look at the taxation allowed under law, it's property taxes. Grand Island is currently below average in the city's tax rate under property taxes. Sales taxes has been voted on by the people--it's a people's mandate--that allowed that expansion of 1.5 percent. When it did the second time, property tax rates were reduced by one-third. They largely haven't been adjusted since. I don't know if that's wise policy in hindsight, or not, but that was a promise made at the time to voters, and that's what occurred. Aside from that, occupation taxes are a consideration, because to what degree you use that revenue instead of property taxes, knowing that your sales taxes on a state level have already been maxed out. So the temptation would come: cut services drastically in such a way that people will feel a reduction. We have 500 employees of the city. If I looked at, for example, how do you make up \$1 million? We have an interlocal agreement between Grand Island and Hall County where we share services of emergency management, and I think there can even be a broadening of that, potentially, in our state. But I think that's a valuable service that needs to be funded. The question is: how to do so. Also occupation taxes, there have been some discussion about the ability of voters to determine that, and I applaud that. That ability is there today. And also when you look at trying to determine a purpose for taxation, I think it's, at least in my estimation, a defined time, a defined purpose, with broad awareness to people so they can weigh in. And I stand by the populace's ability to vote on that decision. Yes, Senator. [LB165]

SENATOR CORNETT: Mr. Mayor, occupation taxes became kind of a hotbed topic of the last year. And you have brought up my bill a couple times that you're going to testify on, and we'll get to that. But I guess the question is, as a mayor and as a taxpayer of the state, do you feel that occupation tax should have some type of limits like property tax does? Because currently under the law you can... [LB165]

JAY VAVRICEK: And when you say occupation tax should have a limit... [LB165]

SENATOR CORNETT: ...like a ceiling on the amount or a percentage that can be taxed. Currently there is none. You're at 3 percent, Lincoln is at 6 percent. [LB165]

JAY VAVRICEK: Well, philosophically I wish we didn't have taxes. I think we all agree

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with that. So okay, so now I'm starting there. One part of me is, okay, how do you fund city services in such a way that you're doing right by your people. And that's where I come from. I've got to defend what I think is the best interests of the people I represent as mayor. And as we've seen, the power is with the people to determine their leadership by voting who they...and also who they may recall. So I think the steps are there with any taxation to where government can be imposed by the will of the people. When you look at a specific limitation, I would first look at what's the purpose and is it proper. And if there's any hesitation, then ask people to what degree they think that's adequate or not. I don't know if 3 percent cell phone rates are a good figure or not. I didn't know another city was doing it at 6.25. But once again, it all comes down to the fact that cities, just like states, have to operate with resources. And as long as it is allowed under state law, I think it is a consideration, and that's why I think this is a good discussion to have, so cities for sure know, should we continue to follow the lead of diversifying and using more revenue in such a way that it diminishes our reliance on property tax; and, if not, then the cities ultimately have the tough decisions of services versus increased taxation in sources that are there. [LB165]

SENATOR CORNETT: You testified that we set the policy, which is correct, for the rest of the state. [LB165]

JAY VAVRICEK: I'm sorry? [LB165]

SENATOR CORNETT: You testified...I'm sorry. I have a cold. You testified that we set the policy for the rest of the state that the municipalities have to live under. [LB165]

JAY VAVRICEK: Um-hum. [LB165]

SENATOR CORNETT: Policy standpoint--occupation tax is one of the few things and probably the only thing in taxation that is not regulated in some form. Policywise, don't you see that it would be better to have some type of uniformity like we do in property tax and what we allow municipalities? [LB165]

JAY VAVRICEK: Well, cities, once again, will follow the policymaking decisions that you make. [LB165]

SENATOR CORNETT: You don't have a choice. (Laugh) [LB165]

JAY VAVRICEK: But also, at least in Grand Island's case, when you look at the ones that have been levied on a local level, one that's benefitting our partnership with the people in Nebraska with the Nebraska State Fair; second, to provide a revenue stream for the Heartland Event Center, and that's a catalyst for education, but also economic development. And I think you can justify the 3 percent cell phone. And I didn't know until Senator Fischer itemized all those, but, wow, that's a bunch of taxes, and I don't even

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know what they are when I see my phone bill. But knowing that they're going to the emergency management, I can justify that and look someone in the face in a cafe and justify, short of coming up with dollars that may be more negative to our economy and the community. [LB165]

SENATOR CORNETT: Senator Hadley. [LB165]

SENATOR HADLEY: Senator Cornett. Mayor, thank you again for being here. Have you taken a motel room here or do you commute? [LB165]

JAY VAVRICEK: No, I don't intend to. (Laugh) [LB165]

SENATOR HADLEY: The question I have from a prior experience, a prior life, do you feel that the average citizen in Nebraska truly understand their property tax bill as to where the property taxes are going, to what entities the property tax goes to? [LB165]

JAY VAVRICEK: Well, in answer to your question, when you look at your property tax or your real estate, no, you don't know if it's city, county, schools. And a few years ago I asked. I said, "How come the Hall County property tax statement says Grand Island Bond 3?" And they said, well, that's the city's; no, that's the schools. So if I could be so bold just to ask, if you really wanted to have people understand their property tax, have subheadings: schools, counties, cities. Because when you look at the Grand Island property tax statement, the city is the culprit and it gets 12 percent of that bill. So, no, I don't believe there is any understanding as to what those dollars are. You just see it every year, typically more and more, without any real awareness as to what it's funding or who it's going to--in my opinion, I'm sorry. [LB165]

SENATOR HADLEY: That would echo my experience, because in Kearney we certainly had complaints about property tax, and ours is a relatively insignificant part of the total property tax bill. And people were constantly talking to city officials about the property tax levy. So maybe we need to have a better understanding, because I think an informed citizenry then can make decisions about, you know, where they want the money spent. [LB165]

JAY VAVRICEK: Right. And also to, going back several years ago, at least in my community we had two or three bond issues that were coming forward for expansion of our Grand Island public school system, as well as for a new law enforcement facility, jail facility, the county. And both of those occurred. And I felt that was kind of a significant step for our community, and it was also a part of the consideration at the time as to what degree the city could maybe take one for the Gipper and reduce itself a little bit from property taxes. Because there's only so many dollars when you write the check, if it's school, county, cities. But once again, the revelation is that if there isn't any flexibility of occupation taxes for municipalities and you take that and you reduce it, in good times or

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tough times right now, it then gets down to the situation: Where do you come up with the money under state law? Are you impacted with your lid? Can you go ahead and get the growth from property taxes? Will you be reelected? All those different things. But it ultimately comes down to you've got to do what you think is right and serve the people the best way you can. But I think that's where cities are going, and in terms of cost shares and managing a business, hopefully the best that they can, going forward. [LB165]

SENATOR HADLEY: Thank you. [LB165]

SENATOR CORNETT: Further questions from the committee? Thank you. [LB165]

JAY VAVRICEK: Thank you, Senator and members of this committee. And once again, I appreciate your leadership. Thank you. [LB165]

SENATOR CORNETT: Thank you. Next opponent. [LB165]

GARY PERSON: Senator Cornett, Revenue Committee members, my name is Gary Person, P-e-r-s-o-n. I'm the city manager in Sidney, Nebraska. I just want to go on record that we're opposed to the bill. We're a small community that's been asked to basically live without any municipal state aid for the past 15 years. The refunds that we now lose to LB775 and Nebraska Advantage are at the \$800,000-a-year level. So we have to be as creative as we can to be diversified in our revenue streams. Back when we formed our E-911 communication center, a lot of us thought the 911 surcharges would primarily fund those centers. That hasn't been the case. We are now subsidizing that center to the point of \$200,000 of additional revenue from the city and \$100,000 from the county. That's what we use our telecommunications occupation tax for. It covers about half of that, about \$100,000 a year. We have done our part as a city. We have frozen wages. We have dramatically changed our health insurance benefits for our employees. Open positions that were dependant upon general fund revenues weren't filled. Our police force is down 20 percent in staff, and we've lived without a police chief for the past 16 months because of the revenue challenges. In small towns, citizens aren't bashful about expressing their opinions, and we get input from a lot of different things and a lot of different taxes. But I can honestly say here today that I've never had one citizen complain about the occupation tax on telecommunications, so. [LB165]

SENATOR CORNETT: Questions from the committee? Senator Louden and then Senator Utter. [LB165]

SENATOR LOUDEN: Thank you, Senator Cornett. Welcome to Lincoln, Gary. [LB165]

GARY PERSON: Thank you, Senator. [LB165]

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SENATOR LOUDEN: With your occupation tax, what do you charge as far as telecommunications? The landlines or the... [LB165]

GARY PERSON: Services. [LB165]

SENATOR LOUDEN: The cell phone service too? [LB165]

GARY PERSON: Right. [LB165]

SENATOR LOUDEN: And just the service. [LB165]

GARY PERSON: Three percent. [LB165]

SENATOR LOUDEN: Any equipment or anything like that isn't charged. [LB165]

GARY PERSON: No. [LB165]

SENATOR LOUDEN: Okay. And then your other occupation tax, you have it on... [LB165]

GARY PERSON: We do have a 2 percent on food and beverage and then also another 2 percent on lodging. And that's basically only been there for a couple years now, and that was to try to do something about street repair since we've lost so many other sources of revenue. [LB165]

SENATOR LOUDEN: And then you have...tourism has a lodging tax on top of that? [LB165]

GARY PERSON: Yes. Yes, they do. [LB165]

SENATOR LOUDEN: And it runs about 7 percent lodging tax then? [LB165]

GARY PERSON: Four percent local. [LB165]

SENATOR LOUDEN: Okay. Okay, thank you. [LB165]

SENATOR CORNETT: Seeing no further questions, thank you, Mr. Person. Next opponent. Welcome to the committee, Mr. Hoppe. [LB165]

RICK HOPPE: Good afternoon, Senator. Senator Cornett, members of the committee, thank you for the time to be here today. I am Rick Hoppe, R-i-c-k H-o-p-p-e. I'm the chief of staff to Mayor Beutler, here representing the city of Lincoln today. After the previous testimony I'm not sure I want to go to my prepared remarks but maybe go into

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a couple other things. I was glad to hear that Senator Fischer and some of the proponents talk about this bill as a vehicle for a larger discussion about occupation taxes generally. I would only tell you all that I believe the discussion has to be even broader than that. If you talk about occupation taxes as the only piece of the spending and tax authority of the municipalities, you really only are looking at a small part of the equation. We have about 70 percent of our costs in our budget go to employee costs, yet we have very little control over the amount of increase each and every year that we are forced to pay to those employees. We can't really have a revenue discussion without having a spending discussion. And our ability to meet those increases which are a part of the Industrial Relations Act and its enforcement body, the CIR, really does not allow us the ability to meet those without the revenues that we currently depend on. As has been previously indicated, the city of Lincoln gets or is projected to get about \$7.8 million from the occupation tax on telecommunications. If that were to go away, that is equivalent--and by the way, I do realize that it would not go away completely until 2018--but it would require about 5 cents to go onto our levy between now and then to make up for that time. In addition to that fact, were losing about a penny of levy to the state aid cut. And furthermore, our rate of increase on employee costs average, when we're not cutting, in the neighborhood of 2 cents of levy. That's starting to add up pretty fast. In order to forestall a lot of that, we have made considerable cuts in the city of Lincoln. We've cut 120 jobs in the four years that Mayor Beutler has been mayor of the community. We've been primarily...we've been fortunate. We've been able to keep most of it away from public safety, but that is rapidly not going to be the case in the future. About half of our revenue...about half our budget goes to public safety, police, fire, and 911. If this revenue source is removed, we will be increasingly pressed to keep that away from the services that matter most to the citizens of each of our communities. So I guess we'd say either we're certainly willing to have a larger discussion about what makes sense in terms of tax and spend policy for municipalities, but enacting one piece of it without the larger discussion we think is a mistake. So we think it's a direction that we need to talk about a little bit, and particularly as it relates to property taxes. As many testifiers have said, our citizens have said to us, loud and clear, the property tax is the one tax they simply do not wish to pay. We also had very little citizen opposition when we recently passed the ordinances which broadened, or I would say made more fair, the telecommunications tax as it exists in Lincoln. Most of the people who were there, were people who were paid to be there in opposition. It seems to us it is certainly more tolerable than the property tax. And I can't imagine you have any questions for me so I'm just go ahead and go and we'll...(laughter). Okay, there we go. [LB165]

SENATOR CORNETT: No, you're going to stay. (Laughter) Senator Pirsch. [LB165]

SENATOR PIRSCH: Lincoln does something unique in the sense that they applied a tax not just on services, but equipment, is that...that's correct, right? [LB165]

RICK HOPPE: Yes. [LB165]

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SENATOR PIRSCH: Okay. And does any other municipality at this time, to your knowledge, do that? [LB165]

RICK HOPPE: We're not aware of ones in the state. There are other communities in the nation. And may I address that for a moment, Senator? [LB165]

SENATOR PIRSCH: Oh, sure. [LB165]

RICK HOPPE: Okay. To us it was an issue of fairness. Why does it make sense to apply the telecommunications tax to the handsets associated with a landline but not the sets or the phones associated with the cellular lines, with cellular plans. Cellular plans are marketed with those phones. And frankly, you could not have cellular service without that necessary equipment. So we thought, in the interest of fairness, that that would be something we would do. Another example is the fact that about 15 percent of the market, if you listen to some in the industry, is now "no contract" cell phones; in short, calling cards. Now why would we exempt them from taxation and yet a person like myself who has a contract for cell service has to pay the telecommunications tax. We honestly had a long, thoughtful discussion about how do you make the playing field level. It didn't seem to us, also, to be fair for someone to be able to walk into a Best Buy, buy the exact same phone and the exact same service, not pay telecommunications tax, and then down the street there's a Verizon retail store that is forced to pay telecommunications tax on both those items. [LB165]

SENATOR PIRSCH: Thank you for your comments. Now are there also other fees that are assessed, right, in Lincoln? The 911 fees, etcetera. What are those additional fees then that would...that Lincoln assesses? [LB165]

RICK HOPPE: Well, we have a sales tax, just like everyone else, and we do have a...we pay the state taxes that are in place, the Universal Service Fund, etcetera. [LB165]

SENATOR PIRSCH: Sure. Is there a 911, right, fee that's being collected? [LB165]

RICK HOPPE: Yes, there is. Had to have a little help on that one. [LB165]

SENATOR PIRSCH: And relay, I think one was mentioned, for the deaf services. [LB165]

RICK HOPPE: Um-hum. [LB165]

SENATOR PIRSCH: And I don't know if you're the appropriate individual, but that is something I always address is I just want to know the underlying policy basis for those fees then, how they're used, that sort of thing. [LB165]

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RICK HOPPE: Well, I believe the two that you mentioned have been directly related to 911 service. And one of the things that I think was asked by Senator Adams and I thought was sort of interesting, is what is the relationship between these taxes and services that are provided. Since the year of cell phone communication, the number of calls that go to our 911 center has exploded, where they used to be in a car accident where somebody would call from a pay phone and you may get one or two calls, now almost instantly we can get 10-15 calls on the same incident that all have to be handled, processed, and made sure that they are reacted to. [LB165]

SENATOR PIRSCH: Thank you. [LB165]

SENATOR CORNETT: Senator Utter. [LB165]

SENATOR UTTER: Thank you, Senator Cornett. Mr. Hoppe, the...it sounds like Lincoln is pretty creative with regard to their occupation tax. You might be the only one, that we've heard of at least, that is applying it to the equipment. The justification...and maybe the justification is that nobody complains about it. I'm not sure that's a good justification for adding the tax. But the justification may be that every two years you get a chance to actually expand what really is a sales tax, the way I'm looking at it--not an occupation tax--to the purchase of a new cell phone or a new...maybe a new, even landline telephone, which is not always bought from the telephone company. Do the justification thing for me. And if you think you've done that, do it one more time. [LB165]

RICK HOPPE: Sure, Senator Utter. And, first of all, thank you very much for addressing the other side of the equation with the CIR bills. We certainly appreciate that. Again, we thought this was an issue of fairness. We thought the issue was that why did it make sense to tax the landline handset and not tax the phone from a cell plan. Furthermore, the cell phones are necessary equipment to provide the service. Without the phones, you simply do not have the service. And to address your other question about how they may be split up where a phone is sold separately from a plan, that is not the way most of them are done, first of all. But second of all, that's why we applied the occupation tax to retailers so in those situations both entities were paying the same amount. [LB165]

SENATOR UTTER: Seems to me...I don't know how it is in Lincoln. Maybe it's different in Lincoln than it is other places. But it seems to me that, at least out in our neck of the woods, that folks who have landlines probably buy their phones from...well, they buy some of them, surely, from Windstream, but they buy a lot of them from Sam's Club and Walmart and what have you, on down the line. But it is not a part of that landline contract. [LB165]

RICK HOPPE: No, it's not. But again, in Lincoln, those were already being taxed as part of the telecommunications tax. So that existed previous to our expansion or, I should

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say, what we regard as making the tax more fair in its application. [LB165]

SENATOR UTTER: So you've been doing this evil thing for a long, long time. [LB165]

RICK HOPPE: Well, yes, if we are the root of all evil, then we have been that way for some time, so. [LB165]

SENATOR UTTER: Thank you. [LB165]

SENATOR CORNETT: Senator Fischer. [LB165]

SENATOR FISCHER: Thank you, Senator Cornett. I was going to wait until closing, Mr. Hoppe, but I think we need to have this discussion at this point. It's my understanding that no occupation tax has ever been collected on any equipment in the city of Lincoln until you recently moved in that direction. That would include cellular or landline. If you went to a Verizon store--and perhaps the gentleman from Verizon can address this--but my understanding is when you went to a Verizon store in Lincoln you weren't charged for that phone, just as you weren't charged for it as you went to a Best Buy store. You were charged on services, not equipment, in Lincoln previously. So am I misunderstanding what you had previously said? Would you like to clarify that. [LB165]

RICK HOPPE: Okay. I may not be clearly understanding your question. Are you saying that our landlines were not previously...the equipment for landlines were not previously taxed? Or are you suggesting... [LB165]

SENATOR FISCHER: Nor were cellular. [LB165]

RICK HOPPE: The cellular. No, I have not maintained that cellular phones were being previously taxed. [LB165]

SENATOR FISCHER: And landlines were not previously taxed either. The phones and the equipment were neither...they weren't taxed either until I think it was October when you instituted the tax... [LB165]

RICK HOPPE: Did I misspeak? I was trying to talk about equity between those two things, and if I gave the wrong impression, forgive me. [LB165]

SENATOR FISCHER: Okay. But the equipment was not taxed, I believe, until October in Lincoln; the services were. [LB165]

RICK HOPPE: And that was part of the rationale for having both be treated equally. [LB165]

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SENATOR FISCHER: Okay. Thank you. [LB165]

RICK HOPPE: I appreciate your clarification. [LB165]

SENATOR FISCHER: I just wanted to make sure I had heard you state something incorrectly that I was trying to correct. [LB165]

RICK HOPPE: I might have stated it as well or incorrectly, and I appreciate you pointing that out. [LB165]

SENATOR FISCHER: Thank you very much. [LB165]

SENATOR CORNETT: Mr. Hoppe, we've had a number of discussions now about occupation tax. And I'm going to pose the same question to you that I did the mayor that spoke previously. In regards to a tax policy for statewide, because that is the concern of the Legislature is statewide policy, do you feel that we should set some type of limitations on the amount that can be taxed? A lot of your occupation...and I'm not referring just to telecommunications. I'm referring across the whole spectrum of occupation tax and the fact that occupation tax was drafted so many years ago that a lot of the language is archaic and outdated and doesn't really apply. Do you feel that we need to update it, not necessarily...maybe limit the scope and limit the amounts. [LB165]

RICK HOPPE: I understand the state's interest in doing so, but I would say that if you focus on the question, that narrowly, we haven't addressed the larger issues, which is how municipalities are going to be governed in terms of tax and spend policy. I don't see how you make those limitations without addressing the bigger picture, without addressing the CIR, without addressing what the Legislature wants us to utilize as taxes. [LB165]

SENATOR CORNETT: And I think that the Legislature is, to some extent, at least addressing the majority of those issues this year in regards to the CIR, and we are looking at the others. I understand it's all part of a moving puzzle, so to speak. But if the other things were in place, do you agree that there should be some type of limitation? We have limitations on property tax, correct? [LB165]

RICK HOPPE: I'd say there would have to be some sort of compensating mechanism so that cities could continue to provide basic services. [LB165]

SENATOR CORNETT: I'm not talking about removing what you're doing now, but setting ceilings on what you can do in the future. [LB165]

RICK HOPPE: I understand why the state has a role in that kind of decision. [LB165]

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SENATOR CORNETT: Thank you. Further questions from the committee? Thank you very much. [LB165]

RICK HOPPE: Thank you. [LB165]

PAM SPACCAROTELLA: Hi. Are we ready? [LB165]

SENATOR CORNETT: Good afternoon. Thank you. Welcome back. [LB165]

PAM SPACCAROTELLA: (Exhibit 8) Thank you. Thank you, Senator Cornett and members of the Revenue Committee. My name is Pam Spaccarotella; it's S-p-a-c-c-a-r-o-t-e-l-l-a. As you all know, I am the finance director for the city of Omaha and I want to thank you for the opportunity to give testimony for LB165. I have provided a handout of some comments, but I think I'd like to just address some of the few things that I've heard today. First and foremost, the city of Omaha does have a telephone occupation tax. Our tax is 6.25 percent. We generate approximately \$16.25 million in revenue every year from the telephone occupation tax. That's about 5 percent of our total general fund revenues. And our general fund revenues, of course, provide services, such as libraries, parks, police, fire, all the essential city services that a general fund provides. The comments that I'd like to address has to do with the fact that it has been stated that the telephone occupation tax is high. And, in fact, in the state of Nebraska the telephone occupation tax in aggregate is approximately 18 percent, which is higher than most of its neighboring or regional states. In doing some research what I have discovered is that that is the case. If you are to compare it to several other states, we are higher than most. But I think that by taking just the telephone occupation tax, you're not looking at the entire tax picture. And so in my testimony what I would point you to is a comparable city, which is the state of Iowa. In the state of Iowa their total tax is 11.55 percent as compared to the 18 percent in the state of Nebraska. However, when you look at the state of Iowa's income tax, their income tax is currently 8.98 percent, whereas, the Nebraska state income tax is only 6.84 percent. So I think you have to look at all taxes before you determine that one particular tax is higher than the rest and, therefore, making the state of Nebraska noncompetitive. The next item I want to discuss has to do with whether or not this is a tax and a fee, or fee, which many of you have asked that question. And having worked in a tax department for a large public accounting firm, there are many taxes that corporations face, and those taxes include payroll taxes, excise taxes, income taxes, sales taxes. Many, many taxes are assessed against corporations. Similarly, the telephone occupation tax is assessed against the corporation. Those taxes are passed along to the consumer. They might not be separately stated on the bill but they are certainly in the fee that is charged to the consumer. Simply because the telephone occupation tax is separately stated does not make that a tax on a tax. The sales tax itself is assessed on the individual. The occupation fees are assessed on the corporation. The last thing I'd like to point out is I've heard testimony--actually two things--is that it's industry specific. We have a variety

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of occupation taxes in the city of Omaha and they are not specifically addressed only on telephones. We have an occupation tax with hotels/motels. We have an occupation tax on vehicle rentals. We have occupation taxes on taxicabs, firearms, go-carts, heliports. There are a variety of occupation taxes that are assessed against a variety of different businesses, so it is not industry specific. And the last thing has to do with several comments that have to do with the administration of the telephone occupation tax. And what I would comment with respect to this is that all taxes are difficult to administer. In fact, the Internal Revenue Code itself speaks volumes. And so just difficulty in administering it, there is guidance. I know the city of Lincoln has a large question and answer memo that's put out on their Web site that helps answer those types of questions. So with that, I would conclude my comments. I'd be happy to answer any questions that you may have. [LB165]

SENATOR CORNETT: Senator Utter. [LB165]

SENATOR UTTER: Thank you for coming again. [LB165]

PAM SPACCAROTELLA: Thank you for having me. [LB165]

SENATOR UTTER: I feel like we're getting very well acquainted, as a matter of fact. [LB165]

PAM SPACCAROTELLA: Yes, I feel that way too. (Laugh) [LB165]

SENATOR UTTER: Looking at...and you said your occupation tax on the phones was what percentage? [LB165]

PAM SPACCAROTELLA: It's 6.25 percent. [LB165]

SENATOR UTTER: 6.25. [LB165]

PAM SPACCAROTELLA: That's correct. [LB165]

SENATOR UTTER: But it's not on equipment. [LB165]

PAM SPACCAROTELLA: It is not. [LB165]

SENATOR UTTER: Okay. Looking at the total tax picture of Omaha--and you brought this up, the many sources of taxes--do you think citizens would better understand what it was costing them to, for their city to operate and how they were spending the money if there was a single source of taxation of some kind? Maybe it would be a sales tax, maybe it would be a property tax, maybe it would be an income tax. I don't know what. But does...in the end, to me, the citizen of your city, the citizen of the state of Nebraska

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ends up paying the taxes, whether it shows up on the monthly statement as a tax or not, taxes that are imposed upon businesses and what have you, that ultimately flows to the people who buy the services or make a...or use the services of those businesses. So is it easier...is the reason that we are seeking out so many sources of taxes is because it's easier for us as political leaders to collect this tax from many sources, even though it is ultimately still tax from the citizen? Or is there another valid reason for us to have lots of sources of taxes? [LB165]

PAM SPACCAROTELLA: I would say...I would answer that in twofold. The first answer is there was actually a revenue study that was commissioned by the city of Omaha in conjunction with UNO, and one of the things that came out of that revenue study is that the city of Omaha was too dependent upon the sales tax. And I think many municipalities through this last economic recession found out that they were also too dependent on sales tax for their revenue sources. So in order for cities to be viable, they have to have more than one revenue source because sometimes that revenue will be down. Similar to what's in my letter, the fact of the matter is, sales tax is actually recovering but the cities are now facing the second wave of the economic recession with the decline of property values. So for that reason I think there needs to be a diversification of revenue sources for the strength of the cities. The second thing that I would point out is that there are...in that revenue study it also talked about fees for services. And it is I think appropriate that citizens that use a specific service where other citizens do not get charged for the fee for the service that they use. [LB165]

SENATOR UTTER: But the telephone service is not a service that the city provides, right? So, in essence, regardless of what it's called, it is kind of a sales tax the way I look at the occupation tax on telephones. Is that not an additional sales tax over and above the sales tax that's already provided, that the city and the state share? [LB165]

PAM SPACCAROTELLA: I do not believe that the telephone occupation tax is a sales tax. Again, legally and from a tax policy perspective, the occupation tax is assessed against the business. It is a cost of doing business in the city of Omaha. The sales tax is imposed on the ultimate consumer. It is a tax on the service of the goods that they purchased. [LB165]

SENATOR UTTER: And you don't think the occupation tax is ultimately paid by the consumer? [LB165]

PAM SPACCAROTELLA: I think that the businesses are passing it along to the consumer, but they are also passing along a lot of other taxes that aren't separately stated on the invoice. [LB165]

SENATOR UTTER: Thank you. [LB165]

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PAM SPACCAROTELLA: You're welcome. [LB165]

SENATOR CORNETT: Ms. Spaccarotella, if we are talking about a broader tax policy, when you said that the city of Omaha had a tax study done and it said it was too reliant on sales tax and that they needed to broaden their tax base, what were some of their suggestions on that? [LB165]

PAM SPACCAROTELLA: The city of Omaha, their primary suggestion is the city of Omaha did not do well in recovering their fees for services. [LB165]

SENATOR CORNETT: The fees for services. [LB165]

PAM SPACCAROTELLA: Um-hum. [LB165]

SENATOR CORNETT: Secondly...I have a few questions here, so. None of them are terrible. [LB165]

PAM SPACCAROTELLA: I'd be happy to send you the study if you'd like it. [LB165]

SENATOR CORNETT: I would actually like a copy of that. [LB165]

PAM SPACCAROTELLA: Sure. [LB165]

SENATOR CORNETT: How much does the city of Omaha generate, in total, from the different occupation taxes it levies? [LB165]

PAM SPACCAROTELLA: Our current occupation tax revenue is approximately \$42 million. [LB165]

SENATOR CORNETT: It has been brought up a number of times today that a half-cent sales tax option for the municipalities might be something that they need, looking into the future. How much would a half-cent sales tax increase...generate for the city of Omaha? [LB165]

PAM SPACCAROTELLA: The last time that we calculated that, it was approximately \$45 million annually. [LB165]

SENATOR CORNETT: So basically a break even. [LB165]

PAM SPACCAROTELLA: That's correct. [LB165]

SENATOR CORNETT: Did the study bring anything up on a city income tax as a way of diversifying your tax base? [LB165]

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PAM SPACCAROTELLA: It might have mentioned it. I don't...it was not one of their largest issues...or it was not one of their recommendations. [LB165]

SENATOR CORNETT: Okay. Thank you very much. [LB165]

PAM SPACCAROTELLA: You're welcome. [LB165]

SENATOR CORNETT: Further questions from the committee? Seeing none. [LB165]

PAM SPACCAROTELLA: Thank you. [LB165]

SENATOR CORNETT: Next opponent? May I see a show of hands of the remaining opponents. Okay. [LB165]

LYNN REX: (Exhibit 9) Senator Cornett, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We really appreciate your time this afternoon in looking at this important issue. I think that it's very clear municipalities across the state of Nebraska will lose significant dollars with passage of this bill. What I'm having handed out to you at this time is some information that we provided and have been gathering from municipalities across the state. But it's not a complete picture, but it's the best we could do in the time frame that we had, and we're going to continue gathering information for you on this because I think it's important to have a more complete picture. And you can see that a number of municipalities across the state, large and small, do have occupation taxes on phone companies. But I think it's important to look at the bigger picture, and that is, how do we fund municipal services? And to go back in time a little bit here and look at what happened when the Legislature removed households and tangibles, when LB1241 passed in 1972, when LB518 passed in 1977, which ultimately eliminated taxes and property taxes on livestock, farm equipment, and business inventory--and that includes, by the way, the business inventory on telephone companies. What I would underscore for you is at that time what was happening is that there was a huge shift over to residential property taxpayers. And with that, over a period of time, there were initiative drives that started happening across the state of Nebraska to limit taxing authority of the state of Nebraska itself, as well as taxing authority of municipalities, schools, counties, and other local governments. And that's back in 1996, and that's when Senator Warner put together a comprehensive study that resulted in enactment of LB1114 in 1996 that imposed lid and levy limits, as well as LB299. There was supposed to be just a lid on restricted funds and then that was supposed to go off in 1998. The levy limits went into effect in 1998. And at that time what I really wanted to underscore for you is that municipalities across the state were told: start reducing property taxes; start diversifying; start figuring out ways that you can reduce property taxes. And that's when there was a huge shift, as you may know, for municipalities in terms of trying to impose local option

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sales tax, which did require, and still does, a vote of the people. So we went from just a handful of municipalities that had local option sales tax to, now, over 184 municipalities with local option sales tax. And we were told at that time: do what you can to lower property taxes. That's what municipalities have been doing. And that's why you see occupation taxes and an increasing number of municipalities having occupation taxes. And I think that's the big picture. And the bigger picture is, I think was pointed out and underscored by Rick Hoppe, which is, how do we fund municipal services? We are looking at sales tax, property tax, occupation tax, and then there's some fees, but other than that, how do we fund these services? Because we have costs that are out of control that we cannot control on health insurance and other things that are occurring in terms of wages and benefits. Senator Utter was kind enough to put in LB482 for us dealing with the CIR and we are very appreciative of that because that is another picture. That's the flip side of this coin, which is, where do we get the revenues to fund basic governmental services? So I would encourage you to consider looking at this issue very carefully. We're happy to work with you on it. We think there is a huge tax policy issue. And, Senator Cornett, you've asked the question repeatedly today, which I think is a very important question and perhaps one of the most important questions, which is, what should the tax policy issue be when it comes to occupation taxes? Municipalities are different all across the state. We have 532 cities and villages. Of those, only 184 chose to go with local option sales tax. Why? Because of their own unique situations in those cities. The same thing with occupation taxes. Not all municipalities have occupation taxes. What we took out--and we probably should have left in--were the numerous municipalities that responded that they had no occupation taxes. So, in essence, what we're suggesting is that--and I think there does need to be a fundamental look at how municipalities fund services. We're happy to work with this committee. But we do think that when you look at overall tax policy, every municipality is different--and that's where the whole issue of local control comes into play--and let them decide because they're the ones that are going to be subject to the decisions on the local level. They're the ones that have to make the decision on what's going to be cut. The local representatives are going to be the ones that have to make the decision of where the money is going to come from, and they're the ones that also have to stand for recall if they make the wrong choice. I'd be happy to respond to any questions that you might have. [LB165]

SENATOR CORNETT: Senator Adams. [LB165]

SENATOR ADAMS: Thank you, Lynn. Lynn, let me ask you the same question I asked of the city administrator, I believe, of La Vista. I know you have a lot of history with the law dealing with municipalities. Literally taken, occupation tax, what was the philosophy behind that? If you occupy the right of way, if you occupy the alleyway of the city...have...? I guess what I'm shooting at is there's a reason for the tax other than just revenue. [LB165]

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LYNN REX: Well, actually the fundamental reason is basically revenue. Let me define for you--and this is out of McQuillin's, which is a municipal law book. It says a business or occupation tax is generally defined as a tax measured by a certain category of gross revenues as it is imposed upon the operation of a business rather than constituting a condition precedent to engaging in a business, i.e., a license tax and so forth. So it is a very typical and standard way in which municipalities across this country raise revenue. It's very standard. And it is a way in which many of the businesses that received a total exemption on property tax and business inventory, this was a tax that helped take the place of that. That's part of the history behind this. And indeed, back in 1996, municipalities were challenged to try to do more with occupation taxes because the whole effort was to get away from property taxes. [LB165]

SENATOR CORNETT: Further questions? Ms. Rex, I stated before it is not my intent to take away occupation tax. But we set parameters and limits pretty much on what every other type...on every other tax in regards to what municipalities, counties, NRDs can do--lid levies. Do you see the policy aspect of setting some parameters, ceilings, on what municipalities can do? [LB165]

LYNN REX: We are prepared to work with you on that issue. However, I want to underscore the fact that because of the limits that have been placed on municipalities, on the levy side and on the lid side on restricted funds, the concern, Senator Cornett, is again the bigger picture: where do we get the revenue to fund local government? We've got over 240 of the 532 municipalities that are up against the maximum levy. They have nowhere to go, and many of those can't even raise the money to raise the 2.5 percent lid amount that you give them the authority to spend. They can't even raise that. [LB165]

SENATOR CORNETT: That I understand--but, currently municipalities are picking and choosing what occupation tax they're going to impose, and they're picking and choosing the rate of that. So inside one municipality you may find two or three, four, five different rates--3 percent here, 4 percent here, 6.5 percent there. A broader...even under occupation tax, wouldn't a broader, more regulated amount make more sense? [LB165]

LYNN REX: At this point I don't know that I have enough information to respond to that. Just based on this little survey that was done predominantly by a city manager in Lexington... [LB165]

SENATOR CORNETT: And I'd be curious to see how many of those people that are up against their lid levies do not impose a local option sales tax and do not impose any occupation taxes. [LB165]

LYNN REX: For example, I was really surprised to find out Gordon, Nebraska, doesn't. Gordon, Nebraska, has a sales tax, but Gordon, Nebraska, is right up against their maximum levy, and they have been for many, many years. And Fred Hlava, a former

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state senator but still the city manager of Gordon, Nebraska, has come here on numerous occasions talking about this. I was surprised to find out they don't have any occupation taxes on telephones. Now, they may have occupation taxes on other businesses. And I guess that one of the things that we would like to find out before the committee would make a decision on this--and I think a very vital piece of information--is what other occupation taxes municipalities are levying on what businesses, and what the percentages are. [LB165]

SENATOR CORNETT: And I would actually like that. We tried over the summer to get some of that information, and maybe you can get it from the municipalities better than we can. [LB165]

LYNN REX: We're happy to try to find that. We'll suggest...I mean it's a public record. We're happy to try to get that because I think it's very important. And we appreciate your patience this afternoon and listening to our comments today. [LB165]

SENATOR CORNETT: (Exhibits 10 and 11) Thank you. Further testifiers in opposition? Is there anyone else in opposition? We'll move to neutral. While you're handing him that, I'd like to read into the record, South Sioux City has sent a letter of opposition to LB165, and Time Warner Cable has submitted a letter of support for LB165. [LB165]

JOHN McCOLLISTER: Senator Cornett and members of the Revenue Committee, my name is John McCollister, spelled M-c-C-o-l-l-i-s-t-e-r. I'm the executive director of the Platte Institute, and we are taking a neutral position on this particular bill although we are generally in support of telecom tax reform and have made reference to that in some of our communications. The Platte Institute promotes free enterprise, limited government, and personal responsibility. And the most obvious thing that really comes out--and I'll be brief because I know you've heard most of these arguments before--is that the telephone taxes in Nebraska are onerous. At nearly 23 percent for wireless taxes, they're confiscatory. And to have the number one rating for telephone taxes in the country is not a good thing. As we know, telephone taxes are an aggressive tax. Over 50 percent of the telephone lines these days are wireless units, and so it's become a necessary tool. Everyone has a cell phone, so those folks least able to afford these high taxes are currently paying these taxes. And finally, there is a lot of talk about the hidden nature of this cell tax and perhaps I can give a little information on that. The wireless industry conducted a survey by McLaughlin and Associates among 400 likely voters on January 26 of this year. And one of their findings was, despite paying more than 23 percent in some urban Nebraska jurisdictions in combined federal, state and local taxes, 34 percent of wireless consumers think they pay less than 10 percent in tax and fees; 54 percent think they pay less than 50 percent in taxes and fees; 64 percent believe they pay less than 20 percent in taxes and fees; only 12 percent say they pay 20 percent or more in taxes and fees; and 25 percent don't have any idea. So this truly is a hidden tax. Nebraskans like plain speaking and direct communication. So if we

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conduct...if we levy taxes on our citizens, which we must, let's do it in a way that it's obvious to the taxpayers. So with that in mind, I conclude my testimony and I wish you well and hope you find solutions to this very vexing problem. [LB165]

SENATOR CORNETT: Senator Utter. [LB165]

SENATOR UTTER: Just one quick question. Part of my telephone bill and part of my cell phone bill is the 911. I don't know whether you call it a fee or a tax. How would you view the 911 charges on your telephone bill? Do you call that a tax or a fee? [LB165]

JOHN McCOLLISTER: Well, funny you should ask that. When I ran for the Public Service Commission two and a half years ago, I kind of got into that as well. The effect is the same whether you call it a tax or a surcharge. Now that particular fee goes to the state of Nebraska, the Public Service Commission, and they distribute the funds. And so, you know, the phone companies collect those fees and they're redistributed to those sources. [LB165]

SENATOR UTTER: It provides a rather...the fee, though, provides a rather unique service to the people of Nebraska. [LB165]

JOHN McCOLLISTER: Yeah, and it's a necessary service. And it's not unusual. You go out through the country and that's a fairly typical fee, and Nebraska's rate on that particular service is uniform and proper. A couple points I'd offer as well. There's been a lot of comment from Senator Cornett regarding, you know, the proper level of taxation for those. And that's a very good topic, I think, that I hope this committee deals with. And secondly, Mayor Vavricek suggested that voters have the opportunity to vote on some of these taxes, these occupation taxes. And I think that would be a good thing. Thank you, Senator. [LB165]

SENATOR CORNETT: Seeing no further questions, is there anyone else in a neutral capacity? Senator Fischer, you're recognized to close. [LB165]

SENATOR FISCHER: Thank you, Senator Cornett and members of the committee. This has been a long hearing; I will try and be brief here. Some comments were made, I think, that can only underline the need for this committee to have a discussion on this policy issue. We had representatives from different municipalities state that an occupation tax is similar to a sales tax. It was made mention that when revenues decrease, then we had to expand the definition to include cell phones, not just landlines. We try to tie our definition to the state's definition with regard to a lodging tax or sales tax. We heard that we have to be creative; we have to be as creative as we can to find other revenue streams. We shouldn't be putting that burden on municipalities. I think that's our job is to define what is going on here instead of having municipalities in their own individual ways try to do it. And it was suggested that we see the bigger picture;

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that we look at CIR and we put this off and we do another study, or whatever, and work on the bigger picture. You know, we're all trying to see the bigger picture here, but it also takes a step-by-step process and I think we need to move forward. It's important that we have this policy discussion. I think it's even more important that we seriously consider what action we're going to take. The Legislature--we need to decide what an occupation tax includes; not each municipality. The Legislature--we are the forum where this discussion needs to take place and we need to have this policy discussion. So I look forward to working with each of you on this issue and I hope we will soon advance this bill to the floor. Thank you. [LB165]

SENATOR CORNETT: Thank you, Senator Fischer. Questions from the committee? [LB165]

SENATOR UTTER: Senator Cornett, you're free to open on LB562. [LB562]

SENATOR CORNETT: Thank you, Senator Utter and members of the committee. I'm going to keep this fairly brief. We've been in hearings a long time today on this topic. Clear back last spring, we started getting phone calls...we, as in the Revenue Committee, started receiving phone calls in regards to telecommunications. As the year progressed, Omaha's restaurant occupation tax came to light and we were already looking at occupation taxes long before that. And one of the things that became very apparent to myself and my staff is the occupation tax had not been looked at in decades, literally. There's archaic language in there and there's no...there's no uniform policy in regards to what we have granted the municipalities the right to tax, and how much they can tax. It was very difficult to draft just a basic boilerplate bill on occupation tax, so people will come up and say they think this bill does this, they think this bill does that. What this bill's primary intent is, was to open up the sections of statute dealing with occupation tax so we, as a committee, can study the issue and set parameters for occupation tax in the state. It is the only tax that we do not regulate in some form. It is broad enough that it can conclude pretty much...as one of my staff members said, you could put an occupation tax on a dog walking down a street. And there's no amount that we could tax that dog. So I think that it is in the best interest of the state and the municipalities that we look at the occupation tax as a whole and look at what we allow municipalities to tax and the rate that we tax them at. And I will waive closing on this in the interest of time, Senator Utter. [LB562]

SENATOR UTTER: Questions for Senator Cornett? Senator Louden. [LB562]

SENATOR LOUDEN: I just want to point out, Senator Cornett, we can tax them walking that dog because on those vet fees here we did a few years ago, and so. (Laughter) [LB562]

SENATOR CORNETT: No, no, that's only if you had the dog groomed. [LB562]

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SENATOR LOUDEN: Okay. Thank you. [LB562]

SENATOR UTTER: First proponent. Jim, take off. [LB562]

JIM OTTO: Senator Utter, members of the committee, my name is Jim Otto, that's...first name, Jim, J-i-m, last name Otto, O-t-t-o. I'm a registered lobbyist for both the Nebraska Retail Federation and the Nebraska Restaurant Association, and I'm here today on behalf of both associations to testify in support of LB562. I won't take too much of your time. I want to just emphasize the fact that we believe that, as many people have already stated, this issue deserves a broader discussion. It's something that we really need to take a look at. Senator Adams asked a question earlier about the origin of occupation tax. And I'm not an expert, but my understanding is that the origin of occupation tax goes way back, if we go back before electricity and before telephones, it goes back to the fact that a peddler might come to town and want to sell wares within a town, and the merchants in that town didn't really like that because that peddler never paid anything as far as local taxes or anything else, so an occupation tax was assessed against that peddler. And it grew as we got electricity and as we got telephones into, as Senator Adams said, occupation of the alleys, the right of ways, those kinds of things. So that's my understanding, that's where that came from. I don't think it...and the name occupation came from that. Now someone can correct me if that's not the case. But what is really the truth as you alluded to, Senator Utter, is this occupation tax has now, maybe not in the terms of the legal definition, in the terms of a legal definition, it is not a sales tax. But in the eyes of the consumer, it is a sales tax. And there's no way that you can tell the consumer it is anything different. So the real issue is that, in my opinion, every other form of taxation that a municipality or local government can do if that's the lid, if that's property taxes, there is a lid. In order to go over the lid, they have to get a vote of the people. If it's sales tax, there is a local option lid of 1.5 percent, and that local option, even to enact any, has to have a vote of the people. There is no lid on occupation tax. There is no control on occupation tax. So, understandably, all of these communities, and I don't argue with their need to raise funds, but we have really forced them into this niche of having to go to occupation taxes to raise money. And so, from a retail point of view, the ease of collection is much easier and much less cumbersome if you simply allow an increase in sales tax. Because that is one place, goes to State Department of Revenue, don't have to worry about all these checks and doing different things. So with that, we would just urge the broader consideration of it, and the most reasonable thing is having it go to a vote of the people. If all occupation taxes...you know, you could say, you can do this, and you can't do that, and you can do that and you can't do this. But to me the simple thing is, if you want to enact an occupation tax, just have it go to a vote of the people like a local option sales tax would have to do or like a increase in the lid would have to do. In fairness, the city of Lincoln did do that. The arena was voted on by a vote of the people. I think the city of Norfolk did that, and they had a vote of the people. Other cities have done it without a vote of the people. Excuse

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me, I must clarify, the city of Lincoln did that on the restaurant tax, they did not do that on the telecommunications tax. Thank you. [LB562]

SENATOR UTTER: Thank you, Jim. Questions for Mr. Otto? Seeing none, thanks. Next proponent. [LB562]

DACIA KRUSE: Good afternoon, Vice Chairman Utter and members of the committee. My name is Dacia Kruse, spelled D-a-c-i-a K-r-u-s-e, and I'm here this afternoon to testify in favor of LB562 on behalf of the Greater Omaha Chamber. I'll be brief and kind of summarize a couple of things that I've heard this afternoon. We believe LB562 is a good vehicle to have a conversation about what is and isn't an occupation tax, and what an occupation tax should and shouldn't be, including the concerns that Senator Fischer raised for bringing forth LB165 and the components of that bill. As has been said before, we've gotten to the point where occupation taxes look a lot like sales taxes or income taxes depending on what perspective you're looking at them from. And we need to develop parameters for defining and implementing occupation taxes. We at the Chamber would like to work with Senator Cornett, Senator Fischer, and members of this committee to do just that. And with that, I will be happy to answer any questions. [LB562]

SENATOR UTTER: Questions for Dacia? Senator Pankonin. [LB562]

SENATOR PANKONIN: Thank you, Senator Utter. Dacia, appreciate you coming today. And I think, obviously, the dilemma that comes out of this discussion...I think it's a very valuable discussion, and for me being new to this committee to learn more about the topic has been very helpful. But I also have to balance that with municipalities need sources, need to function, and they need some kind of source of revenue to be able to do that. So I think we need to balance that discussion with, how is it going to work? [LB562]

DACIA KRUSE: And we couldn't agree more. I mean, we agree. That's what we need to do is figure out how does this work, what are the parameters? Is what we're doing now right or wrong? And we think the bill that Senator Cornett has introduced, as well as the conversation that's taken place surrounding Senator Fischer's bill, are good vehicles to do just that. [LB562]

SENATOR PANKONIN: Thank you. [LB562]

SENATOR UTTER: Other questions? I believe you're done. Thank you, Dacia. [LB562]

KATHY SIEFKEN: Senator Utter and members of the committee, my name is Kathy Siefken, Kathy with a K, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association, here in support of this bill. Jim Otto's testimony is pretty much the same

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that I...me, too, I guess is what I want to say. And frankly, standardizing things so that they're the same all the way across the state, we end up being the entity that collects the...and remits the tax. And when you get into small retail operations that only have one or two keys that is able to do this, we would like the cities to consider that when they're talking about their occupation taxes and the increase. As I said in earlier...in the bill earlier, we are not opposed to raising funds for the arenas or the ball diamonds or whatever the cities want to do as long as it's taken to a vote of the people, and the people in the community have approved that. And that's the direction we think it should go. And it is the place of the Legislature...this is where the decision needs to be made, not on a local level. Thank you. [LB562]

SENATOR UTTER: Kathy, thank you. Questions for Kathy? Seeing none, thank you. [LB562]

KATHY SIEFKEN: Thanks. [LB562]

SENATOR UTTER: Next proponent. First time today. [LB562]

CURT BROMM: I know. Vice Chair Utter and members of the committee, thank you for allowing us to appear before you. My name is Curt Bromm, C-u-r-t, my last name, B-r-o-m-m, and I am a lobbyist representing Verizon Communications, And, of course, you've heard a lot of testimony previously today on the telecommunications tax, and you might wonder why we're appearing on this particular bill. Although we are terribly concerned about the telecommunications tax and the occupation tax that applies to a single industry, we certainly support a broader good look at tax policy in this state. Verizon has a lot of employees in this state. They intend to be here and I hope that they expand here in Nebraska. From a policy standpoint, we believe that it's the Legislature's role and they're most capable of deciding what the proper tax policy is with regard to any tax, including occupation tax. Who should be taxed, what should the levels of taxation be, and at what rates should they be imposed? The Legislature has done that on sales tax, and the policy on that is in the whole scheme of things not that old, but that has served as a road map for municipalities. We would hope that in the field of occupation tax that the...I know, you have lots of heavy duty and heavy lifting this year, but we would hope that you would embark upon the job of imposing or finding good tax policy in the whole area of occupation tax. And I...and certainly, the suggestion that when the people vote for a tax to put upon themselves, that's a good measure of the fact that they're willing to accept that. And so we certainly encourage that ingredient whenever possible. And that's it, Senator Utter. Thank you. If there are questions, I'd certainly try to answer them. [LB562]

SENATOR UTTER: Thank you. Questions for Mr. Bromm? Curt, thanks. [LB562]

CURT BROMM: You bet. [LB562]

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SENATOR UTTER: Next proponent. Opponents. I was wondering when we were going to get that big pile of paper. (Laughter) [LB562]

DAN HOINS: I'll just give you half of it, is that okay? [LB562]

SENATOR UTTER: Okay. [LB562]

DAN HOINS: (Exhibit 12) Thank you, Vice Chair Utter and members of the committee. Dan Hoins, D-a-n H-o-i-n-s, city administrator of city of Papillion, representing the city of Papillion and the United Cities of Sarpy County. Along with reiterating some of our opposition to LB165, we'd just like to go on record with those reasons also for opposing LB562. And just to bring it into some level of reality, I'd like to give one example from each city of the equivalent loss that that city may experience if LB562 is passed in its current form. For instance, in the city of Springfield, the total amount collected pursuant to the occupation tax would cover all of the operating expenses for the city park department in a given year, specifically last year. In the city of Gretna, it's 53 percent of their volunteer fire department budget. The city of Papillion, it is \$30,000 short of our entire library budget within our municipality. In Bellevue, it's the approximate combined budget of the mayor, city council, city administrator, and legal for that city. And finally, in the city of La Vista, it is a dump truck, two mowers, a police cruiser, rescue squad replacement equipment, turnout gear, swimming pool operational budget, and travel and training budget, all together. And the final comment I'd like to make is that we also believe that the impact of LB562, it's most punitive to the smaller communities. For instance, the city of Springfield, this occupation tax represents 17.4 percent of their general fund budget. The city of Gretna, it represents 8.7 percent of their general fund budget. So there is a substantial hole that this would leave if it's passed in its current form. And with that I would conclude and be happy to answer any questions. [LB562]

SENATOR UTTER: Questions for Mr. Hoins? Senator Louden. [LB562]

SENATOR LOUDEN: Yeah, thank you, Senator Utter. In other words, you're using this occupation tax just as your general fund operation, is that what you're telling me? [LB562]

DAN HOINS: Well, if you reduced it and we had to replace it with general fund operating or eliminated it, that would be the equivalent percentage, Senator Louden. [LB562]

SENATOR LOUDEN: Yes, and then...now that's city or county or where does your county fit in on any of that? [LB562]

DAN HOINS: I don't know where the county fits in. This just represents the five municipalities in Sarpy County. [LB562]

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SENATOR LOUDEN: But the...the Sarpy County mill levy is what, 29, not quite 30 cents? [LB562]

DAN HOINS: I believe that's correct, Senator. [LB562]

SENATOR LOUDEN: And then what's the mill levy for your city? [LB562]

DAN HOINS: For the city of Papillion, it's 40 cents. [LB562]

SENATOR LOUDEN: Papillion, okay. And how about Gretna or any of them? [LB562]

DAN HOINS: I'm not sure what Gretna's mill levy is. [LB562]

SENATOR LOUDEN: But you think then that would be a significant...now, what percentage is your occupation tax there? Are you 3, 5 percent? I mean, we have a list here someplace. [LB562]

DAN HOINS: Five. We're 5 percent, Senator, the city of Papillion is. [LB562]

SENATOR LOUDEN: And what do you levy that against, just service or everything that you possibly can or what? [LB562]

DAN HOINS: Just service, Senator. [LB562]

SENATOR LOUDEN: Just the service. [LB562]

DAN HOINS: Yes. [LB562]

SENATOR LOUDEN: And landlines and cell phones, both? [LB562]

DAN HOINS: Correct. And if I may, I'd like to point out that in that thick stack of information I provided you is the ordinances for each of the cities in Sarpy County. And that's one of the complications we see with normalizing this particular issue also, is that it's different across the board even within our collective cities. [LB562]

SENATOR LOUDEN: Well, if you're just doing services, because that seemed to be the problem that I've seen. Cities that are doing just services or something, probably isn't that big of a problem. It's when they expand it out into equipment and everything, and sales and a few other issues there where it seemed like the problem arose, and that's where I'm wondering if and perhaps the Legislature will see fit to allow these towns to levy this occupation tax on one another. The only deal is they've probably got to put some kind of a cap or lid or some kind of description on what can be done, I guess,

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which now isn't there. You have...also have an occupation tax on lodging? [LB562]

DAN HOINS: Not in Papillion, we do not. [LB562]

SENATOR LOUDEN: Okay. And how about on foods? [LB562]

DAN HOINS: No. [LB562]

SENATOR LOUDEN: Okay. Just on your telecommunications. [LB562]

DAN HOINS: Telecommunications and...I'm not sure, and I don't want to answer that until I am sure. But there are other, I believe, cable TV and natural gas also, have a tax on them. [LB562]

SENATOR LOUDEN: Okay. Thank you. [LB562]

DAN HOINS: It's above the telecommunications, I want to be transparent with you there. I just don't know with certainty, Senator. [LB562]

SENATOR LOUDEN: Okay. Thank you. [LB562]

SENATOR UTTER: No further questions? Thank you, Dan. Mr. Mayor. [LB562]

JAY VAVRICEK: I'm going to stretch my legs, so. [LB562]

SENATOR UTTER: What do you think about me? (Laughter) [LB562]

JAY VAVRICEK: I can identify with the role each one of you play. So once again, I'll be brief and appreciate your attention. The name is Jay Vavricek, V-a-v-r-i-c-e-k, representing the city of Grand Island as mayor. First, our community is vested with the people of Nebraska in a very unique way with the occupation tax as allowed under state law. We've made long-term commitments based on that allowance. So as you deliberate and look at to what degree you define occupation taxes in the future, I would just suggest a number of things. First, when I say we have a vested interest, and we can remember a few years ago when Grand Island was extended the opportunity to host the Nebraska State Fair based on the ability to do our part, come up with \$8.5 million. A portion of that, about \$5 million is funded with the food and beverage occupation tax that was enacted by the city council in 2008. So we have a longstanding commitment to fund that project, and would also point out that it is sunsetted. It was enacted by the city council, but it does have a sunset upon the retirement of the lease/purchase agreement of that facility that the city uses like nine or ten months a year, and the State Fair uses during the State Fair itself. So I'd just like to point out that once again, we have a longstanding commitment to fund that and that was part of our

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commitment to be able to do that. And so from that perspective, I think it's important also to know this, the second occupation tax that the city enacted by virtue of a city ordinance is a city lodging tax and that is linked for 25 years to go ahead and provide for, offset operational expenses of a facility. And so the city doesn't even receive a cent of that. It collects it. It earmarks those revenues to a completely different entity, so when you look at occupation taxes, there are some that are enacted in such a way that you can go ahead and potentially earmark to other purposes aside from a general fund. And then the third, of course, is the one that I elaborated on, that in principle provides funding for emergency communications. So as you go forward, two distinctions. When you talk about nonresident, I think there needs to be a decision because when you look at the nonresident, for example, in the State Fair occupation tax and food and beverage, that is being assessed to the Farmer's Daughter Cafe customer, to a Texas T-bone customer, to the Uncle Ed's customer, the local ownership of funds there, as well as to the customers of Applebee's and Red Lobster. So when you look at residency, I think it would be wise to determine how you define residency in such a way that you have a level playing field, that you're not diminishing a role to a local provider, to someone that may have ownership or a franchise in New Jersey. Secondly, State Fair vendors that come there, they also, this year, will be asked and be under that application. So when you come there, Senator Utter, and get your turkey, and Senator Louden, you have your beef pit sandwich, you'll be chipping in on that and we think that also needs to be noted because some of those vendors are out of state, out of city, but yet, nonetheless, they're competing for that same share of that customer at the State Fair right along with the guy across the street at main street. So residency and how you define it, I think, is important. And then lastly, look at all the different things where we've made long-term commitments of, to what degree you grandfather in, existing occupation tax is recognized in the commitments that have been made. I think that is a consideration, but, uniquely, short of any other taxation, the wisdom at the time by leadership of the city was to enact the food and beverage so we could partner and become the State Fair that we all are proud of. Yes, sir. [LB562]

SENATOR UTTER: Questions for...? Senator Louden. [LB562]

SENATOR LOUDEN: Yeah, well, thank you, Mayor. And what's your rate of occupation tax that you charge on these different food or whatever? [LB562]

JAY VAVRICEK: On the food and beverage, that's 1.5 percent. And on cell phones, that's 3 percent, and then there's a certain arbitrary percentage on the overnight lodging that's only within...not only, but it's within the lodging within the city limits, and I can't remember if that's 1.5 or 2, but it's under a city ordinance. [LB562]

SENATOR LOUDEN: Okay. Thank you. [LB562]

SENATOR UTTER: Any further questions? I do have just one question, Mr. Mayor. The

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\$8.5 million that you referred to, what's the anticipated time that it's going to take to repay that? [LB562]

JAY VAVRICEK: Sure. Private fund-raising chipped in about \$1.5 million, then the allowance was extended from the Legislature to be able to allocate a portion of the relocation of softball, baseball fields of that \$7 million. In answer to your question, it's about a \$5 million investment. Based on current revenue, which is right now averaging close to about \$1.1 million a year, it would be projected to be...have that paid off in about six years or so. [LB562]

SENATOR UTTER: And so is the...is it a plan of the city that when that is paid, then that drops off, that occupation tax ceases? [LB562]

JAY VAVRICEK: I think it's a relevant question. The city ordinance now that defines the food and beverage, once the lease/purchase agreement has been paid off, then that taxation will cease. Secondly, when I say it's a relevant question, because when you look at the municipality and if we ask the citizens, hey, is this is a good thing to continue knowing that that's a revenue source outside of property taxes and other different taxations and fees, then it would be up for the city council under the current law to enact again to continue or to extend to the people to vote with that understanding. But right now the ordinance will discontinue upon the retirement of the debt service on the lease/purchase agreement. [LB562]

SENATOR UTTER: By the way, I'm kind of a corn dog, beef pit guy. (Laughter) Thank you. [LB562]

JAY VAVRICEK: Thank you very much. Always a pleasure. [LB562]

PAM SPACCAROTELLA: (Exhibit 13) Good afternoon, members of the Revenue Committee. My name is Pam Spaccarotella, finance director for the city of Omaha. And again thank you for the opportunity to testify with respect to LB562. LB562, as proposed, would limit a city's ability to impose occupation taxes, either through restrictions on nonresidents, or through a limitation on the amount a city can impose. We are here to oppose LB562 for the following reasons: Occupation taxes, as I previously stated in my testimony for LB165, compose a substantial portion of the city's overall revenues. The city generates approximately \$48 million per year in occupation taxes and I have listed some of the larger occupation taxes in my testimony. But those are the telephone occupation tax, which we talked about earlier; the hotel/motel tax; the restaurant tax; and the automobile rental fee. As you can see from those types of taxes, a substantial portion of the city's occupation taxes are actually levied on nonresidents. The hotel/motel tax and the automobile rental fee are almost exclusively nonresident visitor taxes. Revenues from these sources have been pledged to pay off the bonds at the Qwest Center as well as the TD Ameritrade ballpark. As a result to enact legislation

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that precludes the city to tax nonresidents effectively eliminates our ability to collect these taxes and pay for the Qwest Center and the TD Ameritrade Park. In addition, the hotel/motel tax also funds our Convention and Visitors Bureau. This bureau represents the city of Omaha as well as the state of Nebraska to neighboring states, municipalities, businesses, and individuals. The city of Omaha has no other revenue from which to fund the CVB and as a result, if these funding sources are eliminated, we will have to eliminate the Convention and Visitors Bureau. In addition, the state of Nebraska...I'd like to point out that the state of Nebraska also imposes a nonresident income tax on nonresident individuals working within the state of Nebraska. Occupation taxes on nonresidents follow the same principles. Therefore, to enact a policy that would restrict a city's ability to tax nonresidents would be contradictory to the state's ability to tax nonresidents. The city is also concerned with respect to a cap on the tax. The legislation does not state currently what that cap would be and so we are unable to determine at this point in time what the potential revenue impact would be with respect to that limitation. And lastly, what I would like to point out is the same testimony with respect to LB165. The city of Omaha, as well as other cities, are facing economic financial strain. We are using occupation taxes to fill that gap and we would ask that with the current situation with respect to the state and the cuts in the state aid, and other occupation taxes, that we be allowed to continue with the occupation taxes we have. I'd be happy to answer any questions that anyone has. [LB562]

SENATOR UTTER: Questions? Senator Louden. [LB562]

SENATOR LOUDEN: Yes, I was looking in your presentation here and you talk about the hotel and motel tax funds or your Convention and Visitors Bureau. That's a separate tax. That's been in statutes for years. That visitors tax and that sort of thing, hasn't it, isn't that run at 5 percent? [LB562]

PAM SPACCAROTELLA: It is, it's 5.5 percent. That's correct. And it...but it is an occupation tax. [LB562]

SENATOR LOUDEN: Okay. Yeah, it's an occupation tax but that's been in long before you guys started playing around with the other stuff, isn't that correct? [LB562]

PAM SPACCAROTELLA: With respect to the restaurant tax? [LB562]

SENATOR LOUDEN: Yeah. [LB562]

PAM SPACCAROTELLA: Yes, that's correct. [LB562]

SENATOR LOUDEN: Yeah. And then when you mention... [LB562]

PAM SPACCAROTELLA: The telephone occupation tax, by the way, has been in effect

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in the city of Omaha since 1935. [LB562]

SENATOR LOUDEN: Yeah. And then you mention, oh, where you've...your 10 percent, your fire department and some of these others, and 5 percent, your police force, I don't know if the occupation tax will do you any good there will it, your problems you have with some of that and those...? [LB562]

PAM SPACCAROTELLA: Well, we're certainly working on reducing our expenditures. [LB562]

SENATOR LOUDEN: Okay, yeah. [LB562]

PAM SPACCAROTELLA: And, in fact, in the fire department, we were talking about those statistics today. Two years ago the fire department's budget was approximately \$74 million, and today we're operating at \$68 million. So we've made significant strides with respect to our fire department. [LB562]

SENATOR LOUDEN: Now, what is your...what is your occupation tax on your telephone, occupation and that, what's the percentage? [LB562]

PAM SPACCAROTELLA: The percentage is 6.25 percent. [LB562]

SENATOR LOUDEN: Six and a quarter. Okay. Thank you. [LB562]

PAM SPACCAROTELLA: You're welcome. [LB562]

SENATOR UTTER: Other questions? Just so I get this straight, it's your testimony that you don't think that the state should even consider putting any type of limit on occupation taxes? Is that your testimony? [LB562]

PAM SPACCAROTELLA: I would say that we are concerned with respect to any restrictions that the state would place. Not to say that we couldn't discuss what those limits would be, but currently today this is the one area that the city has more flexibility than others. And any restrictions, we would want to discuss what those would be. [LB562]

SENATOR UTTER: Thank you. [LB562]

PAM SPACCAROTELLA: You're welcome. All right. [LB562]

SENATOR UTTER: Other opponents? [LB562]

LYNN REX: Senator Utter and members of the committee, my name Lynn Rex, L-y-n-n

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R-e-x, representing the League of Nebraska Municipalities. We do oppose this measure, but I do want to underscore that we're happy to work with the committee as you analyze what the statewide policy should be on this. And I do think that some information that also needs to be garnered is not just the information about what other municipalities are out there, and what other occupation taxes they may or may not levy, and what those rates are, but also to do a comparison, for example, on the telecom tax because this 18 percent telecom tax that people have been referencing this afternoon, that includes a number of taxes. When I look at the local taxes, the maximum is a cent and a half on sales tax, local option sales tax. The maximum that we've heard today on telecom tax is 6.25. Now in light of that, the rest of those you need to know, are all state or federal taxes, if you will, on your phone bill. So that being said, many other states find other ways in which they pay for 911 systems. They may not put it on as a 911 surcharge on a phone bill. They do it in other ways. So what the 18 percent includes, in my understanding is, it includes all of that. It includes the 911, it includes all the state taxes, and the federal taxes that are mandated. And, obviously, the federal taxes, that's going to be a wash when you look at other states. But certainly what the state of Nebraska has chosen to put on the phone bill is much different. And so we'd ask you to take that into consideration, too, so we could actually have an apples to apples comparison because I think that's very important. With that, I'd also just underscore again, just going back to my testimony on the previous bill, that many of the folks that have testified today in support of the other measures have been talking about the fact that this is one of those issues that they think that occupation taxes should be limited. And I do understand you're going to look at a broad perspective with that, but please know that back in the seventies and in the eighties as tax exemptions were being granted in a much bigger scale than they have been of recent, that those same individuals...or their organizations, not those same individuals, were actually here saying, don't put it on property tax, find another tax. This committee, and your predecessors on this committee, urge municipalities to look at occupation taxes, look at a variety of other ways in which they could fund municipal services, and that is what municipalities have done. So we're very pleased to work with you, and I'd be happy to respond to any questions that you might have. [LB562]

SENATOR UTTER: Thank you, Lynn. Questions for Lynn? [LB562]

LYNN REX: Thank you very much. [LB562]

SENATOR UTTER: (Exhibits 14 and 15) Thank you. Other opponents? Anyone here want to testify in a neutral capacity? Seeing none, Senator Cornett waived closing. I will want to put in the record that the Nebraska Farm Bureau Federation has submitted a letter in support of LB562, and the city of Lincoln has submitted a letter with their concerns on LB562. [LB562]

SENATOR CORNETT: Can you contact Senator Karpisek's Office and tell him...

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SENATOR PANKONIN: He was just down the hall there a minute ago.

SENATOR CORNETT: Oh, was he? Will you check in the hall and see if Senator Karpisek is there? Senator Karpisek, keeping us waiting.

SENATOR UTTER: Your time is about half gone.

SENATOR KARPISEK: I just saw Lynn Rex in the chair when I poked my head in one side. Thank you, Senator Cornett, members of the Revenue Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB537 is to allow exemptions to the budget lid and property tax levy limitations to make up for any reductions in state aid to local governments. LB537 would amend the definition of allowable growth which applies to the budget lid on restricted funds. For political subdivisions the bill would add a provision to allow local governments to increase their restricted fund budget by an amount equal to the reduction in state aid from the prior fiscal year. This provision would be available for fiscal years beginning on or after July 1, 2011. LB537 would also allow local governments to exceed their property tax levy limits for fiscal years beginning on or after July 1, 2011 for replacing revenue lost due to reductions in state aid from the prior fiscal year are not included in the levy limits established by this section. LB537 is designed to give local governments the ability to raise revenue from other sources to compensate for losses in state aid. Currently, there are over 200 cities and villages that are at their property levy limit. If their state aid is reduced they do not have the ability to raise property taxes even if they have the authority to do so under the budget lid. Local governments have been making budget cuts over the last several years and LB537 will give them the flexibility to continue to provide necessary services by offsetting state aid reductions. So in short, this would give them the ability to raise their property taxes to try to make up for some of the state aid that we are talking about taking away from them. We all know it's either reduce the services they provide or raise taxes. And I don't know how this is all going to play out. But it worrisome for a lot of our cities and counties. With that, I'd be glad to take any questions. [LB537]

SENATOR CORNETT: Senator Adams. [LB537]

SENATOR ADAMS: Senator Karpisek, just to double-check, did I hear you right? This would not only be an increase in the levy lid but also on the expenditure side? [LB537]

SENATOR KARPISEK: Yes. [LB537]

SENATOR ADAMS: Okay. [LB537]

SENATOR CORNETT: Senator Loudon. [LB537]

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SENATOR LOUDEN: Yes. Well, when you get into these kind of discussions about like discussing religion because we take the money away from the cities or counties or whoever, then we give them the authority to push it off on their property taxes or whatever. I mean, we went through this in 2003 with school funding. We took away from the schools so we raised their levy lid from 95 cents to \$1.05 and been there ever since. And then we have people, you know, complain about property tax. Do you think it would be better to go this route than to just plainly raise sales tax half a cent or something? (Inaudible) and go ahead and continue these...this funding that the state does to counties, this city aid, you know, city-county aid? [LB537]

SENATOR KARPISEK: I don't know which would be better. I guess, at least this gets it down to local control and they can decide which way they're going to go. And, you know, that would be a way to discuss it too that I've thought about but not in conjunction with this bill so much. I better stop there, Senator. [LB537]

SENATOR LOUDEN: We've had this, you know, declaration--we're not going to raise taxes. But if you're going to pay the bills, somebody is going to raise taxes. And the guy setting down there getting up in the morning and cooking his breakfast, it doesn't matter whether he pays it to the state or he pays it to the county or whatever. At the end of the day it comes out of his pocket. That's what I'm wondering where are we...where should we be here to make it right for everybody? Would we be...would it be easier on everyone if there was a sales tax statewide? This way people coming through the state would probably help contribute more than putting it down the local level and the only place they got to go is...they can't go on sales tax because we got a cap on that. So about all they can do is actually a property tax or something like that. And then we're putting the throttle on the occupation tax. So it about leaves property tax the only thing that's left. [LB537]

SENATOR KARPISEK: That is about the only thing that's left. And we do know that property taxes are already an issue. I think, not to sound like Senator Pahls, but I think we need to look at exemptions. But that's not what this bill does. So you're right, it's a bigger, broader conversation than just one bill at a time. But that's kind of how we have to do it is one bill at a time. And I don't even know what other kinds of bills you have coming to the committee that deal with sales tax or exemptions or any other way to raise these funds. [LB537]

SENATOR LOUDEN: Thank you, Senator Karpisek. [LB537]

SENATOR KARPISEK: Thank you. [LB537]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB537]

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SENATOR KARPISEK: Thank you. [LB537]

SENATOR CORNETT: First proponent. May I see a show of hands for the number of proponents. Opponents? All right. We won't use the lights, but be mindful of the hour. [LB537]

LYNN REX: Senator Karpisek, I'm sorry. (Laughter) Senator Cornett, so sorry. You don't look anything like Senator Karpisek. [LB537]

SENATOR CORNETT: I was just going to say I'm not nearly as hairy. (Laughter) [LB537]

LYNN REX: Senator, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And first of all, we'd like to thank Senator Karpisek for introducing this bill in our behalf. This is a very important bill because we do have a number of municipalities, hundreds of them up against the maximum levy limit. As I indicated earlier in my testimony, in 1996, when the Legislature passed these levy limits which took effect in 1998, second-class cities and villages were at \$1.05 per \$100 of valuation and almost all of them at that time were at \$1.05. Some of them are above that because they had voter-approved bond issues. Within two years they had to go down to 45 cents plus 5, 5 on the interlocal agreements. That was, I mean, the second-class cities and villages just took a huge hit in terms of trying to address that issue. And many of them have yet to recover from that. So this is an issue to help assist them. But we also have some larger communities that were there, first-class cities. As a former mayor of York, you might remember that first-class cities had an 87.5 cent maximum levy limit in 1996. In 1998, that changed to 45 plus 5. But predominantly for first-class cities it was not that big of a deal. Most of them were not even close to 87 cents. So the first-class cities didn't pay the same kind of price, quite frankly, that second-class cities and villages paid. What this bill does is basically say that if you are up against your maximum levy limit you can go above that levy limit to make up for the loss of state aid and you can also do that on the lid side. So because some of them right now are not even able to do that. So with that, I'd be happy to respond to any questions. We do think this is an important bill, especially in light of LB383 being advanced. And, Senator Loudon, you raised this issue, and this is the fundamental issue and we've talked about it on a couple of other bills today, how do you fund local government services? Where do you get the money to do that? I mean, we have limited sources of revenue, municipalities have...municipalities have local option sales tax, only 184 of them do that. And that's probably about the maximum that we're going to see. I mean, there may be a few more down the road. But pretty much anybody that wanted a local option sales tax has gone after it. And those that haven't it's because they don't have a business district or they don't have the ability to raise that revenue. So fundamentally, those municipalities are looking predominantly at property taxes. And the occupation tax issues that we've talked about today also have such a significant play in this. So I'd be

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happy to respond to any questions that you might have. [LB537]

SENATOR CORNETT: Senator Adams. [LB537]

SENATOR ADAMS: Thank you, Lynn. If I interpret this right then this is a dollar for dollar trade-off, is it not? So if there is \$100 lost in aid there could be \$100 gained in additional levy authority? [LB537]

LYNN REX: That's correct. But what I want to underscore is that on the state aid side, as we've described state aid, which we describe it as a partial reimbursement to local governments for a property tax base due to exemptions granted in prior years. But the state aid as you and I would refer to it, that is captured in the lid itself for some communities. But for some of them they are so far out of whack in terms of what...the kinds of dollars that they need that you're right, it would be a dollar for dollar, if it was \$100 in state aid they would be able to make that up. On the levy side that really is important for a lot of smaller cities and villages, I mean, predominantly for the smaller cities and villages, although it does impact some of our larger cities too. [LB537]

SENATOR ADAMS: So you are saying it's going to reach further than just our short-term issue right here with whatever loss of aid may happen because of LB383. This would be an attempt to recover some of that. [LB537]

LYNN REX: Yes, absolutely. [LB537]

SENATOR ADAMS: Okay. [LB537]

LYNN REX: But, see, some communities, in fairness, some communities have enough room within the 2.50 percent lid plus 1 on a super majority vote. Many, many, hundreds of municipalities have plenty of levy authority. It's not an issue of levy authority. So this is an issue of fairness, especially for those smaller communities. But you're going to hear this afternoon maybe some of the larger ones have issues. [LB537]

SENATOR ADAMS: So that was my next question then. If this is a recovery of lost resource, then I...why would we need to increase the spending side? [LB537]

LYNN REX: Well, you would be increasing the lid on restricted revenues. [LB537]

SENATOR ADAMS: Right, um-hum. [LB537]

LYNN REX: And on the state aid side, because some of them for years, Senator, have been unable to raise the appropriate... [LB537]

SENATOR ADAMS: So it's for that extra category,... [LB537]

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LYNN REX: That's correct. [LB537]

SENATOR ADAMS: ...the ones that have been up against it for a long time and there's additional lost aid? [LB537]

LYNN REX: That's correct. [LB537]

SENATOR ADAMS: Because if it was just going to be...I got it, thank you. [LB537]

LYNN REX: Yes. [LB537]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB537]

LYNN REX: Thank you very much. [LB537]

SENATOR CORNETT: Next proponent. [LB537]

GLENN JOHNSON: (Exhibit 16) Good afternoon, Senator Cornett, members of the committee. My name is Glenn Johnson, G-l-e-n-n J-o-h-n-s-o-n. I'm the general manager of the Lower Platte South Natural Resources District, here in Lincoln. I'm here representing that district and also the Nebraska Association of Resources Districts and testifying in support of LB537. Just as the cities and municipalities, if LB383 were to pass and the districts were to have reduced or lost state aid, this particular bill would allow those districts the option then to replace that without any consequences of the lid law. And so from that standpoint some districts may choose to do that and some districts have the capacity to do that. And we appreciate the opportunity. Thank you. [LB537]

SENATOR CORNETT: Senator Adams. [LB537]

SENATOR ADAMS: What was your anticipated...I know we had a chart last week, the week before, what was your anticipated loss of aid under LB383? [LB537]

GLENN JOHNSON: The total for the natural resource districts is \$1.4 million. [LB537]

SENATOR ADAMS: But for your natural resource district? [LB537]

GLENN JOHNSON: This particular, \$140,000...\$240,000. [LB537]

SENATOR ADAMS: What percent of your revenue stream is that? [LB537]

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GLENN JOHNSON: To replace that, let me just put that, to replace that in terms of a property tax would be another 21...6 cents. [LB537]

SENATOR ADAMS: Do you know what percent that is though of your total revenue stream to your general fund? [LB537]

GLENN JOHNSON: Of the total revenue stream, \$240,000 out of \$28 million, it's a pretty darn small piece of the total revenue stream but of the property tax stream it is more significant. [LB537]

SENATOR ADAMS: Right. [LB537]

SENATOR CORNETT: With LB383 your percentage of loss though is around 1 percent, isn't it, 1.50 percent? [LB537]

GLENN JOHNSON: Right, um-hum. [LB537]

SENATOR CORNETT: Correct. Any further questions? Seeing none, thank you. [LB537]

GLENN JOHNSON: Thank you. [LB537]

SENATOR CORNETT: Next proponent. [LB537]

JERRY STILMOCK: Good afternoon, senators. My name is Jerry Stilmock, J-e-r-r-y Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska State Volunteer Firefighters Association. We have knowledge of nine counties right now that have pushed fire districts outside of any support of property taxes. We're concerned that it's going to continue to happen. And if counties aren't allowed to make up or recoup what state aid they are going to lose we're concerned that more and more fire districts are going to be pushed outside of any levy allocation from the counties. As that happens, it pushes fire districts, which pushes volunteer firefighters, volunteer rescue personnel out. Advocating to support an election or a town hall meeting in order to raise funds just to run as volunteers run for...a few will run for insurance purposes. They flat out are not getting the support in nine counties. And we're concerned that that's going to continue to happen and put more strain on volunteers. We'd ask your support of this measure. Thank you. [LB537]

SENATOR CORNETT: Questions? Seeing none, thank you, Jerry. [LB537]

JERRY STILMOCK: Thank you. [LB537]

SENATOR CORNETT: Next proponent. [LB537]

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BETH BAZYN FERRELL: Good afternoon, Chairman Cornett, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell F-e-r-r-e-l-l, appearing for the Nebraska Association of County Officials in support of the bill. In the interest of time, I would just like to say we would echo the comments that you've heard from the League and the NRDs. We think this would be very helpful to counties if we do lose our state aid. I'd be happy to try to answer questions. [LB537]

SENATOR CORNETT: Questions from the committee? Seeing none, next proponent. Thank you, Beth. [LB537]

JACK CHELOHA: Good afternoon, Madam Chair, members of the Revenue Committee. My name is Jack Cheloha. The last name is spelled C-h-e-l-o-h-a. I want to testify in support of LB537 today. I'd like to thank Senator Karpisek for introducing it. I guess my testimony is probably more just to be in solidarity with the political subdivisions that as the Legislature moves forward with various cuts we need some relief on some other areas. This would be a type of relief, if you will. One thing that...in particular for the city of Omaha, after listening to my finance director testify to us, if this committee decides they're going to move forward with Senator Fischer's bill relative to the telephone occupation tax, it would be, to us as a city it would be more important for us to get relief from the occupation tax restrictions, to be able to implement some type of other revenue because there's no way to make it up that way. Whereby, the other thing I wanted to point out if the state cut and state aid to cities goes forward, that number is about \$3.3 million in LB383. And so this bill might be helpful to us, but it may not be as helpful as if we had to amend it to make up for occupation taxes. I just wanted to point that out. [LB537]

SENATOR CORNETT: Jack, you lost me. [LB537]

JACK CHELOHA: I did? [LB537]

SENATOR CORNETT: What do you mean, make up for occupation taxes? You have them currently. [LB537]

JACK CHELOHA: Well, what I'm saying is under the lid, state aid is considered a restricted fund... [LB537]

SENATOR CORNETT: Correct. [LB537]

JACK CHELOHA: ...whereas occupation taxes and fees are not. Therefore, if we lost \$60 million in revenue of unrestricted funds, we still would be subject at the 2.5 percent growth, you know, on the restricted funds, so we'd have no way to make those up. [LB537]

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SENATOR CORNETT: Okay. [LB537]

JACK CHELOHA: So that's all I'm saying. [LB537]

SENATOR CORNETT: You were supposing that Deb's bill is passed is what you're saying? [LB537]

JACK CHELOHA: Right, right, if it was. [LB537]

SENATOR CORNETT: Okay, okay. [LB537]

JACK CHELOHA: So I just wanted to point that out. [LB537]

SENATOR CORNETT: What is...you also brought LB383 up. What percentage of your budget is that? [LB537]

JACK CHELOHA: A \$3.3 million cut in state aid to Omaha would be roughly 1 percent of our state or our city general funds. [LB537]

SENATOR CORNETT: Okay, thank you. [LB537]

JACK CHELOHA: Um-hum. [LB537]

SENATOR CORNETT: Questions from the committee? Seeing none... [LB537]

JACK CHELOHA: Thank you. [LB537]

SENATOR CORNETT: ...next proponent. Are there any opponents? Is anyone here in a neutral capacity? Senator Karpisek, you're recognized to close. [LB537]

SENATOR KARPISEK: Thank you, Senator Cornett, members of the committee. The state aid is not a big part of the budget, as we have heard maybe 1, maybe 2 percent. But I think a lot of these places have already been stretched. And they've been cutting and been cutting. And I would just like to try to give them a little bit more that they don't have to absolutely lop things off right now. They don't have anywhere to be able to pass things down so to say. We can cut their state aid. We can make up some money there. They don't have anyone to pass that down to. Again, Senator Louden brings up a good point--is this the perfect way to go? I don't know. But I think some how someway we do need to still help them not take such a hit right now. So with that, I'd take any other questions. [LB537]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you,

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Senator Karpisek. [LB537]

SENATOR KARPISEK: Thank you, Senator Cornett. [LB537]

SENATOR CORNETT: That closes the hearings for today. Thank you. [LB537]