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Revenue Committee  
March 13, 2013

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[LB150 LB439 LB440 LB474 LB488]

The Committee on Revenue met at 1:30 p.m. on Wednesday, March 13, 2013, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB439, LB440, LB474, LB488, and LB150. Senators present: Galen Hadley, Chairperson; Paul Schumacher, Vice Chairperson; Tom Hansen; Burke Harr; Charlie Janssen; Beau McCoy; Pete Pirsch; and Kate Sullivan. Senators absent: None.

SENATOR HADLEY: Good Afternoon. Welcome to the Revenue Committee. It's always a scary sight when I see most of the seats filled out there, but we have a rule, we don't go past midnight. How's that for...is that a good rule? My name is Galen Hadley. I'm a senator and I represent the 37th District in Kearney. To my left is...sitting down is Senator Schumacher from Columbus; to his left is Pete Pirsch from Omaha; to his left will be Senator Sullivan from Cedar Rapids. On my far right will be Senator Burke Harr from Omaha; and next to him will be Senator Janssen from Fremont; and Senator McCoy from Omaha; and to his left is Senator Hansen from North Platte. Our committee counsel is Mary Jane Egr Edson to my right; Bill Lock is our research analyst; Matt Rathje is...to my far left, is our committee clerk. Our pages are Nathan Funk from Norfolk and Evan Schmeits from Columbus. We are still in the midst of everybody introducing bills yet, so if people get up and leave or are not here, it's not because they don't like your bill but they could very well be introducing a bill in another committee. I'd appreciate it if you'd turn off your cell phones or put on vibrate while in the hearing room. The sign-in sheets for testifiers are on the tables at both doors. This is what they look like. I'd appreciate it if you'd have them filled out. If you're testifying on more than one bill, you need to submit a form for each bill. Please print and complete the form prior to coming up to testify. When you come up to testify, hand your testifier sheet to the committee clerk. There are also clipboards in the back to sign if you do not wish to testify but would like to indicate your support or opposition to a bill. These sheets will be excluded in the official record. We will follow the agenda posted on the door. The introducer or representative will present the bill, followed by proponents, opponents, and neutral. Only the introducer will have the opportunity for closing remarks. As you begin your testimony, state your name and spell it for the record. If you have handouts, please bring ten copies for the committee and staff. If you only have the original, we will make copies. Give the handouts to the page to circulate to the committee. I think with the number of bills we have and the number of people, I'm going to use the light system. And when you come up to testify, we will give you four minutes. And at that point in time the green light will go off and the amber light will come on, and that means you have a minute left. So that's about the time you might want to start wrapping up your testimony. And then at five minutes, give or take, we will turn on the red light. As we move through the bills, especially after we have had a number of testifiers, there is absolutely nothing wrong of coming up and saying, I agree with the prior testimony, and sitting down. So there's nothing wrong with that also. With that, we welcome Senator Gloor to the Revenue Committee, and we will start with LB439. Senator Gloor. [LB439]

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SENATOR GLOOR: (Exhibits 1 and 2) Thank you, Senator Hadley, and thank you for the chance to be here to meet with the august and all powerful Revenue Committee, of course with the exception of the Education Committee, which is also august and all powerful. (Laughter) I've got a few handouts I'd ask the pages to distribute. I'm Mike Gloor, the senator from District 35 which is Grand Island, that's G-l-o-o-r, and I'm here to talk to you about the necessity for an increase in our current tobacco tax. I'm proposing in this bill the cigarette tax increase, for cigarettes specifically, to 72 cents a pack. That would bring our tax on a pack of cigarettes to \$1.36. That will be equal with the state of Iowa. Our current tax is 64 cents. We're estimating the revenue as a result of that increase will about \$66.6 million. We're also proposing a tobacco products tax increase. Now tobacco products are defined in statute separately as cigars, roll-your-own, chew, and the tobacco that's used if you're one of those pipe smokers out there. That increase is always a percentage and it will increase from 20 percent to 31 percent. The estimated revenue from that will be an additional \$1.1 million, bringing the overall increase in dollars to \$67.7 million, and we're earmarking those dollars. In this time of discussion about healthcare, healthcare issues, the importance of providing coverage in a variety of ways for healthcare, it seemed appropriate to me that we talk about steering these revenues towards doing something about our healthcare system. So the earmarks are such: \$5 million goes to our tobacco control cash fund. We fund different programs out of that tobacco control cash fund: the hot line or Quitline as it's called, there are educational programs, educational initiatives, Smoke Free Nebraska pamphlets that get handed out in schools. So there are a variety of things we try and do, although frankly we fund that program at a fraction of what the recommendations are that a program like that be funded. We're one of the lowest states in the nation in terms of allocating monies towards Tobacco Control Cash Fund or tobacco cessation initiatives. We're talking about \$28 million that would be earmarked for an increase in provider rates, Medicaid provider rates for not just acute care services but for aging services, for behavioral health. Since I have been here, starting my fifth term, we've increased Medicaid provider rates, we've decreased Medicaid provider rates, and then we've tried to increase it a little bit again. What we have done over four years is about a 4 percent increase in Medicaid rates. That's 1 percent per year. And the inflationary impact of what's happening in healthcare tells us, we know instinctively, we're losing ground. I have other bills. We have issues related to Medicaid expansion, but one of my concerns and one of our challenges is we don't pay enough for Medicaid for providers wanting to take Medicaid patients. To me, this is one of the solutions to the challenges we're going to be faced with, a potential expansion in our Medicaid numbers, and that is we need to get some more money into Medicaid to get those reimbursement rates higher. We're talking about \$23.5 million to the Health Care Cash Fund. That's the subject of a lot of discussion, debate, interim studies. This is the fund that was set up as a result of the class action lawsuit that was settled by a number of states' Attorneys General against the big four tobacco companies. I've carried other bills that relate to this and securing this particular Health Care Cash Fund. We have concerns that the

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allocations coming out of that fund related to the expenditures, or the dollars that come into that fund, especially with the downturn in the economy and investments in recent years, has that fund expending at a rate that's not sustainable. Twenty-three point five million per year should be enough to stabilize that fund and perhaps allow us to continue to do some good works and maybe some additional good works out of that fund. That leaves us about \$2.3 million for the General Fund. We also are talking about just under \$3 million, \$2.775 million, to enhance cancer research that's also part of where our tobacco tax monies go. That would, as I recall, double the amount of money that we currently allocate to cancer research in this state. UNMC, Creighton, both desperately need that money and that increase in money to continue to do some of the good works that they're doing. There's also \$5 million to fund the Volunteer Emergency Responders Incentive Act. That's LB440, and that bill will follow this particular bill, and I'll save my ammunition on that for the presentation of that bill. The fiscal note estimates--and this is important--include factors for a reduction in consumption and border bleed. You always hear, well, if we're going to increase it here, people will drive to get their smokes in another state. That has not proven to be the case in states, including this state, that have increased their tobacco taxes in the past. But the fiscal note, folks are always conservative about that sort of thing. And so we've given you numbers that we think take into account any potential of that, plus what we hope to happen with this, and that's a reduction in consumption. The 2002 fiscal note was right on the button. And that was the last time that we had an increase in our tobacco tax. I've talked to you about numbers up to now. And to speak candidly the same way I did two years ago when I proposed this increase, this is a healthcare bill for me that should be in front of Health and Human Services rather than Revenue. Now there are obvious reasons it's in front of Revenue. It's a tax increase. But my over three decades of working in the healthcare industry have in me a stubborn stripe relating to knowing how much we spend as a society on tobacco-related illness and disease. We just do. And this bill to me is a health bill. The only way we can get people to reduce smoking, the most effective way I guess I should say that we found to get people to reduce smoking is to increase the cost of cigarettes. It needs to be a big enough increase, and that percentage is around 8 to 10 percent, I think, to bite their pocketbook so that they'll give up. But it generates revenue obviously. And so it made sense to me that, all right, it's a health bill, generates revenue, let's use those revenues that are generated to do some good things for this state and for Nebraskans as relates to their health, their overall health. But let me give you some stats of what this increase of 72 cents means. It means 11,000 Nebraskan adults would quit smoking. It means youth who are the most price sensitive, and we know that from state after state after state and survey after survey that has measured this, they're the most price sensitive, they're the ones who most likely will quit. We expect 20,000 Nebraska youth will be affected, will not pick up and smoke, and that's a huge number when you think about it and think of our youth and the long-term expenses of those youth as they move through life and deal with tobacco-related illness and disease. The long-term savings estimate for Nebraska Medicaid--\$459 million, \$459 million, almost a half a billion dollars. A personal comment

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that I would make, it hasn't been that many years ago that we saw the Clean Air Act passed in this state. And the reports that I've gotten back from my former institution in Grand Island is over that period of time they've seen a 30 percent reduction in heart conditions. I'm going to assume that most good Nebraskans like me, Senator Hansen, continue to eat beef. It's what's for dinner every night if I could have it. At \$12,000 a year I can't, but if I could I would. (Laughter) That's a significant decrease. And as best you can trace this epidemiologically, it's...the only thing that's changed significantly is people aren't breathing in as much smoke in a variety of places across this state. It's just a small personal reflection on what smoking, even indirect smoke, does to us and some of the dramatic changes in the health status of Nebraskans and cost savings we can realize with an increased reduction in smokers. One of the packets you have in front of you or one of the handouts shows where Nebraska ranks 38th of 50 states, 12th from the bottom. Even when we got to the 64 cents back in '01-02, that only moved us to the top end of the top third...or, excuse me, the bottom end of the top third of states, and we've been sliding ever since. And now we're in the bottom third of the states in terms of where we sit with our tobacco tax. At \$1.36, we would match Iowa, but that would put us right in the middle. I mean, we're not talking about making a big leap here compared to how we sit with other states. We're in the middle of the pack. And year by year, as other states increase their tobacco taxes, that number will also begin to slide. But I think for a one-time jump, if we can get to the 50th percentile, that's a major improvement for us. The last tax increase, as I said, was 2002, 11 years ago. I talked about the 1 percent increase in provider rates. Over the past ten years, I think it's ten years, we've seen about a 50 percent healthcare inflation rate. So we know part of the reason for this sin tax is to offset the expense to the state and society for tobacco use. We've badly slid backwards in trying to cover whatever expenses we think we might be able to cover with tobacco tax set as low as it was. Previous cigarette tax showed no measurable border bleed in one-year sales analysis. And because this is taxed and because it's taxed in other states, the Revenue Department has numbers that it can track, and the last increase showed no appreciable bleed to other states as a result of our increase. That pertains to other states also. Missouri is the lowest in the nation. You may see that on there, it's 17 cents. And when Kansas has had increases, they've tried to match and watch for decreases in revenue of Kansas, increases in revenue in Missouri. And, again, no appreciable change between those two states. People don't travel to save a few cents on the addiction to nicotine any more than they travel or look at your regular convenience store. It's called a convenience store for a reason. People are willing to pay a buck more for milk rather than drive five blocks to get it at a grocery store because it's convenient, and to expect people to drive across the border to get cigarettes in great amounts just isn't going to happen with this sort of an increase. The last thing I'd like to finish with is the fact that two years ago there was an extensive survey done by the Cancer Society of Nebraskans on this very issue. Two points that came out of it. And by the way, I should say they used the same survey organization that the Governor uses, that Senator Johanns uses, so this is a reputable firm that did the survey, interviewed hundreds and hundreds of Nebraskans, three quarters of whom

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were in favor of a tobacco tax increase, three quarters of whom were in favor of tobacco tax increase. But the number you'll find most interesting is, of the smokers identified, self-identified in the survey, half of them were in favor of the tobacco tax increase. Half of them were in favor of the tobacco tax increase. Why? I can tell you from personal experiences two years ago, having a number of people call me up and do interviews or talk to me on TV, and inevitably towards the end of the interview they would say, you know, I'm a smoker and I'm in favor of your bill. And I'd say, why? And they said, because the financial incentive is the only way I know I'm going to give up using tobacco. I know it's going to pinch my pocketbook and that's the reason that I will give up. I hope you pass this. I need that incentive to give up. I didn't prompt them. They offered this up on their own. And even one television interviewer said, I stood outside a convenience store and I watched smokers come in, go in, and then walk out. And I asked them, when they came out, about your bill. And she said, half of them were in favor of it. She said it surprised me. And I said, it's the incentive that a lot of smokers need, unfortunately, and we want to help them and do some good things with the increased revenue. So thank you for listening to this and I'd be glad to answer any questions. [LB439]

SENATOR HADLEY: Are there questions for Senator Gloor? Senator Hansen. [LB439]

SENATOR HANSEN: Thank you. Senator Gloor, thank you for being here today and bringing the bill. I have some questions I guess that are pretty basic. In one sentence or less, tell me the purpose of the bill, because reading the statement of intent, it's a little bit contradictory I think. [LB439]

SENATOR GLOOR: The intent behind the bill is to increase the tobacco tax in this state and, as a result of that increase, see a reduction in smokers, a savings as a result of that to taxpayers through Medicaid expense, and using the additional revenue to do other good things with health that will also help the state of Nebraska. [LB439]

SENATOR HANSEN: Thank you. And the statement of intent has seven ways to spend the money that this would provide an increase. [LB439]

SENATOR GLOOR: Uh-huh. [LB439]

SENATOR HANSEN: And you said \$67 million, and that's what I came up with too. But it's funding all these other programs and it looks more like a funding bill rather than a tobacco cessation bill. And that's...I would love to see \$67 million used to stop people from smoking in the state of Nebraska. I think with one bill that we passed, the Clean Air Act back in 2007, I think did a lot of good for very little money other than... [LB439]

SENATOR GLOOR: You bet. Yep. [LB439]

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SENATOR HANSEN: ...it was Big Brother saying that, you know, where you can and can't smoke, but. And I know the state is going to need more money for cancer research and for all the other purposes that you list here. But it looks like smoking cessation is not enough. I mean, it looks like more of that \$67 million ought to go for that. And I think the border bleed, I think you're underestimating the border bleed considerably because people have, you know, SUVs with big trunks, they have cars with big trunks, and they...once into Missouri, they're ranked 51st out of 50 states, so that's pretty low. And that...they...I mean, they're going to fill those trunks up and bring bootleg tobacco products across the border. [LB439]

SENATOR GLOOR: I wouldn't argue the fact that some of that happens. But what I would say is, two things, is that we have real numbers from states that relate to tracking revenues, taxes, on tobacco products that have been looked at across the country, not just as relates to Nebraska the last time we had an increase that don't show any appreciable change. But we've made an adjustment in here saying, yep, somebody going down to see the Royals play baseball--why, I don't know--but going down to see the Royals play baseball will load up on some cigarettes in Missouri and bring them back... [LB439]

SENATOR HANSEN: Firecrackers. [LB439]

SENATOR GLOOR: ...and firecrackers, yeah. A nice combination in your trunk (laughter) as you're driving back. We have a lot of folks involved in fire and rescue here who probably could tell you a story or two about some of that. But the other thing I think we underestimate, Senator Hansen, is how many cigarettes are bought in this state day after day after day and how an occasional trunk filled with cigarettes is a tiny, tiny amount based upon every convenience store, every grocery store and the amount of cigarettes. I pay attention to these things now and when I go to a convenience store for gas or...I don't buy milk at my convenience stores, pick up a cup of coffee or something, if there's a line, 50 percent of the people in that line are buying cigarettes. It's...and you multiply that all day long and the number of packs of cigarettes that go out of places where they're sold across this state is a huge number. I think once upon a time somebody told me that if you took all the packs of cigarettes that were sold in this state, you could have a sidewalk paved with cigarette packs that stretched from here all the way to the Wyoming border and part way back again in just one year's worth of sale of cigarette packs. Not very many of those packs will have come from people in other...who drive to other states to pick them up. [LB439]

SENATOR HANSEN: Nebraska does have a tobacco tax stamp that we put on tobacco. [LB439]

SENATOR GLOOR: Yeah. [LB439]

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SENATOR HANSEN: Do you know anything about the penalties? Would you expect a increase in penalties for this black market cigarette travel? [LB439]

SENATOR GLOOR: Well, it's not part of this bill and usually that's something the Attorney General brings forward. I got involved in some of that a couple of years ago. But it would have to be a separate piece of legislation brought to us by the Attorney General for enforcement purposes, or the Department of Revenue. [LB439]

SENATOR HANSEN: I would expect there to be some, but I certainly was surprised of how the money, if there is that huge an increase from the increase in taxes on tobacco products, that it would be spent that way. I thought that, you know, at least half of it would be spent in usage. And I think in some place it was only...it said that for youth it would only decrease it 9...a little over 9 percent. [LB439]

SENATOR GLOOR: No. It's about a 20 percent reduction in youth I believe. There will be some testifiers who follow me... [LB439]

SENATOR HANSEN: Okay. [LB439]

SENATOR GLOOR: ...who will probably speak to... [LB439]

SENATOR HANSEN: Okay. I will wait. [LB439]

SENATOR GLOOR: ...the way that tobacco cessation monies are used and the amount that's out there. But... [LB439]

SENATOR HANSEN: Okay. [LB439]

SENATOR GLOOR: ...good questions. [LB439]

SENATOR HANSEN: Thank you. Thank you. [LB439]

SENATOR HADLEY: Senator Gloor, I have a question on the provider rates. Wouldn't there be a great temptation for future Legislatures to say, oh, \$28 million is coming in from the cigarette fund, so we can lower the General Fund obligation for provider rates by \$28 million? [LB439]

SENATOR GLOOR: I think this Legislature is so wise that won't happen, but sure. I mean, you can make that argument for just about any of the areas that I've...you know, let's forget about funding a number of programs that get some portion of the healthcare trust fund, as an example. And I can't argue that. We can do what we want because we are the Legislature. But I have a lot of faith also that it's recognized we have a sin tax in place for a reason and, as Senator Hansen points out, it generates some sizeable

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money. I can't figure out a way to get people to stop smoking that's any better than raising the pack of cigarettes, and nobody ever has, going back to 1947. When we first put tobacco tax in place, it was recognized that there's a cost to society for tobacco use. And the only way we've ever found that's been absolutely foolproof to get people to stop is increase the cost. As a result, it generates revenue. We have to find someplace that's a good use of the revenue. And the committee is welcome to come up with its own uses of those revenues if it has some better ideas. Certainly I'm happy to talk about that. [LB439]

SENATOR HADLEY: Thank you, Senator Gloor. Senator Pirsch, did you... [LB439]

SENATOR PIRSCH: Just a quick question. Do you know if an attorney will be testifying as part of your presentation here today or... [LB439]

SENATOR GLOOR: I don't know, Senator Pirsch. [LB439]

SENATOR PIRSCH: Okay. [LB439]

SENATOR GLOOR: But there certainly are attorneys who I know are in the audience and take a great interest in this, so we can have someone visit with you if you wanted. [LB439]

SENATOR PIRSCH: Okay. Good. I'll reserve my questions at this time. [LB439]

SENATOR GLOOR: Okay. Thank you. [LB439]

SENATOR HADLEY: Thank you, Senator Gloor. [LB439]

SENATOR GLOOR: Thank you. [LB439]

SENATOR HADLEY: Appreciate it. Could I see a show of hands of how many people want to testify on this bill? Okay. What I would ask, I mentioned we will be using the lights. If you're in the back of the room and want to testify, I would appreciate your moving toward the front seats so we don't have a lot of time of people coming up to the front seats. Thank you. We'll start first with proponents. [LB439]

DAVID HOLMQUIST: (Exhibits 3, 4, 5, 6, and 7) Thank you. Thank you, Chairman Hadley and members of the Revenue Committee. My name is David Holmquist, D-a-v-i-d H-o-l-m-q-u-i-s-t. I do have some handouts here. I have letters from the Nebraska Child Healthcare Alliance, the Nebraska Association of Behavioral Health Organizations, the Nebraska--if I can read my own handwriting here--Emergency Medical Services Association, and the Health Center Association of Nebraska in support of this bill, as well as some handouts with some information for you. I'm here to



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testify today in support of LB439. I am a resident of District 18 in Omaha, and I'm a registered lobbyist representing the American Cancer Society Cancer Action Network in Nebraska. First, I want to thank Senator Gloor for bringing this bill this year. As you know, two years ago he introduced LB436. If he'd turned it in about 30 seconds earlier, we might have had the same number this year. I'm not sure. But I do appreciate his interest in this issue. This is a very important issue to the American Cancer Society and to the American Cancer Society's Cancer Action Network, as well as the many healthcare organizations across the country, some of whom you'll hear from again. If the records for various athletic events for Nebraska's colleges and universities are any indicator, we like to win. And LB439 is a win-win-win for the state of Nebraska. It's a win for public health because it will dramatically reduce tobacco use and its costly and devastating health consequences. It's a win for the state's budget because, despite reductions in tobacco use, it will produce an estimated \$67.7 million in new revenue for the state. And, finally, it's a win for you and others as elected officials because Nebraska voters overwhelmingly favor increasing the tobacco tax. A public health win: Every year 2,200 Nebraskans die from tobacco-related use. These are your fellow citizens, friends, and family. In addition to the toll on people's lives, tobacco-related disease costs Nebraska more than \$537 million each year in direct healthcare costs and \$134 million in Medicaid costs every year, and much of this is borne by taxpayers. The bottom line is that raising tobacco taxes saves lives by reducing consumption. The reduction in consumption is something both the public and health community and big tobacco agree on. That's why my organization, along with our partners, support a significant increase in tobacco taxes, and that's why the tobacco industry and its allies oppose the increase. For every 10 percent in the overall price of a pack of cigarettes, we see significant reductions in youth initiation and in adult smoking. Passage of LB439 will also be an important win for public health in Nebraska. Funds generated from this important legislation will help endow the Nebraska Health Care Cash Fund, which was created in 2000 using funds from the Tobacco Master Settlement Agreement. The Health Care Cash Fund enables our state to provide a multitude of health services in behavioral health, respite care, biomedical research, public health infrastructure, and many other important programs. The bill will also increase critical funding for tobacco cessation and will create the Provider Rate Stabilization Fund. Win 2: Since Nebraska's last tobacco tax increase in 2002, 44 other states and the District of Columbia and Guam have raised their tobacco taxes more than 80 times. I think it's actually over 100 now. There's a sound economic reason to do so. Even with declines in tobacco use that occur as a result, these tobacco tax increases always result in significant new revenue for the state. Every state that has increased its tobacco tax significantly has seen revenues increase dramatically even as consumption declines. There are no exceptions. The Nebraska increase from 34 cents to 64 cents in October 1, 2002, generated more than \$24 million in new revenue, a 55 percent increase in the first full year after going into effect, even though consumption declined by more than 18 percent. And this revenue has remained consistent. Increasing the tax on other tobacco products would also produce significant additional benefits, including a reduction in use among

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youth and an additional \$1.1 million in new revenue. I understand concerns raised by members of this committee and other members of the Legislature regarding across-border sales or border bleed. The most likely suspect in everyone's minds is probably loss of sales to Iowa, because of the proximity of Omaha and Council Bluffs. Current rate there is \$1.36. This bill will equalize that tax. The example I would also give you is Iowa, Kansas City, Missouri...Kansas, not Iowa, Kansas City, Missouri, and Kansas City, Kansas. Drive across the street, you're in a new state. There is no significant black market traffic and no significant difference in sales between Missouri and Kansas, even though they go across the street. It's 17 cents in Missouri and 79 cents in Kansas. Most smokers do buy their cigarettes at convenience stores. They buy them a pack or two at a time. I smoked for 25 years. I quit 26 years ago. I bought them a pack or two at a time. Rarely did I buy a carton at a time, so. And, finally, this tax is a win-win for you as lawmakers. In polling conducted in mid-2010, mid-December of 2010, 73 percent of Nebraska voters favored raising the tax, and 48 percent of smokers favored this. So the win translates into support for the legislation, increasing the tax on cigarettes and other tobacco products, and using the significant revenues to support provider rates, offer additional resources to help smokers quit, and use a significant portion of the funds to keep vital services to our citizens in place during these tough economic times. Thank you for the opportunity to appear and I'd be happy to take any questions. [LB439]

SENATOR HADLEY: Are there questions for Mr. Holmquist? Mr. Holmquist, is there...or maybe somebody after you can answer the question. Is there any law of diminishing returns when you increase the tobacco tax? If the goal is to...cessation of smoking... [LB439]

DAVID HOLMQUIST: Uh-huh. [LB439]

SENATOR HADLEY: ...if you raise it 10 cents, do you get so many that quit, 20 cents, 30 cents? Do you have to double it? Are you getting anything at the margin? [LB439]

DAVID HOLMQUIST: Well, we used to say that you had to raise it at least 50 cents in order to get the real bang for the buck. In other words, a 50-cent increase on an average pack of a price of cigarettes at \$5 would give you a bang for the buck of between 7 and 9 percent of young people never initiating and 4 to 5 percent of adults quitting completely. So this would raise the percentage on the price of a pack of cigarettes about...it would go from...instead of just 50 cents or 100 percent of 10 percent of the price of a pack of cigarettes, it would go to about 75 percent of a price. [LB439]

SENATOR HADLEY: Okay. [LB439]

DAVID HOLMQUIST: And that's where we see the significant reductions. Recently the American Cancer Society Cancer Action Network, the American Lung Association, the

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American Heart Association, the CDC, and the Robert Wood Johnson Foundation have issued directives or guidance to us that the increase should actually be at least \$1 a pack to see even more significant reductions, and then to keep pace with what's happened around the nation. [LB439]

SENATOR HADLEY: Senator Schumacher. [LB439]

SENATOR SCHUMACHER: Thank you, Senator Hadley. And thank you for your testimony today. I guess I'm having a little trouble today with the math here. This is supposed to generate \$66 million in additional income. It's supposed to dramatically reduce tobacco use with about a doubling of the rate. How can we dramatically reduce use and at the same time maintain a \$66 million perk in income? [LB439]

DAVID HOLMQUIST: These are numbers that we've gotten...we get numbers both from our national organizations. In this case, these are from the Fiscal Office. These are based on sales that have happened over history in Nebraska. So as I indicated, when we increased the tax by 30 cents in 2002, we saw a 55 percent increase in revenue but only...but an 18 percent reduction in smokers. So we get a good reduction in the numbers of smokers, but that continues to bring in additional revenue. Would we like to see every smoker quit? Absolutely. And those funds go away? Absolutely. But that just is not realistic. You know, it's kind of like the argument for imposing Prohibition. We tried that in the '20s with alcohol; it didn't work. Go ahead. [LB439]

SENATOR SCHUMACHER: Well, in other words, 82 percent in the example you just gave I think, 82 percent continue to smoke. Those people already, best I can guesstimate here, are paying an additional \$58 million in taxes because of their habit now. Why it is fair to tax them an additional \$66 million? [LB439]

DAVID HOLMQUIST: I would say the fairness issue is one of dollars and cents to the state of Nebraska and one of healthcare. The dollars and cents translate to the \$500-plus million that you and I as taxpayers spend to treat tobacco-related illness in Nebraska and the \$134 million we spend every year in direct Medicaid cost to treat smokers and other tobacco users is in Nebraska. And so that's the financial incentive. The incentive for...as a state is to improve the overall healthcare...health outcomes, excuse me, from smoking. When we raised...before we raised the tax in 2002, polling was conducted and it's conducted every other year. It's called the youth risk behavior survey. And one of the things we want to do is to keep kids from quitting and they are very price...keep kids from initiating or starting. They are very price sensitive. So in 1999, polling was done that showed 39 percent of all Nebraska high school students had smoked or used other tobacco products within the previous 30 days. When we look at the most current data, which would have been from 2009, that number has dropped from 39 percent to 15 percent. That's the kind of outcome we want to see. And the number of adult smokers has gone from over 22 percent to under 18 percent in

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Nebraska. We actually have done a great job with the money that was...that came into the state because of the tax increase in 2002. We can do an even better job and get those numbers down even lower. Those states where the taxes is very, very significantly higher--on the East Coast some of them are over \$4 a pack--their numbers have dropped below 10 percent in terms of the numbers of smokers, and yet they're still generating many, many dollars because, as an individual, I may or may not choose to quit. The dollars and cents are a trigger for many, many people. Forty-eight percent of smokers have said it would be a trigger for them to quit. But for others, it's not a trigger and they will continue to feed that habit. And it is an addiction. Smoking is an addiction. Once we...once our bodies become used to the nicotine, we become addicted to it, making it harder to quit, so that price sensitivity is one of the best ways we have found in the public health arena to get smokers to quit. Did that answer your question or did I just walk around the barn three times? I'm not sure. [LB439]

SENATOR SCHUMACHER: Well, I mean you brought up a lot of good points. I guess one of the things that comes to mind is, and if we're just talking strictly in the numbers part of it, to the extent that people get disease and die younger, they relieve the burden on society for Medicare. And I think there's some studies out there that show actually by having people smoke you end up saving money in the Social Security picture and the Medicare picture and everything else, because they aren't around to burn up tax dollars anymore. [LB439]

DAVID HOLMQUIST: That's probably exactly true, but isn't that a sad commentary on society if we suggest that we should allow people to continue smoking or continue riding motorcycles without helmets or a number of other risk behaviors. [LB439]

SENATOR SCHUMACHER: But we should allow people to continue to motorcycle, to smoke, to do all kinds of things that we, sitting on high, think they shouldn't do. What happened to personal liberty? [LB439]

DAVID HOLMQUIST: I'm not arguing against personal liberty at all, absolutely not. [LB439]

SENATOR SCHUMACHER: Okay. All right. [LB439]

DAVID HOLMQUIST: I appreciate my liberties as much as you do. [LB439]

SENATOR SCHUMACHER: Thank you. [LB439]

SENATOR HADLEY: Thank you. Any other questions for Mr. Holmquist? [LB439]

SENATOR HANSEN: I do. [LB439]

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SENATOR HADLEY: Yes, Senator Hansen. [LB439]

SENATOR HANSEN: Thank you. Good to see you twice in one day. [LB439]

DAVID HOLMQUIST: And good to see you twice in one day. [LB439]

SENATOR HANSEN: It was the American Cancer Society handout that came out when Senator Gloor was up here and it states that the percentage decrease in Nebraska youth smoking is at 9.6 percent. [LB439]

DAVID HOLMQUIST: Uh-huh. [LB439]

SENATOR HANSEN: Do you think these...any of these funds could be used more efficiently in getting youth to stop? I mean, if we just have the list of money, the \$69 million or \$67 million, what's the best and highest use of that money? [LB439]

DAVID HOLMQUIST: Well, let me give you what the CDC's recommendation is and that's all I can do. [LB439]

SENATOR HANSEN: I want to hear yours. [LB439]

DAVID HOLMQUIST: Well, it would be... [LB439]

SENATOR HANSEN: Same? [LB439]

DAVID HOLMQUIST: ...would be similar. Let me say that. Currently, we are spending \$2.3 million in Nebraska to offer cessation services and prevention services through the Tobacco Free Nebraska Program. The Legislature has appropriated \$3 million over a number of...the last handful of years for that program; however, they've only been given spending authority for \$2.3 million. When we began these efforts in 2000 with LB692, but previous to that it was in the Education Committee--LB1073, I think, was the bill number--we allocated \$7 million a year for three years to this program. Then we hit a bumpy road in the terms of the economy, and \$5 million of that was stolen...not stolen but taken off the top by the... [LB439]

SENATOR HANSEN: Swept. [LB439]

DAVID HOLMQUIST: ...swept up, swept away by Governor Johanns' administration to cover some deficits. So we ended up with a total of \$16 million. At the end of that three-year cycle, the Legislature, in its infinite wisdom, cut that funding to \$405,000 each year for two years. Then we got it back up. We've limped back up. We got it up to \$3.5 million. Now we're back to \$2.3 million. I think that a reason...the CDC recommends that we spend over \$21 million a year in Nebraska. I'm a realistic. I'm a

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pragmatist. I don't see this Legislature or any other Legislature any time soon funding Tobacco Free Nebraska at \$21-plus million. But I think \$7 million would be realistic, since that's where we were 13 years ago. I would...and this bill takes us back up to \$7 million and it would not increase staffing. We wouldn't be increasing the numbers of public employees. Most of their work is done through grants to local communities. We would be able to increase the numbers of communities that are receiving funds. North Platte does receive funds now. We used to fund a number of...I think 16 communities, and now we're funding 9 communities because of reductions. So the more communities we could fund, the better off we would be. This will bring us up to \$7 million and I don't believe it would require new staffing. So I think that's a win-win as well. [LB439]

SENATOR HANSEN: Okay. Thank you for that answer. North Platte has a very, very small office, two young ladies in there that probably never had a cigarette in their life. And, you know, if you're an alcoholic counselor, it's always the best ones are always former alcoholics, as they know where they're coming from. I think we've got to get some more money in smoking cessation. That's all. [LB439]

DAVID HOLMQUIST: We appreciate your concerns. [LB439]

SENATOR HANSEN: We'll be talking about this. [LB439]

DAVID HOLMQUIST: Thank you. [LB439]

SENATOR HANSEN: Thank you. [LB439]

DAVID HOLMQUIST: Thank you. [LB439]

SENATOR HADLEY: Senator Janssen. [LB439]

SENATOR JANSSEN: Thank you, Chairman Hadley. I didn't plan on asking a question, but you made a comment. I generally relent to my very astute colleagues, because they ask questions and they ask great questions. But you brought up a comment in your last question or answer. The infinite wisdom of the Legislature, you said, reduced it. What did you mean by that? [LB439]

DAVID HOLMQUIST: I was sarcastic. I'm sorry. (Laughter) It was meant to be sarcastic. What happened is that there was, you know, a juggling act going on in the Legislature. They needed to find money and the easiest way they found it was to give us \$405,000 along with money for irrigation or something. It was in an Ag bill. [LB439]

SENATOR JANSSEN: So... [LB439]

DAVID HOLMQUIST: And that happened for two years, and then we got... [LB439]

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SENATOR JANSSEN: Understanding that we deal with many issues, not just the issue that's at hand. [LB439]

DAVID HOLMQUIST: Yes, exactly. No, exactly, exactly. [LB439]

SENATOR JANSSEN: All right. Thank you. [LB439]

DAVID HOLMQUIST: But it was sarcastic. I apologize. [LB439]

SENATOR JANSSEN: Thank you. [LB439]

DAVID HOLMQUIST: Yeah. [LB439]

SENATOR HADLEY: Senator Sullivan. [LB439]

SENATOR SULLIVAN: Thank you, Senator Hadley. Thank you, Mr. Holmquist. I don't disagree with any of the good things that might result from this increase in tax. The programs are all important and vital. But one thing you said about...in response to Senator Schumacher's comment about kind of being a sad commentary, which is one of the things I'm struggling with on this, is that, you know, we're conceivably going to instigate state policy that controls people's unhealthy habits. And in the long run in doing that, perhaps we end up putting more burden on and being more onerous on people who can least afford it. [LB439]

DAVID HOLMQUIST: I can't say that that's not a possibility. That certainly can happen in some small percentage of instances. [LB439]

SENATOR SULLIVAN: Uh-huh. [LB439]

DAVID HOLMQUIST: We don't, certainly, want people to go out and buy cigarettes with their food dollars because...you know, since we've raised taxes. That certainly is not our goal. But we do believe that with the price increase...which is one of what we call a three-legged stool. The three-legged stool includes making our environment smoke free--Nebraska has one of the strongest smoke-free laws in the nation; increasing taxes significantly in order that we can increase prices significantly to get a resultant decrease in the numbers of smokers; and then having a significantly robust program that will help to educate both young people who haven't yet started smoking and adults who have smoked, and educating them in how to quit and offering cessation services. We have a very good cessation program in Nebraska. It could use more funding, but we have a good program. It's had good success rates, and we need to continue that so that we can offer an alternative for people who do smoke and do have this habit. And the habit has been created by the cigarette industry. The cigarette industry has, you know, for years

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was pumping extra nicotine into what were called light cigarettes. They knew what they were doing. They found a way to addict people. And the younger that smokers begin, the more addicted they are. I began when I was 13. You know, I'm not proud of it. But it was one of my cousins got me to do it, and I've...every time I see her I shake my finger at her. But I smoked for 25 years. I happen to have a different trigger. But thank goodness the trigger happened and that someone I worked with from Kearney challenged me and said, I bet I can quit and you can't. And that was 26 years ago. So we have to offer people as many triggers as we can, is what I'd say. [LB439]

SENATOR SULLIVAN: Thank you. [LB439]

SENATOR HADLEY: Thank you, Mr. Holmquist. Senator Schumacher. [LB439]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Just a little follow-up based upon Senator Sullivan's questions. At what point, and we have to deal with the taxing policy here, do we...is it legitimate for us to use tax disincentives in order to obtain a change in personal behavior that the powers that be think is good for you? For example, there's a fair amount of evidence out there that red meat is not as good as tofu or whatever they call it. And there's a fair amount of evidence that say that if you did away with feed grains for cattle and turned it into edible grains for people, you could feed a lot more people with a lot less carbon dioxide into the atmosphere. And we know the whole routine. So why aren't we here talking about a red meat tax? People are addicted to this stuff. It's good if cooked medium-well. And why aren't we saying, well, you know, this is a place we can squeeze some money out for good things for the state; let's throw a 25 percent red meat tax on things? [LB439]

DAVID HOLMQUIST: When we had this discussion 13 years ago, it was...we talked about...it was asked about the slippery slope. Well, if it's cigarettes today, why not cheeseburgers tomorrow? For those of us who like cheeseburgers, fortunately that hasn't happened. What I would...the easy response or I think the most critical response to your question is that, as far as I've determined, there is no empirical evidence through scientific study to show that raising the taxes on red meat will have any reduction in consumption. [LB439]

SENATOR SCHUMACHER: Well, isn't that the same argument you just made on... [LB439]

DAVID HOLMQUIST: It sort of is but... [LB439]

SENATOR SCHUMACHER: ...you know, these people are so addicted to red meat and to a good steak that we can tax the living heck out of it and make all kinds of money off...? [LB439]



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DAVID HOLMQUIST: Well, people have made adjustments in the way they eat. I think, you know, 50 years ago most people had red meat every day. And now I think most people have red meat maybe once or twice a week. So the education that we have done on red meat has had some effect. People are eating more chicken. We do have other tax. We tax people for luxuries, for instance. If we don't, you know, maybe there's an excise tax if you buy diamonds or furs as a way to...not to try to keep them from spending the money. But if you're going to buy furs, let's get a little extra from you. So...and there are a number of areas, and I wish I could cite one right off the top of my head, where we do tax products because we would like a behavior change. It's not just tobacco. [LB439]

SENATOR SCHUMACHER: Thank you. [LB439]

SENATOR HADLEY: Thank you, Mr. Holmquist. [LB439]

DAVID HOLMQUIST: Thank you. [LB439]

SENATOR HADLEY: Next proponent. [LB439]

EDWARD O'LEARY: Good afternoon. My name is Edward O'Leary, E-d-w-a-r-d, last name, O-'L-e-a-r-y. I'm an interventional cardiologist from the University of Nebraska Medical Center, Omaha VA Medical Center. I'm representing the Nebraska Medical Association. I am here to speak about the healthcare, health effects of smoking. I am well-qualified to speak about this in the work I do as a cardiologist, also as recently as this morning at 1:30 when I was called in for somebody having a heart attack and got done about 5:30. So if I stutter a little bit, it's because I'm running on about an hour and a half of sleep. Once again it's my pleasure to speak on behalf of the Nebraska Medical Association about this bill. Smoking is a major health hazard in Nebraska and the rest of the world. According to the Centers for Disease Control, smoking is the number one cause of preventable death and disease worldwide. Smoking cost the U.S. over \$193 billion in 2004, of which \$96 billion of this went to health expenditures. I'm having trouble reading this. My print is poor and your lighting is not good. More deaths are caused by smoking each year than HIV, illegal drug use, motor vehicle accidents, suicides, and murders combined. Smoking causes an estimated 90 percent of all lung cancers in men and 80 percent of lung cancers in women. Ninety percent of all deaths due to chronic obstructive pulmonary disease, known as COPD, are caused by smoking. Compared to nonsmokers, smoking increases coronary heart disease by 2 to 4 times; stroke by 2 to 4 times; the risk of a man developing lung cancer is about 23 times; the risk of a woman developing lung cancer by 13 times; risk of dying by COPD of 12 to 13 times. Coronary disease is the leading cause of death in men and women. Smoking is a major risk factor for coronary disease. Smoking is a major risk factor for the development of peripheral arterial disease. If you know anybody that has problems in their legs and their arms, high blood pressure. Peripheral arterial disease has a higher mortality rate than breast

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cancer. Men have a higher risk of erectile dysfunction secondary to smoking. Smoking is also a major risk factor for the development of aortic aneurisms. Aortic aneurisms, the dilatation of the aorta, major artery that you have, something that people have died from, Einstein, for instance. Smoking causes other lung diseases: causes COPD, it causes emphysema, bronchitis. Smoking causes the following cancers: acute myeloid leukemia, bladder cancer, cervical cancer, cancer of the esophagus, kidney cancer, laryngeal cancer, cancer of the mouth, pancreatic cancer, cancer of the larynx, and stomach cancer. Smoking in women has been linked to infertility. In pregnant women, it has been linked to premature delivery, still birth, low birthweight, and Sudden Infant Death Syndrome known as SIDS. It's estimated that \$36.3 million are spent on neonatal care secondary to maternal smokers. Post menopausal women who smoke have a lower bone density than women who have never smoked. Women who have smoked have an increased risk of hip fracture than women who have never smoked. There are more than 7,000 chemicals in tobacco smoke, of which 250 are known to be harmful, including cyanide, carbon monoxide, and ammonia. Cancer-causing agents in cigarette smoke include arsenic, benzene, beryllium, 1,3-butadiene, cadmium, chromium, ethylene oxide, nickel, polonium-210 which is radioactive, vinyl chloride suspected to cause cancer. And there's formaldehyde, benzopyrene, toluene. Smoking is also known to cause cataracts. According to the National Cancer Institute, the U.S. Environmental Protection Agency, the U.S. National Toxicology Program, the U.S. Surgeon General, and the International Agency for Research on Cancer have classified secondhand smoke as a known human carcinogen. Inhalation of hand smoke causes...inhalation of secondhand smoke causes lung disease and cancer in nonsmokers. Secondhand smoke causes many deaths, up to 69,000 deaths. The U.S. Surgeon General estimates that living with a smoker increases a nonsmoker's risk of lung cancer by 20 to 30 percent. Secondhand smoke may increase the risk of heart disease by 25 to 30 percent. In the U.S., secondhand smoke is thought to cause about 46,000 deaths, again 69,000. A report by the Institute of Medicine in 2009 confirmed secondhand smoke as a cause of heart attacks. Pregnant women are at increased risk of low birthweight due to secondhand smoke. Children exposed to secondhand smoke are at increased risk, increased risk of SIDS--Sudden Infant Death Syndrome, ear infections with 790,000 physician visits per year, colds, pneumonia, bronchitis, more severe asthma, aggravate asthma in patients with asthma--about 400,000 to a million kids with asthma. It slows the growth rate of lungs. There's 150,000 to 300,000 lower respiratory tract infections in infants and children under 18 months of age as a result of being exposed to secondhand smoke. In the U.S., 21 million or 35 percent of the children live in homes where residents or visitors smoke on a regular basis. Fifty to seventy-five percent of the children in these homes have detectable levels of cotinine. Cotinine is a breakdown product of nicotine. So they're able to absorb the nicotine just in the room. In summary, I would tell you that smoking, the effects of smoking in healthcare is across all strata of society. I've taken care of people from every walk of life. It's a preventable disease. It's something that we should take care of and not have in our society. [LB439]

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SENATOR HADLEY: Thank you, Dr. O'Leary. Are there questions? Senator Janssen. [LB439]

SENATOR JANSSEN: Yeah, kind of a question. This is the Revenue Committee, not the Health and Human Services Committee, and I say this with all due respect. And I'm hopeful that everybody doesn't come up and...we all agree, I think, and they can answer for themselves, that the facts that you just pointed out are facts and smoking is bad. We're making a revenue decision here though, not a health decision, a revenue decision. Now one may deal with the other, but you didn't speak to the revenue side of this. And I'm hopeful that following witnesses will speak to the revenue. Because we all agree, I believe, and you can ask each individual...well, you can't right now because you're a witness. But I know the people in this committee, we all agree that smoking is bad for the same reasons you laid out. But a revenue reason behind this... [LB439]

EDWARD O'LEARY: I think that... [LB439]

SENATOR JANSSEN: ...without the...without the...what you talked about was great and agreeable. But we have to make a decision based on revenue, not Health and Human Services side of it. So that's what I'm hopeful that the following witnesses will testify to is the revenue side of it and not...because we all agree on the other side, so. [LB439]

EDWARD O'LEARY: Well, I have no doubt that the people that will speak today will speak on revenue and they know dollars much more than I do. [LB439]

SENATOR JANSSEN: And that's why you're the physician. [LB439]

EDWARD O'LEARY: If you have a heart attack, come find me. If you want financial issues, go see somebody else. I can't help you with that part. [LB439]

SENATOR JANSSEN: Okay. No, I appreciate you coming here and putting that forward. So thank you. [LB439]

EDWARD O'LEARY: Thanks. [LB439]

SENATOR HADLEY: Thank you, Dr. O'Leary. The next proponent. [LB439]

TOM MURRAY: (Exhibit 8) Good afternoon, Senator Hadley and members of the Revenue Committee. I'm Tom Murray, T-o-m M-u-r-r-a-y. I'm the associate vice president for health sciences research at Creighton University. I also serve as the principal investigator on the LB595, that is to say the state-funded cancer and smoking disease program at Creighton. And today I'm here to discuss the impact of these funds on the lives of Nebraskans and Nebraska's economy. I greatly appreciate the opportunity to appear before this committee on behalf of Creighton in favor of LB439. At

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both Creighton and the University of Nebraska Medical Center, our neighbors and collaborators down the street, the smoking disease research programs funded through the cigarette tax have been extremely effective in leveraging the state of Nebraska's support into extramural funding over the past 19 years. These programs at both institutions have served as a means to develop and expand important research projects targeting both the better understanding of the causes of cancer and attempts to develop novel treatments for various forms of cancer. As an example, I'll tell you about just a couple of highlights of research that has occurred just in the last three to four years at Creighton. Creighton faculty have discovered a novel diagnostic marker that may lead to the individualization of the treatment of breast cancer. They discovered a potential therapeutic target for nonmelanoma skin cancer; a novel strategy to treat prostate cancer metastasis. As you just heard, we've discovered the ability of cigarette smoking to increase the risk of osteoporosis; and the impact of smoking on respiratory function and the cause of the increased sensitivity of asthma patients to cigarette smoke has also been uncovered in recent years at Creighton. In addition, the cancer and smoking disease program at Creighton has played a key role in the outstanding progress of the hereditary cancer program also at Creighton. This is the program led by Dr. Henry Lynch. He's widely recognized as one of the world's best-known clinical geneticists, and he's responsible for the description of many discrete hereditary family syndromes of cancer, including the one that's name after him, the Lynch syndrome. With early detection, the Lynch syndrome and other colon cancers are curable in 90 percent of patients. And he's a classic, clinical investigator whose experience in the management of patients and their families has enabled him to recognize multigenerational cancer pedigrees through well-established genetic techniques. Dr. Lynch has established the hereditary cancer database at Creighton. It's a remarkable collection of clinical information and biospecimens that has been made possible the discovery of genes and discrete genetic events that lead to hereditary cancer. This database currently has over 200,000 individuals and nearly 300,000 families, and approximately 900 of these are from the state of Nebraska. With the support of the state, the Hereditary Cancer Center at Creighton will continue to identify predisposing genes for cancer as well as biomarkers to aid diagnosis. The support of the state of Nebraska cancer and smoking disease research program has provided Creighton the resources to recruit and develop investigators, who then seek funding from federal sources, such as the National Institutes of Health and the Department of Defense. During this period, each \$1 of LB595 support has led to \$5 in new federal funding for Creighton University. This greater than fivefold return on the investment clearly demonstrates the effectiveness of Creighton faculty in leveraging LB595 support. Beyond the benefits to human health, the federal grants resulting from cancer research at Creighton have had a tremendous economic impact on the state of Nebraska. According to a recent economic analysis authored by Dr. Ernie Goss of Creighton, federal extramural grants have stimulated scientific and research job expansion in Nebraska at a rate much greater than that...than the national average. This research productivity also impacts the overall state economy as research dollars are respent in the state. This spending creates sales,

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earnings, and jobs in the retail sector. Between 2002 and 2010, scientific and research jobs expanded by 64 percent across the United States but by a much higher 106 percent in Nebraska, and a portion of this superior Nebraska performance can be linked to funding for cancer research. This research enterprise represents an important economic driver that increases the attractiveness of the state to either start-up or relocation of other businesses to our state. An investment in cancer research pays a lifetime of dividends in better health and quality of life for Nebraskans. We're, therefore, very supportive of LB439. Thank you and I'd be happy to answer any questions. [LB439]

SENATOR HADLEY: Are there questions? Senator Sullivan. [LB439]

SENATOR SULLIVAN: Thank you, Senator Hadley, and thank you, Dr. Murray, for your testimony. As the previous testifier said, there are a lot of ailments and diseases that are produced as a result of smoking. And you've outlined some of the work that Creighton University is doing in cancer research and cures. And according to the statement of intent on this bill, if we were...the amount of funding for cancer research would be increased by about \$2.75 million. In directing those funds to some of your work and receiving funds from this direction, would they be directed toward dealing with cancers that are expressly developed as a result of smoking? [LB439]

TOM MURRAY: Our cancer research portfolio has an umbrella of cancer and smoking-related diseases. So it's not just cancer. We have some research programs that look at the impact of smoking on respiratory function, for example. And the list of cancers that are increased by exposure to smoke is very broad, as you just have heard of the previous testifier. [LB439]

SENATOR SULLIVAN: Okay. Thank you. [LB439]

SENATOR HADLEY: Senator Schumacher. [LB439]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Thank you, Dr. Murray, for your testimony. You know, I almost hear a bipolar kind of argument being made today. One is, gee, this tax is a great thing because it brings in revenue for research and we're doing great things along this line and it's a revenue mechanism. And on the other hand, it's such a terrible thing. It's got all these terrible chemicals in it. It creates all these diseases. I mean, from that side of testimony, one's got to say, well, gee, this stuff has got to be worse than marijuana. You know, so why...but yet we say we...marijuana is a bad thing so we're making it illegal; you can't do it. Well, shouldn't we just, if it's so bad, forgo the revenue for your research and send the State Patrol out to start seizing cigarettes just like they do marijuana? [LB439]

TOM MURRAY: Well, that's a good point. It's a social question and I can tell you that nicotine...I'm a neuropharmacologist so I can speak somewhat to this, nicotine is more

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addictive than the cannabinoids that are in marijuana. That has been clearly shown. So you could use that in favor of the proposition which you just advanced. I think the...what you've heard today and probably will continue to hear is that there's a blend of human health impacts of this bill as well as economic impacts, and I tried to address both in my testimony. [LB439]

SENATOR SCHUMACHER: So if we're looking at revenue side of it and from what you just testified, wouldn't it make sense for us to legalize marijuana and tax the heck out of it and give the money to research? [LB439]

TOM MURRAY: This proposition has been raised many times over the last 30 years. [LB439]

SENATOR SCHUMACHER: Thank you. [LB439]

SENATOR HADLEY: Any other question of Dr. Murray? Dr. Murray, thank you for coming. [LB439]

TOM MURRAY: Thank you. [LB439]

SENATOR HADLEY: We appreciate it very much. Next proponent. [LB439]

JACK ANDERSON: (Exhibit 9) Good afternoon, members of the Revenue Committee. My name is Jack Anderson, J-a-c-k A-n-d-e-r-s-o-n. I was born and raised in Kearney, Nebraska, and I am currently in my first year at Creighton University. As a youth who has strove and continues to strive to reduce tobacco use among our citizens, especially youth, I'm here today to express my strong support of LB439. LB439 has the potential to significantly reduce the number of youth smokers in our state. The Campaign for Tobacco-Free Kids and the American Cancer Society Cancer Action Network estimate we could decrease youth smoking by 9.6 percent by increasing the tax on cigarettes by 72 cents. Lifelong habits are developed during an individual's childhood and adolescence. By passing this legislation, we have the power to prevent some 9,400 youth from becoming addicted adult tobacco users. In addition, this legislation has the potential to provide additional educational programs and tobacco resources for our youth. These programs could be used to discuss the dangers of using tobacco products and provide resources to assist youth in ending tobacco use. As an active youth who had been involved in programs to reduce tobacco use among my peers, I can say with complete confidence these programs make a significant impact on youth by educating them on the dangers of tobacco. Previously, I was a member of the Buffalo County youth advisory board through the Buffalo County Community Health Partners. In this role, I worked closely with fellow youth, community officials, and state lawmakers to develop innovative and effective solutions to build a healthier community which included reducing youth tobacco use in Buffalo County. Senator and Chairman Hadley has

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invested a great deal of time and effort into the Buffalo County Community Health Partners and has served as a reliable resource for our youth advisory board through our State Capitol visits and previous conversations. As Senator Hadley is well aware, our efforts as a community organization were not possible without the assistance of grants and resources funded through the state's Health Care Cash Fund. However, I have seen firsthand the difficulty of tobacco cessation and prevention program promotion due to a lack of funding. Simply put, organizations across the state, including the Buffalo County Community Health Partners, have been severely limited when developing tobacco prevention or cessation programs but even more so when making these programs known to citizens. A prime example is the Nebraska Health and Human Services Tobacco Quitline. Nebraska currently ranks 49th among other states with only .4 percent of our smokers accessing the state Quitline to end tobacco use. This legislation has the ability to solve this issue and promote healthier lifestyles among our fellow citizens with increased funding through the state's Health Care Cash Fund and Tobacco Prevention and Control Cash Fund. Further, LB439 will provide our youth--the leaders of tomorrow--a resource to live a healthier life. Most youth across our state do not have access to educational programs on the dangers of tobacco, as evidenced by the more than 15,000 young Nebraskan tobacco users and the 15 percent of Nebraska high school students who smoke. In our state, only 9 of our 93 counties have established tobacco coalition programs. This legislation is a step in the right direction to reducing tobacco use among our citizens, especially our youth. The bottom line is if the current trend continues, over 36,000 Nebraska youth alive today and now under the age of 18 will likely die from tobacco use. Surely we can do more for our youth, our children, and our future generations. Surely we can provide a healthier, safer, and tobacco-free environment to the greatest resource in our state--our fellow Nebraskans. Today, you have a significant opportunity to give back to our state and its people, to ensure a healthier living experience for those to come. I urge you to support LB439 by advancing this bill to the full Legislature. Thank you for your time, consideration, and service. I would happily make myself available for any questions you may have. [LB439]

SENATOR HADLEY: Thank you, Mr. Anderson. Are there questions for Mr. Anderson? I have one, Mr. Anderson, and I certainly have appreciated working with you in the Buffalo County group. [LB439]

JACK ANDERSON: Yes. [LB439]

SENATOR HADLEY: What is the legal age limit now for smoking in Nebraska? [LB439]

JACK ANDERSON: It is 18. [LB439]

SENATOR HADLEY: It's 18. [LB439]

JACK ANDERSON: Yes, sir. [LB439]

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SENATOR HADLEY: Would you know per chance, is that a common age limit across the country or are there any states that have...require youth to be older than that? [LB439]

JACK ANDERSON: From what I've seen, the common age is 18. [LB439]

SENATOR HADLEY: The common age is 18. [LB439]

JACK ANDERSON: Yes, sir. [LB439]

SENATOR HADLEY: Okay. Because I wonder, you talk about youth getting addicted and we're going to save 9,600 or 9,600 aren't going to start. [LB439]

JACK ANDERSON: Yes. [LB439]

SENATOR HADLEY: In your experience, are...when you say youth, are there kids under 18 that... [LB439]

JACK ANDERSON: Yes, absolutely. A lot of times kids will be able to access tobacco products from older siblings or older friends that, you know, they are able to provide youth younger than 18 tobacco products illegally. [LB439]

SENATOR HADLEY: Okay. Thank you. Thank you, Mr. Anderson. We appreciate your testimony very much. [LB439]

JACK ANDERSON: Thank you very much. [LB439]

SENATOR HADLEY: The next proponent. [LB439]

JOANNA HEJL: (Exhibit 10) My name is Joanna Hejl, J-o-a-n-n-a H-e-j-l. A recent study published in the American Journal of Public Health provided evidence that there are three most effective ways to reduce youth smoking. They are implementing well-funded and comprehensive tobacco prevention programs, enacting smoke-free air policies, and increasing the price of tobacco products through raising taxes. If tobacco prices are raised by 10 percent, there will most likely be a drop in the youth smoking rates of 6 percent to 7 percent. Raising tobacco taxes can also prevent youth from starting to use tobacco. If a person does not use tobacco before they turn 18, the likelihood that they will ever start decreases significantly. Overall, increasing tobacco taxes will have an inverse effect on the number of Nebraskans, especially those under 18, who use tobacco. If the Nebraska tobacco taxes are increased, the state's economy and health will improve. Because of the decreases in the number of tobacco users, there will be lower healthcare and Medicare costs. There will also be more revenue generated from



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taxing tobacco. Smoking is also the leading cause of preventable death, and secondhand smoke can be just as detrimental. If a person does not smoke and is not around smokers, the chance of them getting different cancers and diseases is much lower than that of tobacco users and the people around them. In conclusion, increasing the tobacco tax in Nebraska would have a positive effect on the well-being of the state, especially on youth. [LB439]

SENATOR HADLEY: Thank you. Are there questions? Thank you so much. We appreciate your coming and testifying for us. The next proponent. [LB439]

MICHAEL WILSON: Hi. My name is Michael Wilson, M-i-c-h-a-e-l W-i-l-s-o-n. I'm here today to speak on behalf of both the youth and underprivileged citizens of this state, and I'm also a constituent of Senator Janssen. Now as you can tell, I'm not a doctor nor an economist nor a representative of any special interest firm. But after just a little bit of research, and no offense to those who have spoken before me, it doesn't require a Ph.D. to understand that this bill will have nothing but positive benefits for the state of Nebraska. This bill will provide a few strong benefits, first of all being the health benefits. Being that smoking is a public health issue that needs to be addressed, this increased tax is one of the most effective ways to reduce tobacco use. Every 10 percent increase on cigarette prices reduces youth smoking by an upwards of 7 percent and total consumption by 4 percent. It will cause a 9.6 percent decrease in youth smoking and an upwards of 10,000 youth will be kept from smoking due to this bill. Being that you are the Revenue Committee, we will talk about revenue benefits. Currently, tobacco use cost Nebraskans \$537 million in health bills and \$134 million in Medicaid costs. Five-year Medicaid cost savings for the state of Nebraska from this bill will equal \$320,000 and long-term costs will equal up to \$333.14 million--a large sum, as you can tell. The revenue increase will go to benefit the state across the board. First, the Nebraska Health Care Cash Fund: As Senator Gloor outlined, due to the Legislature's approved 5 percent budget cuts across the board just, I believe, last session, the funds are in jeopardy of running out. This revenue will go to increase that. Revenue will also benefit various groups such as cancer research funding to the University of Nebraska Medical Center and the University of Creighton. It will benefit groups such as EMS and volunteer firefighters, who I assume will speak after me, and tobacco prevention, control, and education across the state. And finally, it will go to fund the mandated Medicaid expansion to help uninsured Nebraskans, mainly single adults and parents of children who live 133 percent below the poverty line. And to quantify this problem, it will benefit 120,000 Nebraskans who are uninsured. And I know a point of opposition to this bill and one that Senator Janssen alluded to is how high this tax will be, but in national rankings, this increase will only bring us to the middle of the list in comparison of other states, whereas in the current, we stand at the bottom of that list. And being that this is an issue of revenue, I believe this issue should be weighed on a cost-benefit analysis. That being said, this bill will benefit the state's revenue tremendously, as previously outlined. And while it does disproportionately affect a certain group of people, that

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people being...that group of people being smokers, I ask you to remember: What bill is perfect and what bill has ever had a group of people that are happy with this bill? In a holistic view, this bill ought to be passed. And my final point is, although this bill is before the Revenue Committee, I ask you to look at the various impacts that aren't just monetary. With all due respect to Senator Janssen, I know he's not going to like this point, but if we weigh things only on a basis of numbers, statistics, and percents, we lose sight of what this bill is actually addressing, and that is the people of the state, the ones who you have an obligation to protect. It's addressing the benefit of human life. And Senator Schumacher was correct in his remarks that it is not the right of the government to prevent liberties, as he stated, or deny them, but it is the obligation of the government and of this committee to prevent negative impacts of dangerous habits to our citizens, to educate the public of its dangers, and to protect its citizens. It is most important to note that this bill will literally save lives. I believe this Legislature, thus, has an obligation to pass it, for there is no objection we can put above the life of a human or, more specifically, of a Nebraskan. I urge this committee to push this bill forward and to assure that Nebraska remains the good life. Thank you. And I'm open for questioning. [LB439]

SENATOR HADLEY: Senator Janssen. (Laughter) [LB439]

SENATOR JANSSEN: Thank you, Chairman Hadley. You're the only witness that got music played during his testimony, so. (Laughter) No, I would like to thank you for showing up today and your predecessor. I'd like to note that the two people from my district finished their testimony while the green light was still on. What we say is very important and we say it quickly, but I do appreciate what you said. And I'm glad I'm term limited as a state legislator because there's great people coming behind me that can do a great job. So I appreciate your advocacy on this issue. [LB439]

SENATOR HADLEY: Senator Hansen. [LB439]

SENATOR HANSEN: Thank you. Michael, thank you for coming today. Did a great job testifying. [LB439]

MICHAEL WILSON: Thank you. [LB439]

SENATOR HANSEN: You stated in your testimony that so much, whatever it was, would decrease smoking by youth by 7 percent. [LB439]

MICHAEL WILSON: Nine point... [LB439]

SENATOR HANSEN: Do you recall what that figure was? [LB439]

MICHAEL WILSON: Nine point six percent in youth. [LB439]

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SENATOR HANSEN: Okay, that's the 72 cents per pack... [LB439]

MICHAEL WILSON: Yes. [LB439]

SENATOR HANSEN: ...of what Senator Gloor's bill says. Why not double that, \$1.44 a pack? Why not triple it? I mean if we're going to make Nebraska the good life, save our youth, why not double it or triple it? [LB439]

MICHAEL WILSON: Well, I'm no politician, but my answer would be...I mean... [LB439]

SENATOR HANSEN: You...I think you are. (Laughter) [LB439]

MICHAEL WILSON: Thank you. But my answer would be, I mean, you do have to find a common ground between what's going to work for the state and provide the benefits, and also what is reaching a level of fairness. And I guess doubling it might be a little unfair, at least at this point. But if we are reaching the benefits that we're searching for, which would...the decrease in smokers and a decrease in addiction and preventing youths, then I think so far this is the best place to start. [LB439]

SENATOR HANSEN: But why do it just a step at a time? Why not...why not go for the whole enchilada? [LB439]

MICHAEL WILSON: Well, I mean sometimes you have to take baby steps, just like with every bill you pass. [LB439]

SENATOR HANSEN: Why do you have to take baby steps though? You...the idea is to save lives and save Nebraskans... [LB439]

MICHAEL WILSON: Uh-huh. Yes, sir. [LB439]

SENATOR HANSEN: ...and make youth a priority in the state. Why not take a bigger attack at this? [LB439]

MICHAEL WILSON: Well, I mean you can't just start off with, as you stated, the whole enchilada. Otherwise, you won't have the entirety of the Legislature on your side. I mean you never see a bill that...or you rarely would see a piece of legislation that goes for the whole thing, especially with something this controversial dealing with an increase in taxes, which nobody likes, and dealing with, as Senator Schumacher said, preventing liberties. So you have to be careful and, like I said, take baby steps. And also, these baby steps aren't so baby when you look at the amount of benefits that we're receiving. [LB439]

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SENATOR HANSEN: Okay. Thank you. [LB439]

SENATOR HADLEY: Senator Schumacher. [LB439]

SENATOR SCHUMACHER: Thank you, Senator Hadley. And thank you for your testimony. [LB439]

MICHAEL WILSON: Yes, sir. [LB439]

SENATOR SCHUMACHER: We won't hold it against you that you're from Senator Janssen's district. (Laughter) A previous testifier said that if kids don't smoke before they're 18, it's a dramatic reduction in the probability that they will smoke. Right now we've made it illegal for kids to buy cigarettes even before they're 18. [LB439]

MICHAEL WILSON: Uh-huh. [LB439]

SENATOR SCHUMACHER: Where are the kids getting the cigarettes? What's the mechanism that is operating here and how will a few cents a pack more stop it? [LB439]

MICHAEL WILSON: Well, to address the first point, as far as I can see, being able to obtain cigarettes under the age of 18 is from, like they said, older siblings or older friends that buy them for you. And it's not just a few cents. I mean it is 72 cents in increase, which will equal it out to \$1.36 tax on per pack of cigarette. And I mean not for everybody but for some, that will have, as you said, like a bite on the pocketbook. I mean most people won't be able to afford that or some people won't be able to afford this increased tax. So it will prevent some from smoking. And as proposed, it will stop some from smoking because they simply can no longer afford cigarettes. [LB439]

SENATOR SCHUMACHER: So if the source of supply is siblings and associates that are just over the magic age of 18,... [LB439]

MICHAEL WILSON: Uh-huh. [LB439]

SENATOR SCHUMACHER: ...what if we have anybody under 30 years old, they pay a \$1,000 license fee in order to buy cigarettes a year? They have to show their tobacco license when they buy them. Does it work? [LB439]

MICHAEL WILSON: I'm sorry, I don't under...could you like restate the question? [LB439]

SENATOR SCHUMACHER: If you're under 30 years old, in the age category that would supply it to the kids under 18,... [LB439]

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MICHAEL WILSON: Uh-huh. [LB439]

SENATOR SCHUMACHER: ...you have to buy a \$1,000 license, a tobacco purchaser's license that cost you \$1,000 a year. And therefore, we just shut down the source of supply. Does that work? [LB439]

MICHAEL WILSON: Well, those people would still...I suppose they could still give cigarettes to underage kids, if that's what you're trying to get at. [LB439]

SENATOR SCHUMACHER: I mean if the problem is kids under 18 smoking and they're...I mean we go through great lengths to stop you from drinking Budweiser or Miller Lite, so why don't we apply the same mechanism here and we just go really at it? [LB439]

MICHAEL WILSON: I guess I'm not sure. I mean the entire...I mean the entirety of the issue isn't just youth, I mean. And I guess if they really want it, they can get their hands on it. But the point is, it's going to be much more difficult fiscally speaking for them to get their hands on it. And as it was previously mentioned, kids are the most, like, financially aware group, mostly because, speaking as a college student, I don't have money. So I mean... (Laughter) [LB439]

SENATOR SCHUMACHER: Thank you. [LB439]

MICHAEL WILSON: Yeah. [LB439]

SENATOR HADLEY: Thank you, Mr. Wilson. We appreciate very much your coming to visit with us. Thank you. [LB439]

MICHAEL WILSON: Thank you. [LB439]

SENATOR HADLEY: Next proponent. [LB439]

BRUCE RIEKER: (Exhibits 11 and 12) Good afternoon, Chairman Hadley, members of the Revenue Committee. My name is Bruce Rieker, it's B-r-u-c-e R-i-e-k-e-r, vice president of advocacy for the Nebraska Hospital Association here testifying in support of LB439, as well as there's a second letter being shared with you that I am submitting on behalf of Alegent Creighton Health. And to address a lot of the discussion or some of the questions and considerations that have been brought forward in this hearing, isn't it ironic that we pay billions of dollars each year to raise tobacco products? We subsidize that from the federal government. And now we're here talking about taxing or increasing the tax on cigarettes to improve public health. So it's an interesting dichotomy between the federal government and what we're talking about here. Senator Hansen, last year Senator Gloor had a bill that doubled the cigarette tax. He had it for the last two years

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and we couldn't get very many takers. But if this committee would like to amend this bill to double that and we could do a lot more in smoking cessation, we would be happy to support that, because we supported his proposal in the past. On the issue of taxes, why do we do things, just a little bit about taxes. There are usually threefold reasons: one is to incent behavior, two is to disincent behavior, and three is to spread the overall cost of certain public needs across the entire population. So as we look at that fairness, I think we need to look at fairness balanced with responsibility, and not just the personal responsibility of the smokers or tobacco users but us and you as policymakers and those of us advocating this position, that we have a fairness to the people who are already paying for these costs. As Senator Gloor said in his opening, and Mr. Holmquist also echoed it, tobacco and smoking-related illnesses cost the state \$537 million per year right now, and it costs the Medicaid Program \$134 million per year. If my math is correct, following all the discussion so far in this hearing, increasing the cigarette tax, or this tax that we're talking about, would approximately double the state's revenue from around \$60 million or \$65 million to add another \$62 million, approximately \$62 million to the state's revenue to help cover the costs associated with smoking-related illnesses. Adding all that together, it still doesn't cost...or it doesn't raise the revenue that it costs the state in Medicaid, what we pay for the services related to tobacco-related illnesses. Also, a matter of fairness is that this particular tax, increasing this tax, generates revenue to do more along the lines of smoking cessation to help those help themselves. So taxing them, they may not have the resources available to enroll in a smoking cessation program, but they may be able to get help if we developed a robust program. Three or four years ago we worked with Senator Gay and several other senators to work on a robust smoking cessation program. I can pull up that information from the past, but one doctor talked about low birthweight babies. But if you want to talk about smoking cessation saving the taxpayers money, right now about 50 percent of all the babies born in this state are Medicaid babies. And for every baby that's born with a low birthweight due to smoking, if that baby is on Medicaid, it will cost the state more than \$1 million over its lifetime in the Medicaid Program. So if you want to have an ounce of prevention worth a pound of cure, investing in smoking cessation is one area where you can have huge dividends. And so...and I see that the light is coming on here. But preventive care and funding those particular programs is just one of many reasons why we support this particular proposal by Senator Gloor. [LB439]

SENATOR HADLEY: Questions for Mr. Rieker? Yes, go ahead. [LB439]

SENATOR SULLIVAN: Thank you, Senator Hadley. Thank you, Mr. Rieker. In the list of things that are proposed to be helped by the additional income, if you were to prioritize them and see which we might get the biggest bang for our buck, so to speak, in terms of overall healthcare support, which would they be? [LB439]

BRUCE RIEKER: Smoking cessation, number one. Smoking cessation costs...or smoking-related illnesses cost so much. We appreciate the research that's done, but the

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research that's done is treating the end result. Mostly it's focused on what the diseases are and the illnesses that are associated with cigarettes and tobacco use. But the biggest bang for the buck, the fiscal responsibility and why this revenue is so important would be to deter more and more individuals from smoking or using tobacco. That would be number one. As Senator Gloor mentioned, we need to do more to increase provider rates so that more healthcare providers will serve the Medicaid population. We're very appreciative of the efforts, both from the Governor's Office as well as the Appropriations Committee preliminary budget, of increasing provider rates at 2.25 percent per annum. We will continue to work on that, but we know that that's a gradual process. So those would be number one and number two for us, to make sure that we deter people from smoking, and then we have the providers available to take care of those who are in so desperate need of the care. [LB439]

SENATOR SULLIVAN: Thank you. [LB439]

BRUCE RIEKER: You're welcome. [LB439]

SENATOR HADLEY: Any other questions for Mr. Rieker? Thank you. [LB439]

BRUCE RIEKER: You're welcome. [LB439]

SENATOR HADLEY: We appreciate it. [LB439]

BRUCE RIEKER: Thank you. [LB439]

SENATOR HADLEY: Next proponent. [LB439]

JENNIFER COFER: (Exhibit 13) Good afternoon. My name is Jennifer Cofer, J-e-n-n-i-f-e-r C-o-f-e-r. I'm vice president of public policy for the American Lung Association in the Plains-Gulf Region, which represents Nebraska, Oklahoma, Kansas, Texas, Missouri, Arkansas, Louisiana, Mississippi, and Alabama. And I'm from Mississippi, hence, the accent. I'm a registered lobbyist in Mississippi and that does me no good in Nebraska, but...and I wanted to tell this young man really quickly, there may be an internship for him. He was brilliant. I've had the privilege of working in the public health field and in tobacco control since 2001. I've worked on some (inaudible) free policies, tobacco tax increases, as well as other prevention and cessation programs. I wanted to give you some real-life experiences. I worked with Mississippi's Legislature in increasing a 50-cent tobacco tax in 2009. I wanted to share our experience with you, as well as surrounding states around your state of Nebraska. On the left-hand side of your folder is the Mississippi experience. I'm a visual learner, so we asked for this resource and we got it. You can see that in Mississippi we had a 50-cent increase and we saw a decrease in packs sold of 26 percent and a 178 percent increase in new revenue, four sessions. Four fiscal sessions, new revenue went from 178 percent increase. So we

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went from \$49 million in 2008, when we were just at 18 cents. We were the second lowest in the nation. And we increased by 50 cents, although advocates pushed for \$1, and our legislators now regret that they didn't go for \$1. We saw just in this past fiscal year about \$137 million in revenue in our tobacco tax. So I'm sharing with you some real numbers, some real things that happened. In your packet I have a map of the current states' cigarette taxes in all 50 states and some surrounding areas of Nebraska. Yours is at 64 cents; Iowa is at \$1.36; South Dakota, \$1.53; Wyoming, 60 cents; Colorado is 84 cents; Kansas, 79 cents; Missouri, you cannot beat them. They tried for a ballot initiative and, of course, it failed, unfortunately. I have included a handout that will show you the revenue that has increased with those states' cigarette taxes. So, for example, the fiscal win here was in South Dakota: a \$1 increase in 2007, and they had an immediate increase in new revenue of \$32 million. Illinois just passed their \$1 tax in 2012 and we're waiting on revenue from their Department of Revenue. We saw in Iowa, it's now \$1.36. They increased it by \$1 and they had \$128 million in new revenue. This is a fiscal win for budgets. This is a political win because the people support it. Again, it was a 70-something percentage support, bipartisan. Registered voters in Nebraska were polled, and I don't know that you don't know anybody that agrees on anything 70 percent of the time. So these are smokers and nonsmokers that were polled and you have public support back home if you ask. This is also a public health win, which is the whole reason why we are at this table. I know that this is a revenue bill, so I wanted to speak to revenue facts, but we know that every 10 percent increase in a price, you'll see 7 percent decrease among youth and 4 percent of total consumption. I am still in the green so I'll keep going. But again, I have lots of handouts for you. Wanted to see if you had any questions on the surrounding states as I have just a grid there for you in your handouts with what their revenue was. I have a comment for your beef example, if you would like me to state that. Any questions? [LB439]

SENATOR HADLEY: Are there questions? Senator Janssen. [LB439]

SENATOR JANSSEN: I want to hear your beef example. (Laughter) [LB439]

JENNIFER COFER: Back home they always gave as example and asked us about, you know, why don't you tax food, because we are the number one obese state in the nation, Mississippi is. So I use that same comparison. But there are foods that doesn't have 4,000 chemicals in it and 69 of them are known to cause cancer. It is not the same product. You're not comparing apples to apples. So that's just my two cents on why we don't tax beef at a higher rate, because there's not disease and death caused from eating red meat like there is from smoking and using tobacco products. [LB439]

SENATOR JANSSEN: Plus, it's delicious. (Laughter) Thank you. [LB439]

SENATOR HADLEY: Ms. Cofer, I...you've basically been involved in the policy issues with youth smoking and such as that. [LB439]



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JENNIFER COFER: Exactly. [LB439]

SENATOR HADLEY: From what we've heard so far today, why haven't states gone more toward treating tobacco the same way we do alcohol by increasing the penalties for youth using it, increasing the age limit? You know, we have laws in Nebraska where minor in possession can get you a night or two in jail. [LB439]

JENNIFER COFER: Right. [LB439]

SENATOR HADLEY: So how come states across haven't, you know, increased kind of the penalties as a way of trying to get youth to not smoke? [LB439]

JENNIFER COFER: Yeah, that's a great question. And what our studies have shown in our 11 years of experience is that punitive enforcement for youth does not work. It doesn't deter their behavior. Policy does shape behavior and change behavior change, but not with kids. For example, my brother is 14 years younger than me, and when he was in his teens he was caught with tobacco products. My mom did everything punitive. My mom wanted to take him to a counselor. Even if he would have gotten a ticket, if he would have been pulled over and fined if he'd had tobacco products, he still would have found a way to get it. It's just the nature of teenagers in experimentation. So we have found in our public health practices that punitive enforcement does not work to change that behavior, but we did see that with price increases it does deter the purchasing of products among youth. [LB439]

SENATOR HADLEY: Senator Schumacher. [LB439]

SENATOR SCHUMACHER: Thank you, Senator Hadley. You asked for this one. [LB439]

JENNIFER COFER: (Laugh) It makes it fun. [LB439]

SENATOR SCHUMACHER: Why don't we just legalize marijuana and tax the heck out of it? [LB439]

JENNIFER COFER: Well, the Lung Association's unofficial position is very interesting, but I'll tell you about it off the record. (Laughter) So as far as marijuana, again, that's for the states to decide what to do. We are all about increasing...promoting lung health and reducing lung disease. The Lung Association wants state legislators to take policy into their own hand to deter behavior. If we had stats that tobacco kills...that marijuana kills as many as tobacco, marijuana still has a lot of consequences but not at the rate of tobacco products. But again, that's in the hands of you guys to determine what you do with marijuana policy. [LB439]

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SENATOR SCHUMACHER: And one quick follow-up: If price increases or taxing a no-no is a way to deter its use, should we just raise the beer tax, and more effective than chasing kids with cans of beer? [LB439]

JENNIFER COFER: Hmm, not going to weigh in on that alcohol policy tax. [LB439]

SENATOR SCHUMACHER: Thank you. (Laughter) [LB439]

SENATOR HADLEY: Thank you. Thank you, Ms. Cofer. Thank you for coming up... [LB439]

JENNIFER COFER: Thank you. [LB439]

SENATOR HADLEY: ...and visiting with us. Thank you. The next proponent. [LB439]

JOEL CERNY: Good afternoon, Senator Hadley and members of Revenue Committee. My name is Joel Cerny, C-e-r-n-y. I'm here as the District 4 director of the Nebraska State Volunteer Firefighters Association. I'm also a member of the Fire Chiefs Association and their current committee chairman of the legislative committee. And I'm here strictly on the revenue part of this and we're here to testify in favor of this bill, which we'll support LB440 that you'll be hearing later. And I'm open for questions if you have any. [LB439]

SENATOR HADLEY: Seeing none, thank you. [LB439]

JOEL CERNY: All right. Thank you. [LB439]

SENATOR HADLEY: Next proponent. Any other proponents? First opponent. Mr. Cederberg. [LB439]

JOHN CEDERBERG: (Exhibit 14) Good afternoon, Chairman Hadley and members of the committee. I'm John Cederberg, J-o-h-n C-e-d-e-r-b-e-r-g, and I'm here this afternoon representing the Nebraska Grocery Industry Association. My objective this afternoon is not to get into the health side but to actually talk about taxes and finances and things of that nature. And the first point that I would like to make--and I'm not going to read my testimony to you--is that an excise tax becomes an unsound tax when it is imposed at rates that encourage the movement of transactions out of state. And in this case, it's kind of interesting. Joseph Henchman was here, appeared before the committee when LB405 was heard. By coincidence, he also authored, for the Tax Foundation, an article in January where he--he called it smuggling--but where he analyzed, based on some work done by the Mackinac institute that he recognizes, the movement of cigarettes across state lines. And after my written testimony, in the

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handout you'll see a chart that looks something like this. Nebraska is highlighted in red. This chart lists the states in the decreasing order of inflows or outflows of cigarettes across state lines. You notice that Nebraska is down around 27th in terms of the states. We have a net inflow of 5.4 percent. I think that puts us within a group of about 14 states that have a net inflow or outflow of less than 10 percentage points. That tells us, I think, that we probably have our excise tax about right. It isn't causing material behavioral changes. It isn't causing material work across state lines, even with Missouri as an adjacent state and a very popular destination for Nebraskans, for at least Nebraskans in the southeast part of the state. LB439 would take us up to \$1.36, which we have heard recently or you've heard in this hearing is Iowa. I've highlighted that up above in pink. You'll notice that Iowa goes up to 15th, with a net inflow of about 21.3 percent. The implication here of this schedule is that by...that LB439 would nearly quadruple or would be expected to nearly quadruple the amount of cigarettes brought into the state. You'll also notice on page 3 of my written testimony a schedule that was compiled by Altria, and it has the current average retail price. You know, taxes aren't the only thing that go into prices. There are other state laws that go into retail prices and there's the competitive market. At this point, Nebraska's average retail price at \$5.40 a pack is about in the middle of our area. The estimate, if you add the 72 cents for the excise tax plus the other things, that we would be the highest one in the community. I think that the issue here is maybe not even organized smuggling. It's that when you're the highest and your people are visiting these other states routinely, you're going to see a substantial movement, much greater than what was testified to in 2002, and this could have a substantial impact on the revenue. I don't have the resources to redo a fiscal note, but I think it's very possible that if you see movement similar to Iowa's that you have a deficiency in the revenue estimates in excess of \$20 million, probably closer to \$25 million. There are some other things here in my handout that I think would be pertinent to you, things like the amount by which other states have missed their revenue projections, discussion of the trend in Nebraska excise taxes in the first...historically. In the last three years, we've gone down by like 4.8 percent a year. That's about \$3 million a year. This is not a reliable tax on which to fund programs. We would suggest that the committee indefinitely postpone the bill. And with that, I would be happy to take questions. [LB439]

SENATOR HADLEY: Questions? Senator Sullivan. [LB439]

SENATOR SULLIVAN: Thank you, Mr. Cederberg. So if a pack of cigarettes is currently \$5.40 and our cigarette tax rate is 64 cents, what else do we add on to that? [LB439]

JOHN CEDERBERG: Well, we collect sales tax... [LB439]

SENATOR SULLIVAN: Okay. [LB439]

JOHN CEDERBERG: ...on the excise tax. [LB439]

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SENATOR SULLIVAN: Uh-huh. [LB439]

JOHN CEDERBERG: So you would add either 5.5 percent for the state, 7 percent if you include cities, in Omaha, Lincoln, Grand Island, that you would add into that. And then we have some other state laws that, you know, that generate...I think it was a five- or six-page fiscal note that get involved, and that's why the estimate would be 90 cents instead of just the 72 cents. [LB439]

SENATOR SULLIVAN: Gotcha. Thank you. [LB439]

SENATOR HADLEY: Any other questions for Mr. Cederberg? Thank you, Mr. Cederberg. We very much appreciate you coming. Next opponent. [LB439]

STEVE MOSKOVITS: Yes, my name is Steve Moskovits, M-o-s-k-o-v-i-t-s, and I'm with No Frills and Bag'N Save Supermarkets located in Omaha, and I'm here to speak today in opposition of LB439. I want to make sure that everybody understands the issue of border bleed and the impact on the retailer, because I think some of the studies that were quoted before just kind of look at total dollars that are collected in revenues, not looking at the real shift in where they're sold. I think the advocate from Mississippi hit it right on the head when she indicated that they had a 26 percent reduction in number of packs sold in her state the first year they passed it. That means that the retailers saw a 26 percent reduction in sales of that product, regardless of what the state brought in. When we talk about Kansas and Missouri, which was alluded to earlier as well, in 2008 the Legislature in Kansas rejected an additional 75-cent or 79-cent tax increase. And when they looked at the 2002 increase, they had very similar numbers. They saw a decrease in packs sold in Kansas of 22 percent, or 45 million packs. And lest we think that's because of this price increase and everybody quit smoking, Missouri sold 55 million more packs. So when you have a large population of a state that borders other states, border bleed is a real phenomena. I can give you firsthand details of this as well. Back in 2007, we heard testimony about Iowa increasing \$1 a pack. We have a store over in Council Bluffs, Iowa. The first year that that tax went into effect, we saw a decrease of 30 percent sales of tobacco, the next year an additional 14 percent, the year after that an additional 7 percent. So in a span of three years, our store lost 50 percent of tobacco sales as a result of a \$1 increase in tobacco tax. Once again, you'll see the correspondent increase over on this side of the river where it was cheaper to purchase cigarettes. Now, we're a supermarket. We sell a lot of other goods and services. So it cost us a lot of money, but the store was able to survive. We've heard earlier testimony again about convenience stores and how many people buy cigarettes at convenience stores. Estimates are, convenience stores, 40 percent of what they sell are cigarettes. Tobacco outlets would be higher than that. Obviously, a 50 percent decrease in their volume is something that many stores don't survive, and that's why you see a lot of convenience stores that close down. If you look at Council Bluffs, many

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closed down after 2007 as a result of the reduction in the influx of all the tax revenues over here. We heard talk about we're just going to equalize it with Iowa so we won't see a lot of shift. But keep in mind all these people, this 50 percent right now, are coming from Iowa to Nebraska. There will be no motivation for them to do so if we're on parity; thus, you'll still see significant loss of those customers because they'll just simply stay over in Iowa, where it's just as...the same cost. The other thing that no one has focused on yet today that we need to focus on is the regressive nature of this tax. There's no more regressive tax out there than a cigarette tax. According to numbers from the CDC focusing on adults, 34 percent of those under \$15,000 a year income smoke. Only 13 percent of those over \$50,000 income a year smoke. So the burden is borne much, much higher on those that can least afford it, and that's just a fact. You know, and we can say...we can make it more expensive, but we're hurting the people that can least afford to pay it. New York commissioned a study and it was just released last year. They had increased. And again, New York, for most of you who don't know, has the highest cigarette tax of any state in the country. They looked at the increases they have done for the last ten years and what they concluded was that the lower income people did not have any significant reduction in their rate of smoking as a result of price increases. So although we may shift some people, the people that can least afford to pay it are the ones that bear the brunt of this sort of tax increase, and people need to understand that. And also keep in mind what I've said about the impact to us retailers. And I'm here to answer any questions. Thank you. [LB439]

SENATOR HADLEY: Senator Schumacher. [LB439]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Thank you for your testimony. When the folks come across the river from Iowa in order to buy the cigarettes in Nebraska, presumably some of that happens at your stores in the Omaha area? [LB439]

STEVE MOSKOVITS: Yes. I mean if you're...I mean, obviously, the closer you are geographically, the more you're going to pick up from that business. So there would be some of that. [LB439]

SENATOR SCHUMACHER: When...do they just buy cigarettes or do they buy red meat and potatoes? [LB439]

STEVE MOSKOVITS: Well, yeah, what I would characterize, I mean there could be some of that. But if you look at like that store we have in Council Bluffs, the store itself is relatively flat in sales when you take out the tobacco. So it wasn't that they were going over there to simply change and buy other items. You know, they would still shop with us and then they would make arrangements in other trips to buy cigarettes elsewhere and no longer purchase that from us. [LB439]

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SENATOR SCHUMACHER: So there's not much of a multiplier effect, at least (inaudible). [LB439]

STEVE MOSKOVITS: In that instance for us. Now again, if you're a convenience store where someone comes in and buys a candy bar and a pop and that's, you know, their routine, I would think that...and there will be others behind me who can speak to that better. There's probably more of an impact to them as a convenience store operator if they lose someone coming in for the impulse buy. [LB439]

SENATOR SCHUMACHER: Thank you. Thank you. [LB439]

SENATOR HADLEY: Senator Harr. [LB439]

SENATOR HARR: Thank you, Chairman Hadley. So you mentioned three difference concerns you had. I just want to know what your number one concern is. You mentioned border bleed is a problem, you mentioned loss of revenue, and you mentioned regressive to the poor, tax of the poor. [LB439]

STEVE MOSKOVITS: Yes. [LB439]

SENATOR HARR: Which one of those three is most important to you? [LB439]

STEVE MOSKOVITS: Well, obviously first and foremost, as a retailer, looking at our sales and our financial stability would have to be first. But I service a constituency and a customer base, so looking at the impact to, you know, a lower demographic customer that I service, I have to look at that as well because there's a direct correlation. [LB439]

SENATOR HARR: So it's about money for you. That's why you're here, is because of money. [LB439]

STEVE MOSKOVITS: Well, absolutely. [LB439]

SENATOR HARR: Okay. That's all I wanted to know. Thank you. [LB439]

SENATOR HADLEY: I have a quick question. What...and maybe you don't have the answer right off the top of your head, but what has happened to the wholesale price, what the manufacturer is charging for cigarettes in the last five years? Has that gone up any? [LB439]

STEVE MOSKOVITS: It has continued to increase. There are steady increases. And, again, there are others who can probably give you those exact statistics. I haven't put those together. [LB439]

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SENATOR HADLEY: Okay. Okay. I'm just curious as to what the manufacturer is increasing prices as we go along. [LB439]

STEVE MOSKOVITS: Clearly, as a percentage, not nearly as dramatic as this increase would be. [LB439]

SENATOR HADLEY: Okay. Thank you. Any other questions? Thank you. We appreciate you coming. Next opponent. [LB439]

TED STESSMAN: (Exhibits 15 and 16) Good afternoon. My name is Ted Stessman, T-e-d S-t-e-s-s-m-a-n. I'm from Omaha, Nebraska, and I'm representing the Nebraska grocers (sic--Grocery) Industry Association and the company I work for, Farner-Bocken Company. We do business in the surrounding states, and I specifically want to talk a little bit about the border bleed situation that I experienced firsthand in our company. And also, I want to talk about the illicit trade, smuggling in particular, and how it affects the higher tax states. I did want to maybe answer a question for Senator Sullivan. I was just at a conference, a national one, and 53 percent of a Marlboro is tax of one sort of another. And a low-priced cigarette...for instance, Marlboro is costing \$5.50 a pack. There's a cigarette that you can sell, the lowest legal price in Nebraska, I believe, is just under 30 cents...no, it's about \$2.50--I take that back--and that would be about 75 percent of the cost to the consumer would be going to a tax of one form or another. We collect \$233 million in taxes, not all going to the state of Nebraska. Some of that goes, you know, to the federal government. But as wholesalers and retailers between the sales tax, the state excise tax, the federal excise tax, and the growers' tax, you know, we're collecting \$233 million. I'd also like to mention, to answer a couple of questions from earlier, when you talk about what's spent on smoking cessation, I want to commend Nebraska, because they're a little bit ahead of the curve. But out of the last 14 years, \$288 billion have been collected in one tax or another on tobacco products, and of that, 3 percent has been used for smoking cessation programs. And that information came from the federal Centers for Disease Control and Prevention. So, you know, saying that, where's the money go, you know, I think that's a question that we all need to ask in this room--where's the money go--because it's being collected now and we don't know where all the money is going. In regards to border bleed, I spend a lot of time working with our sales people in the surrounding states. I go down I-29, I-35, Highway 71. If you went to the Creighton game, highway...Interstate 70 in St. Louis, and I can tell you there's a lot of billboards out there promoting cigarettes. And the state rate for adult smokers, that's anybody over 18 in the state, is 18.9 percent of the population smoke in Nebraska. And if you take that rate, in Missouri it would be 175 percent. That doesn't make a whole lot of sense until you figure out that eight out of ten packs of cigarettes that are bought in the state of Missouri are bought from somebody not residing in Missouri. And right now, you know, based on being in Nebraska City and going to Rockport, I can tell you, you know, without getting personal into retailers' businesses, you know, the difference between a drop for us could be a \$5,000 drop in

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Nebraska and a \$50,000 drop right across the border; the same on Highway 71 when you go into Iowa. Right now, with Illinois' recent increase, they've got West Quincy and East Quincy. One is on the Missouri side and one is on the Illinois side: \$75,000 to \$5,000, customers that own stores on both sides, our customers. Just read a study here. You know, I've got three specific states here, Virginia, Illinois, and Washington State where their smuggling rates--John talked about it earlier, you know--the smuggling now in Illinois is such that a recent sting in Chicago, Cook County, where the taxes are actually another \$1 a pack higher than they are for the rest of the state of Illinois, resulted in 75 percent of the tax stamps were not Cook County stamps. They've got their own stamp there. That means the product is coming in from elsewhere. And that's the fear for retailers and wholesalers, legitimately. We're the good guys. We're collecting the taxes for you. We're trying to do business legitimately. But you can take a van of product, you know, of cigarettes and move it across state lines from a low-tax state to a high-tax state and there's \$175,000 worth of profit. And these figures are coming from government officials, and they're in your, you know, your handouts that I gave you. And I see that the red light is on. But I appreciate it, and if there's any questions, I'll certainly answer them. [LB439]

SENATOR SCHUMACHER: Any questions? Seeing none, thank you for your testimony. [LB439]

TED STESSMAN: Thank you. [LB439]

SENATOR SCHUMACHER: We'll now continue with opponents. [LB439]

TED STESSMAN: I did have 16,000 signatures here, but I'd like to go through them, if you don't mind, and get them to the individual state senators, because we haven't done the research to get them to the right parties yet. [LB439]

SENATOR SCHUMACHER: Thank you. Any other opponents? Senator Hadley whispered in my ear that he was going out to have a cigarette, but I think he's (inaudible). (Laughter) [LB439]

JOHN DILSAVER: Should we wait for him? [LB439]

SENATOR SCHUMACHER: He may have a whole pack. I don't know. (Laugh) Welcome to the Revenue Committee. [LB439]

JOHN DILSAVER: Thank you. My name is John Dilsaver, J-o-h-n D-i-l-s-a-v-e-r. I represent Rite Way Oil in Omaha, Nebraska, and also the Nebraska petroleum marketers and convenience store operators. The effect of any tax increase on Nebraska businesses has large consequences. Nebraska retailers are already dealing with the struggling economy since 2008. For 2013, we're all dealing with the impact of the



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Affordable Care Act, what that impact is going to be on our employees, and the potential impact of minimum wage increases. One of our dealers, Tom Galitsia (phonetic) from Auburn, Nebraska, has been a dealer of ours for 30-plus years. His comment to me was that his Auburn customers travel the 15 miles to Missouri. They have lunch, fill up their car with gasoline, and bring back home cartons of cigarettes. We operate six locations in the city of Omaha and just recently, January 1 of this year, we've had a 17-cent increase per pack passed in Omaha. So the proposed 72-cent per pack increase in effect would end up making the increase in Omaha, since the first of year, 91 cents a pack. On March 16 of 2007, a couple people before me have testified, when Iowa did their increase of \$1 per pack, it did cause the border bleed to come back home to Nebraska. We do operate a convenience store on the interstate at the Ninth Avenue exit, which is the gateway to Harrah's Casino. Our sales at that location immediately dropped 25 percent and have never recovered from that. Another Omaha retailer shared with me their experience in the Omaha Old Market. They saw a 40 percent increase in cigarette sales at that same time, where the Omaha customers stayed in Omaha because the per-pack price was increased \$1 in Iowa. The proposed 113 percent increase harms Nebraska consumers. It's a regressive tax. It harms Nebraska's job creators with additional uncertainties in a time of much economic uncertainty. As was mentioned before, Steve had mentioned that, you know, these tax increases have hurt pack sales by 26 percent, but revenue is up and so everybody is patting themselves on the back. Well, that 26 percent is affecting our employees. You know, we've got to make tough decisions. Employees are making, you know, they're hired at \$8 an hour, per se. You know, they can make it up to \$10 after several years possibly. I mean these 25 percent reductions in sales on 40 percent of our inside sales is really impacting the employees, and that's really who we're looking out for. That concludes my comments, if there's any questions or anything that I can answer. [LB439]

SENATOR HADLEY: Any questions? Seeing none, thank you. Appreciate it. [LB439]

JOHN DILSAVER: All right. Thank you. [LB439]

SENATOR HADLEY: Next opponent? [LB439]

BRAD STEVENS: (Exhibit 17) Chairman Hadley and members of the committee, my name is Brad Stevens, B-r-a-d S-t-e-v-e-n-s. I'm the Nebraska director of Americans for Prosperity, a statewide advocacy group for a free market and free enterprise. Earlier opponents of the bill have already spoken to the revenue aspect of LB439. We believe it constitutes a pretty sizeable increase in the tax rate on cigarettes and tobacco products. But we're here primarily because we oppose what I consider the social engineering aspect of this bill. You've heard the proponents of the bill basically say the intent of the bill is not, as Senator Hansen characterized it, a funding bill. It's not a revenue bill. It's a smoking cessation bill. And our problem with that is we're opposed to using tax policy, we are philosophically opposed to using tax policy as a means to prevent consumers

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and price out consumers from purchasing legal products and participating in legal activities of their choice. And frankly, that's why we're here. That's why we're opposed to the bill, short and sweet. It's all I have. Thank you for your time. Happy to answer any questions you may have. [LB439]

SENATOR HADLEY: Are there questions for Mr. Stevens? Seeing none, thank you, Brad. [LB439]

BRAD STEVENS: Thank you. [LB439]

SENATOR HADLEY: Next opponent. [LB439]

BILL PETERS: Mr. Chairman, members of the Revenue Committee, I regret that your colleagues from Appropriations aren't sitting in on this joint meeting or at least this joint bill. However, I think this gives you a unique opportunity to defeat this bill and begin the process of the Tax Modernization Committee. This bill presents one of the reasons or one of the items that I think should be considered in any tax reform considerations. [LB439]

SENATOR HADLEY: Mr. Peters, could we have you state and spell your name? [LB439]

BILL PETERS: My name, William E. Peters, P-e-t-e-r-s,... [LB439]

SENATOR HADLEY: Thank you. [LB439]

BILL PETERS: ...3136 South 30th, representing Cigar Association of America. The first opposition is to the earmarking. We have an excellent example here. As you'll review the bill, you'll see that many of our cigarette receipts are earmarked. This usurps the authority, as a practical matter, of future legislators, of future Revenue Committees as far as a revenue source. And secondly, it makes a decision today how a given amount of revenue is going to be used well into the future. Theoretically, you could change it. You're the Legislature. You could change it each year. Fact of the matter is that historically there's been very little review of the earmarked funds and how they were used. Secondly, there's an excellent way for some of the users to lock it in, and that is, is to use it to secure bonded indebtedness or to secure a multiyear grant. Then the heat comes down on you that, oh, you can't change that now; we've got this grant and we'll lose this. And so that's additional pressure. Furthermore, it affects the General Fund. I would refer you to page 2 of the fiscal note where the overall impact is that by...on the General Fund is that by '16-'17 these bills will reduce the General Fund receipts by \$7.5 million. That's another example of the problem with earmarking. I'm not against all earmarking. There are certain user fees that are appropriate to earmark. I would just mention a few. First, there's the livestock brand and registration fees that relate to the

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ownership and control of cattle. Secondly, there's the gas tax that's earmarked for our highway and road improvements. That's an earmarked fee but it's a user fee. And in the business world, there are the registration fees for the Uniform Commercial Code where the system pays for itself. Those are legitimate earmarkings. Referring briefly to the cigar tax, as you'll note from your fiscal note, we're not really a big revenue producer even at 20 percent. However, we represent part of the tobacco industry that has what I would call a COLA tax rate. You don't have to change the tax rate, this bill doesn't have to pass, and we'll be paying more tax next year, most likely, than we're paying this year on a per-stick basis. And that is because our tax is based on the wholesale, the first receiver's cost when they arrive in Nebraska, and so you add 20 percent to that. And then if you're going to be in business very long, you might increase your retail cost, which also increases sales tax. The Legislature doesn't know about it, hasn't had to do a thing, and we preceded with a tax increase. So we are taking tax increases now, and we're opposed to any additional increase. And I would be happy to enter into any discussions that you'd care to. [LB439]

SENATOR HADLEY: Questions for Mr. Peters? Seeing none, thank you, Bill. [LB439]

BILL PETERS: Thank you. [LB439]

SENATOR HADLEY: Next opponent? [LB439]

JIM MOYLAN: (Exhibit 18) Mr. Chairman and members of the committee, I'm Jim Moylan, J-i-m M-o-y-l-a-n, 8424 West Center Road in Omaha, Nebraska, representing the Nebraska Licensed Beverage Association, which is a state association of liquor retailers, of which there are approximately 4,700 in the state and they pretty much all sell cigarettes. Somebody asked me how long I was going to speak today and I said, well, I'll put it this way. Like old Strom Thurmond told a rally down in South Carolina years ago, it's what Elizabeth Taylor said to her seven husbands: I won't keep you long. (Laughter) Now this map I'm handing out shows the cigarette taxes and OTP taxes around. You've heard of all the border bleeding, but what's going to happen is we're going to lose all the Iowa people, you know, that are coming over to Nebraska to buy cigarettes. You got South Dakota, because we're less than a half from them, and, you know, on the border states, they will be coming down in tobacco. Now Missouri is the same way. Southeast Nebraska, even in Omaha they still go down to Missouri to buy their cigarettes. I have an old lady in Omaha that I'm familiar with and for years they sent her daughter. Five women get together, pool their money, and would send the daughter down to Missouri to buy their cigarettes, enough for two months at a time. So, you know, the border bleeding is still there. That kind of quit when the Ponca Indians opened a shop out on the way to the airport, just a little drive-in area and an eight-foot-wide trailer. Now these old people just go out there and buy their cigarettes because they can buy them for \$3 a package. Now you've heard all the rest, the earmarking and everything, and we'd recommend that you indefinitely postpone this

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legislative bill. If there's any questions, I'd be happy to try to answer them. [LB439]

SENATOR HADLEY: Are there questions for Mr. Moylan? Seeing none, thank you, Mr. Moylan. [LB439]

SENATOR HARR: Just quickly, I want to... [LB439]

SENATOR HADLEY: Oh, yes, I'm sorry. Senator Harr. [LB439]

SENATOR HARR: ...congratulate you for having your grandkids, your grandsons on the front page of the paper today, very nice. [LB439]

JIM MOYLAN: Oh, thank you very much. Thank you. [LB439]

SENATOR HARR: Yeah. [LB439]

JIM MOYLAN: It's quite an honor to have more grandsons. [LB439]

SENATOR HADLEY: The next opponent. [LB439]

MARK WHITEHEAD: Chairman Hadley, the rest of the members of the committee, my name is Mark Whitehead, that's W-h-i-t-e-h-e-a-d, just as it sounds. I'm representing the...I'm president of the board for the Nebraska Petroleum Marketers and Convenience Store Association. Just wanted to...and I will be brief as well. I just wanted to address a couple different concerns. Speaking specifically within our own organization, we've had the opportunity...we operate predominantly right here in Lincoln. We do have some experience, though, in western Iowa, in the Council Bluffs area specifically. We had five stores over there until just recently. We ended up selling the five stores in the third and fourth quarter of last year. The cigarette tax differential had a substantial impact. I wouldn't say that that's one of the main reasons that we ended up divesting the Iowa market, but in our particular industry, we understand retailing. We understand the effects of retailing and legislation on our retailing, and it is dramatic. Unfortunately and ironically, sin products represent over 50 percent of what we sell inside of our stores, specifically a little over 30 percent on cigarettes and over 20 percent for beer and the rest of that. And this sort of thing has a dramatic effect on us. It's incredibly price competitive, so much so that many, many years ago, long before I got involved with the industry, they had a minimum markup bill at 8 percent because people were giving them away for free and as loss leaders to get in. But even at that, 8 percent is not much money when you're talking about the kind of price per pack that we've got. It's an incredibly competitive business. We had testimony today on the health consequences of cigarettes. I've never smoked a cigarette in my life and I'm pretty confident I never will prior to my demise. But that doesn't mean that I will not protect the liberties of my customers and their rights as well. But, Senator Schumacher, one of the things that you

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had mentioned and I tend to agree on some of the questions that you had on how you positively affect the demand for young kids today on products such as alcohol and cigarettes. Limiting supply does not do that. You gave the example of...or one of the senators gave the example on alcohol, raising the drinking age to 21 years old. I spoke with the president of the National Brewers Association afterwards. That did not affect consumption of alcohol by 1 percent or even didn't affect it at all. In fact, he said you go back to Prohibition and anything, any policy has not affected consumption of alcohol. Likewise, it is impossible to really tell what the true effect of higher taxes on cigarettes are because of the different examples that you heard today of border bleed, of bootlegging, a whole variety of different ways and resourcefulness that people have, that are addicted to cigarettes, have to in fact get their product. It cannot be measured specifically on the sales within the states that the excise taxes are imposed on. I'd be glad to answer any kind of questions you might have. [LB439]

SENATOR HADLEY: Any questions for Mr. Whitehead? Seeing none, thank you, Mr. Whitehead. [LB439]

MARK WHITEHEAD: Thank you. [LB439]

SENATOR HADLEY: Appreciate you coming. Next opponent? Seeing no other opponents, are there people in the neutral? Seeing none in the neutral, Senator Gloor, would you like to close? [LB439]

SENATOR GLOOR: I would. Thank you, Senator Hadley. And thank you, committee members, for your patience in all this. There's been a lot of information thrown around, some factual, some not. It's always a head scratcher when you hear that this industry of tobacco sales is price competitive but, at the same time, price doesn't affect consumption at all. And so it becomes hard to understand fact from fiction. Or the billboards that line the roads headed here to Missouri, next time you make that trip do your own count. You'll count zero. There are no billboards. That's illegal, as is television advertising and some other things. So some of what you've heard I think is strong fiction, to be polite. But there's some realities of things that I know you're concerned about. Let me address some of those. Senator Schumacher's comment about people self-selecting themselves off of the public tax rolls, and that has come up before as I've talked to folks. But this is what I bring to this dialogue with my years in healthcare, knowing how many people in my hospital were there because of tobacco-related illnesses. And the unfortunate thing for people who have tobacco-related illness and disease is they don't just not wake up in the morning or drop dead walking down the street. They suffer from prolonged illness and disease, multiple hospitalizations, outpatient treatments, home care services at a much greater percentage, much, much greater percentage than the rest of the population. And therein lies the expense to society and the reason that we have this particular sin tax. A couple of years ago, I visited with a group of home health nurses and this subject came up. And so out of

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curiosity's sake I said, and it was a room of about 200 home health nurses: How many of you still take care of patients at home? And they almost all did and they were...this was a statewide meeting so they were there from across the state. I said, I'd be curious how many of you would say that of the patients that you care for, 25 percent require care because of the effects of long-term tobacco use in some capacity. And half the room put their hands up. (Laugh) Half the nurses said 25 percent of the patients they cared for were being cared for because of the long-term effects of tobacco-related illness. How many of those patients do you suppose were Medicaid patients? How many of those patients do you suppose drove up the healthcare bills and the healthcare insurance premiums of some of the very employers and distributors who talked here today? And yet they come to us and say, do something about exploding healthcare costs. Therein lies our challenge and our predicament. The issue of a regressive tax is an interesting policy issue for us to talk about or at least to ponder and think about. In recent years what we have done to that particular segment, lower-income segment of our population, is reduce a number of programs, from transportation to childcare to our educational opportunities and their access to acute care healthcare services. We have made all of those budget cuts in ways that affect that segment of the population dramatically, and yet what we're going to say to them as a policy decision is, but we kept your smokes affordable. Is that the message we're sending when we talk about it's a regressive tax; we don't want to do anything that makes life more difficult for those folks as relates to their smokes? And I've made that decision, which is the reason I've carried forward with that bill. The red meat tax, the alcohol tax, actually what I get quite a bit is why not increase the tax on alcohol, and the answer to that is straightforward. Vast majority of Nebraskans eat red meat and they eat it appropriately, and they eat it and it gets...they have a health benefit. The vast majority of Nebraskans use alcohol in a very appropriate manner, and we're even told a glass of wine every now and then is good for you. But there's no such thing as a good cigarette or a good chew. It's a carcinogen. It changes the DNA once it comes into contact with live cells. There's no such thing as good tobacco products. (Laugh) And that's our challenge and one of the reasons behind this bill. We even know that secondhand smoke is bad. In this state, the policy decision the legislative body made was to protect Nebraskans from even the secondhand effect of that. There's no secondhand red meat effect that I know of, other than a positive one. So there's some of the issues that I at least pondered in making the decision to come forward. And I understand the economic impact, but I don't think tobacco is an appropriate forum or cornerstone for economic development or jobs creation. And as we sink from 38th to 40th to 45th to the point of nuzzling up against Missouri, next to the very bottom as relates to our cigarette tax, do we say it's because it's a jobs bill for us; all the other issues are secondary? Thank you. [LB439]

SENATOR HADLEY: Senator Sullivan. [LB439]

SENATOR SULLIVAN: Thank you, Senator Hadley. And thank you, Senator Gloor. There were several things that came to mind, both in your closing remarks and a couple

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things during testimony. I think you've...and you kind of alluded to this in your closing remarks, but in terms of the demographics of smokers mostly, can you tell me a little bit more? [LB439]

SENATOR GLOOR: Yeah. [LB439]

SENATOR SULLIVAN: Are there more low-income people? [LB439]

SENATOR GLOOR: Yeah, you're more likely to find people who are in the lower end of the income spectrums, yes, you are. [LB439]

SENATOR SULLIVAN: Okay. [LB439]

SENATOR GLOOR: The higher the educational level, the less likely somebody is to use tobacco products. [LB439]

SENATOR SULLIVAN: And then you heard my...or Mr. Rieker's comment when I asked him about the prioritization of some of the things, uses, that would be used with your additional income, and he indicated cessation programs. And I'd like your reaction to that and maybe some thoughts along...do we need to be, since we're using...this money comes from smokers, do we need to direct it more toward the results of smoking? And so cessation is one thing. But also your thoughts on the monies that would be directed to cancer research, should they be more specifically directed toward specific illnesses, cancer-related illnesses that are caused by smoking? [LB439]

SENATOR GLOOR: Actually, I think the answer to that is they are. We can get an absolute clarification on that, but this program is one that's already been established and has been in place for a number of years with a certain amount of dollars going to, in fact, those two tertiary research institutions and for that purpose in treating diseases related...or cancers related to tobacco use. We can get an absolute verification on that, but that's, in fact, where the dollars are supposed to go as it's currently established and would continue that way. The issue about smoking cessation, certainly can look at distributing more money in that capacity. The number we came up with was sitting down and visiting with advocacy groups about what they feel is a reasonable dollar amount to allocate this way. That's a number they came up with. [LB439]

SENATOR SULLIVAN: Uh-huh. [LB439]

SENATOR GLOOR: We didn't just pluck it out of the air. I'm sure they would be happy with more money, but up to a certain point I think we'd say now we're going to have to build a major infrastructure to support. Let's say the entire \$60 million went there. That may be more than can be handled in one fell swoop, but we'd certainly be glad to sit down and talk about that and adjust that dollar amount if you think it's higher, something

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we could talk about. [LB439]

SENATOR SULLIVAN: Yeah, we'd probably take some in education though, too. [LB439]

SENATOR GLOOR: Yeah, and in education. I'd put it all in the same area, you bet. Education is clearly a part of that. [LB439]

SENATOR HADLEY: Senator Gloor, I'd like to follow up on Senator Sullivan's question. I guess I look at this and, to me, it's a significant increase, 115 percent or whatever the increase is. And then I look at where it's going. And, you know, if our goal really is smoking cessation, do we want people to either not start smoking or not...or discontinue smoking if they are smoking, is there room that we could have a lower increase with all of the money going to some kind of smoker cessation program? I mean... [LB439]

SENATOR GLOOR: Well, remember one of the things the testifier said is for the increase to do any good, it's got to be a large enough increase, and that's going to be around the 50- to 55-cent range for it to have its effect, which is the best smoking cessation strategy is to increase the price. And so can it be decreased a little bit to make the committee more comfortable and allocate all of those monies toward some degree of smoking cessation? We could talk about it. But if we decrease that dollar amount too much, then we lose the major benefit of the bill, and that is the price increase itself is the best way that we get people to stop smoking, youth even more so than adults. [LB439]

SENATOR HADLEY: And the second question, and I asked Ms. Cofer from Mississippi, it seems to me that what we've heard is that this smoking for the young people can be as dangerous as alcohol and other things, yet it seems like we allow it at a younger age. We don't...maybe we don't have the penalties. I know in my district, for a while, I don't know if it still is, but it was common that a minor in possession got you a couple days in jail. So do we need to maybe also look at age limits and increasing the penalties, because stopping the person from starting smoking is probably one of the keys to stopping somebody who's 40 years old and smokes? [LB439]

SENATOR GLOOR: Great suggestion, something I'd be personally willing to take a look at during the interim and see whether and how we match up with other states. I've not had or been given nor seen on my own anything that runs up a red flag the way that our low tobacco tax does. So it's something I'm absolutely going to take a look at. [LB439]

SENATOR HADLEY: Okay. [LB439]

SENATOR GLOOR: I'm not sure that I'd be comfortable amending that on to the bill at this point in time but... [LB439]



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SENATOR HADLEY: No, I understand that. But I just, you know...any other questions?  
Senator Janssen. [LB439]

SENATOR JANSSEN: Sorry, I may not have the last question but something just kind of popped up to me here. We're talking about social engineering with raising taxes, and stifling economic activity by doing so, raising taxes. And we're looking for...well, we're not, I'm not, looking for the right number to raise the tax to stop people from purchasing a certain product. So it makes me wonder at what point do we, when we raise taxes on other...income taxes, sales taxes, at what point do we stifle the economy? Do we...do you see where I'm getting at here with this? I mean it's really not a question. It's more of a philosophy, that which I prescribe to that I'm not a raising tax guy and I know you're not either,... [LB439]

SENATOR GLOOR: Sure. [LB439]

SENATOR JANSSEN: ...except in this particular instance, obviously. So aren't we sending a bad, in my case, conservative message that if we raise taxes enough we will stop free markets from working? [LB439]

SENATOR GLOOR: You know, as I've read about issues around tobacco tax and conservative coalitions, it's interesting. Scott Walker, who I think is considered, you know, a fairly conservative Governor in the state of Wisconsin, not willing to take on some tough issues in the interest of conservative governance, has proposed a budget to the Wisconsin Legislature this year that has a \$50 tax, call it what you want, a \$50 fee for every smoking employee that has insurance. So over the course of a year, they'll pay \$600 more for their health insurance. Now what the Wisconsin Legislature does with it we'll wait and see, but that's his proposal and it's because, as I read, he understands the significant cost that smoking Wisconsin employees bring to their insurance costs and this is a way that he hopes to reduce smokers within the employee body of state government in the state of Wisconsin. And I would say Scott Walker and I must look at this similarly. I've not had a personal dialogue with him ever. But I think from a standpoint of societal decisions that you have to make and recognitions of things that cost you money, even the government of this state, back in 1947, decided with its first 3-cent...first tax on tobacco was 3 cents back in 1947, must have wrestled with that same question and decided this isn't a business discussion; this is an issue of trying to recapture some of those dollars and discouraging people from using tobacco products. [LB439]

SENATOR JANSSEN: But in Wisconsin, it's on the insurance policy. I mean if I sign up for life insurance, I have to say whether I smoke, fly, any...parachute, any of the above. I mean that's...so I don't think that's apples to apples. So I'm just wondering if, in a roundabout way, we're stifling economic activity. I'm not promoting...I've never...I won't

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say never, I don't smoke. I don't think anybody on this committee actually smokes, other than Senator Hadley who went out to have a cigarette at the break, but... [LB439]

SENATOR GLOOR: So we heard. So we heard. [LB439]

SENATOR JANSSEN: ...so Senator Schumacher said. So it's just more of a...and you don't need to reply to that. It's just more of a overencompassing comment. Thank you, Senator Gloor. [LB439]

SENATOR GLOOR: No, I understand. Thank you. [LB439]

SENATOR HADLEY: Let's see 1984, what is that, 29 years and 3 months and some odd days since I've had my last cigarette. [LB439]

SENATOR GLOOR: Well, I applaud you of giving... [LB439]

SENATOR HADLEY: When did I think about it last? Oh, when somebody was testifying I guess, so. (Laughter) [LB439]

SENATOR GLOOR: I applaud you for giving up before you got to age 30, so. [LB439]

SENATOR HADLEY: Thank you, Senator. Senator Gloor, thank you. With that, we'll close LB439. And, Senator Gloor, if you want to open on LB440. [LB439]

SENATOR GLOOR: I will. Much briefer. I'm Senator Mike Gloor, G-l-o-o-r. LB440 will create the Volunteer Emergency Responders Incentive Act. The act will create a \$500 refundable tax credit for volunteer emergency responders who meet stated criteria. LB440 uses a point system. This point system is already in place in most fire departments to track the level of involvement of volunteers. The city, village, or rural or suburban fire protection district will certify the list of those volunteers who have qualified as active emergency responders, active rescue squad members, or active firefighters. This list will be filed with the Department of Revenue. This act also adds a new section of the tax refund statutes to grant a refundable credit of \$500 for the tax year for which an individual volunteer qualifies as an active emergency responder, active rescue squad member, or active firefighter under the Volunteer Emergency Responders Incentive Act. Here's the reason I brought this bill forward. And Senator Dubas, by the way, had a similar bill several years ago. This is a healthcare issue as far as I'm concerned, or certainly a public safety issue, when you talk about firefighting. This is our first line of defense. When we're in a car accident or when we are having a heart attack, the first person that we usually see from the healthcare provider network isn't a cardiothoracic surgeon for our heart attack or isn't a trauma surgeon for our car accident. It's usually a first responder. And we're having problems finding first responders. This is our first line of defense when it comes to healthcare in almost all of our communities; yet I'm

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concerned that, slowly but surely, we're seeing these numbers dwindle. We'll have other folks behind me who will give their personal experiences, but some of the numbers that I came up with statewide the number of volunteer emergency responders from '04 to 2010, which were the only numbers I had available at the time, had not changed. It might have been slightly lower, but for all intents and purposes, with a growing state population, it hadn't changed. That takes into effect some larger communities. But even within some larger communities, North Platte, over a four-year period, as an example, has seen a decrease in its overall number of volunteer first responders. Crete has 50 slots available and at one time only had about 37 of those filled. Now we understand, as of today, that number is up to 40. But that still leaves 50 slots, only 40 of which are filled. I had a conversation a couple of weeks ago when we had a gathering of the first responders clan here--you may recall it. I got to talking with the firefighters of Linwood, and they put it in perspective. Once upon a time they had 25 slots. Now they only have 15. They only had 15 volunteers in Linwood. And they had a grass fire not that long ago. Five volunteer firefighters showed up. And it was a prairie fire, so they're lugging hoses across the prairie and whatnot. They're all over the age of 60. Now I'm over the age of 60 and I think I can lug a hose, but I know I can't lug it as long and as far as I could when I was 50 or 40. That's part of our problem is that those volunteers that we have are also an aging population. And so the problem isn't just one of numbers. The problem is also one of people who are going to age out of the system and we're not going to have anybody to replace them. I think an incentive, the \$500 credit, will help--so do they. That's the reason that I've introduced this bill. And because again I think the funding for the tobacco tax ought to go towards a variety of healthcare issues, I've selected this as one of the areas that we've raised dollars that we could use to pay for this tax credit. And that's my introduction. [LB440]

SENATOR HADLEY: Are there questions for Senator Gloor? Senator Schumacher. [LB440]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Thank you for bringing this, Senator Gloor, because it raises some interesting issues, one of which is the legitimacy of using tax credits instead of going through the normal appropriations process and appropriating a \$500 grant or something that people who met qualifications could get. Whenever we do these tax credits, they're kind of off the books and we...they're out of the normal appropriations policy and really hard to control. Why a tax credit instead of a grant? [LB440]

SENATOR GLOOR: I think some of it was consistency of making sure those dollars were going to be there for a long period of time. Probably ease of implementation, because there is a system in place where the volunteer fire departments...the volunteer first responders keep track. And with their own point system, we'd have an accountability piece that was already in there, and that would then allow you to, within the Department of Revenue, get that \$500 tax credit. So I think some of it was just ease

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of operation and verification and distribution of the dollars. [LB440]

SENATOR SCHUMACHER: Thank you, Senator. [LB440]

SENATOR HADLEY: Senator Harr. [LB440]

SENATOR HARR: Thank you, Chairman Hadley. Senator Gloor, the beauty of this or the need for this is also the downfall of this, meaning it has a very large fiscal note. Now \$6 million for the number of volunteer firefighters we have is a pretty good return on investment; but nevertheless, it is \$6.4 million. Can you address that issue? [LB440]

SENATOR GLOOR: Well, someone behind me will I think--not I think, I know--to take on the responsibility of explaining why the numbers are a nice dream when it comes to how many people will actually take advantage of this. Above and beyond that, the dollars are high enough so that it's the reason that I include the funding for it within my tobacco tax bill, so that as we've raised revenue through the tobacco tax, there are some dollars there--not earmarked--but there are dollars there that are added to the General Fund that can be used to pay for this. [LB440]

SENATOR HARR: Okay. Thank you. [LB440]

SENATOR HADLEY: Senator Gloor, and this is probably something you can't answer but somebody else might coming behind you, and we've heard a number of bills over the years dealing with volunteer firefighters and we know how important they are. But one thing that we seem to have heard every now and then is that it's harder now for some people who want to volunteer to get away from their work, because the employer is the one that ultimately has the say of whether they're going to be able to get away or not. And this bill really does nothing to solve that problem of an employer allowing a person to volunteer for EMT or the fire department. Would that be correct? [LB440]

SENATOR GLOOR: Yep, that's correct. This is an incentive bill or a reward bill, however you want to classify it. But it does not address a number of the other problems that volunteer firefighters, volunteer first responders run into. [LB440]

SENATOR HADLEY: Okay, thank you. Thank you, Senator Gloor. [LB440]

SENATOR GLOOR: Thank you. And... [LB440]

SENATOR HADLEY: First proponent. [LB440]

SENATOR GLOOR: ...I have another committee that's in Exec Session and so I will be here for a little while but I may have to run over and rescue some of my other bills in another committee, so thank you. [LB440]

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SENATOR HADLEY: Okay, okay. Again, if you want to testify, there's nothing wrong with coming down to the front. Yes, sir; welcome to the Revenue Committee. [LB440]

BRIAN SCHLOTE: Thank you, and good afternoon, Mr. Chairman and members of the Revenue Committee. My name is Brian Schlote, S-c-h-l-o-t-e, and I'm a resident of Plainview which is in Pierce County, Senator Sullivan's district. I first got on volunteer EMT in April of 1991, a month before I graduated high school. I spent every Monday night, as a senior in high school, in the EMT class. Since then, when I first got on in Plainview, we had 40 firefighters and 18 EMTs. We are now down to 27 firefighters and 12 EMTs, six of which are on both. Thirty years ago we had a full 50-man roster with waiting lists. Not so any more. Some of this...going back to the last bill, LB439, the cigarettes: about 50 percent of our ambulance calls are related to the conditions that the doctor from the VA spoke about in the last issue, and about probably 25-50 percent of our fires. We had a fire one morning when a gentleman fell asleep smoking on his couch, woke up; and we had five firefighters, one of which was myself, on the call. Lower turnouts during the day. Can't leave work. We have some jobs up there, or the employers, second page for a fire they will let them go, for fourth page for EMTs they'll let them go. Some of our EMTs now during the daytime, especially if it's during the school year and with the lunch hour, if you get a call between 7 a.m. and 1 p.m., we're lucky if we have two EMTs show up for the ambulance call. And it's nice to have at least three. Luckily, our firemen are drivers and help lift and stuff. I was talking to Senator Gloor, in Chapman, last year, which is in Senator Dubas' district. The Pump and Pantry, they were remodeling and removing a sign that started on fire. The fire chief and one firefighter was all that was there, so they had to call mutual aid from Central City and Grand Island. A lot of towns around are doing automatic aid. During the daytime when the dispatcher pages one department out, they'll simultaneously page more. And I had talked to some individuals in Ponca Hills, which is on the north side of Omaha. Irvington had a fire. Ponca Hills, automatic aid. Four people showed up, the youngest of which was age 60. House fires...oh, you know, putting on the air bags, going in, you know, it's not a good...I lived in Oklahoma for two years after I got out of the army. They had a retirement system down there for the volunteers, which we've been struggling to get for the whole, you know, 20 years since I've been on here. This would be a step in that direction, I think, showing the volunteers that the state senators do have their backs and appreciate what they do. The last thing, going back with the cigarettes, the first- and secondhand smoke, and now they're talking about third-hand. When we go on EMS calls, we don't have our bunker gear on and air packs because we're going on a medical call, but the smokers that we go to pick up for their chronic diseases, the smoke is in the carpet, it's in the house, it's in the paint. So when we go in there, we're still exposed to that. So eventually most of the EMTs in this state will have long-term health effects even if they're not a smoker or not around smokers, just by doing the job that we do. So with that I will conclude. And if you have any questions, I will attempt to answer. [LB440]

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SENATOR HADLEY: Are there any questions? Seeing none, thank you, sir. [LB440]

BRIAN SCHLOTE: Thank you. [LB440]

SENATOR HADLEY: We appreciate your volunteering for the fire department. Thank you. Would the next proponent come forward... [LB440]

MICHEAL DWYER: (Exhibit 19) I got bumped to the front of the line. Good afternoon. Thank you for the opportunity to testify. My name is Micheal Dwyer, M-i-c-h-e-a-l D-w-y-e-r, and I'm a member of the Nebraska State Volunteer Firefighters Association's legislative committee and a 29-year member of the Arlington Volunteer Fire Department. I'm here today to testify in support of LB440. Currently, over 70 percent of Nebraska is covered by volunteer fire and rescue services. Whether it's a house fire in Schuyler, a car accident near Nickerson, or a prairie fire in western Nebraska, the goals and the risks are the same. The men and women of Nebraska volunteer fire service leave family, leave dinner sitting on the table, leave the comfort of a warm bed in the middle of January, to risk their lives to protect the lives and property of Nebraskans. LB440 calls for a \$500 tax credit based on a point system which, in turn, is based on the individual firefighter's participation in meetings, drills, community fire prevention, and most importantly, response to emergency calls. As I understand it, each point under LB440 equates to roughly two hours of service with a minimum of 50 points needed to qualify for the credit. If you do the math, that's about \$5 an hour, which as I understand it, is even less than a state senator makes. Currently, our minimum wage is \$7.25 an hour for flipping hamburgers and sacking groceries, not that there is anything wrong with that, but what kind of a message does it send to the men and women who protect the lives and property of Nebraskans that we aren't willing to pay minimum wage to provide tax relief for those risking their lives to protect others. I have a friend in our department who has a t-shirt that says: You couldn't pay me enough to do this job. The culture in our state and our nation with respect to volunteerism is changing. Young people--and old people to a certain extent--are no longer as willing to sacrifice countless hours with family, with work, to risk lawsuits, injury, or worse, to fight fires and respond to EMS calls. Your vote on LB440, positively or negatively, will send a clear message to the people in Nebraska that you do or do not recognize and support the men and woman that protect the lives and property. We and they appreciate your support. I thank you and would welcome any questions. [LB440]

SENATOR HADLEY: Are there questions? Senator Sullivan. [LB440]

SENATOR SULLIVAN: Thank you, Senator Hadley. Thank you, Mr. Dwyer, for your comments. Can you tell me a little bit about how you are reacting to the logistics of the bill in terms of keeping track of all of these points? [LB440]

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MICHEAL DWYER: Most departments, ours included, keep track of call response, meeting attendance. Most of the time, bylaws or some kind of a points or promotion system area already is in place. So personally I think it's great. I'm all in favor of holding our members, and I think in a broader sense, to some kinds of standards, so at the very least we know who's making the calls and who isn't, who's contributing and who isn't. I think most departments that have some kind of a length of service program have a similar program already in place. So specifically I think it's a great program. I think it's balanced. I think all of the pieces that LB440 addresses I think are important. Arguably, it can be more heavily weighted with respect to calls, but I think the balance is good. I hope that answers your question. [LB440]

SENATOR SULLIVAN: Yes, it does. Thank you. [LB440]

SENATOR HADLEY: Mr. Dwyer, I guess I have a couple questions. One, what is the impact of employers on the...we heard earlier the declining numbers and we've heard it in previous years. Is that a significant problem? [LB440]

MICHEAL DWYER: I can only speak to my experience, and Mr. Cerny and I had just a brief comment just before testimony when I heard the senator speak to that. My boss is a jerk; I'm self-employed so he doesn't care if I leave. (Laughter) But I know that there are a number of other employers, and rightfully so, who are concerned when in the middle of a day, in the middle of an important production item perhaps, the pager goes off and somebody's got to leave. Mr. Cerny, I think can speak perhaps more specifically to that. I hope that he testifies. I know in our little corner of the world the people that are in town during the day generally have the freedom to respond. Now I will tell you that one of my...I'm squad captain. Our co-captain happens to be a bus driver for the school. I'm a school board member, as Senator Sullivan can relate to, and with that other hat on I know our superintendent is very concerned when Carrie's (phonetic) pager goes off at 3:00, because she's either got to let somebody go or try to find another bus driver. And that's a rock and a hard place she doesn't like to be in. I know that across the state there certainly are issues. I think they're specific, I think, to the locale and the area. In the broader picture, as a conservative, how would the Legislature trim that? That's a tough question, I think. I hope that helps. [LB440]

SENATOR HADLEY: That does. The second question I have, Mr. Dwyer, and this is something I guess we try to deal a lot in policy and I'll use Grand Island and Kearney as two opposites, because Kearney has an excellent volunteer fire department, you know, a number of members, does a great job; and Grand Island has a paid fire department. [LB440]

MICHEAL DWYER: Yep. [LB440]

SENATOR HADLEY: And the Grand Island paid fire department, their funding comes

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from the local taxpayer in Grand Island. So why should...what's the rationale for the policy that the state should be working with the volunteer fire departments rather than Kearney who is...when I was the mayor and the city council we talked about saving \$2 million a year by having a volunteer fire department. Why shouldn't the city of Kearney be the one that's ponying up the money for a program like this? [LB440]

MICHEAL DWYER: Good question. And I know there are a number of efforts underway, particularly on the EMS side, in the state of Nebraska to identify who's got the ball, who's truly responsible not only from a fiscal perspective but from a regulatory perspective--who's in charge. And, I mean, quite frankly, as I sit here today, I don't know that I have a good answer for that. But to attempt to answer your question, I think that the easy answer for me is that a lot of fire districts, a lot of fire departments are segmented to a certain extent. We cover a city. We cover another village. We cover 2,200 residents in the county, I believe, if my numbers are correct. We could...the city could say that we're going to support the fire department, and I...don't quote me on this, but I believe they do to a certain extent. The county could say they were going to support the fire department, and I believe that...I know that they do, our fire district does. But those two entities, particularly from a tax perspective, don't always play in the same sandbox together super well. I could also make the case that this is, with all due respect to Senator Janssen's comments about fiscal conservativeness, and I'm right there in that same seat, but it would seem to me that this is an essential service that the state asks, and in many cases regulates what we provide; and consequently, the state has at least some small little barely minimum wage responsibility to support that, if they're in fact going to expect us to respond to accidents on state highways and fires and state grounds; and again, with all due respect to some of the testifiers in a moment, that are going to require us to--and most of that's good--to be regulated. Does that help? [LB440]

SENATOR HADLEY: Yeah. And maybe it's unfair to you, Kearney, because it is a large department, and the city does...you know, the equipment and the operators are all on the city payroll--and thank goodness, a lot of the volunteer firemen are city employees--that the city understands that they can get off work, so maybe that's not a fair comparison. But, you know, I just want to be able to...if I get a letter from somebody from Grand Island that says part of my taxes are going to support my fire department, so why are you going to give your firemen in Kearney \$500 each, a year--and you don't have to answer that. But that's one of the things that we're going to have to look at. [LB440]

MICHEAL DWYER: Sure. And my answer--obviously I'm not sitting in your position--my answer would be very quick: because they provide state-requested, state-necessary services in an essential way in the same way that so many other things that the state fund does. [LB440]



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SENATOR HADLEY: Okay. Thank you. Senator Schumacher. [LB440]

SENATOR SCHUMACHER: Thank you, Senator Hadley. And thank you for your testimony. One of the things we're struggling with this year is trying to develop a tax policy that's fair and equitable to everybody, and a few years ago we started down the road of granting, for businesses, exemptions and credits; and it started out well-meaning, a few things that looked like they really fit the bill. And pretty soon you almost have a line around the building of people being creative, thinking why they should have an exemption and a credit and get in line for some special program or another, or make up one. So if we start with this (inaudible) of credits for the local fire departments, where do we draw the line when next year the people who give volunteer services as a teacher's aid or in the library or the United Way food pantry or the guy in the small town who jumps on a tractor and cleans the streets in the snow because a small town doesn't have a grader that's up to par and running, where do we say, no, we're not going to give state tax credits to you and we've drawn the line here? [LB440]

MICHEAL DWYER: Well, I personally think that you should give tax credits to only two groups, and that's volunteer firefighters and school board members, (laughter) and that way I would get them and that would be good, and then draw the line right there and that would be just great. But I think the more appropriate answer to your question is that these are essential lifesaving services that are provided to, in many cases, state property, state highways, state lands. This is different, even as a school board member, the requirements to be a volunteer firefighter, to be an emergency medical technician, to take lives in your hands are significantly different and arguably much more important than the guy that we ask to jump on his tractor and scoop snow three or four times a year. Our pagers went off 107 times last year. For a long time, I was kind of the primary EMT in town. Thank God, we have six people that just completed a class, and I believe most of them will become active EMTs, a tremendous group. But it was intense for awhile, and I made I think 88 of those 107 calls while trying to serve on the school board and run a small business and take care of grandkids and all the other cool things in life. But I think it's pretty...obviously, I'm not objective, but I think it's pretty easy to make the case that these are essential lifesaving services provided across the state of Nebraska that I think it's pretty easy, for me, to make that case. You have the tough job. [LB440]

SENATOR SCHUMACHER: Thank you. [LB440]

SENATOR HADLEY: Mr. Dwyer, thank you. Yes, Senator Hansen, I'm sorry. [LB440]

SENATOR HANSEN: Thank you, Mr. Dwyer. I have some...a little bit more background questions that I have. How much training does it take to become an EMT? I know that's a sticky point. [LB440]

MICHEAL DWYER: Interesting different. When I took the class initially, many, many

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moons ago, I believe my EMT class was 80 hours. We did ten hours...I think it was 80 hours, does that sound right? I think that sounds right. [LB440]

\_\_\_\_\_ : Eighty-one. [LB440]

MICHEAL DWYER: Eighty-one. Eighty-one. And then we did ten hours of service in an emergency room to kind of get our skills up, and then we took a state-sponsored test and we were EMTs. And I've been serving for 29, it will be 30 years in a couple of weeks. Now the class that our six people are just going through now was, I think it's fair to say, well over 200 hours. They had more homework in a night than I had in, I think, my entire course, and a significant amount of skills training on top of that. And they are extremely well-trained when they come out of that class. I would trust my kid's life in their hands and that for me is the ultimate standard. [LB440]

SENATOR HANSEN: What about continuing education, yearly training for you and for these new ones that are coming up? [LB440]

MICHEAL DWYER: Yeah. In order for me to keep my license I have to do...again, somebody behind me correct me if I'm wrong. I believe it's ten hours a year of continuing education in order to keep my EMT license. It's higher if you're a higher level EMT. I think that's good. I think most of us do that anyway. The requirements for exactly what are included in that continuing ed are a little tighter than they used to be, but again I think that's good. I think the state has made great progress. One of the objectives clearly is, Senator Hansen, if you have a heart attack at 180th and Dodge or if you have a heart attack in Rose, Nebraska, we want the standard of care to be the same. And that's a laudable goal, no question. But the reality is that what we have, the resources that we have at 180th and Dodge and the resources that we have in Rose, Nebraska, are significantly different. And that's one of the reasons that perhaps LB440 at least helps with that, in that in Rose, Nebraska, somebody is going to have a little bit more of an incentive to go through those 200-plus hours of EMT training to leave your family and friends at 3:00 in the morning and climb out of a warm bed to try to go help your heart attack, which I hope you don't have. [LB440]

SENATOR HANSEN: What about the on-call hours? You said in one year you had 107 calls; you went to 88 calls. So is that two hours per call? Probably more than that. Do you have an average, average what a call...? [LB440]

MICHEAL DWYER: Including paperwork, it's two hours a call. [LB440]

SENATOR HANSEN: Two hours. That's an average? [LB440]

MICHEAL DWYER: Yeah. Our runs are only eight miles when we go to Fremont, so we have a relatively short run. Some departments, Blair for instance, is an extremely busy

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department. It has a hospital in town, so their runs are a little bit shorter. Of course, there's departments in the western part of the state that runs are 60-70 miles in some cases. Once we get back, we have to complete an electronic form recording that run with a number of details. I'm pretty computer literate, I sit in front of one all day, but it still takes me pretty close to an hour to complete that form. So combine those two, and a run is about two hours for me if I'm the primary EMT. Now we may have five or six people on the call, and only one of us...one and a half of us maybe has to complete that e-NARSIS form. [LB440]

SENATOR HANSEN: Well, I realize...I live in rural Nebraska in rural Lincoln County, and I realize how hard it is to get new EMTs. It's really hard because people are busy. Our rural population is down. I mean, our gene pool is even smaller, so we've got to look for them. And I congratulate you on your department, finding six young people to do that. That's great. [LB440]

MICHEAL DWYER: A brief story. I hope I'm not out of order. A year ago we instituted a cadet program for young people that weren't quite available, specifically because we were at 18 people and really down to about four active EMTs. And through the grace of God, now I think we're up to 32, six new people going through class. So today when the tones go off we're in much better shape than we were a year...but we also recognize, just like call volume, it's cyclical and that's going to go up and down. We need to be able to plan for a longer-term solution to this short of just what's going to happen tomorrow when the pagers go off. [LB440]

SENATOR HANSEN: Right. Well, I appreciate the volunteer firemen of this state. I really do. [LB440]

MICHEAL DWYER: Thank you. [LB440]

\_\_\_\_\_ : May I answer one of his questions? [LB440]

SENATOR HADLEY: No. No, you can't. When you come up to...if you want to come up to testify, you sure can. Thank you, Mr. Dwyer. I wanted to make one last comment, and I know I speak for the mayor of Kearney and the city council and the city manager. One of the nice things we have there is Good Samaritan Hospital that handles the ambulance system. And it sends cold shivers up and down the mayor and the city manager's spine when Good Sam, every now and then, will talk about whether or not they want to stay in that business, because that is truly a godsend to Kearney, because the cost would significantly go up if the city had to take over that responsibility. So thank you, Mr. Dwyer. We appreciate all your work and volunteerism, and thank you. [LB440]

MICHEAL DWYER: Thank you. [LB440]

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SENATOR HADLEY: The next proponent, please. [LB440]

PARRISH ABEL: (Exhibit 20) Good afternoon, Senators. My name is Parrish Abel, P-a-r-r-i-s-h A-b-e-l. I'm a lieutenant with the Gering Volunteer Fire Department. I have been with the Gering Volunteer Fire Department for 21 years. I also serve with the city of Scottsbluff Fire Department, which is a paid department, for the last 11 years. I am also the District 1 director for the Nebraska State Volunteer Firefighters Association. I'm here today to talk to you about LB440 and how the volunteers will have to work to get the 50 points to be allowed to get the \$500 tax credit. The Gering Volunteer Fire Department started a retirement program back in 2000 using the current point system that was passed by the Unicameral that year. The firefighters receive points by attending meetings, trainings, drills, and activities where the firefighters represent the fire department. The firefighters also receive points if they hold an office within the department and they make a total of 10 percent of the total calls for a year. It is not an easy task to get the 50 points but it is attainable. The first year this program was in place with the Gering Fire Department, we had half the department qualify for the retirement program. Ten years later we have had half of the department vested into the retirement program and the other half of the department is either qualified or getting vested into the program. If this bill is passed and made into law, the volunteers that make the 50 points will have earned this through their hard work. The second thing I'd like to talk about is some of the calls that we have ran on. Last year, we had the wildfires that ravaged the northwest. The Gering Volunteer Fire Department ran pretty much across the state of Nebraska assisting other departments. The two that pop out in my mind is the Niobrara River fire and the fire at Chadron State Park. The Chadron State Park fire we had two grass rigs, a tanker, and personnel respond up there on a Wednesday morning. Wednesday evening we made the call for additional personnel to relieve this crew. We went into 12-hour shifts and we worked till the end of the day shift on the following Sunday, leaving our vehicles there and just rotating people in and out. Chadron is a two-hour drive from Gering. So most of the guys would work a day shift, come home, rest in the evenings, and turn around and go back up to do another day shift. They were not getting a full 12 hours of sleep because you had to figure four hours of their 12 hours down time was spent on the road driving back and forth. While we were at Chadron, we also received a call for help from the Rushville Volunteer Fire Department to come up there. We had to turn them down because we had crews at Chadron with two of our trucks and a tanker. We only had one grass rig and one tanker left at the station. We had a grass rig blow a motor at the beginning of the fire season and we basically put a two-wheel drive pickup, threw the skid into it, and that's what we used to get us through the fire season. It is very time consuming. And one of the senators asked about jobs and everything. We are lucky we have individuals that work for employers that will give them eight hours a week on-call time. If we have a call, they can go. After eight hours, they have to use their vacation, sick leave, things like that. We are also lucky by having half...not quite half of the department works for the city of Gering, so they are told when they get hired on and they are members of the

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department, they will respond to calls. So I have nothing further. I'd like to thank you for your time and I will answer any questions. [LB440]

SENATOR HADLEY: Are there questions for Mr. Abel? Thank you, Lieutenant. And I guess it's interesting that you are a full-time paid firefighter and a volunteer. [LB440]

PARRISH ABEL: Yes. [LB440]

SENATOR HADLEY: I have not met one of those, so thank you so much for doing that. [LB440]

PARRISH ABEL: Thank you. [LB440]

SENATOR HADLEY: The next proponent. [LB440]

DEB VON SEGGERN: Good afternoon, Chairman and committee. My name is Deb Von Seggern. That would be D-e-b V-o-n S-e-g-g-e-r-n. I am president of the Nebraska Emergency Medical Services Association, and I have been an EMS for almost 22 years. I have lived in the rural area, in Dodge County is where I live at, and reside in North Bend. We are one of ten rescue and fire departments. And when I was listening to some of the other testimony that was going on earlier, I wanted you guys to understand that fire and rescue isn't always together. Sometimes there are fire departments and sometimes there's rescue departments, and sometimes they are together and sometimes they're not. The case with my North Bend department, we are together. I'm a firefighter, a paramedic on that department; and prior to that I was on Uehling rescue, which is also in Dodge County, which operated in the same house but with totally different finances and totally different training requirements. And that happens a lot in the state of Nebraska and also on a national level. With that being said, 80 percent--they just had some new results come out--80 percent of our firefighters and EMTs are volunteers nationwide. And Nebraska is almost 85 percent of volunteerism with the EMS side and the fire side. The other thing I wanted to talk to you about is also when you have a fire and a rescue department that are together, approximately 80 percent of those calls that come out of those departments are EMS-related and not fire-related. That puts a lot of tax burden on our time and us being volunteers. With this incentive that we were looking at with LB440, I have been in leadership for 17 years and we have constantly looked over and over again how we can go ahead and we can encourage our young people and our older people to stay in. Recruitment and retention. One of the ways that does work is incentive. It does not work for everybody but it does entice some of them. With the Nebraska Emergency Medical Services Association, we have 2,800 members. And I have nine people on my board, and right now we have a conference going on and I'm here and I have about 30 people working very hard right now until we all get back, but that isn't the whole 2,800 aren't going to be going there. But I have had a chance to talk with some of them, and they are very excited about this

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and they want to thank Senator Gloor for introducing this. They also want me to thank you for your time and listening to what we have to say and that it would be nice if it did pass because that would show my emergency medical providers and the firefighters that you care. And that's...and volunteerism always has one thing that they say is: Caring and volunteerism has a heart. And I always remember them saying that, and they do. And that's nationwide, that's not just in Nebraska. How many people do you know and how many healthcare providers do you know that will work sometimes 20 and 30 hours a week for free? My chief, who is sitting in the back, with our North Bend Fire Department we run approximately 300 calls a year. We have 30 slots on our roster and we have 13 people, six that are active. He is one of them and he doesn't even work in the town, in our town, and he made it to over 160 calls last year; and so he puts in a lot of hours. And I know a lot of other people that are just like him, similar, across the state and the United States that do the same things, just like every other uniformed person that's in this room right now. And so it's very important that this is recognized. And if you have any other questions. [LB440]

SENATOR HADLEY: Are there questions? Senator Schumacher. [LB440]

SENATOR SCHUMACHER: Thank you, Senator Hadley. And thank you for your testimony today. It seems to me that in the past there was some program where when you were accepted onto the fire department or something, by your town, you got, like, a \$5,000 life insurance policy or something like that? Do you know if that's still around? [LB440]

DEB VON SEGGERN: To my knowledge, we have a life insurance policy through our organizations, which would either be the Nebraska EMS Association or the Nebraska Volunteer Firefighters Association that we have life insurance through. [LB440]

SENATOR SCHUMACHER: I think there was, at least at one time, some other program. [LB440]

DEB VON SEGGERN: I am not aware of that. [LB440]

SENATOR SCHUMACHER: Okay, thank you. [LB440]

SENATOR HADLEY: Any other questions? Thank you so much. We appreciate all your service. Next proponent. Welcome. [LB440]

WILLIAM LUNDY: (Exhibit 21) Good afternoon, committee. My name...Senator Hadley and members of the Revenue Committee, my name is William "Bill" Lundy; William, W-i-l-l-i-a-m, Lundy, L-u-n-d-y, and I am secretary-treasurer of the Nebraska State Volunteer Firefighters Association, a 7,800-member organization that promotes and supports volunteer fire and rescue services in the state of Nebraska. I am also a

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39-year volunteer member of the York Fire Department and third-generation volunteer firefighter. I come before you today in support of LB440, the Volunteer Emergency Responders Incentive Act. As you will be able to see from the study generated by the University of Nebraska that my fellow colleagues will talk about, volunteer fire and rescue services saves the citizens of Nebraska millions of dollars in tax revenue each year not paid in salaries and benefits. But the volunteer and fire rescue service is under attack from economic concerns, time and training commitments, and rules and regulations, many of them promoted by this body and other legislative bodies. The NSVFA, or the Nebraska State Volunteer Firefighters Association, is looking for tools to help stem the tide of reduction in volunteers and trending data that the current volunteer fire and rescue service is aging. You can look at me and see that. One tool we feel would help in this goal is a tax incentive that LB440 would provide to active members of the volunteer fire and rescue service. But it is not the only action that the NSVFA has pursued to promote volunteer recruitment and retention. The NSVFA, working with the Redden Consulting group, applied and was awarded a \$1.96 million federal grant to promote volunteer recruitment and retention in the state of Nebraska. The grant provides eight training sessions over the four years of the grant, with those in attendance having all expenses paid to attend the training. This training will instruct local volunteer firefighters on recruitment and retention issues and will be a how-to guide for recruitment and retention programs. The grant also funds an educational scholarship that provides 75 scholarships per year that provide up to \$4,400 tuition reimbursement with a maximum of two years of funding for the student or a student that an immediate family member is a volunteer fire or rescue member. The scholarship requires a two-year commitment to either remain an active volunteer or to serve two years as a volunteer fire/rescue department after award of the scholarship. I feel LB440 would provide the NSVFA and volunteer fire and rescue departments another method to attract new members and to retain members that they already have, as well as another tool to be added to our toolbox to help support volunteer fire and rescue services in the state of Nebraska. I ask each of you to think about what would happen if the volunteer fire and rescue service would go away in the state of Nebraska, what the economic impact would be to the state? What would occur because of the loss of services and what the response time of emergency services would be to small towns across Nebraska if they would have to wait to receive help from a larger community's emergency services? I ask you on behalf of the 12,000 volunteer fire and rescue members of the state of Nebraska and the 7,800 members of the Nebraska State Volunteer Firefighters Association to support this legislation. And Senator Schumacher, you asked about insurance. The state requires every rural fire district or every fire district to provide a \$5,000 accidental death and dismemberment policy to its members, and so that is regulated by state statutes. And I'd like to address just briefly the fiscal note. I'm sure there's going to be others talking about that. The fiscal note was very simple by the fiscal committee. They took 12,000 volunteers and they multiplied it by \$500 and they got to the magic number. But I want you to know that if you look at the number of volunteers, and if you heard earlier about the active people and the number

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of people that they have, you know they're indicating they have 14 members and only seven of them are active, I've got to believe that the fiscal note is misstated and that that number is going to be considerably lower. There are 454, approximately, fire departments in the state of Nebraska. The association has 254 of those departments that are members, and I'd like to consider those 254 as some of the most active departments in the state of Nebraska willing to go that extra step to fill out the paperwork to make sure their members meet the point criteria. Thank you very much for your time and I'd be willing to answer any questions that I can. [LB440]

SENATOR HADLEY: Are there any questions? Senator Schumacher. [LB440]

SENATOR SCHUMACHER: Thank you, Senator Hadley. And thank you for your testimony. What percentage of the bigger towns, Omaha, Lincoln, Bellevue, Grand Island's departments or fire and rescue are volunteer? [LB440]

WILLIAM LUNDY: Omaha...in the state of Nebraska, and I may miss...there's a large...in Omaha; Lincoln; Grand Island, the city of Grand Island--Grand Island rural is all volunteer; Beatrice; Scottsbluff, those towns are pretty much all career firefighters. Now there is a large number of towns that have combination departments, of which I'm one. And the city of York has 13 career firefighters and approximately 30 volunteer firefighters. And so of that 12,400 firefighters in the state of Nebraska, taking out Lincoln and Omaha, Grand Island, Scottsbluff, Beatrice areas, I'm guessing that there's probably closer to 11,000, potentially 11,500 volunteer firefighters of that 12,000 indicated in the State Fire Marshal's report. [LB440]

SENATOR SCHUMACHER: Well, one of the things we've got to struggle with is somehow being fair, and in those bigger towns which comprise probably close to a majority of the population of the state, they're paying for their own fire departments and their own...they're footing that bill. And with the use of this credit they would be footing at least some of the bill for the smaller communities. Would it...instead of using this credit mechanism, which makes the people in the bigger communities pay extra, would it be better to take something like that \$5,000 policy that's imposed on the local communities now, that they have to buy for their people, and use the incentive of making them provide a \$50,000 life insurance policy out of the local money? [LB440]

WILLIAM LUNDY: That would be a possibility. The other thing I think you need to consider from the committee though is, is that whether you are in Omaha, but if you're driving through York, Nebraska, and you're involved in a car accident, you're not being served by the Omaha; just as if I am in Omaha and I'm involved in a car accident, the Omaha taxpayers are paying the initial services that they provide to me. And so trying to make it equal I think would probably cause your hair to be pulled out. There are just so many services, you know. And so if we try to do that only based on, well, Omaha is all paid and so they shouldn't pay that; so when they are traveling through York the citizens



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from Omaha shouldn't have that responsibility also? I mean, if you really look at it, if you really wanted to be fair, then what we should do is have a charge for basis on any call. So if I'm in Omaha and I have a car fire, the expense of that fire truck coming out and those paid guys, I should bill me or my insurance company for that cost. And the same way if I'm from Omaha and I'm driving to York, and I have a car fire, then the expense for the York Fire Department coming out there and putting that fire out, if we really wanted to be fair...and then in the city of York we have the women's reformatory. So should the city of York bill the state of Nebraska every time we go to the women's reformatory? Or if you have a state park? [LB440]

SENATOR SCHUMACHER: Well, suppose the city of Omaha came to us and said, you know, you're doing this for other communities in the state; you're paying \$500 a credit toward the people who are serving as rescue people and fire people. You know, we're having a devil of a time with our budget here in Omaha and, you know, our people are looking for a raise, and gosh, we just can't quite swing it; state, why don't we treat everybody fair and you give each of our paid firefighters a \$500 tax credit, because you're giving, you know, the other communities a \$500 tax credit for their firefighters? [LB440]

WILLIAM LUNDY: Have you seen the Omaha firefighters retirement plan? [LB440]

SENATOR SCHUMACHER: Well, I have, but, you know, I am sure... [LB440]

WILLIAM LUNDY: (Laughter) I'm sorry. I'm sorry. I understand the question. And that is the difficulties that you're setting in this position making these hard choices. It is...the only thing I can say from that is, is that there is no, you can't pay me enough for this job. And so whether or not you give me the tax credit does not impact whether I'm going to serve my community from now on. But what is impacting this decision is, is what happens when volunteer fire services and rescue services disappear off the face of the earth in the state of Nebraska? Somewhere along the line somebody is going to have to pick that cost up, whether it's like Colorado where you have a county fire department and so the county forms one big fire department and they have a career staff located in a central spot. So in York, Nebraska, so if it's in York, Nebraska, is the central county fire department spot, my farthest town away or my farthest corner away from my county is 13 miles. And so if you have a heart attack from that centralized point, because that's how we're going to centralize and pay for not having volunteer fire services, I have wasted, at 60 miles an hour, 13 minutes to get to you. And brain death occurs approximately after 5 minutes. So if you call me and you're nonresponsive and nonpulse and nobody is doing CPR, instead of calling me you should call the local mortuary. And so that's my major concern. If you look at...and I think there's going to be other people that are testifying we are aging. The volunteer fire service and rescue service is aging. And unless you as senators or somebody does something to help bring that aging group down through incentives or paying or whatever it takes, I don't look for it to get better.

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And then the other economic issue is, Senator Hansen spoke about, what used to be if you had a quarter section of farm ground, you were a big farmer. Now we have farmers farming thousands of acres with just two or three hired guys. And so the farm with six kids has long gone away and so there's less people to draw from, so we need to have some sort of incentive to recruit these people into the service. [LB440]

SENATOR HADLEY: Thank you, Mr. Lundy. We appreciate your service. Thank you very much. Could I have a show of hands of how many more proponents there are? Okay, remember, there's nothing wrong with saying that we agree. Come on up. (Laughter) [LB440]

\_\_\_\_\_: You said midnight. (Laughter) [LB440]

SENATOR HADLEY: Thank you, sir. [LB440]

BILL DEREMER: Yes. My name is Bill Deremer, B-i-l-l D-e-r-e-m-e-r. I represent the Utica Volunteer Fire and Rescue Department. I've been on the Utica Fire Department for 44 years. Our rollcall is 28 members right now. We're allowed 35. And in the last two years we've went from 33 down to 28, and it don't look like it's getting any better. The deal with employers not letting the members go on calls, we don't really have that problem. We've got one employer that requires a second or a third call before his employer can go, but I've got one employer that has five employees and they can go whenever the call comes in. So that has not been a real problem for us. But the thing that is really my problem is I've got seven members of my department that are 70 years of age or older. Nine of them...nine that are 60-70 years of age. And guess where that falls on me? And so that don't leave me a lot of 50-, 40-, 30-, 20-year-olds, you know. And it's getting harder and harder to come up with the new members. We've...our department has spent about \$1,200 since the first of the year on recruitment and retention. We're going to do another push here in another two months or so, probably another \$1,200. And this money is all coming from money that we have made, or like street dances, fund-raisers; it's our own money. And we're trying to get people to join the department, that you don't pay them and you give them a half a chicken a year for the chicken barbecue feast--so that's great pay. And then you also require them, like it was on this past Sunday, we was in the middle of that big calamity out there on Interstate 80. There were four departments out there, and I think everybody had their maximum amount of people out there. You stood out there for...I think we were out there for three or four hours, something like that. And the traffic wouldn't slow down in the eastbound lane. The westbound, no problem. Too many trucks all cracked up there, so. It's real hard to ask somebody to come join the department, take 180 or so hours to be an EMT, plus every year you've got to keep your hours up. Then also if you're on the fire side of it, you've got to keep your hours up in the fire side. That is not that bad, but we require 12 hours a minimum a year, which is not that hard to get, but it's still 12 hours away from your family. And my young people don't have the time away from their

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families, and my old guys, they ain't going to do it. Any questions? [LB440]

SENATOR HADLEY: Any questions? Thank you so much. We appreciate all your help. [LB440]

BILL DEREMER: Thank you. [LB440]

SENATOR HADLEY: Next proponent. [LB440]

AUSTIN BRAKE: Good afternoon, Chairman Hadley and members of the Revenue Committee. My name is Austin Brake, A-u-s-t-i-n B-r-a-k-e. I am a firefighter paramedic for the city of La Vista, and currently hold the rank of lieutenant there. I also...I work as a paid paramedic for the city of Plattsmouth, Nebraska. I am here today to speak in support of LB440, and I do agree with all the previous testimony that has been presented today. A brief little background on the La Vista Fire Department. We are a 61-member department, one of the largest departments in the state of Nebraska. We currently do have a 10 percent call response for our line members and a 15 percent call response required for all of our officers, lieutenants, all two of our captains, our district chiefs and our assistant chiefs. We serve a population of a city of less than...just about 20,000 people. Over the past year, in 2012, we had 1,257 calls, and this year we're on track to serve just over 1,400 calls, which is about three to four calls per day. We require our volunteers to spend at least 12 hours per week at the station. We hold an ISO rating of 3, which I'll touch on just a little bit later. And an ISO rating of 3...about 3.6 percent of the nation's fire service holds that ISO rating, which stands for insurance service organization, and it's a rating of scale of 1-10, 1 being the best protection you can have for your city and 10 being no protection at all. Moving on, obviously, as has been stated before, recruitment and retention of volunteer firefighters, EMTs, and paramedics is a struggle across the country. And currently, many volunteer departments across the state, including mine, which is the La Vista Volunteer Fire Department, does not provide any incentives to their volunteers, such as compensation or financial incentives, at this time. The \$5,000 accidental death and dismemberment coverage that is mandated by the state, we can't cash in on unless we die. So unfortunately none of us really want to touch that. I'm here today as...for two different angles. One, I come from a suburban fire department which many of my colleagues here today are from rural departments, and I'm also quite a bit younger than all my colleagues here today as well. Sorry, boys. But, you know, I hate to say that the volunteer service is a dying breed; however, there needs to be more people like myself, and that is something that I am here today to speak with you, because that's something that you can take direct action today in changing. This...speaking along the lines of a suburban department, I'm also going to bounce around here a little bit and answer some of the questions that were previously presented. Within the Omaha metro area the suburban, the suburban departments that cover that area that are volunteer, include La Vista, Ralston, Gretna, Springfield, and Boys Town, just to name a few. And many of those cities do fall either

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within Omaha, (inaudible) for Douglas County, one (inaudible) from Sarpy County. In many of those departments their mutual aid agreements do help out paid departments, such as Papillion, Bellevue, and Omaha, through mutual aid. So as a La Vista firefighter, you can see my engine or my ambulance within Omaha answering any calls that the need is required. So just because, as a resident of Omaha, it doesn't mean that I can't receive medical treatment from a volunteer firefighter that has the same training. A bill like this will also provide economic development. You're the Revenue Committee so this is something you'd like to hear. As a stronger volunteer department, it's appealing to businesses that are interested in moving into a city. Within the La Vista...with the city of La Vista, we have a couple Fortune 500 companies, including Cabela's, Yahoo, and PayPal. These companies move in to our city not only for many different reasons that I'm not going to waste your time here while I speak about it today, but one of them being, what is their protection going to be? They have to look out for, obviously, insurance reasons of what type of money are they going to be spending. And that all comes down to ISO ratings. Again, along these lines with economic development, an increase of volunteers and retention of those volunteers, either new or old, will aid in the process used to determine ISO, or insurance service organization, ratings. Going along those lines again with the way that the current LB440 is written, in order to get the maximum of 100 or a minimal 50 points required, it is increased training and increased responses which also help in the aid of raising one's insurance service organization rating, which is more appealing to businesses to move into a city and create more jobs. I also do want to answer a couple more questions here and then I'll yield the remainder of my time for any questions that we had. Senator Hansen, you did ask about required number of hours for classes. An EMT is currently required to spend 200 hours or six months in class; a paramedic is about 2,000-plus hours or one year of training; and a firefighter is about six months. Continuing education for an EMT is 24 hours per year and a paramedic is 60 hours. Runs usually in a suburban area can last anywhere from an hour to two as an EMS run. And fire calls, of course, can...you know, and no fire calls average, you can spend anywhere from a couple hours to, you know, up to eight or ten hours on a fire call depending upon what it is. And as far as Senator Schumacher, paid guys receiving a tax credit, as a paid paramedic for the city of Plattsmouth--and I will wrap up here as soon...as a paid guy for the city of Plattsmouth, there I can write off uniforms and other things of that nature. So just because paid guys already have tax credits that they have access to, it's a brotherhood that we have in fire service and they are going to be more and willing to see the volunteers survive in that brotherhood and receive a tax credit that they have. I'll answer any questions you guys do have. [LB440]

SENATOR HADLEY: Any questions? Seeing none, thank you so much. We appreciate your service. Next proponent. [LB440]

TOM HAMERNIK: (Exhibit 22) Good afternoon, Senator Hadley and the rest of the Revenue Committee. My name is Tom Hamernik, H-a-m-e-r-n-i-k. And I'm a volunteer

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with the Clarkson Fire and Rescue, and I'm also a member of the Nebraska State Volunteer Firefighters Association's legislative committee. I will not read all of my testimony. Much of the things are repeated from the other speakers, but I will explain the acronym LEOP, L-E-O-P. It's the local emergency operations plan, and it is a state requirement to develop an emergency action plan for your county and requires the involvement of your fire and rescue services. I didn't explain that acronym. As a fire chief, recruitment and retention is near and dear to my heart. Currently, just to give an example, I have a new young man that just joined my fire department. Extremely sharp. He's an elementary ed graduate from Wayne State College. He's going to be getting married later this summer. I'm trying to get him involved. I'm trying to get him into a Firefighter I class, which is about 100 hours. I know he would love it. I know that he would do a great job for us. He's a real thinker, and so I know that he would be a great asset to our community. But I think he's wondering about that commitment, because he sees some of the active members of our department and what the cost is to them and their time. And so he's going to have to weigh that out and decide if that's right for him; but I'm sure hoping that I can convince him. And I spend a lot of time talking to people about the fire and rescue services, trying to get them to understand that it's a tremendous service to your community and there's nothing better than one could do within your community. The volunteer fire service in Nebraska is not a very strong lobby. We have a limited amount of money and even more limited time. Most of us, today here, paid our own expenses to get here and took time off of work to do it. So I think it's...we're not the same kind of a lobbying group than you're probably used to. I spent some time this past weekend reviewing our department secretary's attendance records. Only about one-fourth of our 42 members would qualify for the credit. Our department has always done a great job of recording attendance, recording leadership roles, recording who takes part in what fire prevention activities and training. And maintaining an accurate list for the point system would not be a problem. And as the fire chief, I would certainly take responsibility and I know my rural fire board would take responsibility for making sure that that point system is applied accurately. And I really believe that that is a genuine system. I think it puts emphasis where it needs to be, and I believe it would make a significant difference within our department for the people that are not active or as active as they could be. I do understand the precedence of granting a tax credit. There are other deserving folks. Where do you draw the line? Senator Schumacher is my senator and he asked the question: Where do you draw the line? Well, you're all leaders here. I've been a school board member for over 20 years in my local community; many of those years, president of my school board. I've been an assistant chief for 20 years. I've been a fire chief for four. You find a position that you can live with, that you can support. You take a stand on it. You listen to folks, and sometimes you take some heat. That's what being a leader is all about. You guys know that and ladies know that. And that...I think you can draw that line, and I'm comfortable that if you understand the situation, you understand what's at stake, you'll put the volunteer emergency responders on the right side of that line. I do sincerely appreciate all of your contributions to the state of Nebraska. I think the Unicameral is a very unique

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system. It works well, and I sincerely appreciate your part of it. So with that I'll answer any questions that you might have. [LB440]

SENATOR HADLEY: Thank you, Mr. Hamernik. And are there questions? Senator Schumacher. [LB440]

SENATOR SCHUMACHER: Thank you, Senator Hadley; and thank you, Tom, for coming down today. Do you know how the \$500 number was arrived at? Why not \$250 or \$1,000? [LB440]

TOM HAMERNIK: I do not know, other...I've asked that same question, because in my mind is \$250 better than nothing? I'm not sure. It has to be a meaningful amount, and I know how many hours are donated. My son-in-law is our rescue captain. And our city, like Kearney, our little town of Clarkson, we have a tremendous amount of autonomy to run the fire and rescue service. Our city clerk doesn't want anything to do with it. Our rural fire board doesn't want anything to do with it. They want the service, they'll support us, but they do not want the hassle and they do not want the responsibility. And so not a single paid hour goes into running that department, including a rescue squad that answers 120 calls a year. And we do bill for our calls, and that money that we receive for those calls pays for our supplies, pays for our ambulance, covers our expenses. [LB440]

SENATOR SCHUMACHER: Thank you. [LB440]

SENATOR HADLEY: Any other questions? Senator Harr. [LB440]

SENATOR HARR: Thank you, Senator Hadley. I guess my question is if you do the fiscal note, \$6,300, \$6,400 (sic--\$6.3 million, \$6.4 million) and you divide that by \$500, and it works out to about \$12,500. You talked about half of your volunteers probably don't qualify for the \$500. Is it...I mean, don't have a feel for how many volunteer firefighters there are out there? [LB440]

TOM HAMERNIK: I think earlier we heard there are about 12,000 volunteers, and the easy way to figure the fiscal note was just multiply that times all of them. [LB440]

SENATOR HARR: Yeah. [LB440]

TOM HAMERNIK: And my experience is, is that that number is much lower. But I think Jerry... [LB440]

SENATOR HARR: Yeah, that's what I'm getting at. What do you think is probably a more accurate number, based on your experience and knowledge? [LB440]

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TOM HAMERNIK: Sixty percent. [LB440]

SENATOR HARR: Sixty? Okay. [LB440]

TOM HAMERNIK: And we're going to hear from Jerry Stilmock a little bit later on trying to adjust those numbers a little bit. [LB440]

SENATOR HARR: Okay. Thank you. [LB440]

TOM HAMERNIK: The question of employers came up. My family's company owns Bluebird Nursery. My three brothers and I, or my two brothers and I and now a nephew, are all EMTs, and I have two firefighters that work for me that drive our ambulance for us. Last year, over half of the daytime rescue calls were all all-Bluebird crews. So that's pulling three people out of business, no matter if we're busy or not, making those calls, because those people who have that medical call deserve that timely response. That's a fact of life. And I'm fortunate that my father started this before me and created that level of commitment within our community. There's a tremendous amount of pride within the fire and rescue service that we take care of our community. Regardless of cost, we are going to take care of our community. [LB440]

SENATOR HADLEY: Thank you, Mr. Hamernik. Any other questions? Thank you. We appreciate all your volunteer work. The next proponent. [LB440]

JERRY STILMOCK: (Exhibits 23 and 24) Good afternoon, Senators. Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters Association and the Nebraska Fire Chiefs Association, in support of LB440. Three quick points. The fiscal note--the maker or breaker. If I may...thank you, sir...2007, LB264 fiscal note. Was it the number of volunteers that increased? No. It's still 12,500. We're still looking at that same number, somewhere between 12,000 and 13,000. Was it the amount of the tax credit? No. It was \$500 that was requested. It was Senator Dubas' bill. The fiscal note? Two million dollars. So why...why do we have a fiscal note that has 100 percent participation at a \$500 tax credit to blow the fiscal note out of the water at \$6.2 million, \$6.5 million? I don't know. But I wanted you to see, in addition to the testifiers, you have somebody else that prepared the fiscal note, Mr. Rippe, back in 2007: \$2.5 million. Fiscal notes, who knows the reason? Number two, the point system. The point system contained in this legislation, LB440...and I'd be remiss if...I know...I believe Senator Gloor has left the room, but thank you, Senator Gloor, for introducing this legislation. The point system was established by a statewide group. Legislation was adopted in 1999. It called for a nine-person board, members from each of the congressional districts. There were three hearings, one each in each of the congressional districts. The point system then was...during that interim study was reviewed, chewed up and looked at, and was finally put into legislation the following year in 2000. Actually in 1999 the study was conducted and then the point system was

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put in place. Why the point system? The idea was, at the time, to have a statewide retirement program, and so we built the point system. Their funding source fizzled. There was not the support by the...although we were pretty close...but upon the basis of the Governor's veto, the statewide retirement mechanism for the volunteer firefighters was set aside in terms of funding, and it was left up to the communities to do it. There's about six, seven communities in Nebraska that have actually retirements for their volunteers using this same point system. I believe those volunteers are easily going to be able to implement that system. The last item, item 3--page again, please--the Nebraska State Volunteer Firefighters Association contracted with the Consortium for Organizational Research and Evaluation at the University of Nebraska at Omaha. Mr. David Drozd is one participant in the team of three. The other two are Jerry Deichert and Professor--all professors--but Robert Blair. The other two gentlemen were here. They left for evening classes. Mr. Drozd is going to come up and try to testify, if there's time, in a neutral position. But the idea of presenting the study to you is to let you know the economical impact, the fiscal impact, by volunteers in the state. The low end...number one is the data. And Mr. Drozd showed up with the data. The data is based upon reports submitted by volunteer departments to the State Fire Marshal's Office. One of the things that jumps out is, is not all of the departments have reported. So he, Mr. Drozd, and the other two gentlemen, can only respond to the data that they have. On the short end of the spectrum, \$5 million annually contributed by volunteers. What does that really mean? All it is, is it's the number of hours that have been documented, kicked out at \$20 an hour. Is there any career firefighter/EMT person in our metro communities that would work for \$20 an hour? No. You have to add on benefits, vacation, multiple shifts, etcetera. So as you look at a number of the low end of the scale, \$5 million, the high end of the scale, about \$12 million annually supplied by volunteers, the defensible position that the gentleman put in the study was \$8.6 million annually supplied by volunteers. What was the one item also that jumped out in the study? Volunteer department, 76 percent fighting with the recruitment of new firefighters. And generically...I want to be clear to the committee, firefighters generically is a term that means both firefighters and rescue personnel. So when I say firefighters, please understand that I'm saying volunteer firefighters and volunteer EMTs, because in so many departments they go hand in hand. So many of the people that testified already, they may say firefighter but they're actually...they're doing both services. One final point...those are my three main points. One final point in terms of questions. Nebraska is one of the few states that does not have a paid fire department...a paid fire suppression. Where would those paid firefighters go? The state of South Dakota. I look at South Dakota as a smaller, less population, etcetera. They have 40 paid career firefighters that go out and stay...may I conclude? [LB440]

SENATOR HADLEY: Yes. [LB440]

JERRY STILMOCK: Thank you, sir. They respond to state fires. We spend so much money in this state encouraging people to visit our state parks, visit Mahoney. Who



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responds to Mahoney? Ashland, a volunteer fire department. Who responds up and down I-80 from Omaha to Lincoln? Volunteers. Who responds to Chadron State Park, another state park? Volunteers. Who responds on the I-80 system from Lincoln out west? Volunteers. If the issue is the fiscal note, I'd ask you to consider what was presented to this committee in 2007, and that was \$2.5 million. Senators, thank you. [LB440]

SENATOR HADLEY: Questions for Mr. Stilmock? Mr. Stilmock, I...the one thing I guess I wrestle with, and it goes back to what's the role of the cities and counties in funding a volunteer fire department. Because that's...they're basically getting the benefit, right? The citizens of the counties that have volunteer fire departments, they're getting the benefit of that. So what should be the role of them versus the state in funding something like this? [LB440]

JERRY STILMOCK: One response, Senator, would be 500,000 acres of wildfires last year. That wasn't on one community. That impacted the breadth of Nebraska. Nebraska is being billed \$12 million in order to respond to those fires, and the communities put together the hub. The community's responsibility, we believe, are to put together the hub of the service. But beyond that is, does that mean then, outside the borders of Syracuse, where Highway 50 and Highway 2 go, it was looked upon that Highway 2 needed to be expanded to a 4-lane instead of a 2-lane in order to...the free flow of trucking and on and on and on. So who does that fall upon then when that happens? We have increased traffic. Increased traffic means increased accidents. Increased accidents mean increased fatalities and looking at gruesome things. And so we pull in the smallest of the departments responding to Highway 2 from Nebraska City to Lincoln. Sure, the community of Unadilla, the community of Bennet, the community of Palmyra, they put together the hub, but the hub expands beyond and goes on to the state highway system, the state park system, and these megafires that we're confronted with. So yeah, I think if the role of...if you look at the role of the state government to provide public safety, infrastructure, and governance--my priority listing, not yours perhaps--but this becomes a state issue, sir. [LB440]

SENATOR HADLEY: Okay thank you. Thank you. Other questions? Seeing none, thank you, Mr. Stilmock. [LB440]

JERRY STILMOCK: Thank you all. [LB440]

SENATOR HADLEY: Next proponent. [LB440]

BRUCE RIEKER: Senator Hadley, members of the Revenue Committee, my name is Bruce Rieker, B-r-u-c-e R-i-e-k-e-r, vice president of advocacy for the Nebraska Hospital Association here in support of LB440. I have learned a great deal from the testimony that proceeded, but I want to talk about the work force shortages. They've

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outlined the graying of the volunteer population that is providing this service, and those demands continue to grow as the demand for the services continues to grow with the graying of our population. This is about stabilizing our provider network and it's incenting...I appreciate the fact that this is an essential life service that we're talking about incenting. And when you look at the fiscal note, whatever it may be, and my hunch is that if it's 6,000 volunteer fire and rescue workers that qualify for the tax credit, then we have a \$3 million tax fiscal note. That is a small price or price for the state to pay in exchange for the volunteer services that they provide. If you look at those numbers and if the pressure were on the counties or the cities or even some suggest that this is the responsibility of the hospitals to absorb this, is that it becomes a service that our nonprofit community hospitals are supposed to provide. It puts increasing pressure. And Senator Hadley, I appreciate your comments about Good Samaritan in Kearney with the mounting financial pressures looking at the cuts that are coming from Washington, D.C. It's going to be harder. It's going to be more difficult all the time to provide some of these. I don't know what it would cost to replace that number of volunteers, looking at the work force requirements, if we paid them as one witness talked about at the level that the Omaha firefighters and rescue units are compensated. We'd probably be well over \$100 million to compensate those 6,000 people that would be earning these credits. But whether that pressure falls on hospitals, the counties, or cities, we urge the committee to take a serious look at this and advance this measure, because it truly is a small price to pay for the volunteer efforts of so many people, so many thousands of people across the state. So we want to support our partners in this particular effort. [LB440]

SENATOR HADLEY: Are there questions for Mr. Rieker? Senator Schumacher. [LB440]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Again we see that the deal that we are trying to socialize the expense of these things and fund them out at the state level. To the extent that this is a part of a local health system, which is basically what it is, and to the extent that people may be incentivized by \$500, give or take, to participate, is there a way that local hospitals could give to somebody who is a certified volunteer the first \$500 worth of service, free? [LB440]

BRUCE RIEKER: Well, there's probably a way. But I'll share with you a couple of the financial pressures that are real already. Because of healthcare reform and the cuts that have come in Medicare since 2010, our hospitals, the 89 hospitals we represent, stand to lose--will lose, it's already in law--\$1.25 billion in Medicare reimbursements. And what that means is it's a little bit over 8 percent reduction in Medicare reimbursements. If we have hospitals that have a 4 percent margin, return on investment, that just erased it. And so we'll put more pressure on what areas of care we provide that are subsidized. There are only certain areas of care that we make money: cardiology, orthopedics, some of those things. But we subsidize trauma care, neonatal care, burn units, and to some extent for those of our hospitals that have paid EMT staff--and we do have some

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hospitals that have that because the responsibility has been put on them to do that. They're going to have to take a serious look at whether or not they're going to be able to continue to provide those services or to at what level. There are also, on top of those cuts, there are another \$672 million that Congress is considering right now, and that's just in the Medicare arena. So we could be looking at a reduction of somewhere in the neighborhood of 12 percent...11 or 12 percent in Medicare reductions per year, starting now. So the financial pressures exist there just as they exist on the states to fund all of the competing interests. We...some of our hospitals could do that. This is not something that we have testified to because we're not sure of the numbers yet and there's a lot of moving parts. But when you were considering LB405 and LB406, there were a few hospitals representatives that indicated that because of healthcare reform, one in six hospitals will close across the country. I'm not here to say that one in six in Nebraska will, but a significant number of our hospitals, unless they change what they're subsidizing, will be put in the red because of the cuts coming from the federal level. So the pressure is, it's going to be very hard for us to absorb this, but if this is what we need to do, and 30 of our hospitals...no, excuse me, 39 of our members are already municipally controlled, including Fremont. But there are 25 of them that are county hospitals, and the other 14 are either hospital districts or municipally controlled. They're going to turn around and they're going to be looking to their city, their county, or this hospital district to help them with that financial assistance. So that's a long answer to say it's...\$500 sounds small but it's a big deal. [LB440]

SENATOR SCHUMACHER: How much do the hospitals bill out a year in Nebraska? [LB440]

BRUCE RIEKER: How much do hospitals bill out? Our net patient revenue...what do you bill and what we're paid? [LB440]

SENATOR SCHUMACHER: Well, what you collect. [LB440]

BRUCE RIEKER: Okay. Our net patient revenues are \$4.7 billion. [LB440]

SENATOR SCHUMACHER: So a little bit more than what the state bills out. [LB440]

BRUCE RIEKER: True. We're a big fish. There's no doubt about it. But if you want me to go through what we provide in charity care, I'll be happy to do that, but that's \$1.1 billion per year that we absorb based upon what Medicare, Medicaid expect us to eat. We lose 26 cents on every dollar of care we provide for Medicaid. I can go into the list of what the state hands us for the bill, so. [LB440]

SENATOR SCHUMACHER: Thank you. [LB440]

SENATOR HADLEY: Any other questions for Mr. Rieker? Seeing none, thank you, Mr.

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Rieker. [LB440]

BRUCE RIEKER: Thank you. [LB440]

SENATOR HADLEY: Next proponent. First opponent? Neutral. Welcome. [LB440]

DAVID DROZD: Thank you, Senator Hadley and members of the committee. My name is David Drozd, D-a-v-i-d D-r-o-z-d, and I represent the University of Nebraska at Omaha who conducted the study for the State Volunteer Firefighters Association, and I'm here to testify in a neutral position and give you some of the details on that particular study. So the study had multiple parts. I'll hit the highlights. Part 1 was the economic impact. What we did is we utilized the last five years of departmental response data that was prepared and provided to us by the Nebraska State Fire Marshal's Office. They provided that specifically for departments that were listed as being comprised of mostly or all volunteers; so we were able to get specifically to the volunteer impact. We basically found the average number of events that they respond to in a given year, multiplied by the average number of man-hours that each event requires. We did separate and categorize these by types of events, such as structure fires, outside fires, EMS. We did that to be as accurate as possible regarding the number of man-hours needed and the number of events that would occur. So that led us to getting the value of the total hours provided on average annually, and that figure comes in at about 287,000 hours from volunteers. We utilized the standard \$20-an-hour rate based upon what we found from Bureau of Labor statistics for career firefighters regarding their salaries only, not benefits but salary, as well as a site that gave average volunteer time in a dollar value. It came out about \$20. So if you multiply that across the board what we can prove from the reporting is a \$5.7 million impact to the state. However, only about half of the volunteer departments provide their reports to the State Fire Marshal's Office. So therefore, we know that the impact is more than that. We could just simply double it up to \$11.5 million, but we backed that off in our official call, given that we want to be conservative. There could be differences between nonreporting and reporting departments, so we basically split the difference, averaged those two values, and came up with an \$8.6 million per year annual impact. The second part of the study was a survey that we did on-line for volunteer fire chiefs as well as city managers and administrators. We had 147 responses, which is a very good response from that, and that showed us some general items, such as more than 70 percent of respondents said that they needed to recruit new firefighters and that was having a large or very large impact upon their fire fighting responsibilities. There were a couple other things that I jotted down that came up in questioning. Secondly here, 20 percent of respondents specifically mentioned that they did not have enough daytime volunteers or that they were not able to leave work as a primary issue that they face regarding fire fighting. Okay, so that's 1 out of 5 participants there. When it came to the issues that they mentioned, almost half of those responses related to membership style issues such as aging, interest in volunteering on the decline, or a general lack of manpower. Regarding

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other burdens, 64 percent said that they had a high or very high burden to take off work to attend training. Okay. And then there was a third statement that we kind of asked about, and 78 percent of respondents agreed or strongly agreed with the statement that as the economy has generally weakened the last couple years, that volunteer firefighters have seemed less likely to take off work to attend volunteer activities. So those were some of the things that came out from the survey. And finally, as part of the survey, we also asked questions regarding the response to the 2012 wildland fires. We found that half of the departments who responded had a member or multiple members respond to the wildfires. Those that did send members to fight the wildfires, on average they sent half of their force. And most importantly, of those who responded, half were not fully compensated for their time; so they basically responded out of the dire need of the situation and out of the good of their heart. The questions allowed us to give a calculation for the dollar impact of the response to the 2012 wildfires. Utilizing the measures that came out at about 123,000 hours, and again using a \$20-per-hour rate, came up at about \$2.5 million, which, you know, if you have a major event like last year's wildfires, that would be in addition to the \$8.6 million that would kind of be the average year. So that gave us the 2012 volunteer wildfire response. And those are some of the main findings from the survey, so I'll open it up to your questions on that study. [LB440]

SENATOR HADLEY: I just have one and I obviously haven't had a chance to read it, but one number I guess really jumps out at me, that it's only valued at \$8.6 million and we have a bill that has a fiscal note of \$6.5 million. [LB440]

DAVID DROZD: Right. Well, again, several others have talked about the fiscal impact of the bill being perhaps a lot less for those who qualify. However, you know, that \$20, the nice thing about the study as you see it, if you add in benefits or have a way to find, well, what is the true overall value, if it's, you know, \$20 is I think can be accepted, it could be higher than that depending on the things that they want to promote, and, you know, life insurance is a benefit not included in that, and other types of...you know, if they truly had to be a paid force, I think that would be considerably...so you could multiply across and come up with a number. But that was our best shot at it. [LB440]

SENATOR HADLEY: Senator Schumacher. [LB440]

SENATOR SCHUMACHER: Thank you, Senator Hadley. And thank you for your testimony. In any of your surveys, whether this one or other things that you've done, the impact on volunteerism when you introduce an element of cash compensation, which is what this is, does volunteerism go up or down among the people who don't qualify for the cash? [LB440]

DAVID DROZD: Well, I would have to assume that any time that you have a financial incentive, that people will respond accordingly. So while there are some people who

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might not have the level of points needed to qualify, an incentive might get them to attend a few more meetings or a few more trainings or, you know, find a way to get out of work so that they can respond to the event and provide that service as the situation requires. So, you know, people respond. We see it in other tax policies where, you know, changes in one thing, in one state, will lead to changes to people's migration decisions and whatnot. So people do respond to the incentives that are provided. [LB440]

SENATOR HADLEY: Thank you. Any other questions? Thank you. Again we always appreciate your statistical work and UNO. Thank you very much. [LB440]

DAVID DROZD: I hope you enjoy reading the survey and study. [LB440]

SENATOR HADLEY: Any others in the neutral? Senator Gloor, do you wish to close? He waives closing. Okay, with that, we bring LB440 to a close. And Senator Krist I believe is here. Is that correct? Senator Krist, welcome. [LB440]

SENATOR KRIST: Thank you, Senator Hadley. Do you want me to proceed? [LB474]

SENATOR HADLEY: Yes, please. [LB474]

SENATOR KRIST: Okay. [LB474]

SENATOR HADLEY: We'll get started, yes. [LB474]

SENATOR KRIST: (Exhibits 25-29) I had about five pages of prepared introduction, and I think in the interest of time and fairness to you, you've had a long day, I'm just going to cut to the chase of where I'm at. Good afternoon, Senator Hadley and members of the Revenue Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha and the north-central portion of Douglas County, including the town of Bennington. I appear before you today in introduction and support of LB474 because the Legislature needs to further define what an occupational tax is and what it is not, how it should be used, and when it should require a vote of the people. I'll save you the details on how I got to this point, but I want to thank Senator Cornett for allowing me to use your Revenue Committee staff during the interim. I want to thank all the people that participated in four roundtable discussions trying to build this bill. I think we've done a lot of the work that probably the committee will end up following forward with, maybe next year during your study, as I understand your intention; and I fully support that. But this is a subject that needs to be addressed. Occupation taxes, in my opinion and in others' opinions during the roundtable discussions is not uniform across the state, being misused in very many places. And more importantly, I'm here representing the people that are tired of having taxes put on them without a vote. So I would just like to walk you through the bill, if you would,

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please. If you can...if you'd like to, you can refer to your green copy. Section 1 through 3 has to do with the NRDs. After further review, I have prepared for you an amendment to the proposed bill. It's AM593 and I would be happy to give you a copy for your look-see. This one eliminates, strikes Sections 1-3 of the green copy. We found, after a lot of discussion and a lot of investigation, that the NRDs are doing it right. We gave them the taxing authority. They're out there doing it right. They're collecting it right. And, of course, then the Supreme Court said on that particular issue the way that they're doing business, they're also doing it right in the court's opinion. Section 4 eliminates provisions in current law that will not apply. Section 5 clearly defines taxing authority other than occupation taxes, so it's looking at other possible tax authority. Section 6 adds back into the statute clearly, clearly defined operational tax provisions. It specifies that tobacco and alcohol are off the table for the political subdivisions. Alcohol already has in statute a limitation for maximum taxation of twice the state rate. So the political subdivisions can now put a tax rate on alcohol at twice whatever the state tax is. So if you have a \$300 tax to the state, the city can put on another additional \$600 for a total of \$900. At one point, one of our political subdivisions decided, well, that's what the statute says; I'm just going to call it a fee so I can add on whatever I want to. That's not the intent of the statute and this section clearly defines that that's not the intent of the statute. Any monies, fees, or taxes cannot exceed twice the state rate. Tobacco--off. It already has an excise tax on it. Section 6 also clearly defines and specifies there is no point of sale collection that should be made in accordance with an occupational tax. That's on page 10, lines 20-23. The definition of an occupation tax and how it is collected, according to Black's Law Dictionary: an occupation tax is an excise tax imposed for the privilege of carrying on a business, trade, or profession. For example, many states require lawyers to pay an occupation tax. So for the privilege of doing business, you are taxed. For the privilege of occupying a particular sewer system, hotel room, you are taxed. But this bill in Section 6 says that there will be no point of sale taxation. By that I mean when you look at your receipt when you walk out after you have eaten in the restaurant or stayed at the hotel, clearly, if they have taxed by city tax and they have taxed you with an occupation tax, guess what happens? When the state comes in and puts its tax on the bottom line, it's a tax on a tax. That's not the correct way to, in my opinion and in others' opinion, not the correct way to collect it. I've had discussions with many mayors in the roundtable discussions, and I think it's possible for them to collect the tax on a monthly basis, a quarterly basis, a semiannual basis, that would have to do with the occupation of said rooms or facilities. So it's a matter of collection not of the tax being inappropriate. Section 6 defines the mode of proposing taxes, and that's page 11, beginning with line 5. And it prescribes an election method that should be used in accordance with the Election Act. It seems to me like it's taxation without representation if you don't go back to the people and ask them, do you want to fund this project? Case in point: Lincoln did it right. They went to the vote of the people: We want to build a facility; we think it's the right thing to do. They voted on putting the bond in place, and with the bond they clearly defined how they're going to collect--and they are collecting at point of sale. But it was inferred and it is implied by the vote of the

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people that they wanted to do that. Any other way, just by a political subdivision's elected folks, it should not happen. This comes also from a point where Columbus, Grand Island, and Omaha have all gone to the vote of the people and they have refused to do what their elected officials want to, but the elected officials put the tax in place anyway--which I think is one of the reasons that I am here. If no election process reemphasizes the limits imposed, if you remember Senator Fischer's bill last year, LB745, if you don't go to a vote of the people, you clearly have to have a cap. In the case of Omaha, it's \$6 million. Section 6 also prescribes the need for an adjustment of the cap. If you get more than \$6 million the first year, you need to adjust for that in following years. So if your goal is to make \$36 million, then..and you get \$7 million the first year, in the second year you would adjust your taxation rate so that you wouldn't exceed that. Again, a specific purpose for a specific time and a \$6 million cap. That's on page 12, lines 15-21. The bill also gives phase-in parameters. That's on page 13. And I do have an amendment that talks to that, that I will talk to you about in just one second. The first amendment that I handed out to you needs to go on any action that we take in the Legislature. The NRDs are doing it right. So Sections 1-3 need to come out. I was prepared to give you an amendment today that would have changed the dates on page 13, lines 16-21, to allow for the city of Omaha to go out to 2020 in order to make their commitment good to UNMC. I specifically asked the council president, if they change the ordinance, amended the ordinance, I would put the amendment in and change it to allow them to do that. They refused. So I am here presenting this bill which would say that if you're doing anything that you're not supposed to be doing, you need to cease and desist by January 1, 2015. That gives the city and anybody else who is in a situation to do that about a year and a half to correct or find something else to tax without going to a vote of the people. Or better yet, 2013 is an election year; go to a vote of the people. That's it in a nutshell. I'd be happy to answer any questions. I appreciate your consideration. I know it's been a long day, and... [LB474]

SENATOR HADLEY: No, we're used to them. Senator Krist, we're used to long days here. Are there questions for Senator Krist? I have a question, Senator Krist. You know, I was involved, as we all were last year, when the occupation tax. We probably didn't do a very good job of specifying how they were going to arrive at their...how much was going to be raised by the tax. Is that a fair statement? [LB474]

SENATOR KRIST: There are two things we didn't do very well last year, and I would agree. One is they need to do their due diligence. The city of Omaha, for example, on tobacco tax, started out at 7 percent. It was the industry standard and others who came to testify to say if you go 7 percent you will exceed the \$6 million. The second thing we did wrong is we didn't say if you exceed that money on your cap, how do you make up for it with that period of time? And that is in this bill as well. [LB474]

SENATOR HADLEY: Okay. I would agree with that, because if...it's just kind of sticking your finger in the air and saying we think this is going to raise \$5,900,000, and it raise



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\$12 million. It's a pretty good deal for the city that implemented that particular occupation tax. [LB474]

SENATOR KRIST: And there are some cities around this state who have made it a habit of putting a tax in place, getting more than what they intended to, and saying, oh goody, we have more money, so. [LB474]

SENATOR HADLEY: Other questions for Senator Krist? Thank you, Senator Krist. Are you going to stay for closing? [LB474]

SENATOR KRIST: Absolutely. [LB474]

SENATOR HADLEY: Okay. [LB474]

SENATOR KRIST: Thank you. [LB474]

SENATOR HADLEY: First proponent. If you are going to testify, you can move to the front. We don't bite much. [LB474]

SENATOR HARR: This isn't church. [LB474]

SENATOR HADLEY: The A students are always the one in front. Welcome. [LB474]

KATHY SIEFKEN: Good, not quite evening. I don't know if I'm doing this right, because I've never quite done it before. Jim Otto was intending to testify in support of LB474. He had to leave, so he gave me his green sheet. That's Jim, J-i-m O-t-t-o, in support of LB474, and he represents the Nebraska Restaurant Association and the Nebraska Retail Federation, and they would like to go on record as being in support of the bill. [LB474]

SENATOR HADLEY: And now you would like to...? [LB474]

KATHY SIEFKEN: And now I would like to testify. [LB474]

SENATOR HADLEY: You'd like to testify in support yourself, is that a fair statement? [LB474]

KATHY SIEFKEN: Yes, I really would. [LB474]

SENATOR HADLEY: Okay. We will certainly listen to you. [LB474]

KATHY SIEFKEN: So I hope that didn't eat into my five minutes. [LB474]

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SENATOR HADLEY: Okay. [LB474]

SENATOR HARR: Reset. [LB474]

KATHY SIEFKEN: Senator Hadley and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today representing the Nebraska Grocery Industry Association in support of LB474. And we would like to thank Senator Krist for bringing this bill. As a matter of fact, we strongly encouraged him to bring this bill and we were part of the roundtable that he referred to earlier. When we met over the interim, it was the consensus of that organized group that we did not want to harm the communities that are currently using the occupation tax in an appropriate way, because the cities and the communities really do depend on the occupation tax. However, last summer, we ran into an issue where we believe the occupation tax was used improperly, and that's why it's so important that we address this issue. That improper use was taxing a product, not an occupation. And Senator Krist's bill comes back in and really defines how that can be used. This bill protects alcohol, tobacco, and motor fuels. It also addresses the issue of when revenue is exceeded and the fact that it has to be adjusted the next year or if revenue is exceeded in the last year. And we believe that when a project is proposed and there is an occupation that is assessed, that that occupation tax should go toward that project, and any excess revenue that is collected should not go into the General Fund for additional spending. So again, because this bill addresses that issue, we are very supportive of it. We do have a concern that not all products are addressed. As a matter of fact, there are items that are actually defined in the streamlined sales tax statutes that according to tax experts could also have the occupation tax assessed against them. And we're very concerned that Omaha may decide to go ahead and do that, because it would be another revenue stream. So as you discuss this bill, we would ask that you forward the bill to the floor for general discussion. If you decide to send it over to the Tax Modernization Committee, we would hope that you would take those additional concerns into consideration because we think that there are other things that are sort of left out there, and that as long as you're fixing the occupation tax issue they should be addressed. So with that, if you have any questions I'd be happy to try to answer them. [LB474]

SENATOR HADLEY: Senator Schumacher. [LB474]

SENATOR SCHUMACHER: Thank you, Senator Hadley. One of the things we've discussed is the possibility, for example, on the half-cent sales tax option, to just freeze, to do a moratorium of some kind while this study goes on so that no one tries to...to be consistent. Does that kind of concept serve any of your functions if we were to say, as to occupation taxes, all of them, a moratorium throughout the term of this study? [LB474]

KATHY SIEFKEN: That would be very helpful, yes. That would probably fix our

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immediate concerns, because Senator Krist is saying that he's giving communities time, the people that--well, the city of Omaha with tobacco occupation tax--he's giving them time to bring that to an end. And if no one else starts in the meantime, the moratorium would fix that, as long as all of the issues were addressed. [LB474]

SENATOR SCHUMACHER: Thank you. [LB474]

SENATOR HADLEY: I would just follow up with a statement supporting that concept, because I do have the worry that, as you know the system here with priority bills and getting bills on the floor, that we could have cities implementing numerous occupation taxes by a vote of the council... [LB474]

KATHY SIEFKEN: Exactly. [LB474]

SENATOR HADLEY: ...and doing that. So it is a concern. Thank you. [LB474]

KATHY SIEFKEN: Thanks. [LB474]

SENATOR HADLEY: The next proponent. [LB474]

TED STESSMAN: (Exhibit 30) Senator Hadley and the committee, Ted Stessman, T-e-d S-t-e-s-s-m-a-n. Your last question kind of is what I want to talk about. I don't have copies but I will leave this one. This is another tax map, and I'm not concerned about the excise tax in regards to cigarettes. But if you take a look at this and you look at all the different ways that moist tobacco is taxed or cigars are taxed, meaning...so with that, if the states have, for instance, you know, not just different rates. Some are by weight, some are by ad valorem rates, some are by, you know, a size stick is taxed at 15 cents, a larger stick is taxed at 22 cents--this, that, and the other. And then this past session, across the United States, cities and municipalities have went from introducing last year, in 2012, introducing something like 220 bills; now it's 417. And our fear is when you look at the communities that we have in Nebraska, some smaller communities, if you make it too burdensome for the reporting part, you know, for the wholesaler, which I work for, if it's different in each different location and somebody decides, well, we want to put tax stamps, you know, on cigars, which is just at this point would be very, very hard for any of us at the wholesale level to do, you would have, like the situation that's happening this Friday in Omaha just with the burden that there is right now for reporting. We have an Omaha wholesaler that's closing their doors on Friday. And my point is in addition to that I have a fear that, you know, wholesalers may take the stance that where it's, you know, still profitable to deliver in Omaha and Lincoln and Grand Island and Kearney, maybe they're not going to go to some of the smaller communities. And therefore, they will have very few options to get products. And with that I'd take questions. [LB474]

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SENATOR HADLEY: Okay. Just a quick question. On a previous bill, we talked about border bleed. We could actually have city bleed, right? [LB474]

TED STESSMAN: Yeah. [LB474]

SENATOR HADLEY: One side of the street you have one tax on... [LB474]

TED STESSMAN: It's been pretty early, you know, in the Omaha. But I'm sure that when you look at a situation in Ralston where you've got two stores right across each other and one of them is taxing at \$1.50 more than the other, it really puts them at a disadvantage. And the retailers, you know, are not...or not the retailers but the consumers are smart enough to see that and they're, you know, they're going to make their choice based on that. And that becomes difficult, you know, for business. [LB474]

SENATOR HADLEY: Okay. Thank you. We appreciate very much your coming in and staying with us today. [LB474]

TED STESSMAN: Thank you. [LB474]

SENATOR HADLEY: Next proponent. Could I see a show of hands of the number of people who are going to testify on this bill? Okay. [LB474]

JOHN DILSAVER: Senator Hadley and committee, John Dilsaver, J-o-h-n D-i-l-s-a-v-e-r, represent Rite Way Oil, Omaha, Nebraska, and also the Nebraska Petroleum Marketers and Convenience Store Association. Certainly support the bill that Senator Krist has put forward, support the study. You and Ted just had a conversation sort of about the...what's happened in Omaha since January with the occupation tax that was passed on cigarettes. We are that location that has a convenience store in Omaha across the street from a convenience store in Ralston, Nebraska, on the corner of 72nd and Q Street. Just what's happened since January. Our January sales were only down about 2 percent on cigarettes. People were figuring it out, you know. I guess they trusted us. They came in. They've been coming there for a while. So we only saw a 2 percent decline in January. February sales at that location on cigarettes dropped off 5.6 percent. And for the first week in March, that store's sales are down 9 percent for the comparative period for the year before. The only other item that I have is, ironically enough, the tax went in place January 1. We are required to report the tobacco tax, I believe, on the 20th of the following month. So we have only been required to file one tobacco tax return so far with the state. We have six locations...or with the city, we have six locations in the city of Omaha. Our tax remitted was approximately \$5,000 for the 3 percent just on those six locations. The ironic thing is I got a letter dated from the city of Omaha March 7 from the finance department that says they are going to conduct an audit on this tobacco tax already. You know, we're only nine weeks into it so it just sort of struck me as sort of an odd thing. So that's all my comments. If there's any

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questions... [LB474]

SENATOR HADLEY: Okay. Thank you. Questions? Seeing none, thank you. We appreciate you staying with us. Next proponent. Seeing none, first opponent. [LB474]

GARY KRUMLAND: Senator Hadley, members of the committee, my name is Gary Krumland, it's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in opposition to LB474. We're concerned generally about how the bill affects ability of cities and villages to raise revenue to provide services. I'm really not going to go in detail. There's other people from the cities here who are going to talk, and considering the lateness of the hour I'll let them address the details of this. I do want to mention even though we oppose the bill and we have some disagreements with Senator Krist, he did go out of his way. He appeared on...participated in several conference calls we've had with city officials on the bill. We've had a lot of discussions. He did make a couple of changes in response to some concerns. We still, though, have problems with the bill and so we're still in opposition. But I do appreciate his effort to work with us. But there are city officials from across the state. So rather than me talk, I'll let them talk and then we can talk later. [LB474]

SENATOR HADLEY: Questions for Mr. Krumland? I have one. Mr. Krumland, I think you remember the floor fight we had on the half cent ability for cities to... [LB474]

GARY KRUMLAND: Yeah, the additional half percent sales tax. [LB474]

SENATOR HADLEY: ...to increase their sales tax, right? And if you remember one of the primary arguments from the opposition was it was cutting into the state's ability later to raise their own sales tax and it was cutting into the tax base which limits the state's ability to raise taxes. And then we turn right around and we have a city that didn't...obviously didn't listen to that debate because that was very front...or forward that comment by many people that turns right around and goes and looks at putting a tax on an item that the state puts on excise tax. So somehow the message didn't get out on the half-cent sales tax. And I'd just make that comment. [LB474]

GARY KRUMLAND: Okay. [LB474]

SENATOR HADLEY: Anything else? Thank you, Mr. Krumland. [LB474]

DOUG KINDIG: (Exhibit 31) Good evening, Senators. I'm Mayor Douglas Kindig, K-i-n-d-i-g. I'm here today representing the United Cities of Sarpy County which include Papillion, Springfield, Gretna, and the city of La Vista. Because of the lateness of the day, I really wanted to testify on LB484 but since we're on LB474...or LB488, excuse me, on LB474, there's a few things I'm willing to point out. There's parts of this bill and, first of all, I want to thank Senator Christ...Krist for allowing us to sit at the table during

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some of the preliminary discussion. Actually, some of the ideas in this bill were brought forth by us at the table. One of the points of the bill that I can probably agree with is the overpayment. If they collect more taxes than the \$6 million in Omaha's case, it should be given back in some way. So we can agree with that part of the bill. But there's one point of the bill especially that I just cannot agree with, and that would be the point of sale position. To give you an example, our conference center in La Vista is funded by hotel occupation tax. That is on the point of sale. First of all, all of our occupation taxes are occupation taxes on businesses and not an individual person. It's up to the business that has decided to put it as a point of sale. If they wanted to, they have the option of putting that a different way on their bill. So that would be one point that I can just not agree with. And I've heard a couple of things this morning and I can tell you guys that my city administrator, I'm winging it today, and she always writes very good testimony for me, so if she's watching, I'm sure she's wondering where I'm going with this. But I've heard about a moratorium on the occupation taxes. And, Senator Hadley, I believe you mentioned that cities might run out and start to pass occupation taxes so that we can get them in the books before the law would change and stuff. We shouldn't have to do that. We do a great job and there aren't that many cities in the state that don't do a good job with occupation taxes and we use them the correct way. They're used to pay for basic services in our city, but they're also used for economic development. And when you start putting moratoriums, and I will reference the sales tax since, Senator Schumacher, you did bring that up, you do a two-year moratorium on that when we're going to use that for economic development, you have scared those developers away. If we don't have a funding source that we can use, then our development could stop. So I would ask that you be very careful as you move forward with this bill and with some of the other bills that will face you this session. To know that the majority of our cities are using occupation taxes correctly, and that if there are a couple of the larger cities over the years that have not starting three years ago, the decisions that you make are affecting the other 98 percent of us that are using them the correct way. And I was here three years ago arguing this point that local control is still the best control, I was here last year, and I'm here again this year. So I ask your consideration that you really look at the long term. And at this time, I'll take some questions. I won't be able to stay for the next hearing, but we will be submitting testimony. [LB474]

SENATOR HADLEY: Are there questions for Mayor Kindig? Yes, Senator Schumacher. [LB474]

SENATOR SCHUMACHER: Thank you, Senator Hadley. Your statement that it would hurt your economic development, would that be the case if a moratorium only applied to the institution of new occupation taxes or the increasing rate of existing ones? If it was just a freeze, continue doing what you're doing exactly right now, but nothing new, no change. [LB474]

DOUG KINDIG: You know, last year...at least we would have a number that we would

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know what was there. [LB474]

SENATOR SCHUMACHER: And I think that's what we were talking about when we used the term moratorium. Not stop collecting them, but stop expanding them. [LB474]

DOUG KINDIG: I will agree there will be a number there, but I will always argue that local control because I think we do one heck of a job in La Vista, and we've used revenue sources and we've had to be creative in our revenue sources. But we're definitely within the lines that have been given to us. But if it keeps changing, it's hard for us to plan. So I won't agree with the moratorium because I think it should be the local officials that have that control because I will say, 98 percent of us have done it the right way. [LB474]

SENATOR HADLEY: And, Mr. Kindig, I think I would agree with that statement of doing it the right way because I was involved with a city that uses occupation taxes. And obviously occupation taxes will...when we do our tax modernization study will be something that we need to look at, is how do we...what is the right way that allows cities to be...use local control but also be responsible in the use of that local control. So that's kind of where we're at on that. Any other questions? Senator Harr. [LB474]

SENATOR HARR: Thank you, Senator Hadley. I hear 98 percent are done right. What are...I'm still trying to figure out why we're here today. What is right? What is wrong? Who's done right and who's done wrong? You stated 98 percent have been done right. Give me the 2 percent that have done it wrong. [LB474]

DOUG KINDIG: I'm going to represent myself now and maybe not the United Cities because we talked as one voice and I haven't talked to them about this. I think this bill came about because the city of Omaha passed a cigarette tax. I think it offended some of our leaders in our state because the state had already pledged money. And because they didn't agree with that, they wanted to do something to correct that wrong. [LB474]

SENATOR HARR: Okay. [LB474]

DOUG KINDIG: The trouble is, is because if they think Omaha did wrong, and I'm not saying that I think they did, it has affected the rest of us greatly. And that's the problem. The same thing was true three years ago, Senator, with Lincoln when they did the telephone charges. They started to make changes. It affects all of us. [LB474]

SENATOR HARR: What was wrong with UNMC? I mean, I guess my question is you stated this could affect economic development. The argument was made that UNMC is economic development. And, look, that's in my district and it's great for my district. It's great for the state of Nebraska. When UNMC does well, that's great. And so this is economic development. [LB474]

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DOUG KINDIG: Right. [LB474]

SENATOR HARR: So is the problem that it's economic development? Is it the problem that there isn't tough...close enough correlation between the cost of cigarettes and the cost of medical expenses because we just heard a whole bunch of testimony? You've been here all day. You've heard the cost of, you know, smoking, it far outweighs the taxes we collect. So my question is, where is the problem? Is it that this was used for an economic development and UNMC shouldn't be economic development? Or is it that there wasn't tight enough correlation? Is it that there wasn't an election? I'm still...no one has really sold me on what the problem is or has clearly stated what they believe the problem is, and I'm still trying to figure that out. [LB474]

DOUG KINDIG: Well, first of all, Senator, I think Omaha did what they had the statutory right to do. And they made a local decision to implement an occupation tax under the threshold and, yes, there was some confusion on the amount that they were going to charge. So I think they did right and the local officials did it for economic development and to enhance the amenities in the city of Omaha. They did right. I never said they did wrong. [LB474]

SENATOR HARR: I'm still trying to figure...if that's the 2 percent though. Someone is saying it's wrong and someone needs to come up and be able to defend what the 2 percent wrong is that we need to change this legislation, because I'm not seeing it yet. [LB474]

DOUG KINDIG: I don't think you do need to change the legislation would be my point. [LB474]

SENATOR HARR: Yeah. [LB474]

DOUG KINDIG: Allow the local officials. You gave us some thresholds last year. That was a trade-off for sales tax. Now we're talking a two-year moratorium on sales tax and taking on the occupation taxes. Allow us at the local level to govern our cities in a responsible way, and most of us do it. There are very few cases. And I think Omaha governs their city and Lincoln governs their city in the right way. Just because some senators disagree with how they do it, don't change the laws that will affect the rest of us. [LB474]

SENATOR HARR: Okay. So you're making an argument for local control. [LB474]

DOUG KINDIG: Without a doubt. [LB474]

SENATOR HARR: Okay. Thank you. [LB474]



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DOUG KINDIG: There's parts of this bill...you know, if we go to the voters...and we don't have to go to the voters, but it's a \$6 million threshold and we go over \$7 million, I totally agree. You've got to make an adjustment to your percentage because that's what state statute says. I agree with that part of the bill. [LB474]

SENATOR HARR: Okay. [LB474]

DOUG KINDIG: The rest of it, it should be local control. [LB474]

SENATOR HARR: Now let me ask you this because you have been mayor for how long? [LB474]

DOUG KINDIG: Going on eight years, sir. [LB474]

SENATOR HARR: Okay. So you remember when you had state aid, right? [LB474]

DOUG KINDIG: Yes, I do. [LB474]

SENATOR HARR: And you no longer receive state aid. And that was the Legislature stepping in and doing that, correct? What forms of taxation do local...what forms of taxation do you have? Do you have property tax? [LB474]

DOUG KINDIG: Sales tax. [LB474]

SENATOR HARR: Sales tax. [LB474]

DOUG KINDIG: Occupation tax. Next we have our fees for rec programs. [LB474]

SENATOR HARR: The fees. [LB474]

DOUG KINDIG: Those are fees, but... [LB474]

SENATOR HARR: Those are fees, but taxation those are the only three you have. [LB474]

DOUG KINDIG: Taxation, that's... [LB474]

SENATOR HARR: So if we take away those, in essence what we're ending up doing is raising either sales tax or property tax. Is that correct? [LB474]

DOUG KINDIG: Correct. [LB474]

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SENATOR HARR: Okay. [LB474]

DOUG KINDIG: And right now there's a lid on property tax, and a moratorium on sales tax will take that tool away from us. And if you touch occupation taxes, it takes that away from us. [LB474]

SENATOR HARR: Do you think the occupation tax needs to be more closely correlated to the actual occupation? Would that appease? I'm still trying to figure out the problem. Do you think that would appease whatever problem is out there? I'm just not... [LB474]

DOUG KINDIG: I'm going to quote...and, I'm sorry, I always forget his last name but the attorney for the revenue department, Bill. [LB474]

SENATOR HARR: Yes. Lock. [LB474]

DOUG KINDIG: Lock. Yes. Thank you. You know, he said this horse left the corral and is over the hill. And I think what he meant by that is that to define occupation taxes, it's extremely difficult because every time you throw something out there, there's an exception being used. And it doesn't mean that it's a bad thing. One of the things we talked about was that, well, maybe they couldn't partner with a nonprofit. Well, there are cities out there that are partnering with nonprofits that have...that are building art centers and public facilities. So do you want to damage them? So, again, I'm going to go back to the local control, Senator. Allow us...there are parameters already. The threshold is number one. And it should be to a vote of the people. But I've also been elected to run my city with the best of my knowledge. And if I have to run to the people every time I want a tax, you know it's not going to happen. That would be unfair to ask this body to every time you want to raise taxes, take it to the vote of the people. It should be the same here as it is in my city. [LB474]

SENATOR HARR: And if we raise taxes...well, if you raise taxes, you're still accountable to the voters at the next election. Is that correct? [LB474]

DOUG KINDIG: Correct. [LB474]

SENATOR HARR: Okay. Thank you. [LB474]

DOUG KINDIG: Thank you. [LB474]

SENATOR HADLEY: Any other questions? Thank you, Mayor Kindig. [LB474]

DOUG KINDIG: Thank you, Senators. [LB474]

SENATOR HADLEY: Next in opposition. [LB474]

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RANDY GATES: (Exhibit 32) Good evening, I guess it is. I'm Randy Gates, R-a-n-d-y G-a-t-e-s, finance officer with the city of Norfolk. The page is passing out a handout that shows what the city of Norfolk levies for occupation tax. We have six different occupation taxes. The way we interpret LB474, I haven't seen the amendments, but the way we interpret LB474 as it was introduced is we do not think that would stop any of the current occupation taxes we have because they were imposed before July 19, 2012. But we think that would severely limit our flexibility going forward. Our city attorney has always told me that there is a lot of flexibility in what we can levy occupation taxes for. And that goes back a long time to the early 1900s at least, the authority for municipalities to levy occupation tax has been in statute. And if you look at what I just passed out to the committee, you'll see the city of Norfolk has been levying occupation taxes since the early sixties, so not quite half of that period of time, but for a long period of time. If we're interpret...and we're raising right now about \$2.25 million annually off of those occupation taxes, if we're interpreting LB474 rightly, correctly, only two of those, and they're the small ones totally about \$42,000 which are based on something other than receipts or volume, would be able to do after LB474 goes into effect. Two of the remaining occupation taxes date back to the 1960s. And I'd like to comment a little bit on those. These are old occupation taxes that have traditionally been passed on, on the bill like most people are doing their occupation taxes. One is a percentage of gross receipts which I believe would not be allowed under LB474, that's our 3 percent telecommunications tax. The other is per hundred cubic feet of gas sold through our system, and it's also put on the bill of the customer. It's, oh, depends on what class they are and it's adjusted for inflation. I think it's about 3 cents per 100 cubic feet. So if you used 100 cubic feet, you'd have 3 cents showing on your bill for that occupation tax. And the state is also sales taxing those items and the city is getting local sales tax on these. So I think the idea that cities shall have an occupation tax on something that the state has a sales tax on isn't how it's historically been done in the state of Nebraska going back many, many, many decades. They're two separate taxes. One is a tax on the business. Although if they have some way of relating that to the bill either through volume or through receipts, they tend to do that. But it is a tax on the business. It's not a tax on the particular item being sold. So they may treat it similar to sales tax, but it really is not a sales tax and traditionally municipalities have had these types of taxes that are separately stated on the bill and the state has sales taxed those items also. The other two on there are percentage of receipts, and these are for debt service on a voter-approved \$16.4 million recreation bond issue. Our understanding of LB474 is even if the voters would approve something like that because a percentage of receipts, we couldn't impose that if LB474 is in effect. And maybe we're not understanding the bill correctly. But those raised almost \$1.6 million for us. The voters didn't technically approve those, but they knew that's what the debt service on the bonds were just going to be paid from. So even though there wasn't a separate ballot issue for that, in effect they approved those. And if we took away, there's about \$1.9 million of occupation taxes we're currently levying, as you can see on that spreadsheet in the next to the far

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right column, that we think we wouldn't be able to levy without...with LB474 in effect. If we tried to replace those with property tax, we'd increase our property tax 73 percent or our levy rate would go up 17 cents or if you have \$100,000 home, that would be another \$170 of property tax. Our voters seem to have a real aversion to property tax. They prefer other kinds tax better. Back in 1984, they passed a 1 percent sales tax for property tax relief. They proved another .5 percent in 2002, half of which was for property tax relief. And we had a prior recreation bond issue a few years before this that failed that was based on property tax. This one passed pretty well and it was based on this occupation tax. So our voters and I think the voters in Nebraska in general don't like property taxes. They prefer some other kind of tax. And Section 18-1208 of state law currently limits the ability of a city council without going to the voters to impose a large occupation tax. In the case of first-class cities, it's over \$700,000. So to summarize since my yellow light is on, municipal occupation tax has been around for a long time. They've been traditionally based on receipts or volume. Norfolk has used them for not quite half that amount of time, and we think that should continue. We believe in the local-control issue, and we think our voters...and if we want to do another large one of these, they're going to have to prove it because of Section 18-1208, should retain that alternative for some revenue source other than property taxes if that's what they want. I'd be glad to answer any questions. [LB474]

SENATOR HADLEY: I have, I guess, a couple of questions and I'll try to make them quickly. It's interesting the natural gas occupation tax and telecommunications that go back to the sixties. At one time, one of the explanations given to me for an occupation tax dealt with those two areas because it was said that they...their lines and pipes occupied at times the city's right of way, and this was a tax kind of like a rental fee that they paid to use the city property. Is that... [LB474]

RANDY GATES: That would have been true of the telecommunications occupation tax when we adopted it in '61 because there wasn't all these wireless services that there are now. Now that's all communications occupation tax doesn't really have any tie in to the use of the right of way because you've got all these cell phone companies and other wireless telecommunication services, and they're paying this occupation tax. They're not using the city right of way. [LB474]

SENATOR HADLEY: And the other question, do you think that there should be certain taxes that are the province of the state, i.e., excise...the goods that we charge an excise tax on now that the taxation of those should be the province of the state? [LB474]

RANDY GATES: I don't think if the state taxes something it necessarily has to exclude some other entity from taxing it. You could have local tax, the state taxes, federal taxes on an item. I think you see that a lot in telecommunications and industry. The phone companies are always complaining about that. So I don't think that necessarily excludes that. There's in LB488, the bill we're not talking about now but this kind of dovetails into

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that, there's I think it's 53-160 that tax the state levies which is the tax on wholesaling or manufacturing of alcohol. It's a gallon-based tax. That specifically says in (6) of 53-160, I believe I got the right reference, I didn't bring up my stuff on LB488, but that specifically says that municipalities...all municipal occupation taxes, this is in addition to that. So when 53-160 was passed, clearly the Legislature was anticipating the ability of municipalities to levy an occupation tax on that same thing that the state was basically levying an occupation tax on. We can get into terminology of what's an excise tax, occupation tax, franchise tax, sales tax. But the state's tax was based on gallons or volume. And it specifically said all municipal occupation taxes can be levied in addition to that. So I think going back to the history of this, it hasn't ever been one or the other. If we tax it, you can't. It just hasn't been that way ever. And I don't think it necessarily needs to be that way now. [LB474]

SENATOR HADLEY: So are you basically saying the state has no reason to worry about us because the state giving up its taxing ability because cities have taken over that portion of what the limited amount people are willing to pay. [LB474]

RANDY GATES: That's not exactly what I'm saying because I think there's a point where, I mean, you heard that talk when they were talking about the bill related to tobacco taxes, there's a point where the tax gets so high people resist it and just don't want to pay it. You know, I think the cities look at that when they put on an occupation tax. How much in total is somebody going to pay when related to the purchase of that item? And that's a little bit of a misstatement because they're not paying it. It's not like a sales tax. It's never their responsibility to pay. It's the business's responsibility to pay since they've got an easy way to identify that tax and then parcel it out to the bill, whether it be on volume or whether it be on receipts that are doing that. They're still passing on their other taxes. Their payroll taxes and their income taxes is part of that bill. They got to be recovering that or they couldn't stay in business. But they don't have any easy way when you go buy a six-pack of beer or you go buy a Big Mac to say our payroll tax is X percent of your bill or this much per 100 cubic feet of gas. But they're passing those costs on all the same. They just don't have an...if they had an easy way to put that on the bill, I bet they would. They like to say...like to attribute those costs to somebody besides them. And I understand that. So if they've got an easy way to do it, they're going to show the sales tax on there. They're going to show the occupation tax on there, whether it's based on volume or whether it's based on receipts. And they would do the same thing I think if they could find out some way to tie their payroll taxes to it and their income taxes to it. But there's no easy way for them to do that. [LB474]

SENATOR HADLEY: Senator Schumacher. [LB474]

SENATOR SCHUMACHER: Thank you, Senator Hadley. And thank you for your testimony. Like this natural gas occupation tax, is that on residential natural gas usage? [LB474]

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RANDY GATES: We got three classifications of natural gas customers, and residential is one, commercial is one, and industrial is one. And they're all paying it. They're not all the same rate. [LB474]

SENATOR SCHUMACHER: Who pays the higher rate? [LB474]

RANDY GATES: Pardon? [LB474]

SENATOR SCHUMACHER: Who pays the highest rate? [LB474]

RANDY GATES: The residential and commercial I believe are the same rate if I remember correctly. Industrial is quite a bit cheaper than that. [LB474]

SENATOR SCHUMACHER: Okay. In looking at these, I mean, telecommunications tax, that has to hit the people who can't afford to pay hard. If the residential natural gas tax is the highest rate, that's got to hit those folks hard. If the folks who eat out at McDonald's and the fast food restaurants get hit by the food and beverage tax, it hits them hard. This whole list of occupation taxes looks like a terribly regressive taxing system. Why are we doing it besides the property tax... [LB474]

RANDY GATES: I mean, you could make the same argument for sales tax I think that it's a regressive tax if...and I think you could say some of these taxes probably are regressive. But are we going to do away with our sales tax because it tends to be a regressive tax? I mean, it gets back to tax policy. But, you know, if you wanted a nonregressive tax, you probably would try and focus in on income taxes, high income tax rates. And I think you need to tax sales. I think you need to tax income. I think you need to tax property. I think the tax base needs to be broad. [LB474]

SENATOR SCHUMACHER: But when we look at it, I mean, we had a proposal earlier this year to do away with the income tax and shift everything back toward basically the sales tax. And we look at the local government taxing scheme here, incredibly regressive with the property taxes and all these occupation taxes that are seemingly coming out of whatever creativity one can put into them. And they're of essentially a very regressive nature in who ends up paying the bill. How do we balance the system? [LB474]

RANDY GATES: I don't have a good answer for that. I hope the committee is going to be studying the tax policy for the state comes up with a good answer for that. I'm not going to argue with you that these aren't necessarily regressive tax. But a lot of the revenues that are collected by the states and local governments tend to be regressive. [LB474]

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SENATOR SCHUMACHER: Thank you. [LB474]

SENATOR HADLEY: Senator Pirsch. [LB474]

SENATOR PIRSCH: Thank you. I appreciate your testimony here today. I just wanted to ask a couple of questions, one of which you'd referenced and you had mentioned, you know, obviously the local control aspect and that you had to be approved, right, by voters. Is that right? [LB474]

RANDY GATES: None of these taxes you see on here were approved by the voters directly. The biggest two or, well, the top two which are going to pay for our recreation bonds were indirectly approved by the voters. [LB474]

SENATOR PIRSCH: Okay. [LB474]

RANDY GATES: After the effective date of 18-1208, which I think was last year, now significantly and in the case of first-class cities \$700,000 of occupation tax, if it gets over that, you have to have it approved by the voters. [LB474]

SENATOR PIRSCH: Say that again? If it's over? [LB474]

RANDY GATES: Seven-hundred thousand first-class cities. I forget what the number is for the other classes of cities. [LB474]

SENATOR PIRSCH: Okay. So no matter the...for Norfolk, which is a city of the first class, \$700,000... [LB474]

RANDY GATES: Correct. [LB474]

SENATOR PIRSCH: ...past that threshold you must have it voter approved, right? [LB474]

RANDY GATES: Yes. [LB474]

SENATOR PIRSCH: Okay. And that's what I'm getting at. And that applies equally at some number, although we don't know what...offhand what that number is for metropolitan...cities of the metropolitan class or primary class. [LB474]

RANDY GATES: And I don't know what those numbers are. They're a lot bigger than our number. [LB474]

SENATOR PIRSCH: Yeah. But there's that threshold under which or over which you'd have to take it to the voters, right? [LB474]

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RANDY GATES: Correct. [LB474]

SENATOR PIRSCH: Okay. So now with respect to that threshold then for you, and I'll just keep it confined with respect to Norfolk, but the \$700,000 threshold, would that apply in the aggregate? Well, obviously I guess the answer would be no. It would be... [LB474]

RANDY GATES: My understanding is, and I haven't... [LB474]

SENATOR PIRSCH: ...per occupation tax, right? [LB474]

RANDY GATES: My understanding is, and I haven't really had to deal with it because we haven't had any new occupation taxes since that went into effect, but I would think...I thought that was by tax. So it would be...it would apply to the biggest one you see on here, our food and beverage occupation tax. It would not apply to the other occupation taxes. [LB474]

SENATOR PIRSCH: So each one of the six different taxes then would each have the \$700,000 limit, but in the...they're not aggregated in the sense that six... [LB474]

RANDY GATES: I don't believe they're aggregated. But, like I say, I haven't really looked at that too hard since we haven't passed any occupation taxes since that went into effect. [LB474]

SENATOR PIRSCH: I see. Okay. And then with respect to...and I guess this conversation, and maybe I hopefully have grasped it, but essentially with respect to the argument, let me ask you this. Is there a substantive difference in your mind, you had mentioned one...or maybe it was a previous testifier who said one substantively deals with the business, right? Historically I think the Chairman had mentioned maybe that was based in...rooted in history about utilizing under the streets, the pipes or whatnot. It was an occupation tax is rooted in the concept you're taxing the business. And the other one is rooted in the taxation of the individual units of a business, the sales. Correct? And... [LB474]

RANDY GATES: I think they're two very different taxes. One tax is owed by the person. In the case of the sales tax, it's owed by the person buying that item. So if you go and order a \$100 camera on the Internet and you're buying that from somebody that's outside of the state, like all good Nebraska citizens you pay your \$7 use tax on that camera when you buy it. And business does the same thing. That's a tax owed by you. If you go out in Norfolk and buy a Big Mac, that's a tax owed by the person that's running that restaurant. It's not owed by you anymore than you owe their income tax or you owe their payroll tax. But since there's an easy way for them to put that on the bill,



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they put that on the bill because it's a percent of revenue is what our food and beverage occupation tax is based on. Not all of them are doing it but most of them are doing it. It's owed by the business. It's got to be passed on to the consumer just like their income tax does, just like their payroll tax does, just like their property tax does or you're not going to stay in business. But there's no easy way for those to put that on the bill. But there is an easy way for them to put this on the bill; most but not all do. [LB474]

SENATOR PIRSCH: Okay. Well, and that... [LB474]

RANDY GATES: But it's owed by the business. This other one is owed by you. The business is just a collecting agent for you. And if you buy from some business that doesn't have a nexus in Nebraska, you still owe that tax. You still have to pay it. The business doesn't collect it for the state anymore, but you're responsible to file that use tax return to pay it. So very different taxes. [LB474]

SENATOR PIRSCH: The way it's imposed on the business, right, and we're talking the occupation tax, is that typically or in all cases measured in terms of units, say, units of sales are sold? [LB474]

RANDY GATES: Not in all cases. I mean, we've got two that aren't. We've got our fireworks occupation tax which is just \$200 per fireworks permit. And we've got our liquor occupation tax which is based on license class. [LB474]

SENATOR PIRSCH: Those are the two oldest ones, right? The '61 and '82. [LB474]

RANDY GATES: I think they are the two. Nope, the fire occupation tax was in 1982. So it's one of our newer ones. The liquor occupation tax is one of our older ones. [LB474]

SENATOR PIRSCH: I see. Okay. And so that's essential...you know, the I guess conversation that I'd like to have is that or the salient point, are we just talking semantics here or are there substantive types of... [LB474]

RANDY GATES: I think there's very substantive differences. When you go out and buy your hamburger, it may look pretty close the same to you. But that's simply because of the way the business is breaking that out on the bill. I mean, if they had some way to do it, they could do that for their property tax and they could do it for their income tax because they have to be collecting those from their customers or they're not going to stay in business long term. [LB474]

SENATOR PIRSCH: Okay. Thank you for your testimony. [LB474]

SENATOR HADLEY: Any other questions? Thank you. We appreciate it. Next opponent. [LB474]

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LOWELL JOHNSON: (Exhibit 33) Senator Hadley and committee, members, thank you for this opportunity. It's late. I can do this in two minutes. And there are some factual things on here that I'll just let you read at your own discretion. I speak on behalf...I'm Lowell Johnson from the city of Wayne. I'm the city administrator. Lowell is L-o-w-e-l-l, Johnson is J-o-h-n-s-o-n. I speak on behalf of the mayor of Wayne in general opposition to LB474. The 2010 U.S. Census population of Wayne is 5,600 people and 2,200 of those are resident students at Wayne State College. When we prepare our city budget, our priorities are, first, to reduce the cost to deliver core public services and, second, to allocate those costs as fairly as possible. Since 2003, we have reduced our city mill levy from a total 55 cents to a total of 45 cents, and 36 cents of that is subject to the lid. So we have tried to stay well under the lid. We've reduced our level of nonessential public services, as a relative term, and cut our full-time staff positions by 25 percent from 54 positions to 39. One-third of our budget is for law enforcement. We have lost the state municipal infrastructure funding for cities. It disappeared in 2003. Federal and state transportation funding for cities is now disappearing quickly as those agencies are on their own survival mode and with lower...have lower revenues from gas taxes. Most of the Wayne State College students don't own property in Wayne, but they use our utilities and our law enforcement services. As we go through time, we're reducing full-time city staff positions through accretion until we verify that critical work cannot get done. We have downsized our police department from nine full-time officers to seven. Consistently when we talk to the Wayne voters and ask, they prefer fees and occupation taxes to property tax and have approved three local option sales tax elections. We use these revenue sources to allocate the cost of government over the broader population. And, Senator Schumacher, this kind of addresses a little bit the regressive issue. And this is a philosophy that the council has used. They believe cities provide opportunities of population density that are efficient for businesses to serve and to be profitable. And we believe that an occupation tax based on the volume of the business is a fair way to help provide revenue to operate the city that provides this population density. Below that is listed some of our occupation taxes. If you know...there are five of those that are occupation taxes on private entities. The middle three are...the middle two are city utilities that we charge occupation taxes on. If you take out the city utility portion, our total occupation taxes on private entities is about \$220,000. Our property tax revenues last year were \$650,000. We'll keep on reducing our cost to deliver services. That's our main priority and broadening the base of revenues, but we need some local options for our residents to continue to do this. We thank you for the opportunities to use the local option sales tax and occupation taxes with voter approval, and we ask that you keep this in mind in the process. And you guys have a tough job ahead. And thank you and I'll take any questions. [LB474]

SENATOR HADLEY: Any questions? Seeing none, thank you. We appreciate your coming in. Next in opposition. [LB474]

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STEVE HUBKA: (Exhibit 34) Chairman Hadley and members of the Revenue Committee, I'm Steve Hubka, it's S-t-e-v-e H-u-b-k-a, finance director for the city of Lincoln. I'm here today in opposition to LB474, and I'd like to thank you for the opportunity to comment. I'd also like to acknowledge Senator Krist for his kind words about how Lincoln implemented the occupation taxes that are building the Pinnacle Bank Arena. There's also some language in the bill that is obviously addressing the circumstances similar to what we have here in Lincoln regarding the west Haymarket project. The city of Lincoln is opposed to further restrictions on municipality's authority to level occupation taxes. Lincoln recently adopted a new telecommunications tax ordinance effective January 1, 2013, to comply with changes in state law made by the Legislature two years ago. Due to the lag in collection time, it is still unclear how much revenue we will lose but it could be substantial. Further restrictions on a municipality's authority to levy occupation taxes can only cause further pressure on other revenue sources such as property taxes or cause reductions in government services. The provisions of Section 6 of LB474 do not apply to taxes imposed prior to July 19, 2012, therefore do not impact our current occupation taxes in Lincoln. Our objections to LB474 center on the provision in the bill requiring that occupation taxes be imposed not on gross receipts but be "uniform in respect to the class upon which they are imposed". It is vague as to whether it is referring to the rate of taxation or that the same dollar amount of tax is to be imposed on all businesses in that class. How a business is classified could easily be disputed. The prohibition in LB474 of imposing an occupation tax is a percentage of gross receipts eliminates what we believe is the fairest way of levying occupation tax and the way most of Lincoln's occupation taxes are imposed. Lincoln collects occupation taxes on telephone companies that do tens of millions of dollars of business down to companies that only do a few thousand dollars of business. We believe that taxation by gross receipts is by far the fairest method of imposing an occupation tax. With that, I'd be happy to answer any questions. [LB474]

SENATOR HADLEY: Questions for Mr. Hubka? Senator Pirsch. [LB474]

SENATOR PIRSCH: I'll just pose to you the same question. I think you do bring up a good point in your closing there that imposing this taxation by gross receipts is perhaps a fairer method because you have larger and smaller companies. But does that then...substantively what's the difference between that and, say, a sales tax? And I understand that in theory or concept you're imposing one on a... [LB474]

STEVE HUBKA: Company. [LB474]

SENATOR PIRSCH: ...business entity and one on the transactional processes. But since you're, you know, breaking down the...I mean, it's pretty clear that the business is going to be passing those costs along to customers and their being actually even imposed on those transactional units. Is there...I mean, is that...can you address that? [LB474]

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STEVE HUBKA: Oh, there are certainly similarities between the tax on gross receipts versus sales tax. But in our case the tax base is of the items that are specifically taxed are somewhat different. Telecommunications tax, for example, equipment was eliminated in that bill a couple of years ago. And so there's some big exclusions from the occupation tax and there are not the same tax base. [LB474]

SENATOR PIRSCH: Okay. Thank you. [LB474]

SENATOR HADLEY: Any other questions for Mr. Hubka? Thank you so much. [LB474]

STEVE HUBKA: Thank you. [LB474]

SENATOR HADLEY: Next opponent. [LB474]

J.D. COX: (Exhibit 35) Hello. Good afternoon. Good evening I guess it is. My name is J.D. Cox. I'm the city manager for the city of Alliance. And I don't know how you folks do it. What a long day and I see a lot of tired, tired eyes around, including mine. I'm going to skip the first page of my testimony and kind of draw your attention to the bottom. I do have a couple of comments from some questions that were raised a little bit earlier today. And I thought I would address those. Again, my name J.D. Cox, the last name is spelled C-o-x. In addition to being city manager, I also serve as the secretary of the Nebraska City Managers Association. A lot of comments have been made today and I thought what I would focus in on in addition to what's been said already, kind of ditto to some of the comments made earlier, especially regarding the local control. That's a really big tenet of things that we talk about in Alliance with our city council. And I'd like to draw your attention to the bottom of the first page. I would like to visit with you about our...what we have started this last year. We are reinventing our tourism industry in Alliance and Box Butte County. We implemented a 6...we were at 2 percent and we went to a 6 percent hotel/motel occupation tax. We went through the normal process. We had a public hearing. We had ordinances where had three readings and accepted public input and implemented. And we have raised...in this past year, we raised \$149,000. That's not a lot by a lot of city's standards that have a lot of tourism industry, but we're just getting started. So we're off to a good start. What is important about that is that that...two things, I guess. One is that it's well under the \$700,000 cap that's been well talked about today. The other thing...we are a first-class city by the way, the other thing is that it allowed us sufficient money to be able to start a visitors bureau. We hired a full-time visitor's director. He's doing a fantastic job. We've developed programs, signage, promotion, and we're well on our way with tourism and we've got more things in the works. So it is a method of economic development. I heard that question was asked a little bit earlier today. I also came today to thank you really for all the tools that this state gives our cities. I came to Nebraska two years ago and came to Alliance, and it's...we're doing well with our economic development tools that we have in place. The

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LB840 tool is very good and we appreciate being able to do that, and we do have the 1.5 cent local option sales tax that came about as a result of that. We also appreciate being able to TIF projects. I know there's a constitutional amendment to change some language on that, outside the Revenue Committee's purview perhaps. But so we appreciate those tools. Also wanted to thank you for LB357 that was added this last year. There was some discussion earlier. I think, Senator Hadley, I think you mentioned about some floor discussion that went on. Well, I will confess, I'm not aware of...I'm not in the loop on the conversation that went on, so I don't know on that. What I can address though and I'd be happy to is what we're doing in Alliance, and I think we're doing a very good job with what we have. LB357, we did not run out and throw an item on the ballot to see how it would go, but it is really nice to know that's in our toolbox. As we start our community visioning process this coming year or, I'm sorry, this coming month, we're going to be having town hall meetings and talking about where we're we're going in the future and what kinds of things we can do. It's nice to know that we've got the LB357 local option sales tax additional .5 percent that's waiting in the wings in case our community, out citizens choose to utilize that. I would like to talk about the one-size-fits-all concept. I don't think it does. I think we have a state full of cities that are diverse and unique, and I think the taxing policies that each city sets is up to those local cities. And I think they know best what...you know, whether we call it regressive, progressive, whatever you want to call it. The local folks can decide what really fits best in those communities. Maybe a community would like to have higher property taxes. I don't know a lot of them, but there could be those. Maybe some would prefer an income tax. Maybe some would prefer sales tax option. The point is, the local folks are going to know what mix really works best. Whether they're a border community. They're in the middle of the state. They're on the western side like we are in Alliance. So I'd like to just share with that...share that with you and respectfully ask that you consider setting this aside or at least setting it back for further discussion and that the issue of the moratorium, I would really hope...I'll wrap up, I would really hope that you would consider not doing the moratorium, especially the local option sales tax. I don't understand that at all. And I apologize. I have not been in Lincoln until today, so I don't know what happened that drove that. But I don't understand it actually. It's the local option sales tax would be voted by the voters anyway. So, I mean, they would be the ones deciding they wanted to have the tax. So I apologize it went long. [LB474]

SENATOR HADLEY: Sometimes late at night you make comments that you may not...I may not like, but just so everybody knows, you're within one vote on this committee of having that .5 cent back out on the floor to have it rescinded. And as you remember last year, it took an override of the Governor's veto on it. So I'm just telling you where you're at, at that point in time on that .5 cent. [LB474]

J.D. COX: Well, I'm not sure how to answer that. [LB474]

SENATOR HADLEY: Yeah, and I'm not...I'm just...no, I...that... [LB474]

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J.D. COX: We appreciate having it. Yeah. [LB474]

SENATOR HADLEY: That's just information that's public information. [LB474]

J.D. COX: And that would be too bad if that happened because it's really nice to have that tool in our toolbox. And, you know, I think a comment was made a little bit earlier about, well, the equalization of funding has gone down and so, you know, communities struggle to figure out what makes the most sense for those communities. And that is a tool in the toolbox. You don't have to use it. The voters don't want it, you're not going to use it. But if they do, it's nice to have. [LB474]

SENATOR HADLEY: Okay. Thank you. Seeing no other questions, we very much appreciate you making the long drive from Alliance here. [LB474]

J.D. COX: Thank you. [LB474]

SENATOR HADLEY: And you're free to leave if you want. (Laughter) [LB474]

J.D. COX: Okay. Oh, may I enter my testimony on LB488? [LB474]

SENATOR HADLEY: Yes, yes. We're not really going to go anyplace with LB488 tonight, so. [LB474]

RON WITHEM: Senator Hadley, members of the Revenue Committee, I am Ron Withem, it's R-o-n W-i-t-h-e-m, representing the University of Nebraska. I'll attempt to be as brief as I can, but I thought it's important that we at least put ourselves on the record as showing our concern with the bill as drafted. We do not have a position on the issues you've been discussing here earlier with other witnesses about the philosophical position of what makes a good local tax and what does not. We are here because the bill as currently drafted with the retroactive provision indicating that any tax imposed after July 19, 2010, must comply with the new statute. It would negate an action that was taken in the city of Omaha last summer to make the city of Omaha a partner, full partner, in helping fund the cancer center that is to be located at the University of Nebraska Medical Center. As you know and most of you participated last year with funding of this project, it is a massive project. It would put Omaha, Nebraska, on the map as the cancer treatment center, a comprehensive cancer treatment center. The \$370-million project overall, the state funded \$50 million of it last year; \$60 million dollars of the...and cancer research tower which is a subportion of the project is being funded by private contributions. There will be bonds that will be paid off through patient revenues. And we also have made the city of Omaha and the County of Douglas, Douglas County, full partners in the funding of this. This was anticipated when the project came before the Legislature last year that we would be doing private

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fund-raising and going to other subdivisions. We, at that time, didn't know how we were going to do that. And I will admit we didn't talk about occupation taxes funding this project last year. But during the summer, the private fund-raisers working for the University Foundation, the city of Omaha, and people from the University of Nebraska came together with a plan to fund the city portion of the comprehensive cancer center. And this particular bill as drafted would negate funding for that. I know Senator Krist has tried to work with a number of different people to find a way in which we can move forward on this, and we appreciate his working on that. But at this point, we just want...needed to make our concerns known to the committee and what the impact of this bill might be. And I would respond to any questions, but I won't feel offended if you don't have a lot of them. [LB474]

SENATOR HADLEY: Are there questions for Senator Withem? Seeing none, thank you. [LB474]

RON WITHEM: Thank you very much. [LB474]

SENATOR HADLEY: Further opponents. [LB474]

TOM MUMGAARD: Good evening, Mr. Chairman, members of the committee. My name is Tom Mumgaard. I'm deputy city attorney for the city of Omaha and I'm here today on behalf of the city of Omaha to oppose LB474. I would start with the historical basis. Occupation taxes are nothing new. They have been, as pointed out, in state statutes for many, many years. You can go back and...Omaha...the statutes controlling Omaha as a metropolitan-class city has authorized Omaha to impose occupation taxes pretty much since Omaha was first established, and Omaha has done that. We have had...we have occupation taxes that go back decades. We have currently, oh, about 15 or so different occupation taxes. It's just been recently that they've caught some people's attention. Certainly they have not over the years stymied economic growth and business growth in Omaha. They've been a very solid, ordinary, regular source of revenue to help run the city. I'll address...the Supreme Court has looked at one of our occupation taxes, what I call the restaurant occupation tax, and they defined an occupation tax as a tax on the privilege of engaging in a business or an occupation in a city. Now that recognizes that there is a special benefit in engaging in business in a city. That's where your customers are. And your customers are there because the city services are there. So a business that is...or an occupation that is engaged in, in the city, receives a special benefit. And so the theory is that they...it is fair for that business to pay an extra tax to compensate the city for those services that that business is benefiting from. And that's all an occupation tax does. It's a way for that business to support the activity that supports their customers and allows that business to make money. Now recently I guess, over...there's been quite a lot of discussion about the point of sale or the percentage of sale or sales volume measure, and that certainly is prohibited by this bill. That would cause us a great deal of problems, and we see that as probably bad policy. To begin

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with, that also is a longstanding historical basis. Our primary example is our telephone occupation tax which exists in almost every city in the state. That is a percentage of sales. That has been in place many, many years. That was examined two years ago, two sessions ago, by the Legislature, and the percentage of sales measure was left in there as a specific type of measuring the business. We read that as being at least implicitly blessing percentage of sales as a measure that can be used for occupation taxes. And I use that word measure because really what we're talking about here is measuring the amount of business that that company or that business is doing in that city. It's the fairest way, as has been pointed out, because it separates the Mom and Pop shop from the mega store. You have small restaurants that pay a percentage of their sales and big restaurants that pay a percentage of their sales. With the tobacco tax, the Mom and Pop shop pays a smaller amount than Walmart does because they're doing different amounts of business. So it's very equitable. It's not regressive. It's very equitable way of addressing it. It's been mentioned that, well, that's a tax on a tax. The Supreme Court in the restaurant tax, very clear restaurant tax case very clearly identified that that is not the same as a sales tax and it is legally significant who pays the tax or who the tax base is. With the sales tax, the tax base is the customer. The occupation, the tax base is the business. The Supreme Court said that's legally significant and you can't mix them up even though certainly the business gets all of its revenue from its customers. The tobacco tax, I was the guy who drafted the tobacco tax. And so if you have any questions, I'd be glad to answer them for you. I probably know more about that than anybody else in detail. Again, it was an economic development tool to gain resources. We tried to very carefully craft it so that it would follow the guidelines that the Legislature set out last session in setting a dollar limitation. I can tell you how we got that. We didn't stick our finger in the air. We tried to go along with the direction that the Legislature has given us, both with the telephone taxes and with the bill last year, and now we find that we're being criticized and being called we did it wrong. When I sat there and I read the bill, I read the statute, we worked very hard to make sure that we were doing what the Legislature seemed to be directing us to do. So, you know, its unfortunate we find ourselves now defending in some fashion that tax because of the effort that we put in to try to agree...try to go along with the direction that had been given to us. All that we would suggest is that's enough. You don't need to change it. Let it be. Give it a few years, see if that works out. I'd be glad to answer any of your questions. [LB474]

SENATOR HADLEY: Mr. Mumgaard, would you...you talked about the press doing a lot of things. To your knowledge, has any city in the state of Nebraska put an occupation tax on a tax that the state has an excise tax on? [LB474]

TOM MUMGAARD: Certainly. As was pointed out earlier, several of the statutes actual envision that. That's public policy of Nebraska, and I'll take liquor for example. The liquor statutes certainly have taxes, state taxes on liquor. And the statute specifically says that cities can have occupation taxes. And that was addressed last year at our



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restaurant tax case. And the Supreme Court said, well, if the Legislature didn't think that there would be occupation taxes on this same product that was being taxed by the state, why would they say that? And we agree. We look at that and say, well, that's been the policy of Nebraska. The sales tax, for example. Ever since the sales tax was first enacted, it says that the sales tax is calculated on the sale price plus any occupation taxes or other excise taxes. State law has always said in the sales tax statutes that it's okay to have an occupation tax as part of the base of the sales tax. The state of Nebraska has been taxing on a tax ever since they first adopted the sales tax. It's in the regulations. We had to follow it when we implemented the restaurant tax. That was one of the complaints that we heard from the restaurant tax. And the Supreme Court says, well, it's in the statute. How can it be wrong to do it that way when the Legislature has specifically written that into the statutes and the Department of Revenue passes regulations that say this is how you calculate the sales tax? And the Supreme Court says, no, that's not...there's nothing wrong with that so-called tax on a tax. That's the declared policy of the state of Nebraska. And so that's all we've done is follow that. And, you know, if that's wrong, then eliminating the occupation tax is not the answer. You go back and you say that, well, when the sales tax is calculated, you don't include an occupation tax. You just do it on that product price. Then you eliminate the tax on a tax. [LB474]

SENATOR HADLEY: Senator Pirsch. [LB474]

SENATOR PIRSCH: Just for kind of background because I know you probably know. The, I guess, gentleman from Alliance, Mr. Cox, had testified for cities of his size that it was a \$700,000 ceiling per occupation tax before you have to bring it to the voters. Are you familiar with what the categories would be below that and above that? For instance, above it would be cities of the primary class and metropolitan of which Omaha would be. [LB474]

TOM MUMGAARD: Well, I can speak only specifically about the metropolitan class. The statute that was passed last year says that if you have an occupation tax that it's going to raise over \$6 million, you have to go to the ballot. Now we read that as saying that it's okay to adopt an occupation tax under \$6 million without going to the ballot. So any complaint that we didn't go to the ballot leaves us perplexed. The Legislature specifically said by implication, I guess, that it's okay to go up to \$6 million without going to the ballot. So when we began looking at the tobacco tax, the Legislature hadn't told us how to calculate that expected amount. And we did start with the 7 percent projection for our tobacco tax. As we gathered more information, we began to ratchet that down. We went to...the state of Nebraska keeps...Revenue Department keeps track of the packages of cigarettes that are sold because you collect tax per package. So we went to the Revenue Department and found out how many packages of cigarettes are being sold. But they can't spit that out or at least they won't tell us how many comes from Omaha. So we had to do some guesswork there. We went to various statistical databases and

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came up with some percentages of smokers who are likely to be residents of Omaha. So we took that state figure and calculated what percentage of that is likely to have come from Omaha, and we used that. We went actually from I think 7 percent to 5 percent. Well, then as we held our public hearings, we started hearing from the industry. And the industry, the retailers who sell cigarettes, were telling us, oh, no, for various reasons our numbers were off and that we were going to collect over the \$6 million. But, once again, we were trying to comply with the direction of the Legislature and we didn't want to collect over the \$6 million. We basically wanted to only collect enough to meet the obligation of the...to the medical center. So we ratcheted it down again to the current 3 percent. We didn't stick our finger in the air. We tried to follow what seemed to be the direction of the Legislature and we tried to use whatever, you know, valid information we could get. We were kind of up against the wall. We couldn't get a whole lot. But then ultimately we heard from the people who are supposed to know what they're talking about, the people who sell cigarettes. And they told us we had to go down, so we went down. [LB474]

SENATOR HADLEY: Any other questions for Mr. Mumgaard? Seeing none, thank you. [LB474]

TOM MUMGAARD: Thank you. [LB474]

SENATOR HADLEY: Further opponents. [LB474]

JACK CHELOHA: Good evening, Senator Hadley, members of the Revenue Committee. My name is Jack Cheloha, the last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I was just going to stand on Tom Mumgaard's testimony, but I did want to cover a couple of other points if I could. And I wanted to thank Senator Krist. As he introduced this bill, he was very open with us with his intention. He reached out to us numerous times to talk, to see what was going on, to...if you will, even negotiate a type of amendment which he talked about. It is true though that we did have to reject his offer, and the reason for that is we just started implementing this occupation tax in January of this year. And typically our financial numbers are at least two months behind, so we have even as of this date on March 13, we still don't know any numbers definitively for what it was going to bring in. So it would have been very difficult for us to try and either amend the ordinance or to even to give him something in writing as to our intent. But I can assure you that our intent is to only utilize this occupation tax for the purposes of economic development to help fund the Nebraska Medical Center's cancer research center. And once we meet our \$35 million obligation, that will be the end of it. So I just wanted to let you know that. [LB474]

SENATOR HADLEY: But right now there's nothing in the statute that would keep you from keeping that tax going forever, is that correct? [LB474]

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JACK CHELOHA: Right now there is nothing in the statute, but we've been through this discussion for the last couple of years dealing with occupation taxes. And as Mr. Mumgaard pointed out, we're trying to follow the law and that's what we want to do. [LB474]

SENATOR HADLEY: But there's nothing...you say you want to end it after the payment is made. [LB474]

JACK CHELOHA: Right. [LB474]

SENATOR HADLEY: But there's nothing in the statute that requires you to do that. So some future council in Omaha could say... [LB474]

JACK CHELOHA: Right. Not in state statute but in our city ordinance we do have a December 31, 2022, ending date for this occupation tax. [LB474]

SENATOR HADLEY: 2022. [LB474]

JACK CHELOHA: And that's on our books. [LB474]

SENATOR HADLEY: Okay. Senator Schumacher. [LB474]

SENATOR SCHUMACHER: And did you...when you overestimated the amount of revenue to bring in, what's been done with the amount over, of the overage? Has that been applied to credit somebody else's taxes now? [LB474]

JACK CHELOHA: No. As we had our public hearings and kept lowering the rate, now it's ultimately set at 3 percent, that's the amount, and it's set in an enterprise fund only for the specific purposes of meeting our contractual obligations with the med center. And that's the only purpose it will be use for. Did I understand your question? [LB474]

SENATOR SCHUMACHER: But it won't go over the limit when you have the election. [LB474]

JACK CHELOHA: Oh, the \$6 million? Once again I cannot say with definitive answer because we don't know what it's producing yet. [LB474]

SENATOR SCHUMACHER: But if it does, what's your intention? [LB474]

JACK CHELOHA: I believe our intention would be to revisit the ordinance and lower the rate so we would be in compliance without having to have a vote of the people. But of course there is no statutory guidance as to what happens if you do go over it. [LB474]

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SENATOR SCHUMACHER: So if you went over by a million but the next year you go under it, you fix the rate so you'd be under by a million? [LB474]

JACK CHELOHA: I can see that potentially happening, yes, Senator. [LB474]

SENATOR SCHUMACHER: Thank you. [LB474]

SENATOR HADLEY: I think tonight I'm going to quit talking. Thank you, Mr. Cheloha. [LB474]

JACK CHELOHA: Thank you. [LB474]

SENATOR HADLEY: Other opponents? Neutral? [LB474]

NATE JENKINS: Good evening, Chairman Hadley and members of the Revenue Committee. My name is Nate Jenkins, that's N-a-t-e J-e-n-k-i-n-s. I'm assistant manager for the Upper Republican NRD in Imperial presenting testimony today in a neutral position on LB474 on behalf of the Nebraska Association of Resources Districts. My testimony today will only focus on the occupation tax on irrigated lands by the NRDs. I'd like to preface my remarks by thanking Senator Krist for offering the amendment to LB474 which eliminates the changes in occupation taxes for NRDs. We do not want to interfere with his effort to make a policy change in occupation taxes regarding retail sales. However, if we would be included in this bill, the local water funding programs for state compacts and agreements could be in jeopardy. The NRDs have worked closely with the Nebraska Department of Natural Resources and the Nebraska Attorney General's Office to defend the use of occupation taxes on irrigated lands for water programs since they were authorized by the Legislature via LB701 in 2007 and modified in 2010 by LB862. When the tax was passed in 2007, the use of the tax was suspended when a lawsuit was filed in the fall of 2007. It took four years to get the final decision from the Nebraska Supreme Court that the tax was constitutional. The court case was important to the use of the occupation tax in several areas, primarily that the tax is constitutional and it is a valuable tool to manage water resources to keep Nebraska in compliance with compacts, decrees, and agreements. Also important to note in the case are the court preferences made how the occupation tax protects taxpayers and provides an important tool to manage the water, not just groundwater, within the basin. This sets some important foundation for funding water programs in fully and overappropriated areas. We would anticipate that a change in the definition would result in a new lawsuit being filed, again, challenging the constitutionality of the occupation tax. We do not want to risk going through the court process again that may result in another lengthy suspension of the use of the tax. As you may be aware, the Nebraska Department of Natural Resources has declared a water-short year for 2013, making the use of the tax even more important. The NRDs in the basin are utilizing the occupation tax to pay for augmentation projects and temporary water retirement programs to keep Nebraska in

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compliance in the Republican River Basin. The NRDs would prefer to provide local funding for water use reduction programs from all irrigators to provide solutions to the issues rather than mandating regulations without compensation. Again, I would like to thank Senator Krist for his willingness to work with the NRDs by offering his amendment to LB474, and I'm available to answer any questions you might have. [LB474]

SENATOR HADLEY: Any questions for Mr. Jenkins? Seeing none, thank you for coming in. [LB474]

NATE JENKINS: Thank you. [LB474]

SENATOR HADLEY: We appreciate it. Any other neutral? Senator Krist, would you like to close? [LB474]

SENATOR KRIST: Yes, sir, I would. Mr. Mumgaard is the kind of lawyer that you want on your side but you never want to face because he craftily drafted the piece of legislation to do exactly what it did and he used every opportunity to stay inside of a gray area to make sure that they were there. I won't argue with that. His quoting of the Supreme Court ruling I'm not sure has any bearing here. We're making policy decisions going forward on the use of occupation taxes and trying to bring something into control. Senator Harr, my answer is this. What's broken? Tomorrow they're going to put an occupation tax on lawyers. And the next day they're going to put an occupation tax on soda. And the next day they're going to put it on...and I don't want to get into an argument, but you understand what I mean. You live in Omaha. There's something about talking about somebody else's mother. You never talk about somebody else, but you can talk about your own. This is my city. And when they continue to put taxes after taxes on things and try to work with their unfunded requirements for fire and police, and then donate the money to UNMC, I have an issue. I think the citizens of the city of Omaha might have voted to support this. They might have used that .5 percent that we gave them to do what they needed to do. You're going to have a tough job ahead of you. I know on the Exec Board we're prioritizing Senator McCoy's...prioritize that bill. We're going to put that super subcommittee together, and this needs to be part of the discussion. I'd like to say in response to all the mayors and all the folks who came forward, thank you for participating in the discussion. However, tobacco and alcohol should be a state excise tax authority. And to counter the things that were said about the alcohol I will tell you this. There is a statute in the Liquor Commission--I wish Mr. Rupe would have stayed around--will tell you they were allowed to tax only at twice the rate. So it wasn't inferred that you could occupy or put an occupation tax on anything you wanted to even though we had an excise tax on it. It was we're going to give you the authority to go twice the rate because you have some unique problems with implementing those licenses and maintaining control of the liquor, and they understood that. So that's a little fallacy I think. It's one of those days. I just believe that we did the right thing in funding UNMC and voting that money out. I think we've done the right thing

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and would have done the right thing if the university would have come back to us and asked us for more money. I'll leave that conversation right there. I think the city of Omaha could have done a number of things to fund their portion. They chose to tax tobacco. It's a regressive tax. And I would hope that within the discussion as we go forward we'll have a discussion about what occupation tax is and is not. One final comment. It doesn't make any difference whether your cause is noble or not. If you're building a hospital for Mother Teresa or you're building a house of ill repute, if you're using the wrong tax base to build it and you're giving away the taxpayer's money and bypassing a vote of the people, I think it's wrong. So we need to clearly define in policy what our intentions are, and I'm sure this committee and all the other committee chairs will join you to make that decision. Thanks for your time. [LB474]

SENATOR HADLEY: Questions for Senator Krist? Seeing none, thank you, Senator Krist. [LB474]

SENATOR KRIST: Thank you. [LB474]

SENATOR HADLEY: With that, we will close LB474. And I will open LB488 and turn the gavel over to Senator Schumacher. [LB474]

SENATOR SCHUMACHER: Welcome to your committee, Senator Hadley. [LB488]

SENATOR HADLEY: Good afternoon, evening, whatever it might be. My name is Galen Hadley, G-a-l-e-n H-a-d-l-e-y. LB488 is a Revenue Committee bill. It was signed on by five members of the Revenue Committee. And basically it was put in because we didn't know where the discussion was going to go on the other occupation tax bill. But I think it is something that we're going to have to look at in our study committee because it basically says very simply that you cannot put an occupation tax on a tax or an excise tax that the state is implementing. You cannot put an occupation tax on alcohol, motor fuels, or tobacco products. And I think there is some justification for that. Those are areas that we have carved out for special taxation, the excise tax, as well as charging sales tax. And I do believe that we can run into concerns about giving away the state's tax base. And I think I would just use motor fuels. What would be to stop a city from deciding to put a 5 cent a gallon tax on motor fuels? They can do it now. Call it an occupation tax. I think this is something that we will certainly look at in our tax study, the whole area of occupation taxes. I think we had a bill last year. We worked hard on that bill, had a lot of discussion on the floor, tried to put some limits in to have the concern of taking the bill to...the amounts to the vote of the people. Remember, that was a key part of that legislation last year was the taking over a certain limit to a vote of the people. I think that's still a very important part of these occupation taxes. Lastly, I will say we've heard a lot about it's a tax on the business, not a tax on the individual. You better explain that to the citizens of Nebraska because that is not how they see it. That may be the fancy definition of it. That may be the legal definition of it, but that isn't the way they

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see it because they go to the hotel and they look down in Kearney, Nebraska, and they see a line that says occupation tax. You go to a restaurant in Omaha, 90...I don't know, I can't tell you what percentage but a lot of them there's a line that's called occupation tax. So you can say that it's a tax on the business but businesses, their goal in life is to transfer that tax to their customer and I think that's what they're doing. With that, I would be happy to answer any questions. I really don't see this bill going anyplace right now because I think it needs to be part of the study. But I do have...I would say that I just do have a concern that we leave the door open for the next year...let me put it this way. If cities decide in the next year while we're doing our tax study that they want to have taxes on these kinds of things on occupation tax, they better be ready to rescind them later. Any questions? [LB488]

SENATOR SCHUMACHER: Questions for Senator Hadley? Seeing none, thank you, Senator Hadley. Any proponents? Welcome to Revenue Committee. [LB488]

RON SEDLACEK: Thank you. Good evening, Senator Schumacher and members of the Revenue Committee. For the record, my name is Ron Sedlacek, and that's spelled S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce. I'll be brief in comments of the chamber, particularly considering the time. Our tax council did review the occupation tax bills. We decided to take a neutral position on LB474; had some concerns in regard to retroactivity in that regard; it's already been testified to. However, we do support the policy changes, the directions represented in LB488, also the clarifying language in that bill, and would echo the comments as to addressing this policy that were previously stated by Chairman Hadley. And with that, I'll close. [LB488]

SENATOR SCHUMACHER: Questions from members of the committee? Seeing none, thank you for your testimony. [LB488]

RON SEDLACEK: Thank you. [LB488]

SENATOR SCHUMACHER: Further proponents. [LB488]

JOHN DILSAVER: John Dilsaver, J-o-h-n D-i-l-s-a-v-e-r. I have no additional comments other than we are a proponent of this bill and no other additional comments than I had on LB474. If there's any questions... [LB488]

SENATOR SCHUMACHER: Who do you represent? [LB488]

JOHN DILSAVER: Rite Way Oil and Gas and the Nebraska Petroleum Marketers. [LB488]

SENATOR SCHUMACHER: Any questions? Thank you for your testimony. [LB488]

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KATHY SIEFKEN: Good evening. Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association, and we are also here in support of this legislation. We liked Senator Krist's bill because it had a little bit more detail in it, but we need help. And it's all about taxing products instead of occupations. So if you have any questions, I'd be happy to try to answer them. [LB488]

SENATOR SCHUMACHER: Any questions from the committee for Kathy? Thank you, Kathy, for your testimony. [LB488]

KATHY SIEFKEN: Thank you. [LB488]

SENATOR SCHUMACHER: Any more proponents? Seeing none, opponents. [LB488]

TOM MUMGAARD: Good evening, Tom Mumgaard, deputy city attorney for the city of Omaha. That's T-o-m M-u-m-g-a-a-r-d. The city of Omaha opposes LB488. My comments I made for LB474 also apply here in large respect. I would just simply say that these are your, the excluded businesses here, are businesses that benefit greatly from being within a city. They add to the cost of the city operation and it is fair for the city to be able to impose an occupation tax directly on them to recover revenue to pay for those costs. And that's good policy. It's been policy that's been expressed in many ways in the statutes throughout the years, and I would encourage you to stay with that policy. I'd answer any questions. [LB488]

SENATOR SCHUMACHER: Any questions for Mr. Mumford (sic--Mumgaard)? Thank you. Next opponent. [LB488]

RANDY GATES: Randy Gates, R-a-n-d-y G-a-t-e-s, finance officer with the city of Norfolk, here to oppose LB488. Most of my testimony that related to LB474 would apply to this bill. I'm not going to go over that again. I just want to reiterate we feel local control is important. We think if we continue to pull away cities' taxing ability, which I agree is pretty broad now under the occupation tax authority, you're going to continue to put pressure on what taxes are left, which are basically property taxes, because most cities are getting up toward their 1.5 percent limit on the general sales tax. LB488 would prohibit local occupation tax on motor fuels, tobacco products; and we may not be reading the part about alcoholic beverages the same. It specifically identifies 53-160, and 53-160 is a tax on manufacturers and wholesalers of alcohol beverages. It's not a tax on a retailer of alcoholic beverages. And once again this is an occupation tax, and our occupation tax in on the retailers; so we feel that LB488 would allow what we are currently doing with our occupation tax on retailers. Other than that, we don't tax any of these items and we don't feel the Legislature, however, should restrict our flexibility in the future. We don't foresee going there at this point. But once again, if we have it in the hands of the voters with 18-1208, we have to put it in the hands of the voters if it's a major tax. And we feel that's appropriate to keep that level of control locally. And I'd



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answer any questions. [LB488]

SENATOR SCHUMACHER: Any questions from members of the committee? Seeing none, thank you for your testimony. Next opponent. [LB488]

GARY KRUMLAND: Senator Schumacher, members of the committee, my name is Gary Krumland, G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in opposition to LB488. I won't be repetitive. But just to answer a couple of questions that did come up, cities do have certain sources of revenue: property tax; sales tax; fees, for example, for programs and for utilities, those sorts of things; and some state funds--the major part of that is the highway allocation funds; state aid was eliminated two years so that's done; and the occupation tax. So there is a very limited source. If you eliminate one, you either eliminate the services or you put the burden on the other, and the property tax seems to be the one that most people have concerns about. There was a question earlier about the bill that was passed last year and what the thresholds were. For metro class cities, that's Omaha, it's \$6 million; for primary class cities, which is Lincoln, it's \$3 million; for cities of the first class, which are those cities between 5,000 and 100,000, it's \$700,000; and for second-class cities and villages, those are basically everything below 5,000, it's \$300,000. That's the threshold at which a city would need to go to a vote of the people in order to impose an occupation tax, if that was what the income was. And then just also it's been mentioned before, the current law right now, Section 53-132, does allow the city to impose an occupation tax on a liquor license holder, and it does limit it though to twice the amount of what the license is. So whatever the license fee that the license holder pays to the state, the city can impose an occupation tax of twice that amount. I'd be happy to answer questions. [LB488]

SENATOR SCHUMACHER: Any questions of Mr. Krumland? Seeing none, thank you for our testimony. Further opponents. [LB488]

STEVE HUBKA: (Exhibit 36) Steve Hubka, finance director for the city of Lincoln. It's S-t-e-v-e H-u-b-k-a. Just in addition to the comments I made earlier on LB474, if it's okay with the committee I'd just like to turn in our written testimony, which is just one further comment on this subject. [LB488]

SENATOR SCHUMACHER: You couldn't read out the whole thing to us? (Laughter) It's okay with the committee. [LB488]

STEVE HUBKA: All right. Thought it might be. [LB488]

SENATOR SCHUMACHER: Any other opponents? Any folks in the neutral capacity? Senator Hadley. [LB488]

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SENATOR HADLEY: My 20-minute closing is a little long, so I will waive. [LB488]

SENATOR SCHUMACHER: Senator Hadley waives closing. That concludes the hearing on LB488. Senator Nordquist, welcome to the Revenue Committee, opening the hearing on LB150. [LB488]

SENATOR NORDQUIST: (Exhibits 37-39) Thank you, Senator Schumacher and members of the Revenue Committee. For the record, my name is Jeremy Nordquist. I represent District 7 in downtown and south Omaha. I'm here today with LB150, which will level the playing field between compressed natural gas as a vehicular fuel and gasoline and diesel fuels. It will encourage the use of CNG as a viable, affordable, and clean alternative for vehicles. Compressed natural gas can help our state and our country become more energy independent. Natural gas is abundant and a domestically available resource. In recent years, 80-90 percent of natural gas used in the United States is produced at home. We know that our constituents would greatly benefit from alternatives to gasoline, given the volatility of those prices. And CNG, on average, has been about 40-45 percent less per gallon than unleaded gasoline over the past 15 years. There are two components of the bill and then an amendment that's being passed out. I'll go through those two components of the underlying bill. First, Section 1 and 2 provides an exemption from a 2 percent statutorily required payment to municipalities for natural gas, for water and natural gas inside Omaha. Currently, MUD pays 2 percent of their annual gross revenue derived from the retail sales of gas and water. This provision was placed on the books, it's my understanding, in lieu of property taxes. And some folks after me can talk about maybe that agreement in more detail. But when the law was enacted, the use of compressed natural gas, certainly as a vehicular fuel, was not contemplated at that time. So the proposed 2 percent exemption would only apply to the retail sale of CNG as a fuel for vehicles. The 2 percent statutory payment to cities remains for the sale of water and natural gas used in homes. In 2012, the city of Omaha received \$3.6 million under this 2 percent municipal tax. Of that, only \$6,400 was related to CNG as a vehicle fuel. So the city of Omaha submitted two letters in support of this legislation, which I distributed, stating that as they understand it also, the 2 percent tax was never intended to cover CNG. And it's an important step to help level the playing field for CNG. The second component of the bill is found in Section 3. It provides for an exemption from the sales tax on energy used to produce CNG for vehicles. The Department of Revenue issued an opinion denying MUD's request for a sales tax exemption for energy used to produce compressed natural gas. The state statute and current department regulations provides for a sales and use tax exemption for energy used for processing, manufacturing, and refining. The CNG fuel purchased by MUD is not in a viable form for vehicle use and requires processing before it can be used as a vehicle fuel. It would take hours for a CNG customer to fill up their vehicle in the original form MUD receives the CNG fuel before it's processed, refined, or compressed for public consumption. So a statutory change will clarify that the electricity used to compress the fuel would be exempt. Then the amendment I'm also bringing to

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the committee and would suggest adding would also level the playing field when it comes to liquefied natural gas. Currently, Nebraska's motor vehicle excise tax as it relates to natural gas is based on gasoline. It takes about 5.66 pounds of compressed natural gas to equal the same amount of energy as in 1 gallon of gasoline. Therefore, every 5.66 pounds of CNG is taxed the same as 1 gallon of gasoline. Nebraska is ahead of the game in this area supporting CNG and defining CNG this way to ensure that it's not being overtaxed. However, there is an issue when it comes to liquefied natural gas. Liquefied natural gas displaces diesel and not gasoline, and there is more energy in 1 gallon of diesel than there is in 1 gallon of gasoline. So essentially it's an equation including British thermal units that's described. It would just treat LNG a little more favorably. Because there is no LNG filling in the state, there would be no fiscal impact on that. The other two provisions of the bill are the first provision the 2 percent tax, the city tax has an impact on Omaha, as I said, of only \$6,000. And then the other provision, because CNG is not used readily, that would be a very small fiscal impact also. After me are two individuals, Rick Kubat, from MUD, who will speak to the two provisions of the bill; and then Spencer Richley, from Clean Energy, will speak to the amendment. And with that, I'd be happy to take any questions. [LB150]

SENATOR HADLEY: And questions for Senator...yes. [LB150]

SENATOR HARR: Natural gas to compressed natural gas. [LB150]

SENATOR NORDQUIST: Yes. [LB150]

SENATOR HARR: I don't understand that process. [LB150]

SENATOR NORDQUIST: It's compressing. It's just pressurizing, it is essentially... [LB150]

SENATOR HARR: So it's pressurizing it. Okay. And what's taxed? I don't... [LB150]

SENATOR NORDQUIST: The energy of the compressing of it. [LB150]

SENATOR HARR: Okay. And how much is that? [LB150]

SENATOR NORDQUIST: Maybe the folks from MUD could probably speak to that. I don't know exactly. But that was a recent Department of Revenue ruling that it should...they are considering that it should be taxed (inaudible). [LB150]

SENATOR HARR: And there's no fiscal note, though, with that? [LB150]

SENATOR NORDQUIST: Because the utilization of CNG is so small at this time. But as the utilization of CNG grows, as it's expected to both in Nebraska and around the

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country, that component would grow. But MUD could speak. At this time I think it's nominal, but it will grow. [LB150]

SENATOR HARR: What's nominal? [LB150]

SENATOR NORDQUIST: I don't know. Sorry. [LB150]

SENATOR HARR: Okay. [LB150]

SENATOR HADLEY: Any other questions? [LB150]

SENATOR NORDQUIST: Exactly. Thank you. [LB150]

SENATOR HADLEY: Are you going to stick around for closing or are you going to head... [LB150]

SENATOR NORDQUIST: Yes, I'll be here. [LB150]

SENATOR HADLEY: First proponent. [LB150]

RICK KUBAT: (Exhibits 40-41) Good evening, Chair Hadley, members of the Revenue Committee. My name is Rick, R-i-c-k, Kubat, K-u-b-a-t. I'm a government affairs attorney working for the Metropolitan Utilities District. It's late nights like these that remind me why I voted for the pay raise. [LB150]

SENATOR HADLEY: Oh. [LB150]

SENATOR HARR: (Inaudible) suck up. No. [LB150]

RICK KUBAT: I did... [LB150]

SENATOR HADLEY: You know, I have never...I haven't met anybody who voted against that. I don't understand it. (Laughter) [LB150]

RICK KUBAT: I did strike some of my testimony and I'll try and be very brief. This last year, all of us endured a rather polarizing presidential election where commonality on the issues seemed to be the exception to the rule. But there was one issue that both candidates were united behind, and that is that it's imperative for America to reduce its dependence on foreign oil. Natural gas is abundant in the United States with approximately 90 percent of America's consumption being produced right here at home. Just as important, compressed natural gas for vehicular use is far cleaner. It emits far less greenhouse gases than gas or diesel, and it comes in at close to half the price. Most importantly, it can significantly lower the cost of transporting goods. LB150 is a

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simple bill with two aspects, and I'm going to speak to those first two aspects. There's a gentleman behind me with Clean Energy that will speak to the amendment. LB150 has two parts. Part 1, it addresses a municipal tax which is only applied to compressed natural gas as it relates to the Metropolitan Utilities District. The second aspect of the bill is it provides compressed natural gas a state sales tax exemption for energy used in industry, which is currently provided to other fuels. In the 1960s, this Nebraska Legislature passed a law requiring the district to pay municipalities in which it serves 2 percent of its annual gross sales of gas and water. At that juncture, compressed natural gas as a vehicular fuel was not contemplated. If this bill were to be passed, the 2 percent would still remain on normal gas and water sales. It would only exempt compressed natural gas as a vehicular fuel. This is a tax that is currently not paid by gas, diesel, or any other fuel. If the 2 percent municipal tax is eliminated, the cost of compressed natural gas at the pump will be lowered by 3.9 cents. That may not seem like a big number but it is a big number for fleet operators that are considering conversion. I want to stress as it relates to this first aspect of the bill, compressed natural gas will be paying the same exact state and federal excise tax; thus there is zero fiscal impact to the state treasury on the first half of the bill and there will never be a fiscal impact. It is only applied to compressed natural gas in the Omaha metropolitan area to be paid to the municipalities in which the district serves. Omaha supports this legislation primarily because it's going to assist them with their pollution mitigation efforts. The second aspect of the bill relates to the sales tax exemption for energy used in industry. LB150 would provide clarity on current state law that provides an energy exemption. Current law in Nebraska 77-2704 provides for an exemption from sales tax when more than 50 percent of energy is used for processing, refining, and manufacturing. The Department of Revenue recently issued an opinion that the district does not qualify for this because the natural gas is not changing forms and it's not becoming a different product. What MUD does, we take the gas off the pipe, we dry the gas to remove moisture, we filter it nine times to remove particulate matter. And I handed out what I kind of look at as a ridiculous picture, but what we're primarily using the electricity for is we're compressing it from 45 pounds per square inch to 3,600 pounds per square inch. This is a bus, I assume someplace in China, that shows what the product would look like without our compression process. And this is a bus that uses a fuel storage tank produced right here in Lincoln, Nebraska, by Lincoln Composites. LB150 would provide clarity on this issue and it would provide the same energy exemption to the district's processing of natural gas that would be provided to oil and gas refining in the processing of other fuels. This is my last point: The fiscal impact to the state from MUD's part of it would be a mere \$1,900. But what it would allow us to do is again reduce the cost at the pump by an additional 1 cent. Collectively, these two aspects would allow us to lower the price at the pump by 5 cents. MUD...if this bill is passed, MUD will not gain financially because of this. All we are looking to do here is to lower the price of compressed natural gas and make it a more viable alternative fuel.

[LB150]

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SENATOR HADLEY: Good. [LB150]

RICK KUBAT: Thank you. [LB150]

SENATOR HADLEY: Questions? Senator Schumacher. [LB150]

SENATOR SCHUMACHER: Now do you compress it? It's still in gas form once you compressed it, and then further compression gets it into liquid form? [LB150]

RICK KUBAT: That's correct. And again, you know, it's further compression, and I believe that it's cooled to roughly 260 degrees below zero. And again, the gentleman behind me that can talk about the LNG process and he's a little bit more sophisticated than I am on that front. [LB150]

SENATOR SCHUMACHER: Thank you. [LB150]

SENATOR HADLEY: Senator Harr. [LB150]

SENATOR HARR: Thank you, Chairman Hadley. And just to clarify the record, MUD agreed to that 2 percent tax back in the '60s, and the reason is because you guys are a public entity? [LB150]

RICK KUBAT: A political subdivision exempt from property taxes. [LB150]

SENATOR HARR: And so this the equivalent of paying property tax, that 2 percent. [LB150]

RICK KUBAT: That's exactly right. [LB150]

SENATOR HARR: Okay, thank you. [LB150]

SENATOR HADLEY: I just have one quick question. It looks to me like the person in the third window in that bus from China looks like Senator Harr. Senator Harr, would you like to explain to us what you were doing on that bus in China? (Laughter) Thank you so much. Wait. Senator McCoy. [LB150]

SENATOR HARR: I wish I were outside right now. [LB150]

SENATOR McCOY: Thank you. Thank you, Chairman, and thank you, Mr. Kubat. Just back on the 2 percent tax for a moment. I understand we're looking at .1 percent utilization now, if I'm understanding the information before us correctly. However, in light of everything else that's been talked about today, and I'm not asking you to comment on any other bills--however, I know you are here to represent MUD--has there been any

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conversations with the city of Omaha as to 20 years from now that 2 percent might be a huge sum of money. Hopefully it would be, with the utilization of CNG. I understand they are both written...provided testimony in support today. Have there been any conversations between MUD and the city of Omaha as to down the road is there going to be a point where the city is going to come back and say, remember that 2 percent we took out? We really would like to have that back. [LB150]

RICK KUBAT: To be honest with you, Senator, we did meet with officials from the city of Omaha and, you know, they understand that we want to grow this. What we emphasized to them and what they understood is pollution mitigation is going to be a big deal for the city of Omaha not only today but going down the road. And I think they also understand that this 2 percent is a 2 percent that is only on compressed natural gas and it's not being paid for gas and diesel sales. So, you know, to answer your question, no, we didn't talk about what it was going to look like in 20 years. And you know, my hopes would be we wouldn't be back here. I don't believe we will because of the fact that it burns much cleaner and I think that outweighs the cost concerns for the city of Omaha. [LB150]

SENATOR McCOY: Okay. Thank you. [LB150]

SENATOR HADLEY: Any other questions? Thank you. [LB150]

RICK KUBAT: Thank you for your time. [LB150]

SENATOR HADLEY: Further proponents. [LB150]

SPENCER RICHLEY: Chair Hadley and members of the Revenue Committee, my name is Spencer Richley, S-p-e-n-c-e-r R-i-c-h-l-e-y. I am the policy and regulatory associate at Clean Energy, and I'm here in support for LB150 as well as the amendment. Clean Energy is North America's leading provider of natural gas as vehicle fuel, and currently we are building what we call American's natural gas highway, which is 150 stations that stretch across the United States. And the purpose of that is so that for the first time the goods movement sector can use natural gas to get across the country. And two of those stations fall in Nebraska, one in Gretna and one in North Platte. And we have jointly located those stations at Pilot Flying J truck stops. What we found in building this 150-station network is that the motor fuels tax code in many states, including Nebraska, is based on an old system. And because liquefied natural gas is such a new fuel, it's not in the tax code; and this is leading to overtaxation of liquefied natural gas because liquefied natural gas has a lower energy content than gasoline and diesel, and therefore, it takes more of it to equal the same energy content. Thus it's being overtaxed. It takes 1.7 gallons of liquefied natural gas to equal the same energy content that's in 1 gallon of diesel. Basically, this cleaner domestic cheaper fuel is being penalized over a foreign fuel, like gasoline and diesel that's also dirtier. So this

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is a very simple amendment. And simply what the amendment does is includes a definition for what a...how liquefied natural gas will be taxed in the tax code. And the purpose of this is just so that it can be taxed equally to diesel. I want to stress it is not an incentive for natural gas. This is simply to put it in the tax code so that it can be taxed on an equivalent basis to diesel. And the fiscal note on the amendment is zero because our two stations right now are not flowing any gas because the network will not be completed until the end of this year, and we can't open those two stations until the entire network is finished. So with that, thank you, and I'm open to any questions. [LB150]

SENATOR HADLEY: Questions? Senator Schumacher. [LB150]

SENATOR SCHUMACHER: Just briefly. Thank you, Senator Hadley. If I were to drive 100 miles in a vehicle, what would my bill for liquid natural gas--forget about the taxes for a moment, at least the state taxes or these taxes--compare with my cost if I were just using gasoline? [LB150]

SPENCER RICHLEY: Well, compressed natural gas displaces gasoline. Liquefied natural gas displaces diesel. So that's, first of all... [LB150]

SENATOR SCHUMACHER: Let's say it's my car. I'm the compressed guy. [LB150]

SPENCER RICHLEY: Okay. Well, we sell it, and as well as other fuel providers sell our fuel on...with compressed natural gas, we sell it on a gasoline gallon equivalent, so that consumers know that when they fill up their tank with, say, 5 gasoline gallon equivalents, that is the same as filling their tank up with 5 gallons of gasoline. So you would get exactly the same. [LB150]

SENATOR SCHUMACHER: So how much will 5 gallons of gas cost me as compared to 5 gallons of gallons equivalent of natural gas cost me? [LB150]

SPENCER RICHLEY: It's \$1.50 cheaper with the gasoline gallon equivalent. [LB150]

SENATOR SCHUMACHER: So with or without this tax, why wouldn't people use compressed natural gas if they have the ability to do it? [LB150]

SPENCER RICHLEY: I agree. I mean, well... [LB150]

SENATOR SCHUMACHER: I mean, why do we have to incentivize them by reducing the taxes on it? [LB150]

SPENCER RICHLEY: Well, this isn't an incentive. And compressed natural gas...to just be clear, compressed natural gas is in the tax code currently. It's 5.66 pounds of compressed natural gas equals 1 gallon of gasoline. Liquefied natural gas, which is



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used in heavy-duty vehicles typically, and displaces diesel, is not in the tax code. So this is just simply including what liquefied natural gas would be in the tax code to diesel. [LB150]

SENATOR SCHUMACHER: But if it's so much cheaper, on the merits--forgetting about taxes--it's a lot cheaper and supposedly cleaner, and with or without the tax it's still a lot cheaper. Then why would we want to give up the tax revenue? In fact, why wouldn't we want to put a little more on it? [LB150]

SPENCER RICHLEY: Well...with liquefied natural gas? Okay, so compressed natural... [LB150]

SENATOR SCHUMACHER: Either one. [LB150]

SPENCER RICHLEY: Well, there is a difference and I just wanted to explain this really quickly. Compressed natural gas, you can utilize the pipeline system for that. So you can take that right out of the pipeline, compress it, put it in the vehicle. Liquefied natural gas you cannot do that. You have to produce liquefied natural gas at a plant. So we produce the gas at one of our LNG plants. Then we have to truck it to Nebraska. And for every mile that we have to truck that, that's an extra cost and that slims our margin. And what we're finding is that with this penalty currently, this unintentional penalty, simply because it's not in the tax code, we can't meet...that gap becomes slimmer and slimmer to the point where in some states, like Nebraska, it's becoming negative, where it's not cheaper than diesel anymore. So putting this in the tax code would guarantee that price margin difference. [LB150]

SENATOR SCHUMACHER: But this deals both with compressed and liquefied, right? [LB150]

SPENCER RICHLEY: The amendment...well, yes. The bill with the amendment, yes. But how it's applied in the bill is different for compressed natural gas to liquefied natural gas. Again, the amendment is simply including liquefied natural gas in the tax code. The first two parts of the bill, which were spoken on earlier, have to do with compressed natural gas only. [LB150]

SENATOR SCHUMACHER: All right. But we could still tax it more, compressed. I understand there might be additional overhead on liquefied. We could tax compressed more and it would still be a whole lot cheaper if somebody had a compressed gas-fueled car. So why won't we tax it more and try to make up all these needs that we're hearing? [LB150]

SPENCER RICHLEY: Well, because...well, number one, it's a cleaner fuel. [LB150]

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SENATOR SCHUMACHER: But it's still carbon...it still emits carbon dioxide even though it's cleaner. [LB150]

SPENCER RICHLEY: It does. Yes. But, I mean, if you tax it more, then the incentive to switch over is lost and the fact that... [LB150]

SENATOR SCHUMACHER: If we tax it 100 percent more. But I'm just a little greedy; I just want 20 percent. I'll leave 80 percent for a cost difference. (Laugh) [LB150]

SPENCER RICHLEY: Well, I mean, it...the incentive still, I mean, is lost. Like as was spoken earlier, even a 4 cent difference is...even a penny is extremely important to...you know, Werner is here. They are going to testify as well. And they'll tell you, they consider a penny per gallon a lot when you're talking about a fleet. So just a 20 percent, whatever, 100 percent, whatever it is, that's important to a fleet that's considering switching over to a cleaner domestic fuel. You don't want to disincentivize a fuel that's cleaner domestic and incentivize petroleum fuels that come about 35 percent from OPEC. [LB150]

SENATOR SCHUMACHER: Thank you. [LB150]

SENATOR HADLEY: Senator Harr. [LB150]

SENATOR HARR: Thank you. And you seem like a nice young guy, but we need some third-party scientific that shows the equivalents that you want in this amendment. If you can get that to us, that's all (inaudible). [LB150]

SPENCER RICHLEY: That's fine. I can definitely provide that to you. And, in fact, let me explain the amendment real quick: 6.06 pounds, which would be the diesel gallon equivalent of natural gas...of liquefied natural gas, that number was agreed upon between many, many, many stakeholders, the largest stakeholders in the natural gas industry. And we do have a spreadsheet of all the calculations that I can get to each and every one of you. [LB150]

SENATOR HARR: Perfect. That's all I need. Thank you. [LB150]

SENATOR HADLEY: Senator Janssen. [LB150]

SENATOR JANSSEN: Since it's late and Senator Pirsch isn't here, I'll ask a question. Senator Schumacher got me thinking down the line of, okay--I'm trying to grasp this--five...say it's Senator Schumacher's compressed vehicle or his vehicle. He was talking price. I want to talk mileage now. [LB150]

SPENCER RICHLEY: Okay. [LB150]

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SENATOR JANSSEN: I'm trying to...so that same 5 gallons of regular gas compared to the equivalent of 5 gallons of compressed natural gas, which would be the replacement, right? I've got that right? [LB150]

SPENCER RICHLEY: Right. The gasoline gallon equivalents, yeah. [LB150]

SENATOR JANSSEN: Okay. Right. So apples to apples, if you can, what would be the mileage difference, one over the other? Is it the same; different? [LB150]

SPENCER RICHLEY: Well, the reason we sell it on a gasoline gallon equivalent is so that consumers know it is the exact...the same. The MPG is the exact same. And we do that because, you know, natural gas is an alternative fuel. People are hesitant about switching over. So we try to make it as easy as possible for the consumer when switching over. They know that 5 gasoline gallon equivalents is the same as 5 gallons of gasoline, so they can travel the exact same amount of mileage. [LB150]

SENATOR JANSSEN: So if I had a 5 gallon gasoline tank--that's the maximum amount of gasoline I could put in it--and I had the maximum 5 equivalent gallons of CNG, I could go the same distance MPG. [LB150]

SPENCER RICHLEY: Yes. Yes. [LB150]

SENATOR JANSSEN: Okay. All right, thank you. [LB150]

SPENCER RICHLEY: Sure. [LB150]

SENATOR HADLEY: Further questions? Seeing none, thank you. [LB150]

SPENCER RICHLEY: Thank you. [LB150]

SENATOR HADLEY: Further proponents? Welcome to the Revenue Committee. [LB150]

JOHN DAVIS: Thank you, Senator Hadley and members of the committee. It seems like deja vu all over again. [LB150]

SENATOR HADLEY: It certainly does, doesn't it? [LB150]

JOHN DAVIS: For the record, my name is John Davis, J-o-h-n D-a-v-i-s. I came prepared with some bullet points, but obviously, in terms of the talking points here, I think everyone gets the gist. I did want to clarify a couple things just to make sure that we all understand that in terms of looking at eliminating this 2 percent charge or fee or

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tax or whatever we're going to call it, is that it's not like that we're going to do that and then there isn't going to be any taxation towards the CNG. As we've all heard, is that it's still, whether it's 5.66 pounds or whatever it is, they're still basically is a fuel being taxed. But again, as these statutes were originally set up, it was not set up to charge us 2 percent or this 2 percent to be charged to CNG as a vehicle fuel. Now I'm not a physicist or an engineer, but I might be able to answer some of the questions. I know that Senator Schumacher had quite a few. And Senator Harr, I'm a nice young man as well, so take it easy on me. But I have the benefit of being on the front end in terms of being a fleet manager that uses the fuel and then also partners with MUD in terms of dispensing the fuel. Several years ago we started talking with MUD about this as a possibility. We operate five cab companies in Omaha, Nebraska. As we went to different trade shows and regional conferences, we see our peers in other areas are using CNG or other alternative fuels. And so typically that issue would come up. And, quite frankly, we weren't really doing anything here in Nebraska or in Iowa. So we started working to address that, and we ended up partnering with I think about nine other partners, along with MUD, on a Department of Energy grant through the Clean Cities initiative; and were awarded that program. And so part of that was, is that we converted 50 Chevy Impalas to run on compressed natural gas and then also partnered with MUD to open the first public CNG gas station in Omaha. And so we currently are at 5402 L Street. And when we bought that property, we bought it with the intent of also purchasing the gas station at 5318 L Street, which we did several years ago. And again, in June 2011, opened the gas station along with MUD. So from our standpoint, these small initiatives or incentives like this give stakeholders, such as MUD and fleet managers and fleet systems such as the example that we have with us, the incentive to seriously look at that. Because that is one of the...I think the toughest selling points right now, when you look at that, is that fleet managers look at your incremental costs in terms of converting these vehicles. It's not cheap. Luckily for us, we're doing cars versus dump trucks or garbage trucks or that sort of thing. Those are exponentially more expensive. To convert a Chevy Impala, it's roughly about \$10,000 to do the install, and that's with us actually doing the install ourselves versus farming that out and paying retail for that conversion. The drivers that we contract with are independent contractors. They're not employees, so they purchase their own fuel. I know that I think it was Senator Harr wanted to hear some numbers. I'll just throw out a general number in terms of our average fuel utilization for a taxicab in Omaha, Nebraska. The average taxicab per week puts on about 1,000 miles. Those vehicles sit idle, as you know, a lot of times, at cab stands, airport, that sort of thing. And so they consume about 15 gallons of fuel per day. On average, a cab driver that is driving a CNG Chevy Impala versus a gasoline Chevy Impala saves about \$210 a week--that's what they gross--for driving that Chevy Impala. Now obviously we put a lot of resources into that, and so we charge incrementally a little bit higher lease, about \$10 a day. So we're grabbing about a third of that, but they're still netting out about \$140 a week. And that is apples to apples, Senator Janssen, as close as you can get. CNG and gasoline both burn at about a B.T.U. of 125,000 B.T.U.s. So when you do that GGE comparison, those vehicles, again

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there's a substantial savings there. I frequently drive a CNG Impala back and forth to Lincoln, to our Lincoln office here; or if I'm doing business here, like today, typically when I go back and top that vehicle off after driving from Omaha to Lincoln, typically it's only consumed about \$6 worth of fuel. And I can tell you, I chose to drive my 2011 Silverado down here, and it's going to probably cost me about \$42 to drive between here and Omaha. So other than that, I would certainly, with the lateness of the hour, open it up to any of the senators if you have any other follow-up questions. [LB150]

SENATOR HADLEY: Questions? Senator Schumacher. [LB150]

SENATOR SCHUMACHER: Just a quick one here. It sounds like this is so much cheaper and even though there is some overhead in converting or to manufacture these vehicles right out of the chute, it probably wouldn't be any conversion overhead. Why are we saying we've got to give a few cents extra off on the tax to make it even more attractive? It seems like we should be going the other direction. [LB150]

JOHN DAVIS: Because again, it's very expensive. And so you need to look at options to give fleet managers again those options. The conversion cost, as I said earlier, is \$10,000 for a Chevy Impala. Based on our business model, that's more than typically what we...prior to our CNG program, I typically didn't have \$10,000, period, in the vehicle before it went into service. We typically used cars that were about four or five years old, roughly around 80,000 miles. [LB150]

SENATOR SCHUMACHER: But let's fast forward three years when they are making these things right off the assembly line, using things like Westpoint Technologies (sic). I believe they make the natural gas carburetors and things like that. So these things come that way. Why would we want to permanently cut this tax or why wouldn't we want to take advantage of the fact that this is going to be a lot cheaper to drive and actually go the other direction? I mean, you're making a case for using compressed natural gas and making cars with it right off the assembly line, so there is no conversion cost. Why do we want to not take advantage of that and make up some of that spread in increased taxes? [LB150]

JOHN DAVIS: Well, if you call it a conversion cost or an incremental upgrade, unfortunately, Senator, there is an additional cost. [LB150]

SENATOR SCHUMACHER: Right. But let's forget about the conversion business because I understand that right now you've got to go through a lot of expense in order to make it run. But fast forward to a time when you can go and place your order at the Chevy dealership for your Impalas: I want my Impalas to run right off the assembly line with compressed natural gas. And you're going to have a huge fuel savings; every incentive to buy it from the dealership that way. Why wouldn't we want to start planning for taxing that a little bit more in order to recoup some of the lost revenue we're having

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in all these other areas? [LB150]

JOHN DAVIS: Well, unfortunately, I think that may be decades down the road. Right now, if you go, for instance, and you went to O'Daniel in Omaha and you purchased a new Honda Civic GX, which from Mother Honda comes already burning CNG. The incremental upgrade for that car versus the gasoline version is \$6,000. So when you...and you mentioned Westport earlier. The Westport, I believe it's the I-9 engine that they use in semis. Again, great motor, a great product. But if you order that truck with that Westport motor versus the diesel motor, there is a substantial incremental increase for buying that vehicle. Now what it is...I don't buy those particular...so I couldn't tell you exactly whether it's... [LB150]

SENATOR SCHUMACHER: But that's because they are in low production right now. They're not in the...not many of them made, but...I know it's getting late and I'll just shut up (inaudible). [LB150]

JOHN DAVIS: Right, right. Yeah, but... [LB150]

SENATOR HADLEY: Okay. Any other questions? Senator Hansen. [LB150]

SENATOR HANSEN: Thank you. John, when you compress gas, they usually put an additive in there that has that really bad smell to it, a distinctive smell. Do you have that in your cabs? [LB150]

JOHN DAVIS: We do. [LB150]

SENATOR HANSEN: Never an odor going down the interstate or anything? [LB150]

JOHN DAVIS: No. No. I mean, much like when you have gasoline in your car, typically you don't smell gasoline. And... [LB150]

SENATOR HANSEN: Gas doesn't smell near as bad as...(laugh). [LB150]

JOHN DAVIS: Yeah, you're correct. It doesn't smell nearly as bad, but... [LB150]

SENATOR HANSEN: I don't know what that additive is but it's really bad. So is the fuel tank part of the conversion? [LB150]

JOHN DAVIS: It is. [LB150]

SENATOR HANSEN: So it's a much stronger fuel tank. [LB150]

JOHN DAVIS: It is. The test actually, with the fuel tanks, go through a variety of tests,

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including ballistics test. And, you know, the example that I usually give people when they're asking, because I have people come up and just ask questions all the time, is if... [LB150]

SENATOR HANSEN: What about a wreck? [LB150]

JOHN DAVIS: I was just going to address that. [LB150]

SENATOR HANSEN: Okay. [LB150]

JOHN DAVIS: ...is if I was in an accident and the impact was hard enough that the fuel tank got ruptured, would I rather be standing there at the wreck in a pool of gasoline around my feet or would I rather be standing next to a car that has an air gas that's lighter than air so when it actually leaves the vessel is going to go straight to the atmosphere and it won't sit there around your feet. So I'd rather have that. Plus with the CNG, you have to have the right...you kind of have to have that perfect storm. You have to have the right air temperature, the right amount of oxygen, and then obviously the ignition source. [LB150]

SENATOR HANSEN: All that good technology. Thank you. [LB150]

SENATOR HADLEY: Any further questions? Seeing none, thank you. [LB150]

JOHN DAVIS: Okay, great. [LB150]

SENATOR HADLEY: Next proponent. Could I see a show of hands of how many more we have? Okay. [LB150]

STEVE PHILLIPS: Good evening, Chairman Hadley and committee members. I'm Steve Phillips; that's S-t-e-v-e P-h-i-l-l-i-p-s. I'm the senior vice president of operations for a small trucking company down the road, Werner Enterprises, out of Omaha. I'll give a little background on Werner, because I think our size and scope certainly plays into this topic. We run over 7,300 trucks. We're slightly under that right now, but normal time, 7,300 trucks. We operate in 48 states. We have in excess of 10,000 employees. Our fuel purchases are large, and to put that in scope, we run in excess of 2 million miles a day down America's highways. Okay. And the fuel that it takes to operate that equates to about 12 million gallons a month of diesel fuel. It doesn't make us the bad guys, because we are burning a lot of diesel. We also bring everything you see in this room to you, it all comes on trucks. We, of course, want to buy that fuel, whether it's natural gas or diesel, as cheaply as possible. Trucking is a very low-margin business, and so anything that we can do to limit how much we burn or what we pay for what we burn is very important to us. We don't measure our gains in miles per gallon. We measure them in hundredths of miles per gallon. So 4 or 5 cents off what we purchased on that much

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diesel means a lot. The questions have been asked by a few of you as to if it's so low right now, why does it need further incentive? The fact of the matter is that cost of the vehicle--to expound a little bit more on that--is so high with diesel trucks, or with Class A trucks I should say, that the return on investment right now is no better than buying a diesel. Okay. So why would Werner Enterprises go buy natural gas trucks? Because we believe that in the future, for a lot of reasons, for cleaner fuel being produced domestically and the fact that it's coming, all of our suppliers are putting in natural gas stations, we believe there's going to be an opportunity to purchase those vehicles lower than we do right now. We believe there's going to be an opportunity to have a lower-cost solution. Okay. The diesel truck that we...we've got two test CNG trucks on the road right now. The upcharge on those--and we got them straight out of the factory, but then we did add some tanks--\$80,000 additional over that same truck if it was burning diesel. And that's again, to put enough tanks on it to get it one...well, 500 miles is about the capacity that we get out of our 165-gallon tanks. So it's very important to us. And, of course, supporting this bill, we're a little bit agnostic on what fuel we burn. At the end of the day, it really comes down to cost. We have to operate as cheaply as possible. We feel, long term, natural gas is going to give us some solutions. How fast we will get to that point I can't tell you. We do plan on purchasing some more vehicles by the end of the year. We have not made that order yet. But anything that we can do that at least makes it fair, a fairer tax, be it natural gas or diesel, just makes sense to us. So we are in support of the bill. With that, I'll open it up to questions. [LB150]

SENATOR HADLEY: Senator McCoy. [LB150]

SENATOR McCOY: I know it's late. I just have one question as I'm sitting here. I have a small business; you obviously have a large business. I'm just trying to understand...and I don't want to get into your business model, but if it costs that much, why wouldn't you just wait until it's cheaper? With the...why...I mean, if you feel comfortable, why make the investment? I'm trying to understand why you would make the investment in those trucks when they're so expensive now, hoping, obviously not very long down the road, it's going to be cheaper. Wouldn't you just...why wouldn't you just wait until...? If it's a cost running now about the same as diesel, why not just wait until it's cheaper and then go out and order some new trucks? [LB150]

STEVE PHILLIPS: I think that's a great question and kind of a multipart answer. One is it's not more expensive, so we're not getting hurt at this point, and our test is showing that our maintenance costs are not much higher. But we certainly save on the fuel purchase. But you know, at the end of the day, there are otherwise about the same in the life of the truck. So it doesn't cost us more. The other thing is, we want to be on the front end of that technology. We want the learnings from having trucks in our fleet right now, so when it does become a cheaper solution and we actually are able to cut costs, we don't want to spend a year testing and learning from it at that point. We want to be able to jump, purchase trucks, and put them in the fleet. The last one...the last answer



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to that, and it's huge, is our customers are demanding cleaner burning equipment. Our customers are pushing to their customers, and I'll use P&G as an example. The consumers that buy their product, they need to be able to sell that we are doing what's right for this country and we are pushing clean energy. And so that plays into it a lot too. As a partnership with our customers, we're kind of obligated to get in the game now. [LB150]

SENATOR McCOY: I understand. Thank you. [LB150]

SENATOR HADLEY: Any other questions? I think you have 7,299 trucks, because one was in the median when I came in from Kearney the other day. So I just thought I'd...if you don't know it's there, it's there, okay? (Laughter) [LB150]

STEVE PHILLIPS: I better go check him out. [LB150]

SENATOR HADLEY: Thank you for staying and testifying. We appreciate it very much. [LB150]

STEVE PHILLIPS: You're welcome. [LB150]

SENATOR HADLEY: The next proponent. [LB150]

JILL BECKER: Good evening, Senator Hadley and members of the Revenue Committee. My name is Jill Becker, spelled J-i-l-l B-e-c-k-e-r, and I appear before you as a registered lobbyist on behalf of Black Hills Energy; and specifically we are in support of Section 3 of the green copy of the bill. And just to remind you what this is: That would exempt from sales tax the electricity costs for compressing natural gas. That's the simplest way to say it. For us, that number is small. You asked what it is. I have no idea because we don't even measure it. We don't have a separate meter right now out at our facility here in Lincoln at our fueling station that would measure that. What we do see this being a benefit...or who it will benefit for, is for those customers that might put in their own fueling station but do have a separate meter that would know exactly how much electricity they're using. They would reach that 50 percent threshold and they would not be charged sales tax on that. That's where we see the benefit that comes in. Just to comment a little bit on the discussion that you were having, I wish I was sitting in this chair and we were having a big discussion about incentives for CNG. We're not. CNG conversion costs and fueling stations are very expensive. The fiscal notes that you would see on those types of bills would be large and probably more than the committee's appetite given the discussions going on this year. But I definitely think that what you're hearing from us in the industry and us consumers is that we really want to see our state move down the path using more CNG. This is just a really small piece to maybe do that but there is a lot of benefit to doing so. There is environmental benefits for using CNG. There's certainly financial impacts regarding the lower fuel costs. We've

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got to figure out a way to get the costs of those conversions and the fueling stations under control. You've heard testimony in the years past, the largest manufacturer of the compressed natural gas tanks is here in Lincoln and they hardly sell any within our state. Hopefully, that's changing, based on the testimony that you've heard. But this is an industry that we don't want you to tax too high right now, because we really want to get it moving, and we'll talk about those bills when we've got a booming industry here in Nebraska but we don't have it yet. With that, I'd be happy to take any questions. [LB150]

SENATOR HADLEY: Any questions for Ms. Becker? Seeing none, thank you. [LB150]

JILL BECKER: Thank you. [LB150]

SENATOR HADLEY: Next proponent. [LB150]

MARCUS MEYER: Good evening, Senator Hadley, members of the committee. My name is Marcus Meyer, M-a-r-c-u-s M-e-y-e-r. I'm here to represent Hexagon Lincoln, formerly known as Lincoln Composites, here today in support of LB150. I assume you are already aware of the benefits of CNG given our previous conversations here. And in combination with these benefits, we have spawned a domestic industry which is growing rapidly. While it may not seem that natural gas as a vehicular fuel is important to the state of Nebraska, I'd like to point out a few places that natural gas vehicles directly impact the state. NGVs benefit from lightweight storage of CNG. The industry leader for lightweight composite CNG fuel tanks is located right here in Lincoln, Nebraska. Below are a few quick facts about the economic impact of CNG growth as an alternative fuel. Hexagon Lincoln has grown since 2010 from 119 employees to presently 269 full-time employees. Our employees are not minimum wage earners. In 2013, we represent \$13 million in salary, and this is directly an impact to the Nebraska work force. We have grown from \$33 million in sales in 2010, to \$87 million in sales in 2012. This growth is directly related to CNG vehicle fuel tanks. In 2012, over \$15 million was spent with local Nebraska businesses within our supply chain. While our consumer base is almost exclusively outside of Nebraska, we have significant impact on the local economy. This growth would not be possible without CNG as a driving force for our market. LB150 helps ensure that CNG is recognized on an equal basis with traditional liquid fuels such as gasoline and diesel, which will help our business grow. It is not asking for preferential treatment of alternatives to traditional fuels, only for equality in the tax base which won't hinder the economic benefits of CNG and slow down the economic growth within this support industries most important to Nebraska. Equality of tax base is key to continual growth, and as such, we support LB150. I would like to add to that, based on Senator Schumacher's question: Why not tax it more? I believe at this point that would hinder the growth of this industry. Perhaps later, when margins can be squeezed. But at this point I do not believe the industry can do the chicken-and-egg scenario of stations or vehicles without the greatest margin possible. [LB150]

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SENATOR HADLEY: Questions? Seeing none, thank you for staying with us. Thank you. [LB150]

MARCUS MEYER: Okay. Thank you. [LB150]

SENATOR HADLEY: Next proponent. [LB150]

LARRY JOHNSON: Good evening, Chairman Hadley, members of the committee. My name is Larry Johnson, L-a-r-r-y J-o-h-n-s-o-n, and I'm the president of the Nebraska Trucking Association that is testifying enthusiastically about the...in favor of LB150. On behalf of our over 800 member companies, and the owners of approximately 815,000 pieces of power equipment that are licensed in Nebraska used in moving freight and people into and out of the state, all of which eventually could be operating using the clean and affordable CNG or LNG to fuel their engines. In addition, I've been asked by our worldwide member United Parcel Service to also specifically voice their support for LB150. They've already adopted and are putting equipment into their fleets right now, but the only thing that's holding them back is that national fuel system so that they would be able to refuel. So as Werner said, they're already doing a test pilot here and that these early folks are looking at adding more trucks to their fleet as they go. However, as one might imagine, one of our industry's biggest challenges in making this change is to be sure that the new fuel will continue to be competitively priced and that we'll have a reliable national network to refuel wherever we go. Being such a mobile industry, it will be important that all these early adopters that are taking that risk in creating that national fuel network and the companies the y'll be helping to support that, commercial vehicles, that they have a level playing field for all those industries that will come along after. One of the things that we could look at globally is that right now the U.S. has 7.5 cents of their gross domestic product that goes into transportation. China is at 25.5 cents. If you can imagine what this kind of benefit it would create for transportation, if we can get that down to 4.5 cents of GDP compared to their 25.5 cents, we'll see that manufacturing moving back to the market much quicker again. So certainly it works on the agricultural side as well. We need cheap...cheaper transportation to get the grain on the exports over to them. And as long as they're at 25.5 cents, we have that competitive advantage here for production as well. So with that, I'll answer any questions. Not too technical though. [LB150]

SENATOR HADLEY: Questions? Seeing none, thank you. [LB150]

LARRY JOHNSON: Okay. Thank you. [LB150]

SENATOR HADLEY: Any further proponents? Opponents? Neutral? Waives closing. With that, thank you all for staying. [LB150]