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Transcriber's Office

Revenue Committee
January 28, 2016

[LB683 LB727 LB762 CONFIRMATION]

The Committee on Revenue met at 1:30 p.m. on Thursday, January 28, 2016, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB683, LB727, LB762, and gubernatorial appointments. Senators present: Mike Gloor, Chairperson; Paul Schumacher, Vice Chairperson; Lydia Brasch; Al Davis; Burke Harr; Jim Smith; and Kate Sullivan. Senators absent: Jim Scheer.

SENATOR GLOOR: Good afternoon. We're going to start our hearing. I'm Mike Gloor. I'm the Senator from District 35, which is Grand Island. I welcome you to the Revenue Committee hearing this afternoon. We'll take the bills in the order listed on the agenda outside the door here. A couple of procedural things that I want to run through quickly. This looks like a pretty savvy audience, but let me run through them anyway for the record. Please, if you haven't done so already, either turn off or mute your cell phones. If you're going to provide testimony, please move closer to the front so we don't spend a lot of time with people going back and forth. When you provide testimony, we need you to fill out a sign-in sheet in the back. Get that filled out and then give it to the clerk when you come up here. When you provide your testimony, we'd ask you to speak into the microphone so that we can get it down. Give us your name and spell out your name. If you have copies of handouts, please give us 11 copies of handouts so we have enough to go around for everybody and for the record. If you don't have 11 copies, and you have a handout, get the attention of the pages so that the pages can get those copies for you and by the time you get up here, we'll have them taken care of. If you choose not to testify on the microphone, but you would like your position stand on a bill to be known, there is a sign-up sheet in the back and you can register your name back there and we'll make sure it's part of the record. We'll take testimony in this order. We'll start with the introducing senator, then we'll go to proponents for the bill, opponents for the bill, those in a neutral capacity, and then we always offer the introducing senator a chance to close if he or she so wishes. To my immediate right is counsel, Mary Jane Egr Edson. At the far end is Kay Bergquist, she is the research analyst, and Krissa Delka is the clerk sitting down there on my left. And today, we have the pages with us. Alex from Aurora, and Brenda from Wakefield. And I would ask the members to introduce themselves starting with Senator Davis, please.

SENATOR DAVIS: I'm Senator Al Davis from District 43, which is north central and most of western Nebraska Panhandle.

SENATOR BRASCH: I'm Senator Lydia Brasch, District 16, and that is Burt County, Cuming County, and Washington County.

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

SENATOR SMITH: Jim Smith, District 14 in Sarpy County.

SENATOR GLOOR: And with that, we'll get started. I would say that there are senators who come and go, will show up as...I'm sure you understand, they have other bills to introduce in other committees and so I expect the other senators will show up and we will get them introduced as they arrive. We'll start our meeting with gubernatorial appointments, and start with the TERC, Tax Equalization and Review Commission. Mr. Keetle, welcome.
[CONFIRMATION]

STEVEN KEETLE: Thank you. Good afternoon Chairman Gloor and members of the Revenue Committee. My name is Steven Keetle, that's S-t-e-v-e-n K-e-e-t-l-e. I appear before you today to ask for your confirmation of my appointment to the Tax Equalization and Review Commission. Governor Ricketts is appointing me as a commissioner from the Second Congressional District. I attended the University of Nebraska for undergraduate degree and the University of Nebraska College of Law for my juris doctorate. I graduated in 1999. After law school I became a staff attorney for the Tax Equalization and Review Commission. I worked for the Commission either as staff attorney or legal counsel until my appointment in December. During my time working for the Commission I've gained experience in the areas of appraisal and assessment of rural property, as well as the familiarity with the hearings conducted by the Commission of every individual taxpayers in their appeals of their property values. I've worked with a variety of taxpayers, county officials, attorneys, for both parties, staff members of the Department of Revenue, current and former commissioners of the TERC over the years, and I think this experience will...in perspective will serve me well as a member of the Commission. I believe I will work well with the other members of the Commission, including Commissioner Hotz who is also appearing today for his confirmation of his reappointment. I think I will work well with the various parties that appear before the Commission to fairly and efficiently resolve the appeals and the other duties of the Commission. I believe the Commissioner plays an important role in property assessment process and I want to apply my experience to help make the Commission fulfill this role. With that, I'd be happy to answer any questions you might have.
[CONFIRMATION]

SENATOR GLOOR: Tell me again how long you have been counsel. [CONFIRMATION]

STEVEN KEETLE: I have been counsel since 1999, so quite a few years, either as counsel or as staff attorney. [CONFIRMATION]

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SENATOR GLOOR: So, you haven't said it, but I would imagine in your own mind, you're looking forward to this as being a pretty easy transition between being counsel and being the actual commissioner. [CONFIRMATION]

STEVEN KEETLE: I think so. I think I've observed enough, dealt with enough of the parties, both pro se taxpayers, attorneys who appear regularly before the Commission and a lot of the county officials, I think it will be a smooth transition, I believe. [CONFIRMATION]

SENATOR GLOOR: Well, it speaks volumes that you weren't discouraged to make that move and were wanting to make that move, so good for you. Are there other questions of Mr. Keetle? Senator Schumacher. [CONFIRMATION]

SENATOR SCHUMACHER: Thank you, Senator Gloor. One of the issues that occasionally is called to our...my attention and perhaps other members of the committee, is valuation of land where the soil type and the...maybe improperly classified resulting in it to being overvalued. Do you see adjustments in that area within the realm of TERC? [CONFIRMATION]

STEVEN KEETLE: Well, I think those do happen when cases come before the TERC. Every case that we hear on a property valuation appeal is very fact specific, evidence specific to that case. I think a lot of times when parties have the opportunity to appear before the Commission, those types of misclassifications can get resolved either by the Commission or through agreement of the parties. [CONFIRMATION]

SENATOR SCHUMACHER: But if the classification relates back actually a mislabeling of the land from those old studies that were done that somebody apparently went through and labeled the land as, you know, Class 4(B) or whatever, what role is there in...before the TERC board in looking at hard data that this is not Class 4(B), it's really 4(C)? [CONFIRMATION]

STEVEN KEETLE: Well, again if the parties bring that data to the Commission, that that's something that can be considered when deciding the appeal. So if there is the evidence there to show that that was...that is the case, then I would assume you would change that valuation on that parcel of property. [CONFIRMATION]

SENATOR SCHUMACHER: Any systemic approach? Is there quite a bit of this going on in a particular area of the state? [CONFIRMATION]

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STEVEN KEETLE: Well, the Commission's powers set by statute and when an appeal comes before the Commission, we have the authority to resolve the valuation of that piece of property, so. [CONFIRMATION]

SENATOR SCHUMACHER: Is that limited to a case-by-case basis rather than some type of rule making? [CONFIRMATION]

STEVEN KEETLE: Yes. [CONFIRMATION]

SENATOR SCHUMACHER: Thank you. [CONFIRMATION]

SENATOR GLOOR: Other questions? Seeing none, thank you for taking the time to come in today, and on a personal note, we're all thinking of your father. [CONFIRMATION]

STEVEN KEETLE: Thank you very much. [CONFIRMATION]

SENATOR GLOOR: And we'll move to Commissioner Hotz for a reappointment. Good afternoon. [CONFIRMATION]

ROBERT HOTZ: Good afternoon. Chairman Gloor and members of the Revenue Committee, thank you. My name is Rob Hotz, R-o-b H-o-t-z. I was recently reappointed by Governor Ricketts to continue serving on the Tax Equalization and Review Commission as the Commissioner from the First Congressional District, and thank you for your consideration of my reappointment today. I am a fifth generation Nebraskan, born and raised in Grand Island where I graduated from Grand Island Senior High. I attended the University of Nebraska-Lincoln and received undergraduate and law degrees from there. Since my first appointment to the Commission in 2007, I have earned a Nebraska assessor certificate, which is the certificate required of all county assessors and deputy county assessors. I have also completed 150 hours of appraisal course work. I earned a certificate also from the National Judicial College for administrative law for hearings and completed 30 hours of training in basic mediation as recognized by the Nebraska Supreme Court Office of Dispute Resolution, which actually comes in quite handy with as many pro se litigants as we see, and as I think the courts are seeing these days as well. I'm also a member of the National Association of Administrative Law Judiciary and have served on the planning committee of the National Conference of State Tax Judges since 2012. During my service on the Commission, I've been involved in the resolution of several thousand real property valuation appeals. In 2011, the Commission was reorganized to consist of three commissioners rather than as four commissioners, and single commissioner hearings were also authorized in that legislation. Since that reorganization, I have been presiding over both

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single commissioner hearings and panel hearings routinely. I'm committed to continue serving Nebraska taxpayers by providing fair and equitable hearings, and a fair and equitable real property valuation of appeal process. And I'm asking for your approval of my confirmation to continue to serve in that role. Be happy to answer any questions if you have any.

[CONFIRMATION]

SENATOR GLOOR: I'm just curious when you were a legislative aide, who were your senators?

[CONFIRMATION]

ROBERT HOTZ: Oh, boy, that goes back a long ways, Senator. But... [CONFIRMATION]

SENATOR GLOOR: That's part of the test. [CONFIRMATION]

ROBERT HOTZ: Back in 1989, Senator Jacklyn Smith, Senator from District 33, which was Adams County only, back then; 1994 and 1995, Senator Kate Witek from the Millard area.

[CONFIRMATION]

SENATOR GLOOR: Interesting. Interesting. If we weren't so...if this weren't such an open meeting, it would be interesting to have some stories from you. (Laughter) I knew Jackie Smith.

[CONFIRMATION]

ROBERT HOTZ: They were both great and interesting people in lots of ways, yes.

[CONFIRMATION]

SENATOR GLOOR: Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: Thank you, Chairman Gloor, and thank you, Mr. Hotz, for your willingness to be reappointed. And I looked...you have a long list of excellent references, not just two or three, but there must be at least a dozen and that shows a lot of merit. I'm curious, how long have you served already...is it every four years? How often are you reappointed?

[CONFIRMATION]

ROBERT HOTZ: I was first appointed to the Commission in 2007. We have six-year terms.

[CONFIRMATION]

SENATOR BRASCH: Six years. [CONFIRMATION]

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ROBERT HOTZ: And this appointment and confirmation process would be for a six-year term, but like we often do, the math doesn't quite work out all the time. I was filling out a term in 2007. Then in 2010 when I was reappointed, the subsequent year in '11 was the reorganization and that set the clock again. And then that term was only four and a half years, so I have not yet served a full six-year term technically, eight-plus years on a Commission. [CONFIRMATION]

SENATOR BRASCH: Excellent, and you're...and it may not be possible to briefly state, but I'd imagine your role has changed a lot of dynamics with the board, or is it...the business as usual, or your work with all the property tax challenges that the state faces, and dilemmas, are there more people that, you know, has your job become more challenging or is it...is it regardless...is it...I hope you understand what I'm asking, you know. [CONFIRMATION]

ROBERT HOTZ: Sure. Yes, Senator. The number of appeals has gradually increased over the years. We had a spike in '11 and '12 where we... [CONFIRMATION]

SENATOR BRASCH: Okay. [CONFIRMATION]

ROBERT HOTZ: ...were well over 2,000 appeals per year. Last year the number was a little lower, in fact, down to about 1,800. That's still a pretty high volume number. The authorization in 2011 of what we call single commissioner proceedings, I think has been very good for the process for all the taxpayers involved, whether it's the individual taxpayers coming in to do the appeal, or whether it's all the taxpayers who are going to foot the bill one way or the other. So I think the single commissioner process, since we have so many pro se or unrepresented litigants, is a very good informal way to deal with a very complicated situation. Some of us...the Commissioner who is here, or Commissioner Salmon who wouldn't like me saying it, but she's easily the best at that because she's a former assessor and she's had that practice of sitting across the table with the taxpayer and working it out and talking it through. We've tried to learn from Commissioner Salmon. The process has changed significantly because of the authorization of single commissioner hearings. Any formality that scared away and caused the process to be burdensome, unnecessarily, a lot of those formalities went away in that process. But we still do have lawyered up, big, sizable appeals that involve a lot of value and it's very complicated on legal issues and procedural issues. [CONFIRMATION]

SENATOR BRASCH: Very good. I do want to thank you for your willingness to be reappointed knowing the magnitude of what you've already done and possibly what's ahead. So thank you. [CONFIRMATION]

ROBERT HOTZ: Thank you, Senator. [CONFIRMATION]

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SENATOR GLOOR: Other questions? Seeing none, thank you again, as Senator Brasch says, for your service and your willingness to serve again. [CONFIRMATION]

ROBERT HOTZ: Thank you, Chairman Gloor. Thank you all. [CONFIRMATION]

SENATOR GLOOR: And go Islanders, maybe I should say that. [CONFIRMATION]

ROBERT HOTZ: Yes. Thank you. [CONFIRMATION]

SENATOR GLOOR: That's the end of our gubernatorial appointments for today. We'll move into our bills, LB683. Senator Craighead, welcome to Revenue.

SENATOR CRAIGHEAD: (Exhibits 1-3) Good afternoon, Chairman Gloor and members of the Revenue Committee. I am Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d, and I represent Legislative District 6 in Omaha, in Douglas County. I come before you today to introduce LB683 that amends Section 77-3506 Revised Statute Cumulative Supplement, 2014, and Section 77-3509 Revised Statute Supplement, 2015, and would change provisions relating the homestead exemptions for certain surviving spouses. The amendments in LB683 would harmonize Nebraska statute with federal statute regarding surviving spouses of veterans and the furnishing of benefits relating to dependency and indemnity compensation allowing a surviving spouse who remarries after the age of 57, to retain their current homestead exemption status. Nebraska law strips remarried surviving widows and widowers of homestead benefits that are provided for them in federal law. Currently, a widow or widower of Nebraska that remarries at any age will lose the homestead benefits that they are entitled to per federal law. Under federal statute, Section 103 (a)(2)(B), the remarriage after age 57 of the surviving spouse of a veteran shall not bar the furnishing of benefits. LB683 does not change the amount or ratio of relief that a widow or widower would receive. Benefits would remain as they are prior to the remarriage. Included in my handouts today are two letters of support for LB683. After conversations with various veterans coalitions and agencies, we found great support from veterans and survivors of veterans who died in a service-related illness for LB683. The state meeting for the veterans counsel is being held today as we speak and many of our proponents are leading segments of the conference. Due to scheduling conflicts with our hearing date, they were unable to attend and sent letters of support. The letters today include a message of support from Gregory Holloway, Chair of the Nebraska Veterans Council, and Jerry Anderson, United States Air Force, Lieutenant Colonel, retired. In closing I want to thank you for considering LB683 and ask that you vote to advance it out of committee. [LB683]

SENATOR GLOOR: Thank you, Senator Craighead. Questions? Senator Schumacher. [LB683]

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SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for presenting us with this bill, Senator Craighead. In this homestead exemption the fiscal note, because of...you know, some property tax exemptions in it, what's the impact on local government? Do we have any idea? [LB683]

SENATOR CRAIGHEAD: On the impact on what? [LB683]

SENATOR SCHUMACHER: Local government. [LB683]

SENATOR CRAIGHEAD: It should be very small because this is spread statewide and if you notice, the whole fiscal note is \$38,000. It should be very small. What this does is it puts Nebraska in compliance with federal statute. Okay. What Nebraska does is take away what something that the federal government has given to widows and widowers of men and women who have died due to service-related illnesses. [LB683]

SENATOR GLOOR: Senator Sullivan. [LB683]

SENATOR SULLIVAN: Thank you, Senator Gloor. Thank you, Senator Craighead. Do we know at this point in time how many disabled veterans qualify for the homestead exemption? [LB683]

SENATOR CRAIGHEAD: Well, this is not for disabled veterans. [LB683]

SENATOR SULLIVAN: I know it's not, I know, but it impacts their spouses. [LB683]

SENATOR CRAIGHEAD: No, it is not for disabled veterans. It is for the widow or widower of a veteran who died due to a service-related illness. It's not disabled veterans. It's the surviving spouse of a deceased veteran whose illness and death was due to a service-related illness. [LB683]

SENATOR SULLIVAN: Okay. [LB683]

SENATOR GLOOR: Senator Harr. [LB683]

SENATOR HARR: Thank you. Do you have the federal statute that this harmonizes with? [LB683]

SENATOR CRAIGHEAD: Yes, and we can get that for you. [LB683]

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SENATOR HARR: Okay. Thank you. [LB683]

SENATOR GLOOR: Senator Craighead and I visited a little bit about this bill this morning, and I was looking for some parallel, and I think there is at least a little bit of precedence along this line that has to do with our veterans home. We will allow the surviving spouse of a veteran, this isn't just disabled or service-related death, we allow the surviving spouse of a veteran into our veterans homes on their own volition because of that connection. And, in fact, we would also, if they decide to remarry, allow them to remain in the veterans home. And should they then pass away, we would allow that spouse who is not a veteran, to also remain in the veterans home. So, the state already recognizes that that veteran's benefit has a degree of transferability. And they consider it that way because they honor the benefit that was earned by that veteran to begin with. I found that interesting and I thought that was the case, but I talked to the Department, Mr. Hilligus, over the noonhour, and he confirmed that was the case. So there's some precedence here for what we're talking about. Clearly, we're talking taxes versus veterans homes, but. Other questions? Seeing none, thank you, and we'll move to proponents of the bill. Oh, I'm sorry. Senator Harr. [LB683]

SENATOR HARR: And I...I don't know how to ask this nicely. So I apologize if this is offensive, but I don't know. If a person marries...how do I say, are not committed, undocumented citizen...let me think about this. For that time before they become documented or legal, are we giving benefits to an undocumented worker? [LB683]

SENATOR CRAIGHEAD: No. In order to receive a homestead exemption as a surviving widow or widower...no, let me finish this. [LB683]

SENATOR HARR: Yeah. Yeah. [LB683]

SENATOR CRAIGHEAD: You have to qualify for DIC, dependent and indemnity compensation. Okay? [LB683]

SENATOR HARR: Okay. [LB683]

SENATOR CRAIGHEAD: So a widow or widower who remarries loses their homestead exemption. If that surviving spouse passes away and is remarried, the nonveteran remarried the second spouse would lose the homestead exemption. So if someone was a widow or widower of a veteran and married someone who was undocumented, that undocumented person will never get the benefits. Once that surviving spouse passes away, the homestead exemption goes away. [LB683]

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SENATOR HARR: Okay. Okay. Thank you. [LB683]

SENATOR CRAIGHEAD: You're welcome. [LB683]

SENATOR GLOOR: Any other questions before we move to proponents? Seeing none, thank you. We're going to move to proponents now. Are there any other proponents to speak to us for this bill? Any opponents of this bill? Anyone in a neutral capacity? Well, Senator Craighead, I should have just had you stay put. Would you like to close on this bill? Senator Craighead waives closing. Thank you, and that ends the hearing on LB683. We'll move to LB727. Mr. Smoyer. [LB683]

BRENT SMOYER: Good afternoon, Chairman Gloor, members of the committee. My name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, here to stand in for Senator Schilz who, unfortunately, had two bills in front of Natural Resources, his committee. So, he does send his apologies. At the same time, I'll keep this short and sweet for you. Senator Schilz is no longer interested in pursuing this bill and would request that the Revenue Committee, IPP it at their soonest possible convenience, so. [LB727]

SENATOR GLOOR: Thank you. You delivered that message very well, very succinctly. [LB727]

BRENT SMOYER: Didn't figure I wouldn't waste your time. [LB727]

SENATOR GLOOR: Thank you very much. [LB727]

BRENT SMOYER: Have a great one. [LB727]

SENATOR GLOOR: Then that ends the hearing on LB727. We'll move to LB762 and that may have caught Senator Kintner a little off guard, so we will try and get the message out to him that we've moved forward far quicker than he might have. Welcome, Senator Kintner. [LB727]

SENATOR KINTNER: (Exhibit 1) I do have something to hand out here. I'm Senator Bill Kintner, B-i-l-l K-i-n-t-n-e-r, Legislative District 2. Thank you, Mr. Chairman and committee. What I'm handing out to you is an amendment to the bill and I'll go over that in just a second. The purpose of this bill is to try to capture some of the premium cigar sales that we're losing to the Internet and to states that surround us that have a lower tax on cigars. The bill has two parts and I'm amending one part of it. Part of it raises the tax from 20 to 22 percent on low-end cigars and I've amended that part of it to take that out. So anything left in it is that it caps the tax on cigars at 50 cents a stick. So it's a 20 percent tax on cigars and this will cap it at 50 cents a stick.

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To tell you how we're losing, let's...you take a \$10 cigar, it's taxed at 20 percent, that makes it \$12. So it's \$2 more than it would be if you bought it, let's say, from Florida. It's \$1.50 more than if you bought it from Iowa. So if you're going to buy cigars, you would get on the Internet and you would save \$1...or you save \$2 a stick. If it's 25 cigars, you save \$50 a box. That's why people buy them from the Internet. If you're down at a Kansas City Royals game, hey, why don't we just stop and get a couple boxes of cigars, we're down here. Or if you're in Omaha, why don't we go over to Iowa and buy the cigars. And if you buy them from Iowa, they cap it at 50 cents a stick too. So you're buying them at \$1.50 a stick on premium cigars. So the goal here is to capture some of those sales, keep them in our state. We'll get the sales tax revenue, the cigar tax revenue, the local retailer will get the business, and we all come out ahead. That is the purpose of the bill and that is why I think if we cap it at 50 cents, we'll be exactly the same as Iowa. And the reason that I originally raised it on the small and low...the low-end, nonpremium cigars, I thought we'll waive and recoup a little bit of the revenue. Well, I saw that would generate ten...\$3,310 in revenue. That would be a revenue generator. I'm not trying to generate revenue here. This bill, in my opinion, will pay for itself when we recapture sales. So the...if you look at the fiscal note, the fiscal note will no longer be relevant, so I got them to verbally give me the new fiscal note. It will be a \$290,000 loss per year to the state coffer. So what we want to do is, you know, grab those sales from the Internet, grab those sales from Kansas and Iowa, and surrounding states, and my hope is that we're able to get more money into the pocket of our retailers. In the long run, put more money into the state coffers and more money in local sales tax. Just so you know, you have the cigar tax at 20 percent and you have the sales tax on top of that. So sales tax is the additional one that if we capture these sales that are being purchased in Omaha and Lincoln and various retailers around the state, the local governments will also improve. So I think it's a win-win-win for everyone if we can capture some of the sales. This is my idea. I didn't get it from somewhere else other than I looked at Iowa, I saw that they were doing it. So I figured, well, let's just see if we can try it, so. That's the reason I did it. And if you have any questions, I'd be happy to answer them. [LB762]

SENATOR GLOOR: Thank you, Senator Kintner. Questions? Senator Schumacher. [LB762]

SENATOR SCHUMACHER: Thank you, Senator Gloor, and thank you, Senator Kintner, for bringing us a smoking bill. The question I have is, you're talking about a cigar bought in any retail establishment that sells cigars. Okay, so most of these places are set up to charge sales tax and their computers are figured up to add it in, or if it's a food item, it's exempted. But can you think of any place in our system where we charge...where we have a cap sales tax where a businessman wouldn't have to go through the overhead and software change of saying, whoops, this scanned the cigar, now enter number of cigars being purchased, so that they can do the multiplication in the cap. I mean...I'd almost, if I had the store that sold cigars along with a bunch of other stuff, I'd be cringing at a software cost. [LB762]

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SENATOR KINTNER: Senator Schumacher, they pay the tax when they receive the cigars, not when it's sold. So you pay the cigar tax, the 20 percent at the point that you take delivery of the cigars. Then when you turn around and you sell it, then you get your money back. So it's not a point of sale calculation. They've already paid that. [LB762]

SENATOR SCHUMACHER: So, when the guy in the store buys the cigar, he's paying the 7 percent of the whole works. [LB762]

SENATOR KINTNER: He's...no, he's paying the tobacco taxes to the state. Twenty percent per stick or per...on the cigars, this will cap it at 50 cents a stick on cigars. So 50 cents a stick, so it's going to be paid before the point of sale. [LB762]

SENATOR SCHUMACHER: So I guess how does the cash register at the grocery store know? [LB762]

SENATOR KINTNER: It doesn't. It's like a VAT, a value added tax. It's already in the price of the cigar. [LB762]

SENATOR SCHUMACHER: So the cigar when it goes through its tax, it never hits the 7 percent calculator in the cash register. [LB762]

SENATOR KINTNER: The...then you take your cigars, say it's \$10, then you bring it up to the register and then they put the 7 percent on top of that or 5.5 percent or whatever the local sales tax is. [LB762]

SENATOR SCHUMACHER: Okay. So it's the...at that point, the customer is paying 7 percent like always. [LB762]

SENATOR KINTNER: Right. The customer doesn't even see the tobacco tax. Very few people know exactly what the tobacco tax is. The only thing they see is the final price of the cigar. It's cheaper in Council Bluffs than it is in Omaha, but they don't know what the tax is that made it that way. [LB762]

SENATOR SCHUMACHER: Thank you. [LB762]

SENATOR GLOOR: Seeing no other questions. [LB762]

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SENATOR KINTNER: Okay. [LB762]

SENATOR GLOOR: Are you going to stick around to close, Senator? [LB762]

SENATOR KINTNER: Yeah. [LB762]

SENATOR GLOOR: Okay. We'll move on to proponents of this bill. We'll move to opponents of this bill. [LB762]

KENT ROBERT: Good afternoon, Chairman Gloor and members of the Revenue Committee. My name is Kent Robert, K-e-n-t R-o-g-e-r-t, and I'm here today to offer opposition testimony on behalf of Altria and its affiliate, John Middleton, regarding LB762. And my testimony will be to the green copy. I'm not representing the amendment. We're opposed to increasing state excise taxes as it is proposed in the green copy. John Middleton makes and sells large machine made cigars which are different from the hand rolled premium cigars. Those cigars have plastic or wood tipped or maybe untipped and are usually smaller in diameter from premium handmade cigars. Large machine made cigars are also different from the little ones which use cellulose acetates, smaller filters. This proposes in the green copy again a 10 percent increase in the tax from 20 percent ad valorem to 22 percent with the cap of 50 cents. And this would...this rate change would benefit the hand rolled premium cigars at an expense of the lower tiered machine made cigars. So with that, I'd answer any questions, if you had any. [LB762]

SENATOR GLOOR: So, Senator Robert, with the amendment being proposed, do you believe that might address the concerns? [LB762]

KENT ROBERT: We're not sure. We'd have to go back and look at...the definitions in the amendment aren't necessarily changed and they may still affect our product. [LB762]

SENATOR GLOOR: Okay. Other questions? Seeing none, thank you for your testimony. [LB762]

KENT ROBERT: Thank you. [LB762]

SENATOR GLOOR: (Exhibit 2) Other opponents? We have a letter from the American Cancer Society Action Network, Dave Holmquist, that was distributed that's in opposition. Anyone in a neutral capacity? [LB762]

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MICK MINES: Chairman Gloor, members of the committee, my name is Mick Mines. M-i-c-k M-i-n-e-s. I'm a registered lobbyist for the Nebraska Grocery Industry Association. I came prepared to testify in opposition of the bill. I have not seen the amendment. Like the previous testifier, I've got to go back and talk to our organization and see where we're at with it. So, we'll be submitting comments to you later, but at this point, we've got to testify neutral because I've not seen the amendment. In the original form, we didn't like it. [LB762]

SENATOR GLOOR: Questions? Seeing none, thank you, Senator Mines. [LB762]

MICK MINES: Thank you. [LB762]

SENATOR GLOOR: Anyone else in a neutral capacity? Senator Kintner, you're recognized to close. [LB762]

SENATOR KINTNER: (Exhibit 3) I'm going to give you one more handout. One of them, you can see what the taxes are from all the other states and I've highlighted a few on here that cap at 50 cents. As you can see, there are some states that have no cigar tax at all, Washington, Florida, North Carolina. So 30 states have lower taxes than Nebraska, including the District of Columbia. Three are the same as Nebraska, in 18 states are greater than Nebraska. So, just so you can kind of see where we fit on that. Other than that, I think I have said everything I need to say unless you have any more questions. [LB762]

SENATOR GLOOR: Questions? Senator Smith. [LB762]

SENATOR SMITH: Thank you, Mr. Chairman. Senator Kintner, you heard the opposition. I'm trying to wrap my head around this. Can you maybe explain again to me what's going on with the amendment that changes the bill and then respond to the opposition that was brought by the tobacco lobby. [LB762]

SENATOR KINTNER: The amendment keeps the tobacco tax at 20 percent. I originally raised it to 22. I was being kind of cute thinking maybe we can offset a little bit of it. It didn't work out when I got the fiscal note like I thought it would. So that ends that. So it's simply going to keep the tobacco tax at 20 percent. So, any testimony opposing that shouldn't have a problem with it. So it will be cap the tax on any cigar at 50 cents a stick. That's it. [LB762]

SENATOR SMITH: All right. Do you see that...the concern about the tax shift being to nonpremium cigars? [LB762]

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SENATOR KINTNER: Yes, and I understand that. [LB762]

SENATOR SMITH: And, and... [LB762]

SENATOR KINTNER: I agree with that, that concern. I addressed that concern. [LB762]

SENATOR SMITH: Do you believe that concern remains with your amendment? [LB762]

SENATOR KINTNER: No, it does not. I took care of that concern with my amendment. There shouldn't be no opposition with my amendment. I listened to that concern. I agree with it. It's called the law of unintended consequences. Sometimes you do something that doesn't work out like you think it's going to and you have to back up and say, whoops, that didn't work out. [LB762]

SENATOR SMITH: Okay. Thank you. [LB762]

SENATOR KINTNER: The bottom line is it's capping it at 50 cents per stick which will only really affect the premium cigars. That's it. [LB762]

SENATOR SMITH: All right. Thank you. [LB762]

SENATOR GLOOR: Other questions? Senator Schumacher. [LB762]

SENATOR SCHUMACHER: Thank you, Senator Gloor and Senator Kintner. So the man who smokes the poorer grade cigar, he pays tax at a higher rate than the man who smokes the higher grade cigar. [LB762]

SENATOR KINTNER: The man who smokes the higher grade cigar pays 20 percent, same rate, up until 50 cents. It's capped. They all pay the same rate. It's capped at 50 cents. [LB762]

SENATOR SCHUMACHER: Right, but if I'm buying a \$100 cigar, I pay 50 cents. If I buy a cheap cigar, once I hit... [LB762]

SENATOR KINTNER: I've never seen a \$100 cigar. I don't run in those circles like you do, so I've never...(laughter). [LB762]

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SENATOR SCHUMACHER: Oh, you don't. I thought that was what you always carried around. [LB762]

SENATOR KINTNER: No. [LB762]

SENATOR SCHUMACHER: Okay. Thank you. [LB762]

SENATOR GLOOR: Senator Smith. [LB762]

SENATOR SMITH: Thank you, Mr. Chairman. I'm still confused then. So what Senator Schumacher just brought up, so the premium cigar smokers they have a cap on how much they're going to pay. [LB762]

SENATOR KINTNER: Yes, it's capped at 50 cents a stick. [LB762]

SENATOR SMITH: Do the nonpremium cigar smokers have a cap? [LB762]

SENATOR KINTNER: Yeah, 50 cents a stick. It just...it never hits that because they're not that expensive. [LB762]

SENATOR SMITH: All right. Thank you. [LB762]

SENATOR GLOOR: Senator Brasch. [LB762]

SENATOR BRASCH: Might as well join in. Thank you, Chairman. Now what I'm believing I'm hearing is that with this bill, there would be, you know, what we call border bleed. You would buy your cigars in Nebraska instead of Council Bluffs because right now you would save money in Council Bluffs what would be the same. [LB762]

SENATOR KINTNER: Yeah, I don't think you would want to drive to Council Bluffs to save 50 cents per cigar. If it was two bucks, maybe. If you go buy three cigars, yeah, you'd probably go over there. [LB762]

SENATOR BRASCH: So, you're introducing this to... [LB762]

SENATOR KINTNER: Capture more sales that are going to border states and Internet. [LB762]

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SENATOR BRASCH: Right. So there would be more cigars sold in Nebraska for the grocers or whoever is selling cigars. [LB762]

SENATOR KINTNER: Correct. [LB762]

SENATOR BRASCH: Potentially, it would be more sales for them. [LB762]

SENATOR KINTNER: Correct. [LB762]

SENATOR BRASCH: But they're objecting to this so...correct, or? [LB762]

SENATOR KINTNER: Well, they're objecting to what I originally had. [LB762]

SENATOR BRASCH: Your original plan. Okay. All right. I have no... [LB762]

SENATOR KINTNER: I've heard those objections. I understand them, yes. [LB762]

SENATOR BRASCH: Okay. I have no other questions. Thank you. [LB762]

SENATOR GLOOR: Senator Davis. [LB762]

SENATOR DAVIS: I've got a couple questions. Thank you, Senator Gloor. Senator Kintner, can you explain a little bit your sheet? It talks about an example price which varies a lot among those states. Do you know what exactly means? [LB762]

SENATOR KINTNER: The what? [LB762]

SENATOR DAVIS: Well, okay, so Arkansas, the example price at \$9.50, I guess that's the suggested retail price is \$9.59. [LB762]

SENATOR KINTNER: Arkansas, it's capped...it's 68 percent tax, but it's capped at 50 cents. [LB762]

SENATOR DAVIS: Okay. So that \$10.50 then, that includes the 50 cent cap? [LB762]

SENATOR KINTNER: Yes. [LB762]

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SENATOR DAVIS: Okay. So let's go to Colorado then. [LB762]

SENATOR KINTNER: Okay. [LB762]

SENATOR DAVIS: The suggested retail price is \$9.50, then the tax is 40 percent, so the total is \$13.30. [LB762]

SENATOR KINTNER: Yes. [LB762]

SENATOR DAVIS: Got that. So tell me about Internet sales. How does that work? [LB762]

SENATOR KINTNER: Who knows. I don't know what...but I don't know very many cigar, premium cigar smokers that don't get these...a few of their cigars on the Internet. [LB762]

SENATOR DAVIS: You don't know whether there's a reimbursement to the state of the taxes that would be due to the state by the retailer. [LB762]

SENATOR KINTNER: It depends how honest cigar smokers are. I don't know. Well, you mean, them actually officially remitting it? [LB762]

SENATOR DAVIS: Yeah. [LB762]

SENATOR KINTNER: I don't think any. [LB762]

SENATOR DAVIS: That's kind of what I wondered. Okay. Thank you. [LB762]

SENATOR GLOOR: Other questions? [LB762]

SENATOR KINTNER: Of course when I buy them on the Internet, I do declare it on my taxes. [LB762]

SENATOR GLOOR: All right. We had no doubt. (Laughter) [LB762]

SENATOR KINTNER: Thank you. [LB762]

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SENATOR GLOOR: Thank you, Senator Kintner, and that ends the hearing on LB762. The committee is going to go into Executive Session so I would ask people if you would move to exit the room as quickly and quietly as you can. Thank you. [LB762]