

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

[LB913 LB949 LB950 LB1013 LB1014 LB1087]

The Committee on Revenue met at 1:30 p.m. on Wednesday, February 24, 2016, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB913, LB1014, LB949, LB950, LB1087, and LB1013. Senators present: Mike Gloor, Chairperson; Paul Schumacher, Vice Chairperson; Lydia Brasch; Al Davis; Burke Harr; Jim Scheer; Jim Smith; and Kate Sullivan. Senators absent: None.

SENATOR GLOOR: Good afternoon. If I could have everybody take their seats, please. Turn off...silence your cell phones if you would. I'm Mike Gloor. I'm the Chair of the Revenue Committee and that's the right committee. If you're not here for Revenue Committee bills, give you a second to get up and get to the right hearing room. But I'll bet this is an experienced group of people in attendance. We're going to take the bills in the order posted on the agenda outside today. We have some general rules we would like to go through here. We have a certain order of testimony. We have the introduction by the introducing senator. We then turn to proponents, then opponents, those in a neutral capacity, then we allow the senator who's introduced the bill to close. If you are providing testimony we would ask that when that time comes you move closer to the front so we're not spending a lot of time with people going to and fro. Would like you to spell your name for the record, give us your name and then spell it. We also need you to fill out a testifier sheet--there are copies of those in the back--and give those to the clerk. We ask you to be concise. We are going with a five-minute schedule today and would ask people to understand that one of the reasons we're doing that, even though we have a lot of bills to cover, is that we're picking up on an interrupted set of hearings that we had a little over a week ago as a result of a power outage in the Capitol. It was a memorable experience for all of us who were here. But we had given, especially as relates to LB1013, we had given proponents five minutes and we'd given a number of opponents five minutes before the lights went out. And so we need to carry through with some degree of consistency for those who are in opposition. Nonetheless, would ask people to try and keep in mind that we would like you to be as concise and non-repetitive as possible. The light system up here will help you along those lines. It goes green when you start, yellow when you've got a minute left, and red means we need you to wrap up your comments if you would. If you're not testifying and would like your thoughts on a bill to be known, we can get you on the record if you sign up in the back. If you have a written testimony of some kind or if you have a handout of some kind, we need 11 copies. Please get those 11 copies to the pages so they can distribute them on your behalf. And if you don't have 11 copies, there's still time for most of you I would guess to have the pages make those copies for you. On my immediate right is committee counsel Mary Jane Egr Edson, Kay Bergquist is research analyst at far end, and Krissa Delka is our clerk down here to my left. I'd ask the committee members if they would introduce themselves starting with Senator Sheer.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR SCHEER: I'm Jim Scheer from Norfolk, District 19, Madison County and a little bit of Stanton County.

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

SENATOR SULLIVAN: Kate Sullivan of Cedar Rapids representing District 41, a nine-county area in central Nebraska.

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

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

SENATOR GLOOR: Our pages are usually Jordan from Oakland, who I believe is here, and Brenda from Wakefield, who may eventually be here. But they're there to help you as well as help us. And with that, we'll start off with LB913. Senator Smith, welcome to your committee.

SENATOR SMITH: (Exhibits 1 and 2) Thank you, Senator Gloor and members of the Revenue Committee. For the record, I am Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Sarpy County. And I'm here today to introduce LB913. Please forgive my voice. I'm recovering from a cold. Hope it's not much of a distraction for you. LB913 would allow for the adoption of the Facilitating Business Rapid Response to State Declared Disasters Act. Despite its long title, LB913 is a fairly uncomplicated bill. In fact, I did not come up with the title myself. The bill is actually modeled off of legislation developed by the National Conference of State Legislatures. Under LB913, withholding requirements would not apply to out-of-state businesses that assist in repairing, renovating, installing or building infrastructure related to a declared state disaster or emergency. It would also exempt these businesses and their employees from having to register with the Secretary of State. Currently companies conducting business in Nebraska are subject to withholding requirements and individuals working just one day in the state are responsible for income taxes. This bill would provide some relief to those entities and individuals who come to our state to help when the resources are stretched thin due to a disaster. And just kind of a personal note, I spent 30 years in the electric utility industry myself and I know that our staffing could never...we could never staff enough to cover all the disasters that would occur in a state. So we were very dependent upon mutual aid from outside the state coming into our state. And likewise, we would send our utility workers outside of our state to help other utilities. And this happens across our country with our utility workers. This bill is very limited in its application. It applies only during times of disaster or emergency as declared by the Governor. It applies to a specified period of time. It applies only to out-of-state businesses and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

employees whose services are requested by the state; a county, city, village, or other political subdivisions; or an in-state business that owns or uses specific infrastructure. That infrastructure is defined as property and equipment own or used by a public utility, communications network, broadband and Internet service provider, cable and video service provider, gas distribution system, or water pipeline that provides service to more than one customer. This does not exempt out-of-state roofing companies or a business of that nature that comes into the state to take advantage of disaster situations. Because it is impossible to predict when a state of emergency might be declared, the fiscal note cannot be estimated. But due to the narrow scope of this bill, I would predict any fiscal impact to be minimal--actually nonexistent. Keep in mind these businesses are doing business in this state only if and when services are requested due to a disaster. The out-of-state companies and employees will still be responsible for transition...for transaction taxes, such as fuel and sales tax, and any business or person that stays in the state beyond the specified disaster period will then be subject to registration and income taxes going forward. As I mentioned, this is an NCSL model legislation, and to date, 22 states have passed similar legislation. I have passed out a list of those states that make up the 22 states that have passed this similar legislation. And I believe bills are pending in Iowa and New Jersey as well. I do have a simple amendment clarifying that any equipment brought into this state for use by businesses helping in disaster relief efforts is not subject to sales, use, and ad valorem taxes. That language was inadvertently left out of the original draft but is part of the model language as well. That is all there is to LB913. Eliminating the need to fill out burdensome regulatory and tax paperwork will allow these crucial businesses to deploy resources and repair essential infrastructure quickly in our state. It will also treat those who come to help our state recover the same as we are treated in several other states. I believe it's a good bill. I believe it helps in emergency restoration efforts. It's really consent calendar material, which I hope it will be. And I urge you to please advance LB913. [LB913]

SENATOR GLOOR: Thank you, Senator Smith. Any questions for Senator Smith? Senator Sullivan. [LB913]

SENATOR SULLIVAN: Thank you, Senator Gloor. Thank you, Senator Smith. And I certainly concur when you talk about the importance of utility companies from other states coming in and helping. I can remember on 281 west of Cedar Rapids when we had a ice storm a number of years ago. I think there were utility crews from Minnesota that were helping put those poles back in, but just a couple questions. So you've got parameter set on that the kinds of infrastructure activities that would be considered acceptable in this bill, but what about the...and they have to come in at the request of an entity here in Nebraska to help deal with the disaster, is that correct? [LB913]

SENATOR SMITH: Yes. [LB913]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR SULLIVAN: And then secondly, is there any sort of verification process? They have to register with the Department of Revenue, but who's to say...who checks and verifies that this is an acceptable business within the parameters set forth in this bill? Anybody? They just have to say that we're here because we've been requested to be here and we qualify. [LB913]

SENATOR SMITH: And they would...and then they would also have to...it would have to be a disaster or an emergency as defined by the Governor. It would have to be related to that. [LB913]

SENATOR SULLIVAN: Okay. [LB913]

SENATOR SMITH: And it would have to be within the disaster period as defined which begins ten days before the Governor's proclamation or declaration by the President, whichever occurs first, and extending for a period of 60 days following that. And so it would be, again, limited to the disaster proclamation and during that period of time... [LB913]

SENATOR SULLIVAN: Okay. [LB913]

SENATOR SMITH: ...for those set number of utilities. [LB913]

SENATOR SULLIVAN: And it has to be a business that has been requested to come in. [LB913]

SENATOR SMITH: Yes. [LB913]

SENATOR SULLIVAN: Okay. All right. Thank you. [LB913]

SENATOR GLOOR: Senator Scheer. [LB913]

SENATOR SCHEER: Thank you, Senator Gloor. Senator Smith, maybe a quick way to solve that, add it to your amendment simply when they file with the state that they have to provide a copy of the letter of whatever entity requested them to participate. And then the verification would already be...have taken place with the application. [LB913]

SENATOR SMITH: That would sound reasonable to me but I...there may be some following me in testimony. Let's see if they can clarify any of those questions and then I'll loop back around in my closing and see if we can further address that. But I think that's reasonable, what the request is. [LB913]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR GLOOR: Senator Brasch. [LB913]

SENATOR BRASCH: Thank you, Chairman Gloor, and thank you, Senator Smith. Because at this point they are currently registering with the Secretary of State's Office, do we have a record of who these vendors may be? They should have...we've had tornadoes and floods and hail damages, I know, in... [LB913]

SENATOR SMITH: To date, yes. [LB913]

SENATOR BRASCH: To date. So do we have a list or a record of how many? I mean, are we talking less than ten, more than ten? Can the Secretary provide a record of that? I'm curious who is coming in. [LB913]

SENATOR SMITH: I think we can probably gather that information. Going forward I'm not certain if that would be reflective of what we would have in the future. You can imagine that for like an electric utility, their request for mutual aid, it's possible that we would have utilities responding in the future that have not responded in the past. So I mean it could vary... [LB913]

SENATOR BRASCH: That it may attract knowing they don't have to pay the tax? [LB913]

SENATOR SMITH: I would doubt very seriously you're going to have responders deciding as to whether they're going to participate in mutual aid based on this alone. This is just...this simply relieves some of the burden from the workers that are coming into our state for a short period of time similar to what maybe some of our workers are relieved from the burden when they go and they respond in their states. So I don't think this is going to be a deciding factor for getting emergency relief but I do think it's proper based on the way we're treated in other states. [LB913]

SENATOR BRASCH: Very good. I have no other questions. Thank you. [LB913]

SENATOR GLOOR: Senator Harr. [LB913]

SENATOR HARR: Thank you, Senator Smith. And I know you're the Governor's head, but my question is I'm not. So how do I know what the Governor is going to do ten days before he does something, because here it says ten days before the Governor's proclamation. So how do I know if he's going to do that in ten days? [LB913]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR SMITH: Well, because I think typically when a disaster occurs there's a period of time that the Governor can declare an emergency. But it could be that utilities are already responding to those emergencies. [LB913]

SENATOR HARR: Do you remember earlier this year when we got a day off because of that great "snowmageddon?" It didn't end up happening. I mean so I don't know how we can...you know, maybe they have to bring people in ahead of time. But let's say you do bring someone in ahead of time and then the catastrophe doesn't occur, what happens then to that business? Are they kind of left there hanging in the wind or...? I mean... [LB913]

SENATOR SMITH: Yeah, I think they... [LB913]

SENATOR HARR: ...we're asking them to kind of take a risk aren't we? [LB913]

SENATOR SMITH: I think they're already doing that today. [LB913]

SENATOR HARR: Okay. And I know you're for tax cuts, but is it fair that an employee in Nebraska who lives here and pays taxes in a disaster who does emergency work would pay taxes and that someone from Alabama, Arizona, wherever, comes up here and wouldn't have to pay income tax for doing the exact same work next to the same person doing the same job? [LB913]

SENATOR SMITH: You can make an argument, Senator, but I will tell you that we cannot staff our utilities in Nebraska to meet the needs that we had during emergency times and we are absolutely dependent upon mutual aid. And I think it is the appropriate thing to do based on the way other states treat this type of arrangement. We are absolutely dependent upon mutual aid in our state, as each state is. And so I think we need to soften the burden on the workers that are participating in that mutual aid. [LB913]

SENATOR HARR: Okay. Thank you. [LB913]

SENATOR GLOOR: Senator Smith, this is infrastructure specific, is it not? [LB913]

SENATOR SMITH: Yes. [LB913]

SENATOR GLOOR: Okay. Any other questions? Senator Schumacher. [LB913]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Senator Smith. A couple of things. You had mentioned that this doesn't apply to things like roofers that come in after a storm, but yet infrastructure is defined as real and personal property such as buildings or offices. And the aid can be requested by basically any business that does business in this state: a registered business, I think that's a definition. So where is it that things like roofers and that things are excluded from this? [LB913]

SENATOR SMITH: Well, I've believe that's captured in the language, but I...if there's more language that's needed to tighten that down, we certainly do not want that type of loophole in this law. This is intended for mutual aid for utility-related workers. [LB913]

SENATOR SCHUMACHER: How has this been handled up to this point? How we attempted to tax people? Have they gotten tax bills? What's kind of brought this to a head? It seems that this bill is fairly common sense. [LB913]

SENATOR SMITH: Yeah. [LB913]

SENATOR SCHUMACHER: But have we had issues with if a utility company sends somebody up here in the past... [LB913]

SENATOR SMITH: I think... [LB913]

SENATOR SCHUMACHER: ...that we were chasing them for taxes or something? [LB913]

SENATOR SMITH: I think more or less we're trying to modernize our language so that it reflects the direction other states are going. [LB913]

SENATOR SCHUMACHER: And does this in any way address what has been thought about such issues as workmen's comp? Are our laws going to apply or they bring their workmen's comp policies with them, any of that? I kind of scanned through it and I didn't see that issue in here. [LB913]

SENATOR SMITH: You know that would be some of the language that would be included the mutual aid agreements and perhaps some of the folks following me...I think I know the answer to that, but there are some experts probably to follow me. They may be able to answer those questions for you. [LB913]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR SCHUMACHER: Thank you, Senator Smith. [LB913]

SENATOR SMITH: So that they don't have to tell me I'm wrong with what I said. [LB913]

SENATOR SCHUMACHER: Maybe you should tell us (laugh). Thank you, Senator Smith. [LB913]

SENATOR GLOOR: Senator Scheer. [LB913]

SENATOR SCHEER: Thank you, Senator Gloor. Senator Smith, real quick in regards to Senator Harr's question about not knowing in advance, to my recollection it will take the governor in most states two, three, maybe four days to declare an emergency even though the storm may have happened. And so people coming in the very first day afterwards, there still hasn't been an emergency declared. So that would then back up so it would cover those that came in immediately, would it not? Is that maybe the intent? [LB913]

SENATOR SMITH: Exactly. You're exactly right. [LB913]

SENATOR SCHEER: Okay. Thank you, Senator Gloor. [LB913]

SENATOR GLOOR: Seeing no further questions, thank you, Senator Smith. And we know you'll be staying around. [LB913]

SENATOR SMITH: Yes. [LB913]

SENATOR GLOOR: We'll now move to proponents, our first proponent, please. Good afternoon. [LB913]

DUSTIN BLYTHE: (Exhibits 3-7) Thank you, Mr. Chair, ladies and gentlemen of the committee. My name is Dustin Blythe, D-u-s-t-i-n B-l-y-t-h-e, and I'm director of external affairs for AT&T in Nebraska and Iowa. Before we get started, I want to do...I just want to thank Senator Smith and his staff person Lisa Johns for their work on this bill and did want to reiterate that we do support Senator Smith's amendment. There was some language from the model that didn't make it into the draft and his amendment captures that. A little brief history here, I also cover Iowa. I live in Des Moines. This morning we had a hearing on this very same bill. It passed out of subcommittee in the house 3-0 and in all accounts looks like we will pass this in Iowa this year. So, so far, no objections. Senator Smith did a really good job of laying out what the bill

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

does. I did want to speak to a few of the questions that did come up. I know, Senator Harr, you had a question about the ten-day advance. As Senator Smith alluded to, this is a NCSL model. This model came about after Hurricane Sandy in New York-New Jersey area. And obviously with hurricanes, in some instances you know a hurricane is coming so you can pre-stage people before the actual disaster is declared. So even though we're landlocked here I don't anticipate...it's hard for us probably to know a week out if we're going to have a huge ice storm that's going to require that type of notice. But that's where that came from. So it's more of a hurricane-related instance there. Senator Schumacher, you had a question on workmen's comp. This bill was just passed in Oregon last session. That issue came up. The answer is the workmen's comp comes from the state from where they're coming from. So it follows them. So it wouldn't apply here. Nebraska work comp laws wouldn't follow it. And then, Senator Brasch, I think you had a question if we had an inventory of companies and Senator Smith alluded to that as well. Depending on the disaster, you may have companies come from different parts of the country. You know, Senator Sullivan, you mentioned some groups came from Minnesota to come down. Depending on where it is, the disaster is, you may have folks coming from Missouri or Kansas, things of that nature. In each of your packets there is a actual map that shows all of the states that have passed this so far. We are...like I said, we are running this bill in Iowa and Nebraska this year and would like to see both of them...obviously both of them pass. Not only does it help your employees in your state to raise their hand in times of a disaster and go help others in other states, the reverse is true. So if there was a disaster in Nebraska. We want folks from Iowa or Kansas or Missouri to raise their hand, come help restore the services as quickly as possible, not stay here more than 60 days, get in and out, get the services restored, and then get back to their lives without having undue tax paperwork, things of that nature. So that's the design. That is the reason behind the bill. I did want to touch on a few highlights. The Iowa bill, there is a requirement that we...that companies have to register with the secretary of state, give them their name, their FEIN number. I think this bill, it's with the Department of Revenue. So either/or is fine. But it's not like they just come in without checking in or at least providing some basic information for the state. So the big thing here or the impetus behind this bill is to make sure that infrastructure or utility companies can rapidly deploy their resources and their personnel based solely on the needs of the state and its citizens during emergency without being hindered and delayed by regulatory and tax paperwork. This will help accelerate restoration efforts and get the state's business and citizens on the road to recovery quicker. And that concludes my comments. [LB913]

SENATOR GLOOR: Thank you, Mr. Blythe. Questions? Senator Brasch and then Senator Harr. [LB913]

SENATOR BRASCH: Thank you, Mr. Blythe, for your clarification. And I am aware during many disasters we've had that vendor service providers come from other states. But what I was

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

curious about is currently they are registering with the Secretary of State's Office by law if they are being compliant. [LB913]

DUSTIN BLYTHE: Okay. [LB913]

SENATOR BRASCH: And then after paying taxes they must...most likely, being in contact with the Department of Revenue or going to the city-county building, getting required permits in the specific location that they are providing assistance to. And I'm just curious what record already exists with each incident that we've had, whether it's the tornadoes and Pilger, Wisner, the flooding along the Missouri, the hail storms in...you know, we've had many situations in our six years that Senator Smith and Senator Harr. But my curiosity...I know this exists but I don't know if it's just one or two people that work on power lines that have the capacity or qualifications or if we're talking dozens or hundreds. [LB913]

DUSTIN BLYTHE: I don't have the answer, but we will definitely look into that for you and get an answer for you. [LB913]

SENATOR BRASCH: All right. Thank you. [LB913]

SENATOR GLOOR: Senator Harr. [LB913]

SENATOR HARR: Thanks. Thanks for coming. I guess I have a couple questions. First of all, where does it say the workers' comp issue within, where would I find that reference to it within the bill? [LB913]

DUSTIN BLYTHE: I don't know that it does. I'm not sure that it references it specifically, but I know this issue came up in Oregon specifically because I had to...I prepared for it for my Iowa testimony this morning. And I was told that from the workers' comp perspective, wherever the workers is from that work comp follows them in during the disaster period and out. [LB913]

SENATOR HARR: Was that based on another part of Oregon law that we may or may not have in Nebraska or how...because I'm... [LB913]

DUSTIN BLYTHE: Sure. [LB913]

SENATOR HARR: This is the problem with bills, right? We only get the green copy and sometimes we don't know if, you know, in another part of this chapter in another section it says:

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

work comp means shall apply to anyone working in the state, or only those who are here more than 60 days, or as defined in other places. So I don't know if Oregon has a different definition of what a worker is in a state versus us. And it may and probably is true in Oregon. I'm just not sure if it is here. [LB913]

DUSTIN BLYTHE: And I don't know the answer to that, but I will get you an answer. [LB913]

SENATOR HARR: Okay. And then the other question I have is so it has a definition of what an out-of-state means, a business entity, and it says: that does not have a presence in the state, that does not conduct business in the state. All right, so we have a storm. Let's say we have a big tornado because that's what we get. And Commonwealth Edison comes in and provides all this...well, AT&T comes in and provides...well, you already have a nexus here. So Commonwealth Edison comes in and provides all this great services for us, all right. They leave. By this, I guess my question is do they...what is the definition of conduct business? Is it at any time ever, or just at the current time of the incident? [LB913]

DUSTIN BLYTHE: It has to be within that time frame, either 10 days before and your 60 days after the disaster. That's the whole... [LB913]

SENATOR HARR: Okay, so once they leave... [LB913]

DUSTIN BLYTHE: They're done. [LB913]

SENATOR HARR: ...they're a born-again virgin. [LB913]

DUSTIN BLYTHE: Yes, they're done. [LB913]

SENATOR HARR: Okay. Okay, that makes sense. I just wanted to make sure that's clear on the record. All right. Thank you very much. [LB913]

SENATOR GLOOR: And clarification for me, it's interesting that the origins of this go back to Hurricane Sandy. I happened...happens to be traveling into New Jersey five days after Hurricane Sandy and it was very dark, except where the hotel was. A third of the rooms went to people who had reservations like we did. A third were people who are homeless because they had lost power to their homes. And the other third were contractors. I remember driving into the parking lot and it was a power company from Northern Michigan. It was painted all over their...decals all over their large trucks that were parked around there and I visited with a couple of those folks. They were all there basically as subcontractors. In other words, they've

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

been pulled in by power companies to work for them under their direction and were there to help. Isn't it pretty safe to say that in all likelihood we're not talking about people who are independently running around looking for work? We're talking about somebody who has volunteered to help, whether it's AT&T or a public power district or whomever, a city utility department. [LB913]

DUSTIN BLYTHE: That is absolutely correct. I mean if AT&T, if we had a problem I could see his partnering...if we have AT&T employees in other states that can help us...that can come in. But if Verizon needed to help us, we would help Verizon. People wouldn't come in in a vacuum. They would be requested. [LB913]

SENATOR GLOOR: For a couple of reasons, the most obvious one being by driving...why drive all your units in there looking for work when you probably have plenty of work for them at home. They all seem to be there on missions to be helpful as opposed to seeing this as a business opportunity. [LB913]

DUSTIN BLYTHE: Correct. [LB913]

SENATOR GLOOR: Now that was my experience. Okay. Senator Schumacher and then Senator Scheer. [LB913]

SENATOR SCHUMACHER: Thank you, Senator Gloor, and thank you for your testimony. Following up just a little bit on Senator Harr's questions, let's suppose that there was a major disaster. And AT&T of course has got personnel and operations in Iowa, personnel and operations in Nebraska. And you send a bunch of the Iowa people over here. How does...how are they taxed? Are they taxed back in Iowa or...? [LB913]

DUSTIN BLYTHE: Yeah, they would...yes, they would be taxed in their state of origin. If they come into Nebraska, as long as they're in this time frame of 10 days before or 60 days less, when they go back to Iowa, Department of Revenue in Nebraska is not going to send them a tax bill saying, by the way, you need to file a tax return for the time...for the period you worked here... [LB913]

SENATOR SCHUMACHER: Even if they're moving across basically to work on an AT&T Fiber network or something that got all washed out? [LB913]

DUSTIN BLYTHE: It would have to be a declared disaster. [LB913]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR SCHUMACHER: Okay. [LB913]

DUSTIN BLYTHE: So if it's routine...I mean, if there's no disaster and we had an outage we had folks come in, that's different. That's separation. [LB913]

SENATOR SCHUMACHER: Okay. Thank you. [LB913]

SENATOR GLOOR: Senator Scheer. [LB913]

SENATOR SCHEER: Thank you, Senator Gloor. Sort of a yes-or-no question. My assumption is, with the limited knowledge I have, in regards to the work comp, most companies that buy work comp, their policies are endorsed by the states that they provide payroll. So if you were coming to Nebraska and even if you were from Michigan, that was not one of your normal areas of work, you simply would just contact your insurance carrier and they would endorse your policy into that state. And as far as how the coverages would go about, it would be either defined in your work comp policy or by statute of either one of the states, either where the money was being paid or where the money was being earned. Does that sound logical? [LB913]

DUSTIN BLYTHE: That sounds logical, but I will double-check and get that question answer. [LB913]

SENATOR SCHEER: Okay. [LB913]

SENATOR GLOOR: Senator Harr. [LB913]

SENATOR HARR: Just to follow up though, but work comp varies from state to state. So if I'm injured on the job, a broken arm might be differently compensated here than, say, Iowa or...you know, depending on what part of the body it is, it would be compensated differently. Would you agree with that? And so it could have... [LB913]

DUSTIN BLYTHE: I'm not a work comp expert but... [LB913]

SENATOR HARR: Yeah, and nor am I... [LB913]

DUSTIN BLYTHE: Generally I would agree with that, yes. [LB913]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR HARR: I probably know more about work comp than I need to but...or want to, but that would be the question is, would they personally be compensated? And I think it would have a big effect on...while you might have the insurance, it would matter what is the reimbursement. [LB913]

SENATOR GLOOR: Senator Scheer. [LB913]

SENATOR SCHEER: And it might be the case most policies will determine if they're paid at the higher of the two states that they're injured in. And some states by statute will clarify how the injury is to be handled. So it not only goes by policy but it would also go by state statute, I believe, again, based on my knowledge. [LB913]

SENATOR HARR: Yeah, we'll look into this off the record. Yeah, thank you. [LB913]

SENATOR GLOOR: Seeing no further questions, thank you for your testimony. [LB913]

DUSTIN BLYTHE: Thank you. [LB913]

SENATOR GLOOR: Next proponent, please. Good day. [LB913]

ANN PROCKISH: Good day. Good afternoon, Chairman Gloor and members of the Revenue Committee. My name is Ann Prockish and that's spelled A-n-n P-r-o-c-k-i-s-h, and I am the governmental affairs director for CenturyLink. I'm here today to testify in support of LB913. CenturyLink is also a member of the Nebraska Telecommunications Association and the NTA also supports LB913. Natural disasters occur frequently in Nebraska, from tornadoes to ice storms, and as we saw just recently, blizzards. As we saw with the Pilger tornadoes in 2014, these severe weather events can and do cause significant damage. For CenturyLink, the primary focus during these events must be to restore service as quickly as possible. This is necessary to get commerce back up and running in terms of telecommunications services, broadband services, etcetera. In order to do that, CenturyLink may need to bring in out-of-state employees or contractors to assist with the cleanup and restoration of service. However, the recovery from state-declared disasters may be delayed because out-of-state contractors may not be registered to conduct business in the state or out-of-state employees may be reluctant to take the assignment knowing that Nebraska taxes will be withheld and they would be required to file a Nebraska return at the end of the year. LB913 will help reduce those delays by allowing out-of-state businesses that are not registered with the Secretary of State to operate in the state of Nebraska during the time for the disaster declaration as long as that business is assisting with the repairs needed as a result of the natural disaster. Similarly, the legislation will allow out-of-state

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

employees to assist in the cleanup effort and repair efforts without having Nebraska income taxes withheld from their paychecks and the requirement to file a Nebraska income tax return at the end of the year. In conclusion, LB913 will help speed the recovery effort from state-declared natural disasters allowing communities and their citizens to return to normal as quickly as possible. I'd be happy to take any questions. [LB913]

SENATOR GLOOR: Ms. Prockish, I'm guessing CenturyLink has its own disaster recovery plans. [LB913]

ANN PROCKISH: Yes, we do. [LB913]

SENATOR GLOOR: And do those lay out, in the case of the tornadoes we've talked about, some of the specifics like who you might call to help out if you decide you need additional help? I mean, do you already have preexisting arrangements that could expedite some of this? [LB913]

ANN PROCKISH: There could be some preexisting arrangements where we'll try and pull in employees from...if necessary. It depends on what the extent of the disaster or the damage caused where we may need to bring in employees from out of state, for instance, from Iowa, from Minnesota, from South Dakota. So I mean, we do have some steps that we'll work through, but again, the emphasis is to get the service back on as quickly as possible. And so we're working through, you know...it's really on a day-by-day type of thing. Do we need to bring in other employees? Do we need to bring in some contractors to help with the effort? [LB913]

SENATOR GLOOR: Okay. Thank you. Further questions? I don't see any. Thank you for your testimony. [LB913]

ANN PROCKISH: Thank you. [LB913]

SENATOR GLOOR: Other proponents. [LB913]

KRISTEN GOTTSCHALK: Senator Gloor, members of the Revenue Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the government relations director and the registered lobbyist for the Nebraska Rural Electric Association. I'm here today representing our 34 rural electric members to provide service over more than 80,000 miles of distribution line in the state. And we are very much in support of LB913. You know, often in emergencies such as ice and snow storms, tornadoes, other inclement weather, and we have problems within the state, in-state utilities typically are the first to respond to help their neighboring systems. And in those situations, mutual aid agreements are worked out well in advance that outline a lot of the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

questions that you've been asking about. You know, how do you handle workers' comp? How do you handle compensation after the storm is over, as well as the technicalities of how the repairs are being made? But times and needs are greater and the border utilities are going to need to have assistance from outside the state or if the disaster is broader within the state and the only...the utilities within the state can't respond. But what happens with the rural utilities is they come in first, they do the work, and they worry about all these technicalities later. You know, how are you going to pay? You know, what are the requirements of the state with respect to registration and such? And we've had systems that have gone into other states and they've done this sort of repair work within those other states and then a few weeks after they get back they get a little "nastygram" from the government in that state saying that, well, you're in violation of our laws. You didn't register and you didn't pay taxes. Now in those situations you typically work with the utility that you were there assisting and they make sure that those things are taken care of on the back side. But in the long run there's a lot of this exchange going back and forth across the borders and so legislation like LB913 just is kind of a common-sense approach to dealing with these disasters and the shared assistance that goes on across the borders. While it's never going to stop one of our systems from providing assistance in another state if they have these registration requirements or if you actually had to turn around and then submit income tax, but it is more of a nuisance because we're providing a service to them. They in-kind would provide that same service to us. And LB913 seems to make practical sense. The questions were already...there were other questions that you had asked about workers' comp. Typically, any time a utility from Iowa, say, comes in or South Dakota comes in to assist one of ours, we compensate them as they would have compensated their employees. So we're compensating the utility as they've paid their employee to provide service in our state. And in that situation, when there are excesses or if there's an injury, we typically cover those excess costs. But that's an agreement with those utilities. At this point, there wouldn't necessarily be anything in statute but more a part of the mutual aid agreement across the utilities that handle those situations. And as far as the nexus issues, we do have some utilities that are headquartered in another state but they actually serve customers in our state. And of course in the situations this emergency declaration wouldn't apply because they're already compensating their employees and paying taxes here and they're already registered within the state. [LB913]

SENATOR GLOOR: Good point. [LB913]

KRISTEN GOTTSCHALK: With that, that concludes my testimony. If you have any questions I'd be happy to... [LB913]

SENATOR GLOOR: Questions? [LB913]

KRISTEN GOTTSCHALK: ...address those for you. [LB913]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR GLOOR: I don't see any. Thank you, Kristen. [LB913]

KRISTEN GOTTSCHALK: Thank you. [LB913]

JILL BECKER: Senator Gloor 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 today as a registered lobbyist on behalf of Black Hills Energy in support of LB913. This is a piece of legislation that we have supported in numerous states. My counterpart is one of those that supported the Iowa bill that you heard about this morning. And really the reasons for supporting bills like this are very simple. It allows us to have more rapid recovery of our infrastructure and assist our state and local economies, but it's really about saving time and lives. That's really what it comes down to. I would offer a few technical changes to the bill, for example, on page 2 line 20 I'd like to have you include the word "natural" so that it's a natural gas distribution system because that's what we are and so we want to make sure that we're covered under the bill. We do support the amendment that Senator Smith has offered. And another piece that I'd like to I guess offer, the 60-day window may be a little bit too short. In talking with some of the other lobbyists I understand that maybe having a totally open window might be problematic. But at the same time I don't know that we can always say that we'll be done in 60 days. But that's kind of a policy decision for you to make. To answer the question about the ten days, Senator Harr, before a disaster how do we know it's going to happen? As an example when we saw the floods along the Missouri River, we started pulling meters up and shutting customers off before the flooding actually occurred. And then like one of the senators said, then eventually we got a disaster declaration. So you're right, that maybe sometimes that disaster doesn't happen exactly the way that we anticipate it timingwise. But there will be times when we're doing stuff in preparation of that disaster to try to minimize either the impact on customers of the damage to a system. So that's probably the reason for ten days beforehand. So with that, we thank Senator Smith for introducing this piece of legislation and we hope that you will support LB913. I'd be happy to answer any questions. [LB913]

SENATOR GLOOR: Questions? Senator Brasch. [LB913]

SENATOR BRASCH: Thank you, Ms. Becker. And you did bring up a good point when you mentioned the flooding along the Missouri River. I believe the infrastructure work began maybe 30 days before the flood to secure the sewer system and everything. So do you think ten days is really enough? [LB913]

JILL BECKER: I mean, it's hard to say because, you know, I suppose at some point you're going to have to decide, well, today is the day that we actually started doing these. So you know I think in a lot of those cases a lot of the prep work is done by the workers in that state or specifically that community so it's probably less of an issue. You know, just given where we are located, we

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

have operations in Council Bluffs and then right across the river we've got technically in Papillion. And so we may have had people over there, but it's not nearly as significant until after the disaster actually occurs. [LB913]

SENATOR BRASCH: Very good. Thank you. I have no other questions. [LB913]

SENATOR GLOOR: Seeing no further questions, thank you. [LB913]

JILL BECKER: Thank you. [LB913]

SENATOR GLOOR: Thanks, Jill. Any other proponents? Is there anyone in opposition? Anyone in a neutral capacity? Senator Smith, you're recognized to close. Senator Smith waives closing and that will end the hearing on LB913. We'll now move to LB1014. Senator Stinner, welcome to the Revenue Committee. It was your day to bring treats. [LB913]

SENATOR STINNER: (Exhibit 1) Good afternoon, Senator Gloor and members of the Revenue Committee. My name, for the record, is John, J-o-h-n, Stinner, S-t-i-n-n-e-r, and I represent District 48. It is my privilege to introduce LB1014 on behalf of Scotts Bluff County Airport Authority. LB1014 brings county airport authorities in line with how other political subdivisions are currently treated regarding bond authority and levy limits. Under current statute, specifically Nebraska Revised Statute 77-3442, bonded indebtedness approved by law is not included in the levy limits established for the majority of political subdivisions. However, the statute specifically applicable to county airport authorities, Nebraska Revised Statute Section 3-613, does not have the similar exclusion. As a result, ambiguity exists which has created a problem in refinancing for county airport authorities. In viewing the legislative history, there was no indication that the Legislature ever intended for county airport authorities to be treated differently in this regard from other political subdivisions. This bill amends Section 3-613 to provide that bonded indebtedness approved by law shall be excluded from the levy limits. This bill also amends Nebraska Revised Statute 13-520 to specifically include public airport authorities as being exempted from levy limitations as they pertain to restricted funds budgeted...used to retire bonded indebtedness. This exemption is also reflected in new language for Revised Section 77-3442 and 77-3443. The intent of this bill is to not make any changes to any political subdivisions other than county airport authorities. I have presented an amendment to LB1014, which is AM2192, and would ask the committee to consider it. This amendment was presented to me as the minimum change necessary for bond counsel approval as to the airport authority being exempted from levy limitations when it decides to issue bonds. It amends only second 3-613(12) and becomes the bill. There are people behind me who will testify who can probably answer all of your questions. Thank you for your consideration. [LB1014]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR GLOOR: Questions for Senator Stinner? I don't see right now, Senator. [LB1014]

SENATOR STINNER: Thank you. [LB1014]

SENATOR GLOOR: I'm assuming you're staying and will close. [LB1014]

SENATOR STINNER: Yes, I will. [LB1014]

SENATOR GLOOR: Okay. We'll move to proponents. [LB1014]

DONALD OVERMAN: (Exhibit 2) Good afternoon, ladies and gentlemen. Thank you, Senator Gloor and distinguished members of the committee. My name is Donald, D-o-n-a-l-d, Overman, O-v-e-r-m-a-n. I'm chairman of the Airport Authority of the County of Scotts Bluff, which operates Western Nebraska Regional Airport. I'm here at the invitation of Senator Stinner to speak in support of LB1014. The Airport Authority has asked Senator Stinner to introduce this bill to help rectify a problem we have encountered in the past few years. And we appreciate Senator Stinner's cooperation in offering this amendment. In the past several years, the Airport Authority has looked at attempting to refinance the airport bonds. Those bonds were sold in 2004 to pay for a new \$4.5 million airport terminal. However, due to ambiguities in the law which the senator has alluded to, bond counsel has expressed hesitation in approving refinancing of the bonds. I would throw in here that I think that the State Auditor has always approved our audited budgets. For most other political subdivisions, bonded indebtedness is not included in the levy limits established for political subdivisions. However, the Nebraska statutes applicable to county airport authorities do not have a similar exclusion. As a result, the Airport Authority of Scotts Bluff County has encountered difficulties in refinancing our bonds. All of you know how interest rates have dropped since 2004. Being able to refinance the airport bonds would result in savings to the airport and the taxpayers of Scotts Bluff County over \$200,000 over the remaining life of the bonds, which is nine years. It's actually \$232,262. All we want is for the county airport authority to be treated similarly to other political subdivisions. We have no desire to make any changes to the laws applicable to any other political subdivisions other than the county airport authorities. And we ask for your support of LB1014 and thank you for allowing me and others to testify. [LB1014]

SENATOR GLOOR: Thank you, Mr. Overman. [LB1014]

DONALD OVERMAN: Any questions of myself? And our legal counsel will speak after I do. He's smarter than I am. [LB1014]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR GLOOR: I lived in Scottsbluff for a while. By reputation, I'm not sure that's true, Mr. Overman. (Laughter) [LB1014]

DONALD OVERMAN: Very good. [LB1014]

SENATOR GLOOR: I knew you way back when. Are there any questions for Mr. Overman? [LB1014]

DONALD OVERMAN: Thank you, Senator. [LB1014]

SENATOR GLOOR: Seeing none, thank you. And thank you for making the long trip out. [LB1014]

DONALD OVERMAN: Thank you. It's only 800 miles. [LB1014]

SENATOR GLOOR: Welcome. [LB1014]

JERALD OSTDIEK: Thank you. [LB1014]

SENATOR GLOOR: You're supposedly the smartest man in the Panhandle. [LB1014]

JERALD OSTDIEK: (Exhibit 3) And I agree with your assessment. I think we know who's the smarter here. Good afternoon, Chairman Gloor and ladies and gentlemen of the committee. My name is Jerald Ostdiek, J-e-r-a-l-d O-s-t-d-i-e-k. And I'm here at the invitation of Senator Stinner also to speak in support of LB1014. And I am legal counsel for the Airport Authority of Scotts Bluff County. I've reviewed the legislative histories regarding Section 3-613 and 77-3442 and have found no intent whatsoever throughout all those years of any of the Legislature to treat County Airport Authorities any differently than the other political subdivisions concerning the exclusion of the bonded indebtedness from the levy limits. Additionally, as Mr. Overman has indicated, the State Auditor has rendered opinions as far as the yearly budget filings that we're in compliance as we're doing it. But the problem exists then when we are looking at refinancing, bond counsel are hesitant to recommend refinancing because of the lack of the similar language in 3-613. So that's what we're here trying to fix. Bond counsel has reviewed the proposed bill and then also the amendment found at AM2192 and are of the opinion that that would adequately address the problems that the county airport authorities are trying to fix. So we'd also ask for your support of LB1014. [LB1014]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR GLOOR: Questions? Senator Harr. [LB1014]

SENATOR HARR: Thank you. I guess my first question is, how many county airport authorities are there? [LB1014]

JERALD OSTDIEK: To my knowledge, I think there's only two. There could be more, but I think Grand Island and then Scotts Bluff County. That's all I'm aware of. [LB1014]

SENATOR HARR: Okay. And have you guys run into any other bond counsel that's had the same opinion? Have you had...I guess first question is, have you bonded before? [LB1014]

JERALD OSTDIEK: We bonded originally to build the terminal and that's what we're looking at trying to refinance. [LB1014]

SENATOR HARR: Okay. [LB1014]

JERALD OSTDIEK: And originally we didn't have the problem. Over the last, now, ten years we've run into this problem now. [LB1014]

SENATOR HARR: And has any of the language changed in the last ten years in the statute? [LB1014]

JERALD OSTDIEK: It has not. It has not. [LB1014]

SENATOR HARR: Okay, I'm just trying to figure out... [LB1014]

JERALD OSTDIEK: So the problem we have is the budget as...our airport authority was created at about the same time that we built the terminal. So our budget has increased as we've grown. [LB1014]

SENATOR HARR: Okay. I was just curious as to why this is necessary. And then how does...if you know and you probably don't, we have levy limits proposed in LB958. [LB1014]

JERALD OSTDIEK: I understand that, yeah. [LB1014]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR HARR: How would this bill be affected? How do they interact between the two of them, I guess, is the way to ask. [LB1014]

JERALD OSTDIEK: I can give you my best understanding. I don't think LB958 and the others that address that specifically amend 3-613, but the other broad language I think would create a serious problem. I think they'd be in direct conflict with each other. [LB1014]

SENATOR HARR: Okay. I guess my...I'm still a curious as to bond counsel. Have you guys sought a second opinion? [LB1014]

JERALD OSTDIEK: We have. [LB1014]

SENATOR HARR: Okay, and what was that? [LB1014]

JERALD OSTDIEK: Both of them...at least two of the bond counsel that we've discussed, and all of them, have agreed that this language would address that. And without this language... [LB1014]

SENATOR HARR: Do they think it's necessary, is the question. [LB1014]

JERALD OSTDIEK: Yes. [LB1014]

SENATOR HARR: Both? [LB1014]

JERALD OSTDIEK: One does and the other we didn't ask him at that time. But I believe he does also. [LB1014]

SENATOR HARR: All right. Thank you. [LB1014]

JERALD OSTDIEK: Thank you. [LB1014]

SENATOR GLOOR: Senator Schumacher. [LB1014]

SENATOR SCHUMACHER: Thank you, Senator Gloor, and thank you for coming in from Scottsbluff. Are city airport authorities then governed by a different set of the statutes? [LB1014]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

JERALD OSTDIEK: They are. They are. [LB1014]

SENATOR SCHUMACHER: And they don't have the problem? Or they issue their bonds under the city or...? [LB1014]

JERALD OSTDIEK: I don't know the answer to that. I know we have a problem, but I don't know the answer to that. They do have the other statutes. We're, county authorities, we're all under the 3-600s. And the city authorities are under a different set. [LB1014]

SENATOR SCHUMACHER: In researching this, have you stumbled across any other entities that we may have left out of the language of these exemptions? [LB1014]

JERALD OSTDIEK: You know, I didn't look for that. I didn't look for those issues. I was just concerned with what we're dealing with. So, no, I didn't. But I really wasn't looking. [LB1014]

SENATOR SCHUMACHER: Okay. Thank you. [LB1014]

SENATOR GLOOR: Seeing no further questions, thank you. [LB1014]

JERALD OSTDIEK: Thank you. [LB1014]

SENATOR GLOOR: Other proponents for this bill. [LB1014]

WILLIAM MUELLER: Chairman Gloor, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska Association of Airport Operators. We are in support of LB1014 and have reviewed AM2192 and support it. Senator Schumacher, our firm also represents the Lincoln Airport Authority that is organized under the city statutes that Mr. Ostdiek referred to. My understanding is they must have language in their statute that they're comfortable with because they've looked at this, they've looked at the amendment, and do not have any problem with it and didn't suggest that we needed to amend other statutes, although I'm going to go back and specifically confirm that. But the statewide Association of Airports supports this and we would ask the committee to advance it. Be happy to answer any questions you may have. [LB1014]

SENATOR GLOOR: Yes, Senator Brasch. [LB1014]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR BRASCH: Thank you, Chairman Gloor. And thank you, Mr. Mueller. How many airports are in your association? [LB1014]

WILLIAM MUELLER: I don't know. [LB1014]

SENATOR BRASCH: Oh, darn it. [LB1014]

WILLIAM MUELLER: I'm sorry. [LB1014]

SENATOR BRASCH: Because I believe there are several counties, Wayne County, Hall County, there's other counties with... [LB1014]

Darwin Skelton: There's about 30 (inaudible). [LB1014]

SENATOR BRASCH: Thirty in this state. Okay. [LB1014]

WILLIAM MUELLER: I knew that Darwin would know. Several, it is a very vibrant operation in Nebraska. We have airports in many, many of our of communities that are very vital to our communities. [LB1014]

SENATOR BRASCH: And do they also...for bonding, how are their funding mechanisms? [LB1014]

WILLIAM MUELLER: I don't know that either. (Laugh) [LB1014]

SENATOR BRASCH: Well, I thank you for your testimony. [LB1014]

WILLIAM MUELLER: Even though it's not very helpful. Bond counsel probably would know that. [LB1014]

SENATOR BRASCH: Okay. All right. No other questions. [LB1014]

SENATOR GLOOR: Seeing no further questions. [LB1014]

WILLIAM MUELLER: Thank you. [LB1014]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR GLOOR: Thank you, Mr. Mueller. Other proponents. We'll move to opposition. Are there any opponents for LB1014? Anyone in a neutral capacity? Senator Stinner, you're recognized to close. [LB1014]

SENATOR STINNER: Just like to add just a couple things to the commentary. There is a real limited amount of folks that are willing to underwrite these types of bonds. So there may be only two or three that I know of. And every bond counsel I've ever dealt with is belt and suspenders. They underline. They dot the I's and cross the T's. This is one of those issues that came up that, you know, the bond counsel says, I've got to have belt and suspenders on this. That's what this is all about--a limited number of companies to go to, to get bonding and to do the refinancing. [LB1014]

SENATOR GLOOR: Senator Harr. [LB1014]

SENATOR STINNER: Please. [LB1014]

SENATOR HARR: Thank you. Thank you, Mr. Chairman. Thank you, Senator Stinner. So is this to get a...I assume this is to get a legal opinion, we have to change the statute, is that...? [LB1014]

SENATOR STINNER: We have to get concurrence of their bond counsel in order for them to underwrite the bonds. [LB1014]

SENATOR HARR: They want...is this to issue the bonds or to get the letter from the bond counsel? [LB1014]

SENATOR STINNER: This...good question. Actually it would probably be getting the letter from bond counsel that would allow or make the company feel comfortable that they had the legal authority to issue those...reissue those bonds. [LB1014]

SENATOR HARR: Okay. And then because we are so cognitive of property taxes right now... [LB1014]

SENATOR STINNER: Right. [LB1014]

SENATOR HARR: ...you know, I was looking at the amendment, would this have the effect of the ability to raise taxes higher than they currently can? [LB1014]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR STINNER: If this does hit inside of the boundaries of what you're talking about in terms of limiting an ability of a political subdivision to go over their lid, and this is one of those exclusions, this would be an actual example of why you shouldn't have those because it's going to save this political subdivision \$232,000 on a refinance. If you want to say that we can't do these anymore heretofore and allow them to actually refinance these things and be over the lid, that probably would be something. But this is a primary example of what the Governor's bill is about. If it's limiting these types of activities I... [LB1014]

SENATOR HARR: Thank you. [LB1014]

SENATOR STINNER: ...I would say that it hurts local folks. [LB1014]

SENATOR HARR: Great. Thank you. [LB1014]

SENATOR GLOOR: Other questions? Seeing none, thank you, Senator Stinner. [LB1014]

SENATOR STINNER: Thank you. [LB1014]

SENATOR GLOOR: And that will end the hearing on LB1014. And Senator Davis was introducing a bill in another committee. Senator Harr, would you be ready to go ahead with your bill? [LB1014]

SENATOR HARR: Yes, but definitely on...yes. [LB1014]

SENATOR GLOOR: I think, given the fact that once we get into LB1013 it will be hard to get out of LB1013, I think, to go back to Senator Davis, I'm going to use my prerogative and we're going to move ahead on the agenda to LB949. Thank you. (Exhibit 8, LB913) Let me read into the record for LB913 a letter of support from Jason Bromm, Nebraska Cable Communications Association. Senator Harr, you're recognized to open on LB949. [LB1014 LB913]

SENATOR HARR: Thank you, Chairman Gloor, members of the Revenue Committee. My name is Burke Harr, H-a-r-r. I am from Legislative District 8 and I am here on LB949. LB949 would restore the cigarette stamping discount for license stamping agents to the 2002 level. We have been working with the stamping agent on the bill as introduced, but are unable to reach a reasonable conclusion. Given our limited time this session, the stamping agents and I ask the committee to IPP LB949. Thank you for your time and I would gladly take any questions. [LB949]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR GLOOR: Senator Scheer. [LB949]

SENATOR SCHEER: Can you expand on that, please? [LB949]

SENATOR HARR: (Laugh) I want it indefinitely postponed. [LB949]

SENATOR SCHEER: Ah, understood. Thank you. [LB949]

SENATOR GLOOR: Fine. Thank you. I would imagine there's no proponents, but I'll ask. No opponents? Neutral? [LB949]

SENATOR HARR: And I will waive closing. [LB949]

SENATOR GLOOR: So ordered. So we'll call the end to LB949. Senator Harr, LB950. Are you ready to go ahead with that? [LB949]

SENATOR HARR: I am. [LB950]

SENATOR GLOOR: Please. [LB950]

SENATOR HARR: I feel like saying Your Honor. [LB950]

SENATOR GLOOR: (Laugh) Please don't. [LB950]

SENATOR HARR: I am, Mr. Chair. Members of the Revenue Committee, my name is Burke Harr, H-a-r-r, and I'm here on LB950, which is to allow a bad debt deduction relating to cigarette and tobacco product taxes. Nebraska's license cigarette stamping agents approached me about an unfair practice as it relates to state taxes on tobacco products and here it is. As you know, each package of cigarettes, each cigar, and all tobacco products sold at retail in Nebraska are taxed by the state. To identify that the tax is paid, stamps are affixed to appropriately mark the product. What you may not know is that the stamping agents must pay the state tobacco tax at the time they pick up the stamp from the Department of Revenue. Then they attach the stamps before the products are delivered to retailers who then reimburse the stamping agents for the product and the state tax. For affixing the tax stamps, wholesalers receive a discount of .0185 per each cigarette stamp and a small percentage of the \$0.44 tax on snuff and 20 percent tax on all other tobacco products. This tax arrangement works for the state, but there is little instances when stamping agents are not...but there are instances when stamping agents are not paid by retailers

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

resulting in bad debt. LB950 creates a platform by which stamping agents may recover the state taxes which they have paid but were unable to collect. I believe LB950 is based on similar statutes in Colorado, Minnesota, and Virginia. And the bill provides very stringent reimbursement standards with which stamping agents must comply: a copy of the original invoice, evidence that the tobacco products were delivered to the person who ordered them, evidence that the person who ordered and received the tobacco products did not pay the stamping agents for the tobacco product, and evidence that the stamping agent used reasonable collecting practices to attempt to collect the debt. There are testifiers behind me that can answer specific questions about the process and why this bill makes sense. I will just quickly say next week we're going to have a claims bill in Business and Labor. And in there we have the same situation with the lottery and we're looking to fix that problem as well in the claims bill, to forgive those bad debts. It would seem reasonable that we would do the same thing here. Thank you. [LB950]

SENATOR GLOOR: Thank you. Senator Scheer. [LB950]

SENATOR SCHEER: Thank you, Senator Gloor. If you don't know, that's fine. I'm just curious. As far as I know, I'm in retail business, I sell something on account, I charge the individual sales tax and I don't get paid, I don't get reimbursed for that sales tax. So how would this be different from the perspective of you've got a wholesaler that is charging the tax, doesn't get paid for the product, and is out the money but is also out the tax versus a retailer that would be out the product and has already paid for the sales tax as well. [LB950]

SENATOR HARR: Well, I think I'll let those coming after answer that. But one thing I'll say is the difference is, one, you're taking on that voluntarily when you're selling a product. But when it's a tax, you don't have a choice. [LB950]

SENATOR SCHEER: Well, you have a choice if you want to sell to the retail entity, don't you? I mean whoever... [LB950]

SENATOR HARR: You have a choice if you want to work in this state or not, yeah. [LB950]

SENATOR SCHEER: ...whoever is not going...well, I mean... [LB950]

SENATOR HARR: I mean sure, you always have choices, yeah. And let me...I'll let someone come after me, maybe they can answer that better than I. [LB950]

SENATOR SCHEER: Okay, fair enough. Fair enough. Thank you, Senator Gloor. [LB950]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR GLOOR: Any other questions? Senator Smith. [LB950]

SENATOR SMITH: Just for clarity here, are you wanting to IPP this one as well? [LB950]

SENATOR HARR: No, no. This one we are good to go. [LB950]

SENATOR SMITH: All right. Thank you. [LB950]

SENATOR HARR: Thank you. [LB950]

SENATOR GLOOR: Seeing no further questions, thank you, Senator Harr. [LB950]

SENATOR HARR: Thanks. [LB950]

SENATOR GLOOR: We'll move to proponents for LB950. [LB950]

MICK MINES: Mr. Chairman, members of the committee, my name is Mick Mines, M-i-c-k M-i-n-e-s. I'm here today representing the Nebraska Grocery Industry Association. We, first of all, want to thank Senator Harr for introducing LB950. We strongly support the effort. And I just...I'd like to cover that the Nebraska licensed cigarette stamping agents are engaged in distributing and stamping cigarettes and tobacco at wholesale to retailers throughout the state. Prior to selling tobacco products to retailers, the licensed wholesalers must pay the stamping fee, or the tax that's due to the Department of Revenue. They then affix the stamps on the cigarettes and tobacco products before delivery...and then deliver the product. So in practice, Senators Scheer, the wholesalers pay the tax in advance then affix it to the cigarettes and then sell that stamp and tax to the retailer. And in your situation, there is no tax charged on another product--candy or gum--there's no sales tax or tax affixed to that until the end customer buys the product. Then tax is affixed. So this isn't...this is the stamping fee. It's not the sales tax. It's a different model. So what happens is the wholesalers will sell to a retailer and for some reason there's a bad debt. The retailer doesn't reimburse the wholesaler. Wholesalers would take the hit on the product itself, but they've already paid the state for the state tax that they're not able to collect. In fact, they're collecting...they are tax collectors for the state as it regards cigarettes and tobacco products. We just think that LB950 is a fairness issue. It allows those stamping agents to recoup the loss of the stamp tax or the bad debt and only if the certain conditions are met as Senator Harr had listed those. They have to indeed prove that there is bad debt and there has been an attempt to collect the bad debt and that it's only for the tax itself that's been paid but not collected from the retailer. So I would thank you and answer any questions. [LB950]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR GLOOR: Are there any questions for Mr. Mines? I don't see any. [LB950]

MICK MINES: Thank you. [LB950]

SENATOR GLOOR: Thank you. Continuing with proponents for this bill. Good afternoon. [LB950]

DANIAL JOHNSON: Good afternoon. Thank you, Senators. My name is Dan Johnson. I'm the general manager of AMCON Distributing Company in Omaha, Nebraska. We primarily service convenience stores with all sorts of products and cigarettes and tobacco are part of that. My contribution to this is a little bit more of the mechanics. I was given the fiscal notes and I saw that number and I said, man, if I did that I would be out of business tomorrow. So what I wanted to explain to you what we do as an industry, at least in my company and that's all I can speak to. In the real world, our customer terms are--so we don't...so we're clear in what our customer term are--are three to seven day. So a customer typically pays in three days after delivery or seven days after delivery. So we don't have a two-month time period before someone pays. So we don't let them get really large debt. Customer signs personal guarantee and a security agreement so we are protected as much as we can be. Average AR for all products for all customers is 10.41 days. So that's what our average is and you would say if you're three to seven days, how do you get ten days' worth of debt? Because what we're delivering one order we're getting the other one. If that check doesn't cash then I've got 14 days so that's how there's always a wash of AR. The average customer has an AR balance of \$4,745 of tobacco-only sales. The tax portion of those sales is 20 percent roughly, which would be \$949 per customer. For the state to experience a \$441,000 impact, 464 customers, average convenience stores or smoke shops would have to need to go into default in 2016 or any year. The fiscal note if expressed in AR tobacco sales dollars is \$2,205,000 worth of bad debt and AR would need to be in default with no hope of collection statewide from all distributors. The fiscal note exceeds my total Nebraska AR, period. Every single AMCON Nebraska customers would need would need to default for AMCON Distributing for us to reach that number. In 2015, AMCON has no bad debt in Nebraska that would apply. However, the safeguards for our part in the tax collection process would very much be appreciated. And those are my comments. Thank you. [LB950]

SENATOR GLOOR: Thank you. Questions for Mr. Johnson? Senator Scheer. [LB950]

SENATOR SCHEER: Thank you, Senator Gloor. If you have no bad debt from an industry standpoint, how big a problem is this? I mean... [LB950]

DANIAL JOHNSON: It's a problem from...as the economy goes obviously. I will have to say that Nebraska, with its reasonable taxes and reasonable ways of doing business, the retailers are

fairly healthy. That's not always. And we are very good. We would probably be on the high end of that collection process and the sacrifice for that is sales for us if we decide that there's any risk at all with a customer. Somebody is servicing those customers. We have had bad debt, but we've never had...experienced huge amounts of it. And you know, when they were explaining the process of that, when 20 percent of your sales are simply tax and not a product where you market out, that kind of thing, it's basically... [LB950]

SENATOR SCHEER: I mean is this... [LB950]

DANIAL JOHNSON: It's a negative cash flow type of thing. [LB950]

SENATOR SCHEER: Is this bill just in response to something that could happen or is it something that's happened? [LB950]

DANIAL JOHNSON: Oh, we've had things happen in the past but it's, you know, if you're not moving forward you're not moving. So it's one of those things that we've always had on our minds. And you know, I can only speak for AMCON Distributing. The other distributors might have another experience. [LB950]

SENATOR SCHEER: Sure. Okay. Thank you. Thank you, Senator Gloor. [LB950]

SENATOR GLOOR: Senator Smith. [LB950]

SENATOR SMITH: Yes, thank you, Senator Gloor. At what point is it uncollectable? [LB950]

DANIAL JOHNSON: Well, to give you an example, in my company I had a nice lady in Plattsburgh go out of business who still owed me \$4,000 and she paid \$100 every two weeks until it was paid off. We do whatever we can to collect because even though if I could get that 20 percent from the state, the other 80 percent comes to me either way. So I really want that money. We usually spend, you know, some time collecting through the salespeople, sometimes at some point we'll have to turn it over to a collection agency and try to see if they can work on it. [LB950]

SENATOR SMITH: But in which of those descriptions there is it uncollectable? [LB950]

DANIAL JOHNSON: Oh, what would be uncollectable? [LB950]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR SMITH: Yeah, when is it uncollectable? When you turn it over to a collection agency? [LB950]

DANIAL JOHNSON: Well, I'd say that once you've done everything you can legally to get that money and we can't get the money. I guess that's the... [LB950]

SENATOR SMITH: Is it before or after it's turned over to a third party for collection? [LB950]

DANIAL JOHNSON: It would be before because I would say that we would wait at least 90 days before and make every before we could turn it over. [LB950]

SENATOR SMITH: And then you'd turn it over to collection agency. At that point it's deemed uncollectable? [LB950]

DANIAL JOHNSON: It is deemed uncollectable because... [LB950]

SENATOR SMITH: And if they collect, then what? [LB950]

DANIAL JOHNSON: Oh, I would say that they would be repaid, absolutely. I mean, we would have to...if the state reimbursed us, we'd have to repay that money. [LB950]

SENATOR SMITH: Okay. [LB950]

DANIAL JOHNSON: I mean, we have a lot processes in the taxing process where we do returns to retailers, all that kind of stuff, that we have money going back and forth to the state all the time. So that would probably be the answer to that. I would hate to give up and just let...because I got my 20 percent and walk away. I would still try to...I believe somebody owes the money, they should pay the money. So I would never stop because I got my 20 percent from the state. [LB950]

SENATOR SMITH: All right. Thank you. [LB950]

SENATOR GLOOR: Seeing no further questions, thank you, Mr. Johnson. [LB950]

DANIAL JOHNSON: Thank you. [LB950]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR GLOOR: Other proponents? We'll move to opposition. Anyone in opposition to this bill? Anyone in a neutral capacity? Seeing none, Senator Harr, you're recognized to close. [LB950]

SENATOR HARR: And I'll be brief. I just want to--thank you, Chairman Gloor--to address this valid concern, Senator Smith. If they do later receive that money, it would go to the state. And it's written in the bill. [LB950]

SENATOR SMITH: Who keeps...I'm sorry. [LB950]

SENATOR GLOOR: That's fine. Go ahead. [LB950]

SENATOR SMITH: Senator Harr, so who keeps track of that? How do we know...? [LB950]

SENATOR HARR: Certified public accountants, outside third parties, impartial. [LB950]

SENATOR SMITH: And is it prorated? So if you recover 50 cents on the dollar, do you still get all of the sales tax back? [LB950]

SENATOR HARR: You would repay the state the portion that you receive. So if you receive 50 cents later, you would get 50 cents, yeah. The state would get 50 cents. [LB950]

SENATOR SMITH: Okay. [LB950]

SENATOR GLOOR: Any further questions, Senator Smith? Senator Harr, did you have closing statements before we take another question? [LB950]

SENATOR HARR: No. [LB950]

SENATOR GLOOR: Okay. Senator Scheer. [LB950]

SENATOR HARR: Where does it say that the proportionality of the dollars collected go back to the state? [LB950]

SENATOR HARR: You know, again, this kind of goes back to the previous bill. This is the beauty of the green copy is you don't see how...you only see a small picture of it. [LB950]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR SCHEER: Well, I guess... [LB950]

SENATOR HARR: But it's in the overall statute. [LB950]

SENATOR SCHEER: Here's the problem with that for me. [LB950]

SENATOR HARR: Okay. [LB950]

SENATOR SCHEER: If you collect 50 percent of the lost amount, the state is only getting back 50 percent of the tax money. But indeed it was your sales, not the state. So if you collect more than...I mean to me, the state should be getting its dollars back before you recover the loss of your accounts receivable. [LB950]

SENATOR HARR: That's fair. [LB950]

SENATOR SCHEER: That's where I would have a problem. [LB950]

SENATOR HARR: We can...and that's fair and we can work on that and that's definitely a valid concern. [LB950]

SENATOR GLOOR: Seeing no further questions, unless you have any final comments, Senator Harr. [LB950]

SENATOR HARR: Just thank you for the time. [LB950]

SENATOR GLOOR: Thank you. [LB950]

SENATOR HARR: Thanks. [LB950]

SENATOR GLOOR: And that ends the hearing on LB950. We'll now return to the agenda and LB1087. Senator Davis, welcome back. [LB950]

SENATOR DAVIS: Thank you. And I want to apologize for not being here when I was in the proper order, but in my last bill there were questions that really needed to be answered at closing. So I felt compelled to stay. [LB1087]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR GLOOR: We certainly understand. [LB1087]

SENATOR DAVIS: Good afternoon, Chairman Gloor, members of the Revenue Committee. I am Senator Al Davis, A-l D-a-v-i-s, from District 43. Today I'm before you to ask that you listen to LB1087. LB1087 would modernize the tax code for how retailers operate by updating the definition of retailer doing business in the state to reflect the expansion of on-line commerce and related technology and the competitive disadvantage faced by retailers located in the state who must collect sales tax on transactions. Extending sales tax collection obligations to all retailers who choose to compete with a presence in Nebraska's marketplace will put all sellers on the same competitive field and relieve residents of their obligation to track, report, and submit annual use tax on Internet purchases. I do want to be forthright with the committee in that my goal is to have an interim study on this issue this summer. In fact, when the bill was brought to me there was a companion bill that we had drafted, REQ 04646, and that would also serve as a basis for interstate. Jim Otto from the Nebraska Retail Federation will follow me and has copies of the REQ. Thank you. [LB1087]

SENATOR GLOOR: Thank you. So your hope is ultimately this bill ends up as a study resolution. [LB1087]

SENATOR DAVIS: Right, and Mr. Otto has visited with legal counsel on that issue. Obviously it's a big and growing bigger problem for the state of Nebraska with on-line merchants not remitting sales taxes. [LB1087]

SENATOR GLOOR: Any questions? Seeing none, thank you, Senator Davis. [LB1087]

SENATOR DAVIS: Thank you. [LB1087]

SENATOR GLOOR: (Exhibits 1-7) We'll go with proponents, but before I forget, let me read into the record proponent letters that you have in front of your from Gary Krumland, Nebraska League of Municipalities; Renee Fry, OpenSky Policy Institute. Opponents, you'll have letters from Steve DelBianco from NetChoice; Robert Callahan from Internet Association; Clark Packard, National Taxpayers Union; and Matt Litt from Americans for Prosperity. And then a neutral, we believe from the wording, is Steve Hubka from the city of Lincoln. Mr. Otto. [LB1087]

JIM OTTO: (Exhibit 8) Thank you, Senator Gloor, members of the committee. My name is Jim Otto; that's J-i-m O-t-t-o. I am president of the Nebraska Retail Federation, also registered lobbyist for the Nebraska Retail Federation. Want, first of all, thanks to Senator Davis for

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

introducing LB1087 and also mentioning that last year Senator Davis introduced LB200, which the Revenue Committee advanced, and we thank you for that, and actually is now law and would take, if the federal government enacts sales tax for all those on-line sellers that don't collect and remit, that money would go to property tax reduction. And in fact, the real solution for property tax reduction is to get on-line sellers to collect and remit. It's somewhere...most estimates are that it's in excess of \$100 million a year that the state of Nebraska is not collecting because of this ongoing situation. As Senator Davis said, there were two bills...two bills drafted, one bill introduced. The bill that you have in front, LB1087 is one part of the NCSL language. This actual language was suggested to NCSL I believe in Salt Lake City. I think Senator Smith might have been at that meeting. And what I handed out was Request 04646 which was the other part of the NCSL language and we simply ask that...as Senator Davis said, we'd really appreciate a very serious interim study and that both the bill and the REQ 04646 be included as part of that interim study. With that, I'd be glad to answer any questions. [LB1087]

SENATOR GLOOR: Thank you. Any questions for Mr. Otto? Seeing none, thank you. Other proponents? [LB1087]

KATHY SIEFKEN: Good afternoon, Chairman Gloor and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I am the executive director and lobbyist for the Nebraska Grocery Industry Association here in support of this bill for the same reasons that Jim Otto stated. If you have any questions, I'd be happy to try to answer them. [LB1087]

SENATOR GLOOR: Thank you. [LB1087]

KATHY SIEFKEN: Trying to move things along here. [LB1087]

SENATOR GLOOR: Thank you, Ms. Siefken. [LB1087]

KATHY SIEFKEN: But it really needs to be an issue that needs to stay at the top. We need to keep talking about it. [LB1087]

SENATOR GLOOR: Okay. Seeing no questions, thank you for your brief testimony. [LB1087]

KATHY SIEFKEN: Thank you. [LB1087]

JASON HAYES: (Exhibit 9) Good afternoon, Senator Gloor and members of the Revenue Committee. For the record, I am Jason Hayes, J-a-s-o-n H-a-y-e-s. I'm here today representing the Nebraska State Education Association and we thank Senator Davis for introducing this

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

legislation. And I will limit my comments. NSEA supports LB1087 because it's a way for Nebraska to increase its tax revenue without necessarily raising tax rates. On-line sales from Internet-based transactions have grown significantly over the past 20 years. LB1087 provides a partial solution to regaining some of this lost tax revenue. And the extent to which this lost revenue could be directed toward state aid to education will help lessen and equalize school districts' high reliance on local property taxes. And I thank you for your time. [LB1087]

SENATOR GLOOR: Thank you, Jason. Senator Scheer. [LB1087]

SENATOR SCHEER: Thank you, Senator Gloor. Jason, I've just got to ask because it's been a long time...it's been a couple years since I've had NSEA testimony in front of me. Usually it's the NSEA and their 28,500 members. So I was just wondering if the membership is included in this today as well. [LB1087]

JASON HAYES: It's still 28,000. [LB1087]

SENATOR SCHEER: All right. [LB1087]

JASON HAYES: I figured everybody knew that. Thank you very much. [LB1087]

SENATOR GLOOR: Seeing no further questions, thanks for your testimony. [LB1087]

JASON HAYES: Thanks. [LB1087]

SENATOR GLOOR: Other proponents? Any opponents? Anyone in a neutral capacity? [LB1087]

RON SEDLACEK: Thank you, Senator Gloor and members of the Revenue Committee. For the record, my name is Ron Sedlacek; that's R-o-n S-e-d-l-a-c-e-k. I'm here on behalf of the Nebraska Chamber of Commerce and Industry and testifying in a neutral capacity. We did review the legislation and although while the State Chamber is supportive of marketplace fairness, do have some concerns about potential constitutional issues. And in that regard, we do welcome an interim study on the subject and we would like to be included in participation. And with that, I'll close testimony. [LB1087]

SENATOR GLOOR: Thank you. I see no questions. [LB1087]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

RON SEDLACEK: Thank you. [LB1087]

SENATOR GLOOR: Thank you, Ron. Anyone else in a neutral capacity. Senator Davis. Senator Davis waives closing and that will end the hearing on LB1087. We'll now move to LB1013. Just a quick housekeeping approach towards this, before the lights went out in Georgia and the State Capitol, we were with...we had gone through proponents. We were on opposition. Can I see a show of hands of those who wish to speak in either opposition or in neutral capacity. Okay. I will be turning the gavel over to Senator Sullivan until Senator Schumacher as Vice Chair is able to get back. And so we would begin with testimony for those in opposition. [LB1087]

SENATOR SULLIVAN: Thank you. Thank you, Senator Gloor. And we now hear opposition testimony on LB1013. Welcome. [LB1013]

MARK WHITEHEAD: Thank you very much. Acting Chairman Sullivan, members of the committee, thank you. My name is Mark Whitehead; that's M-a-r-k W-h-i-t-e-h-e-a-d. First of all, climb onto a little bit of a soapbox before I go on with my prepared comments. I do agree with just about every one of the proponents of this in that I've never smoked a cigarette in my entire life and nor do I ever intend to. But that's where some of the similarities cease. I've been in the convenience store business since 1982. Back in 1982, cigarettes were our number one inside product category. In 2016, they are our number one inside volume category and I would anticipate in 2030, more likely than not if the trend continues, they will be our number one indoor category along those lines. Certainly things have changed dramatically over the course of the...I don't even want to count the number of years since I've been in this business. Different issues arise as to the responsible hospitality of it. Before I get in specific to the bill, this is an e-mail from our HR director just this afternoon as I was thumbing through my e-mails. Stings are done on a regular basis for both alcohol and tobacco. We make a huge deal out of it for both alcohol and tobacco. Selling to a minors is a huge deal not only represented by the State of Nebraska, but likewise to the retailers who are trying to enforce it. It's a counter-intuitive transaction. We've got associates that are in entry-level positions trying to do the best job they know how to do it in terms of customer service. And when someone comes up to the counter, they don't know whether or not this is going to be a legal or an illegal transactions attempt. And so consequently it flies into the face of what they intuitively are taught in terms of customer service skills and the rest of that. But certainly a tremendous amount of effort is done on our part and our industry's part on both the alcohol issue and the tobacco issue to make sure that there are no infractions. This represented five stings just over the course of the last 48 hours and to the best of my knowledge we passed every single one of them. We reward them not only with this but also with financial incentives as well. And unfortunately on the negative side they can be terminated as well if they do that sort...do those sorts of transactions. So this is...it's been recognized as an incredibly sensitive issue to us by the state and we've received that message very, very clearly. Specifically as it relates to the \$1.50 a pack issue, a great deal of testimony

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

was done in terms of the border bleed issue. That is a very real, real concern for our industry. One of the things that I want to caution on it, we've ebbed and flowed back and forth with the state of Iowa over the course of the last several decades. It can't be the effect that we currently have right now on revenue and overall prosperity for the retailers on the Nebraska side cannot be underestimated. Right now we've got a decided advantage over Iowa. That has very rarely been the case. Substantial amounts of revenue are coming in from the state of Iowa. The \$1.50 would reverse that back. So not only would we not get the 30 percent or so increased revenue that we are now having plus the sales tax revenue on it plus the additional sales that come with those customers coming over to our side to do business in Nebraska, we would not only lose that but all those sales as well. They cannot come anywhere close to the financial model that would be predicted on a straight-line effect on what the \$1.50 would impact. It would come absolutely nowhere close to that. In terms of...likewise, from my years of experience, in terms of the reduction of alcohol...tobacco use, rather, that this would cause it would be minimalized. As I stated earlier, I fully expect our number one product category, regrettably or not, to still continue to be tobacco even after the excise tax is done. I'd be happy to answer any kind of questions that you might have. [LB1013]

SENATOR SULLIVAN: Thank you, Mr. Whitehead. So what's the difference between the Iowa tax and Nebraska tax? [LB1013]

MARK WHITEHEAD: I don't know exactly. It's substantially different. I believe it's...I can't tell it. I think testimony beyond...well, I take that back. [LB1013]

\_\_\_\_\_ : \$1.36. [LB1013]

MARK WHITEHEAD: Right here, yeah, \$1.35 (sic) a pack right now is what Iowa is. [LB1013]

SENATOR SULLIVAN: Okay. So if we neutralized it and were the same... [LB1013]

MARK WHITEHEAD: No, it...well, yes and no. But then that does not discount the fact that we would lose that advantage that we're currently enjoying in terms of the 30 percent or so of increased revenue that we're getting over the boarder currently right now. It's a substantial positive impact to the retailers and to the state of Nebraska right now in terms of revenue. [LB1013]

SENATOR SULLIVAN: Okay. Any other questions for Mr. Whitehead? Senator Brasch. [LB1013]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR BRASCH: Thank you, Vice Chair Sullivan. First of all, Mr. Whitehead, I do want to thank you and commend you for your efforts to make sure that any sales is not the minor, whether it's alcohol or tobacco, and your diligence and your work in that. And moving forward the tax situation, as you mention, would be harmful and expensive to your business and others across the state, correct? [LB1013]

MARK WHITEHEAD: Absolutely, we would...again, when somebody comes into our store, they're not just coming in to buy cigarettes. They're buying other items as well. So that substantial increase on the border side, and the farther away from the border you get, of course, the less the border bleed. But I'm here representing--I guess I should have mentioned this--I'm representing Nebraska Petroleum Marketers and Convenience Store Association as well as comments that are consistent with the Nebraska Chamber. [LB1013]

SENATOR BRASCH: Very good. Thank you. I have no other questions. [LB1013]

SENATOR SULLIVAN: Any other questions? Thank you for your testimony. Welcome. [LB1013]

JIM VOKAL: (Exhibit 30) Acting Chair Sullivan and members of the Revenue Committee, my name is Jim Vokal, J-i-m V-o-k-a-l, and I'm the CEO of the Platte Institute for Economic Research. Thank you for this opportunity to speak in opposition to LB1013. First, I want to applaud the members of the committee for trying to find a way to reduce the state property tax burden and costs to our Medicaid program. We have testified in support of lowering the property tax burden, yet today, I must speak against raising the cigarette tax. I know the committee members that support this tax increase are well intended, but this is not the way to properly address property tax reform and fund state government. From a funding perspective, cigarette taxes are an extremely unstable revenue source. Over the last ten years, cigarette sales in Nebraska have generally declined an average of 2 percent per year and higher taxes bring an expectation of even lower sales. During the same period, the state's government expenditures have grown an average of 3.7 percent. If Nebraska relies on this tax to fund property tax relief or any other reoccurring government expenditure, it will create long-term funding shortfalls that will have to be paid for with other budget revenues. The National Conference of State Legislatures supports this stating: Cigarette taxes are not a stable source of revenue. From a policy standpoint, this regressive tax would affect lower income adults the most. According to the Centers for Disease Control and Prevention, 34.8 percent of adults in Nebraska who earn less than \$15,000 per year are smokers. Raising this tax will unfairly shift the burden to these low-income earners. There is a general consensus among policymakers that increasing sin taxes, such as the cigarette tax, will reduce consumption. However, research has found that higher tobacco taxes reduce usage by an insignificant amount and are more likely to increase smuggling,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

creating an illegal tobacco market, without necessarily improving health outcomes. A 2014 study by the National Bureau of Economic Research found that current smokers have demonstrated a strong preference for the habit that is largely undeterred by tax rates. The study also found that if the tax was increased by 100 percent, it would decrease adult smoking by only 5 percent. Under current law, Nebraska is ranked 40th in the nation, with Missouri and Wyoming the only neighboring states with lower rates. If this bill is enacted, the 234 percent increase will give Nebraska the 12th highest rate in the country and the highest amongst its neighbors. LB1013 could also unintentionally trigger an illegal market for tobacco. Economists at the Mackinac Center for Public Policy in Michigan have created a statistical model to estimate the degree to which cigarette smuggling occurs in all fifty states. According to these economists: Nebraska's 2013 smuggling rate was a puny 2.8 percent of total cigarette consumption in the state. But if the proposed bill, LB1013, is adopted that rate will rocket to 32.3 percent of the total market, putting Nebraska 5th overall behind Rhode Island, a perennial cigarette smuggling state. In addition to smuggling concerns, the increased tax rate would also mean that Nebraska would see a decline in the sale of legally taxed cigarettes, but not on the assumption that fewer people are smoking. The Journal of Health Economics found that up to 85 percent of the change in legal sales after a tax increase is due to tax avoidance and evasion, not by quitting smoking. Ultimately, variations in state cigarette taxes often result in smuggling, legal border crossings to lower tax jurisdictions, and Internet purchasing. Again, while I'm sympathetic to the committee's intent with the bill, after a review of the evidence and sound tax policy, an increase in the cigarette tax would do more harm than good in Nebraska. Thank you for the opportunity to testify and I'd be happy to answer any questions. [LB1013]

SENATOR SULLIVAN: Thank you, Mr. Vokal. Are there any questions for him? Senator Harr. [LB1013]

SENATOR HARR: Thank you, Madam Chair. Mr. Vokal you're from Legislative District 8 and I'd just like to welcome you here. [LB1013]

JIM VOKAL: Proud to be your constituent, Senator. [LB1013]

SENATOR HARR: Thank you. [LB1013]

SENATOR SULLIVAN: Any other questions or comments? Thank you for your testimony. [LB1013]

JIM VOKAL: Thank you so much. [LB1013]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR SULLIVAN: Welcome back. [LB1013]

DANIAL JOHNSON: Thank you. Again, my name is Dan Johnson, and Danial Johnson, D-a-n-i-a-l J-o-h-n-s-o-n, and I am the division manager for AMCON Distributing in Omaha, Nebraska. I realize I'm here on behalf of AMCON Distributing, however, my presentation is primarily based on a smoker because I may be the single smoker in the room. My first inclination...oh. My first inclination when I read the article in the paper of \$1.50 and I thought, man, what's this do to me? What's this do to my employees? And then what's it do to my business? Okay? All three of those things are important to me. I've been a smoker for 40 years and I wouldn't abandon if it wasn't for people...it was for people like Mark Whitehead from U-Stop for keeping me from buying cigarettes when I was that young. I smoke consistently a carton and...a carton a week which is about a pack and a half. It's under a pack and half. The personal cost of the proposal for me personally is \$800 a year and that's over and above the \$850 a year I already pay and state and federal taxes and that doesn't take into account the...excuse me, the Master Settlement Agreement that the state gets money back based on the volume from the cigarette manufacturers. Although that is the cigarette manufacture payment, it's all built into the suit. I have a visceral objection to sin taxes as a general rule anyway and I don't like the financial loss. But I'm the highest ranking person at AMCON Distributing who smokes. No other general managers out of six branches, no corporate management, nobody in the high salary ranking would smoke a cigarette, none of them are smokers. However, when you get down to the warehouse smokers, I counted them in my warehouse, I got 40 percent of those people in the warehouse making \$22,000 to \$25,000 a year who smoke cigarettes. You ask them how much they smoke. Most of them a pack, usually a smoker will lie, okay, because they don't want to tell you how much they're smoking. The additional cost to my warehouse employees right now, if they smoked at my rate, would be \$800 a year which is 3.2 percent to 3.6 percent of their income. I think we all agree that's a lot of money. You might say, well, we're all quit smoking. Well, that's not going to happen and if it did the state is going to have to make up a lot of money. There's no question to that. As a smoker, I hoard cigarettes in my car. I hoard cigarettes in my desk at work. I hoard them at home. I make sure that I am never without a cigarette or without it without a lighter. I'm not going to quit no matter what you put money at. But I'm at a different position as most people, all right. I was sitting...last night I was having a cigarette out with the warehouse people on the smoking patio and I watched them, a young man eating a bowl of ramen noodles. The ramen noodles cost a couple cents, a few cents. I don't know what they cost. His two cigarettes cost far more than that ramen noodles. His cigarettes cost more than his lunch. So it's a big impact to those people who smoke cigarettes. What choice do these lower income people have? I don't think it's right that we put people through this process so we can give property taxes to people who own property when all these people who are paying the taxes don't own a home. I don't understand that process. I watched the stream of people in line for new money, but I think when people use the word new money, it's not new money. It's my money. It's my employees' money. It's your taxpayers' money. It is not new money. The organizations asking

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

for cigarette money should be worthy enough to have the money or they don't have the money based on their own merits. And I don't know the association between cigarettes and people funding a volunteer fire department. I am absolutely positive these organizations are for the...have the best interest in mind. I think they're all good people. I have their best intentions. I have nothing against them. I just don't want to be funding them. And I'm sure that if you asked my warehouse employees who smoke, that they don't wish to fund those programs either. They'd like to give their money to charity if they want to, but they should be able to choose their own charities. I guess I want my \$800. I think my other customers...my employees do too. And I hope you guys will reconsider the \$15 tax. [LB1013]

SENATOR SULLIVAN: Thank you, Mr. Johnson. Questions? Senator Davis. [LB1013]

SENATOR DAVIS: Thank you, Senator Sullivan. So how do you feel about the \$100 million in Medicare, Medicaid expenses that the state of Nebraska takes on for smoking-related illnesses? [LB1013]

DANIAL JOHNSON: I really don't know how I feel about that. I know that if I died in a car accident, somehow it be associated with me being a smoker. I will also say that I pay higher insurance at every level because I'm a smoker. If I looked at a cigarette they're going to charge me more. So I'm paying my part. I pay my taxes so I assume that that's being taken care of in my Medicare...out of my Medicare funding. So my opinion is people who are overweight and they have extra expenses because of...because in the Medicare system, you know, I guess they're...we're going to have to pay for them too. [LB1013]

SENATOR DAVIS: Well, I guess the question really leads to this. Would you be more comfortable if the funding went to compensate the state for the cost that it incurs on behalf of smokers? [LB1013]

DANIAL JOHNSON: My opinion is I'm already paying it. I mean the money that's coming in right now isn't being used for smoking. I mean the money coming back from the Master Settlement isn't being used for smoking. It was supposed to be...designed to keep people from smoking. Well, I don't know and I'll have to tell you that that's worthless money anyway. You show me an ad on TV, I'm changing the channel. I don't want to be preached to. I'll go to church on Sunday. [LB1013]

SENATOR DAVIS: Do you think there's anything to the argument that higher costs for cigarettes will deter young smokers from starting? [LB1013]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

DANIAL JOHNSON: No, they'll find new ways to do it. I just...I really think they will. And they have money for gas and going to...you know, when you're talking a \$20 difference between Missouri, it's only an hour from my house. I mean I go pick up four cartons a month and never look back. [LB1013]

SENATOR DAVIS: Thank you. [LB1013]

DANIAL JOHNSON: It's just the practical part of it. It's so easy to avoid that tax. [LB1013]

SENATOR SULLIVAN: Any other questions for Mr. Johnson? Thank you for your testimony. [LB1013]

DANIAL JOHNSON: Thank you for listening to me. [LB1013]

SENATOR SULLIVAN: Welcome. [LB1013]

DON YOUNG: Thank you. Good afternoon, Senators, members of the committee. I'm coming at this from a little bit of a different perspective. My name is Don Young, Y-o-u-n-g. I live in Lincoln where I own and operate Capitol Cigar Company at the corner of Cotner and R. I've been in the cigar business for almost ten years and I'm speaking out today as a strong opponent of the proposed increase in the tax on cigars. I also would like to make note that I'm also a property owner in Lincoln so I understand the need for property tax relief, but I'm hoping that we can find a better way than this. As a small local business in what many politicians have termed a business friendly state, I find that any additional taxes placed on the very items that provide me and my family with an income and the citizens of Nebraska with a commodity with which they have every right to enjoy will only cause those same citizens to look elsewhere to make their purchases. Mr. Whitehead made a very valid point that border bleed is a very, very real result if the taxes continue to increase and an identical product can be purchased in Missouri or Kansas where the current taxes are half of what they are here in Nebraska, while the Internet which is already my largest competitor offers the added benefit of no tobacco tax. Now I understand that cigarettes are different in that there are laws surrounding the purchase and important cigarettes into Nebraska--not so with cigars. You can buy cigars anywhere across this country and obviously in states where there is no tobacco tax--Florida, Texas, Delaware, Pennsylvania--and get them shipped here and pay no tobacco tax. That's my largest competitor now and I am a firm believer that if this tobacco tax increase passes, it will only become a larger competitor for me because there's nothing to keep people from doing it until changes are made to institute taxes like that. In the political arena recently, the subject of additional regulations causing small businesses to find other options and locations which are more conducive to better serve the needs of the small business when it comes to tax laws and restrictions has become a real hot topic of late.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

And many are due in part to the overtaxation of goods, services, and small businesses. I'm just the little guy right now. I'd like to be like Mark Whitehead eventually, but right now I'm just the little guy. So let's turn this thing around and bring the small business climate up to where it needs to be to support the tax-funded necessities related to this particular tax. Doing so will avoid the threefold results of such an increase as had previously been mentioned: fewer businesses, less sales tax, and less tobacco tax collected as many will simply find other outlets from which to purchase their goods. Thank you. I'm happy to answer any questions. [LB1013]

SENATOR SULLIVAN: Thank you, Mr. Young. Are there questions for him? Thank you for your testimony. [LB1013]

DON YOUNG: Thank you very much. [LB1013]

SENATOR SULLIVAN: Welcome. [LB1013]

SANDY McCORKINDALE: Thank you. Thank you, Vice Chair Sullivan and committee. My name is Sandy, S-a-n-d-y, McCorkindale, M-c-C-o-r-k-i-n-d-a-l-e. I'm an owner and general manager of Cigarz Lounge. We opened our doors just four and a half weeks ago in Lincoln's Haymarket. We're an upscale bar, I guess, where cigar smoking is allowed under the new state law that was passed just a year ago. And I pretty much want to repeat what Mr. Young said. We're Ma and Pa. We don't mind paying our fair share of taxes. We're all for property tax relief, but this proposal we feel would be detrimental to our business. I think no one would argue opening a business your first year is tough enough. I think this proposal would really make it a struggle for us. And we've had great feedback from our patrons, but we do know that they'll go buy their cigars on the Internet. And we just...we know that it would not be great for us and I think there's other ways to get this relief done for property taxes. So thank you. Any questions? [LB1013]

SENATOR SULLIVAN: Thank you, Ms. McCorkindale. Senator Harr. [LB1013]

SENATOR HARR: Thank you. Thanks for coming. If we took the cigar tax part out of it would you support it? [LB1013]

SANDY McCORKINDALE: We would like to see something. I think Iowa has a cap on what each cigar can actually be taxed. An amendment like that would, I think, be very helpful to not just us but to all of the cigar shops and the cigar lounges that have opened up since LB1118 (sic-- LB118) was signed by Governor Ricketts a year ago. [LB1013]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR HARR: Great. Thank you. [LB1013]

SENATOR SULLIVAN: Any other questions? Senator Scheer. [LB1013]

SENATOR SCHEER: Thank you, Senator Sullivan. Sandy, I'd just like to welcome you as a former resident of District 19. And I'm sure you really wish you were still there. (Laughter) [LB1013]

SANDY McCORKINDALE: I know. I do miss seeing you, Jim, and our great talks. Thank you so much. [LB1013]

SENATOR SULLIVAN: Thank you for your testimony. Welcome back. [LB1013]

KATHY SIEFKEN: (Exhibits 31-34) Good afternoon. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing several people today, first of all, the Nebraska Grocery Industry Association. And before the lights went out at the last hearing, we had retailers that were in the room. And some of them drove several hours and were not able to come back today so the handouts that the aide is passing out has some of the testimony that those people would have made...would have given and so what I'd like to do is kind of go through that a little bit. The very first the sheet there is from Mike Brtek who was intending to testify. He is an independent grocer from Norfolk, Nebraska, and he was not able to come down today because he had to run his store. And he says--if you go to the second paragraph in his letter--he says that the...he's talking about the negative impact the tax increase would have on both his customers and his business. And the \$1.50 per pack increase in cigarette tax will take money out of the pockets of my customers and will reduce the amount of food that would be sold in my store. The tax increase will come right off the top of my customers' food budget; \$1.50 per pack is \$15.00 per carton, the weekly cost of a little over a pack a day. And the second sheet is a photo that he had intended to bring along with the receipt on what that would cost. So the \$15 dollars that the state would take per week would be equal to these groceries. And as you can see we're talking about a roast, a gallon of milk, a bag of potatoes, bananas, bread, eggs; \$1.50 a pack takes this food right off the table of our customers because they are going to spend their money on this additional tax and we would much rather sell our customers healthy food than pay the state of Nebraska another \$1.50 in sales tax...or in excise tax. And another point that Mike makes is that most of his customers that smoke are low income or blue collar and they can't afford this shift in taxes and he's also saying that when you...the third page that he had here in his handout: 91 percent of the cigarette excise tax increases missed the projected revenue. And the chart is there. You can go through and review that yourself. The point is when you increase a tax by \$1.50 a pack people will find another way to either not pay that tax, they will change their shopping patterns, and what we end up seeing is border bleed where people purchase their tobacco in a neighboring

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

state or they'll buy it out the back of a van. And frankly the people that go down to Missouri and pay \$0.17 cents a pack for tobacco aren't really concerned about whether they're going to sell to minors or not. All they're in it for is the money. And my understanding from a couple years ago when I talked to an ATF agent was that it would be easy for them to go down, grab a van full of tobacco, of cartons of cigarettes, bring it back up here and they could make a quick \$50,000. It's very, very profitable. And you will see more gang activity. You will see more sales, illegal sales. You will see bad things come to our state that we don't see here now. And for those reasons we would just as soon not see this tax increase. In addition to that, when those sales leave the state of Nebraska that's revenue that we don't have anymore. If the sales are going to Missouri we don't collect those taxes. We don't make those sales on gasoline and bread and eggs and the other things that people buy. That means our revenue decreases. That means we can't afford to hire the people that we now hire. It's going to give someplace and those are the negative things that we're going to see. And I see that the yellow light is on so I'm going to quickly go through some of the other things. We have a coalition and the talking points that we have, we put together, and that's in your packet. I also have a letter of testimony that De Lone Wilson was going to give. He is one of the principals of Cubby's. They have convenience stores in Iowa, South Dakota, and Nebraska. And then one of the other things that I wanted to talk about is the very last sheet and it's color coded so it's a really good visual that helps people understand the border bleed. If you look at the dark green areas, this is what happened in the state of Iowa. And if you look at this chart when Iowa went to \$1.36 a pack, everybody went outside the state of Iowa and that's what the green border is. Those are all of the lost tobacco sales that Iowa lost when their cigarettes went to \$1.36 per pack. If you have any questions, I'd be happy to try and answer them. [LB1013]

SENATOR SULLIVAN: Thank you, Ms. Siefken. So these numbers on this last sheet you talked about, the rates on the surrounding states, those are current as they are right now? [LB1013]

KATHY SIEFKEN: Yes, they are. And you can see that in...on that chart, a lot of those...the green areas, the dark green, they increased their tobacco sales by 49 percent to 115 percent. People don't stop smoking. People change their buying habits. This is income. These are excise taxes that we will not collect when they can just go across a state line. And if you look there, the interior of Nebraska is the least affected because those people aren't really close to a state...another state. But if you take the chart right down below that, all those little dots, those are the stores, the locations within 50 miles of the state line. Every one of those businesses will be impacted if the tax goes to \$1.50. And really, that \$1.50, that's not really a deterrent. That's not a deterrent to smokers. That's a punishment. I don't think we should punish 18 percent of our people, 18 percent of our citizens by putting this kind of a burden on their backs. [LB1013]

SENATOR SULLIVAN: Thank you. Any questions? Senator Brasch. [LB1013]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

SENATOR BRASCH: Thank you, Madam Chairwoman, and thank you, Ms. Siefken. And I do remember you had many other members here when the power went out. And it is unfortunate they were unable to testify. I did get contacted today over the lunch hour by Karen Baumert, one of your Affiliated Food family-owned stores with the same concerns about the groceries that will not be purchased in lieu of cigarettes. Are there any others that you are aware of that you would like to mention here that...or more information? Yes. [LB1013]

KATHY SIEFKEN: I quickly went through the people that were not able to come back. But I guess maybe our main point is it's a declining revenue source. The number of...one of the things I think, Senator Davis, you had asked was about the youth smoking. Back in 2003, that was the last time we had a tax increase on tobacco. Our smoking rates for our youths, the ones that are under the age of 18, the smoking rates back then were around just under 24 percent. I went on the CDC Web site and in 2013 the smoking rates have dropped down to 10.9 percent and in 2014, which is the latest figures, those numbers dropped to 9.4 percent. It is a declining...it's a declining source of revenue because our youth are being educated and they're being told that it's not good for them and they are making wiser choices. So what we're doing is working. You know, one of the other issues with this whole concept of \$1.50 a pack and increasing the taxes even more to punish the people that smoke, the Master Settlement Agreement brings millions of dollars to the state of Nebraska--millions--yet less than 3 percent is used to help people quit smoking. If we want to make a difference, maybe we should redirect some of those funds. [LB1013]

SENATOR BRASCH: I have no other questions. Thank you. [LB1013]

SENATOR SULLIVAN: Any other questions for Ms. Siefken? Thank you for your testimony. [LB1013]

KATHY SIEFKEN: Thank you. [LB1013]

SENATOR SULLIVAN: Welcome. [LB1013]

TED STESSMAN: (Exhibits 35-38) Thank you. Senator Gloor and members of the Revenue Committee, name is Ted Stessman, T-e-d S-t-e-s-s-m-a-n. I work for Farner-Bocken Company. We're a candy, tobacco, food service wholesaler. We do business in the Midwest. And I have resided in Omaha for 35 years and been in the industry for 35 years. Actually I've lived and almost all my life but been in the industry for 35 years. In the last seven years I went from being a sales manager to being our category manager of tobacco. So at 50 years old at the time, I said, well, if they want me to do it that's what I'll do. But it seemed like I was getting myself into something that was going to be heavily regulated, and you know, certainly taxed and something

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

that I had never participated in as a cigarette smoker. I'll have a cigar on occasion, but I think the reason they put me in the position is because I do have a passion for the business and for the little guy. I will tell you, you know, as I travel the Midwestern states when people will talk about border bleed, I see it because I can be in West Quincy and east (sic) Quincy--one is on Missouri; one is on the Illinois side--and I can see stores that are doing \$40,000 to \$50,000 on the Missouri side and doing \$4,000 or \$5,000 on the Illinois side. If you drive down I-29 and you stop at Sapp Brothers on the right-hand side and you look at their tobacco department there and you go a few miles down the road to Rock Port and take the first and go into the TravelCenter, you'll be amazed at how many more cigarettes are there. Now I'll see that in Nebraska versus South Dakota. I'll see that North Dakota versus Minnesota and I could give you documentations, but I just as soon talk to my customers before I do so. When you're talking about tobacco, you're talking about numbers that we can make real, real easy. In my reports that I'm giving you guys, you'll see exactly how many cartons of cigarettes were stamped last year in the state of Nebraska. It was 8,735,820 cartons. And if you want to know, Senator Davis, what that brought in to the state and federal government just in cigarettes, it was close to...it was over \$234 million with more than half of that going to the state in Nebraska. That doesn't include the other tobacco products which I don't have good numbers on. But the cigarette numbers are reported, you know...one, the state gives us...the Department of Revenue gives me those numbers so I know them to be true. I've followed it for the last seven years and I've seen a decrease of 2 percent to 3 percent every year with the exception of this year. It wasn't much, but there were more cartons stamped in the state of Nebraska in 2015, 2014, which is another part of the border bleed that I'd like to talk to. I mean we're the recipient and when you look at that total \$0.50 for FDA user fee, the federal excise tax is \$10.10 a carton. You know, on a full-price cigarette like a Marlboro or a Camel, we're getting an MSA payment of \$6. Our state excise tax is \$6.40. And then depending, state and local is going to be around \$3.80 for a total take, state and federal, of \$26.80. And \$26.80, you know, it's going to be more than half the price of a full priced cigarette. And as little...the tax on that will be more than two-thirds, you know, on lower price cigarettes. But in fairness the MSA payment won't be as high either. So we are...when I just...you look at a lot of reports and honestly proponents and opponents look at the same reports. They're usually government reports and you've got to sift to get to the ones that are closest in date. But smoking rates are going down and they've gone down to approximately 17 percent in Nebraska. And I think the best way that we can get our youth to stop smoking is to be good parents, you know, and be good citizens and I don't know...when Mark Whitehead talked about his stings, I mean, nationally CDC, which is a government organization, says the convenience store associations, they're getting better than a 95 percent approval rating when stings take place. But yet these kids who are...you can call it soft crime, call it whatever you want. But to me, it's criminal and there needs to be something more than a slap on a hand and instead of taking and putting the retailers, 2,600 of them in the state of Nebraska...looks like I'm supposed to stop speaking. Would you like me to continue? [LB1013]

SENATOR SULLIVAN: Just finish, just finish. [LB1013]

TED STESSMAN: So 2,600 retailers, many that are on the border, are going to be affected to this just like Iowa was when in 2012 when they, you know, went up \$10 a carton; 50 percent of the business went away for a period of time on the borders and 34 percent went away in the middle of the state. And you know, Senator Gloor just mentioned and I looked at the same report he looked at in regards to Kansas border bleed, and it's not as bad as what it was in 2002. But the fact of the matter is their state excise tax on cigarettes is \$12.90 and 50 percent their borders are right next to Missouri where the tax is \$1.70. [LB1013]

SENATOR SULLIVAN: Thank you, Mr. Stessman. Are there questions for him? Thank you for your testimony. Any further testimony in opposition to LB1013? Anyone wishing to speak in a neutral capacity? Welcome. [LB1013]

LAWRENCE VOEGELE: (Exhibit 39) Thank you, Madam Chairwoman and members of the Revenue Committee. My name is Lawrence Voegele; it's L-a-w-r-e-n-c-e V-o-e-g-e-l-e. I am the health director of the Ponca Tribe of Nebraska's health department and I'm here on behalf of the health departments of the four tribes of Nebraska. I have a handout that's being distributed to you right now. As that's being handed out, I want to say that with the Nebraska Commission on Indian Affairs' assistance we've been communicating with Senator Gloor's office regarding this bill. He's aware of our hope to see a reduction in the smoking burden and associated costs across the state using this unit cost increase approach, which is actually very well studied. CDC has a report detailing 116 studies in support of this approach. He's also aware of our major concern which is the omission of Tribal Health Departments from the resulting health and public health funding to further address tobacco use and its impacts. I'm testifying as neutral today but would strongly support the bill with the tribal omission corrected as in the proposed amendment on the second page of the handout. In support of the proposed amendment, please allow me to highlight a few points in the handout. A very small point further down I think would be very important to realize, a majority of the Nebraska American Indians reside in counties that are within the service delivery areas of the Tribal Health Departments and IHS health programs and these service areas actually consist of 16 counties including those that surround the reservations, that surround Omaha, Lincoln, Norfolk, Niobrara, and Grand Island. And given this area, of course, most of the people that we would be targeting actually reside off reservation that would be making their purchases off reservation. And at the beginning of the handout, you can see that I've given a few statistics that came from the Nebraska Office of Health Disparities and Health Equity, that the smoking burden on the population we're trying to reach is very high. It's 2.4 times higher in their numbers versus the white population in Nebraska. And unlike the other populations, it's actually increasing. We're higher than national. We have a rate among Ponca members that is actually higher than among the American Indians generally, about 66.7 percent. And our death numbers show it. We're more likely to die younger of smoking-associated

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

conditions like respiratory disease, heart disease, cancer, and diabetes versus the white population. LB1013 as it is, it provides support to Nebraska local health departments and federally qualified health centers among other agencies. I believe it's important to realize that the tribal health departments have the same responsibilities. Like the (Section) 330 funded federally qualified health centers, we provide medical, pharmacy, dental, behavioral health services given the money that's made available to us from federal agencies which is actually inadequate to address all of our needs. Like local and state health departments, we have a responsibility to provide preventive public health services and we are held to the same accreditation standards as the local state health departments are. We have a history of partnering with other public health agencies such as the local health departments that intersect with our service delivery areas and with universities on service projects, research projects, professional development projects like those that would be funded under LB1013 and we bring them access to a population that they have difficulty reaching. And we help ensure that the services that are provided are culturally competent and effective...more effective at reaching the people that we target. Another important consideration I'd like to bring your attention is tribal health services are a cost savings to the state. And as they expand if it's through federal funding or if it's allowing us to provide more health services to people who reside throughout Nebraska at no cost to the state. And if it is people who are increasing usage at one of our clinics when Medicaid eligible seek services from us, the Medicaid burden on the state does not increase. The federal payments to the state increase accordingly because there is 100 percent federal match for services provided to American Indians in our clinics. Nebraska does provide some support tribal public health departments through the Native American Public Health Act which began about 18 years ago. That has not changed in how much has gone to us since that time. It's \$100,000 per tribe per year. Now if you choose to support this bill and if you choose to you support the amendment that we are requesting, we will of course invest in the reduction...invest in services that would reduce the smoking burden and cost to families and communities. And we would also...beyond that, also through the increase of our health and public health services, we would to be able to bring in more third-party income from billings to insurance companies and we would also have greater access to federal funding, further increasing our ability to serve more American Indians within our service delivery area, which reduces the public health burden to nontribal agencies. That is all I'd like to say for now. [LB1013]

SENATOR SULLIVAN: All right. [LB1013]

LAWRENCE VOEGELE: I'm open to any questions. [LB1013]

SENATOR SULLIVAN: Thank you very much, Mr. Voegele. Just to clarify, okay, you said that each tribe, and how many tribes are there in Nebraska? [LB1013]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

LAWRENCE VOEGELE: There are four tribes headquartered in Nebraska. [LB1013]

SENATOR SULLIVAN: Okay, and you each right now get \$100,000 per year from the Native American Public Health Act. [LB1013]

LAWRENCE VOEGELE: Yes, that's it. [LB1013]

SENATOR SULLIVAN: And and do those dollars from that act come from the Nebraska Health Care Cash Fund, or where do they come from? [LB1013]

LAWRENCE VOEGELE: I have often tried to look that up. It's not in the appropriations bill as a line item. All I know is that it comes from the Department of Health and Human Services. [LB1013]

SENATOR SULLIVAN: Okay. But with your amendment then you're requesting that into this Native American Health Care Act, \$4 million from the Nebraska Health Care Cash Fund that would be ramped up because of the increase in the cigarette tax... [LB1013]

LAWRENCE VOEGELE: Yes. [LB1013]

SENATOR SULLIVAN: ...would go to your Native American health care fund divided equally among the four tribes. [LB1013]

LAWRENCE VOEGELE: That is correct. Thank you. [LB1013]

SENATOR SULLIVAN: Okay. All right. Very good. Senator Brasch. [LB1013]

SENATOR BRASCH: Thank you, Madam Chairman, and thank you, Mr. Vogle (phonetically)... [LB1013]

LAWRENCE VOEGELE: Voegele. [LB1013]

SENATOR BRASCH: ...Voegele, for your testimony. I'm looking at your letterhead and I don't see an address. Where are you headquartered out of? [LB1013]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

LAWRENCE VOEGELE: The headquarters for the Ponca Tribe of Nebraska is located in Niobrara. But the Ponca Tribe has offices in five cities: Lincoln; Omaha; Norfolk; Niobrara; and Sioux City, Iowa. It has a 15-county service delivery area instead of a reservation due to the fact that they were terminated and restored. And in the restoration process the 15 counties that we serve within which the American Indians are deemed to be residing on or near that reservation for the sake of federal funding. [LB1013]

SENATOR BRASCH: And there are various smoking cessation programs offered on many levels that tribes and nontribe individuals have access to, am I correct, on...I see the infomercials and the 800 numbers that anyone could call regardless. Or are there other avenues to cease smoking other than taxation? [LB1013]

LAWRENCE VOEGELE: Taxation is part of...increasing the unit cost price of tobacco is part of a comprehensive approach to addressing the tobacco problem. It can't, of course, solve everything. It's not a magic bullet, but it's one of the recommended strategies to go along with many other approaches that could be funded if LB1013 were to proceed. And we do try to work with other agencies who are doing tobacco outreach, but we have limited staff to help make sure that what they're doing actually reaches our population effectively. [LB1013]

SENATOR BRASCH: Very good. Excellent testimony. Thank you. [LB1013]

SENATOR SULLIVAN: Senator Davis. [LB1013]

SENATOR DAVIS: Thank you, Senator Sullivan. Mr. Voegele, thank you for coming. Interesting data, I guess I knew Native Americans were heavier smokers. I didn't realize it was that significant. But I represent District 43 which is that area that runs from Dawes County across to Keya Paha County, so I'm on the border of both the Rosebud and the Pine Ridge Reservations. If this were implemented and put into Senator Gloor's bill, is there a way that we could direct some funding to the Native American populations that are within those counties? [LB1013]

LAWRENCE VOEGELE: If the... [LB1013]

SENATOR DAVIS: For health care purposes obviously. [LB1013]

LAWRENCE VOEGELE: For the tribes... [LB1013]

SENATOR DAVIS: Maybe this is... [LB1013]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

LAWRENCE VOEGELE: The tribes have a services area that they need to work within and the four tribes of Nebraska only extend so far. [LB1013]

SENATOR DAVIS: Right. [LB1013]

LAWRENCE VOEGELE: If you wanted to increase the reach beyond that but working with non-tribal agencies would probably be the best route, or possibly a partnership across state lines with the tribes of other states. [LB1013]

SENATOR DAVIS: I think that might be worth looking into. Thank you. [LB1013]

SENATOR SULLIVAN: Any other questions? Senator Scheer. [LB1013]

SENATOR SCHEER: Thank you, Senator Sullivan. Do you know, because one of the other testifiers talked about the youth rate declining in smoking, on the reservation do you see that as well or...? [LB1013]

LAWRENCE VOEGELE: In the numbers that I got from the Office of Health Disparities, it looks like the rate is increasing. [LB1013]

SENATOR SCHEER: For your youth as well? [LB1013]

LAWRENCE VOEGELE: Yes. [LB1013]

SENATOR SCHEER: Okay. Thank you. [LB1013]

SENATOR SULLIVAN: Any other questions? Thank you, Mr. Voegele. [LB1013]

LAWRENCE VOEGELE: Thank you. [LB1013]

SENATOR SULLIVAN: Anyone else wishing to speak in a neutral capacity? I will turn it over to the Vice Chair now. [LB1013]

SENATOR SCHUMACHER: Chair of vice. (Exhibits 40-71) We have a list of letters in support, opposition, or neutral that we'll read into record. Proponents on LB1013: Dr. Richard Raymond, former Chief Medical Officer of the Nebraska Department of Health and Human Services;

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

Annette Dubas, Nebraska Association of Behavioral Health Organizations; Sue Hunter, Two Rivers Public Health Department; Dr. John Skretta, Norris School District 160; Clarence Tichota, Elkhorn Logan Valley Public Health Department; Dr. John Harris, Sarpy/Cass Department of Health and Wellness; Larry Cherny, Public Health Solutions District Health Department Board of Health; Charles Vette, Southwest Nebraska Public Health Board of Trustees; Dr. Adi Pour, Ph.D., Douglas County Board of Health; Ryan Bojanski, Three Rivers Public Health Department; Margaret Brink, Four Corners Health Department; Wendy Raemakers, East Central District Health Department; Mary Beth Mau, Nebraska Panhandle Area Health Education Center; Susan Bockrath, Nebraska Association of Local Health Directors; Lana Wood, Nebraska Home Care Association; Shari DeVeney, Nebraska Speech-Language-Hearing Association; John Roberts, Nebraska Rural Health Association; Dr. Brandon Grimm, Ph.D., Public Health Association of Nebraska; John Cavanaugh, Nebraska Child Healthcare Alliance; Steve Seline, Building Healthy Futures; Dr. Heidi Stark, DDS, Lincoln/Lancaster County Board of Health; Anne Buettner, Nebraska Association for Marriage and Family; Therapy; Justin Frederick, UNMC College of Public Health Alumni Association; Leah Martin, Advocacy and Tobacco Control; Dr. Michele Bever, Ph.D., South Heartland District Health Department; Leah Bochnicek, Omaha, Nebraska; Bruce Rieker, Nebraska Farm Bureau; Dr. William Spaulding, Ph.D., the Nebraska Psychological Association; Dr. Richard Azizkhan, Children's Hospital and Medical Center; Brian Krannawitter, American Heart Association; Dr. Wayne Stuberg, Ph.D., Nebraska State Board of Health. In opposition we've received a letter from Mark Rock, a Nebraska citizen; and neutral, Nancy Russell who is also a Nebraska citizen. Senator Gloor, you're welcome to close. [LB1013]

SENATOR GLOOR: Thank you, Senator Schumacher. Members, just a few notes and I won't belabor all of the information that's come here but provide some information that I think will be helpful. The issue of border bleed, the issue of noncompetitive cost and the difference in price resulting in smuggling, and ISIS being able to come in the state and all of that, you should do some of your own fact finding and it's pretty easy. Do what I did, and that is Google the average price of a pack of cigarettes in Omaha. Google the average price of a pack of cigarettes in Council Bluffs. Our tobacco tax is twice as high as Iowa's yet the difference in price that you'll get when you go to Google is pennies. And so why is it that Nebraska smokers aren't realizing that huge savings that they should be getting? And it's because there's an awful lot that goes into the cost of the price of cigarettes: margin, who gets how much, plus it's a market issue. Tobacco products are subject to the market, something that I think gets overlooked quite a bit by the Platte Institute in their information. And one of the testifiers who is an opponent made the point that dispels the issue of it's not a reliable source of income. There was an increase of \$660,000 dollars in our net taxation revenue last year on tobacco tax. So contrary to what you're hearing, that's a fairly stable source, certainly more stable than property tax which we've come to count on and are looking to increase in certain ways. So tobacco products are a stable source of revenue and the decrease we've seen has been a slow and gradual decrease that we hoped we

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

would see as more and more people reduce smoking. Let's talk about the number that was used about children. Yes, there has been a dramatic increase in the number of...the percentage of children smoking across the country--across the country. Two issues here: One is vaping has caught on as we all know and so there's a lot of that going on, hard to measure yet and I've not had any interest in looking at that because, unlike tobacco products, I think the jury is still out on the health hazards associated with vaping. But nonetheless, that decrease is good news and exactly and what we hope to see. Remember, nationwide during the period of time that in 2002 we last did our increase, we've had 47 of the 50 states have increased their tobacco tax 150 different times. That's an average of three jumps per state since we have gone through ours. And that increase in prices, as I keep saying, results in a decrease in smokers. And the most sensitive components of the smokers are youth. And that's part and parcel of what we would hope to see: a decrease in use smokers as a result of increase in price. It makes our point for us. This is not...this...we know this isn't just a revenue issue. This is a public health issue and the dollars generated by tax can be minimal compared to the overall health savings to the state of Nebraska through our Medicaid expenditures. That's what I keep trying to bring forward. Would love to continue trying to work with the tribes, but here is our, I think, policy dilemma. Members of the tribes have access to the same services that all Nebraskans have. The argument certainly can be made that, as is the case with some Nebraskans, it may be harder to access those services for them than for others. But remember that the tribes unlike most Nebraskans, and this is the key point, are involved in their own distribution of tobacco products and one even manufactures its own tobacco products. They have the ability to tax themselves. And I have a problem taking those revenues that we might generate from the sale of tobacco products to Nebraskans and taking a very large sum at \$4 million--that's a large sum of the amount we're trying to distribute--and distributing that \$4 million to the tribes when they haven't yet taxed themselves for the products they themselves are able to distribute. And that's the policy predicament for me as it relates to that. Difficult issue and I appreciate your patience sitting through this for two days. But it's an important public health issue I think for the state of Nebraska. And I have the pile here of information but I think I'm going to leave it there and not open it up. Thanks for your patience and if there are any final questions I'm happy to try and answer them. [LB1013]

SENATOR SCHUMACHER: Senator Sullivan. [LB1013]

SENATOR SULLIVAN: Thank you, Senator Schumacher, and thank you, Senator Gloor. There was a comment made by a previous testifier that as low as 3 percent of the monies that I think are devoted to...out of the--and I could be wrong on this--Nebraska Health Care Cash Fund go to smoking cessation. I wonder if you could maybe shed a little more additional light on that and if that is accurate or not. [LB1013]

SENATOR GLOOR: Well, I think they're talking about the cash fund, the settlement. I don't...I'd be glad to try and find that information. I don't know whether that's true or not true. I think we all

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Revenue Committee  
February 24, 2016

---

know the tobacco cash fund that came back to the state has been used for a variety of things by other legislatures over the years. Three percent sounds awful small and I think, again, we've had the issue of what is smoking cessation by definition? Is it nicotine patches? Is it educational material that might go out? I would try to get a better handle on that number. It sounds an awful lot lower than what I've been familiar with, but I'd be glad to look into that. [LB1013]

SENATOR SULLIVAN: Okay. All right. Thank you. [LB1013]

SENATOR SCHUMACHER: Any other questions for Senator Gloor? Seeing none from members of the committee, that will conclude our hearing on LB1013. Thank you, Senator Gloor. [LB1013]