

Transcript Prepared by Clerk of the Legislature Transcribers Office
Revenue Committee February 15, 2018

SMITH: Afternoon and welcome to the Revenue Committee public hearing. My name is Jim Smith. I chair of the committee and I represent the 14th Legislative District in Sarpy County. The committee will take up the bills in the order that's posted on the outside of the room. Our hearing today is your public part of the legislative process. This is your opportunity to express your opinion and your position on the proposed legislation that's before us today. To best facilitate today's proceedings I ask that you abide by the following procedures. If you would first please silence your electronic devices so as not to interfere, interrupt the person that is testifying before us today. The order of testimony will be introducer of the bill, proponents of the bill, then opponents, then those in a neutral capacity. And then we will invite the introducer back up to close on the bill. If you will be testifying, please complete the green form and hand that to the committee clerk when you come up to testify. If you have written materials that you would like to have distributed we will need 11 copies. If you need assistance in making those copies, just raise your hand and the page will help you make those copies so you have those ready when you come up to the table to testify. And then the page will make certain those get distributed. When you come to the table to testify you will need to start out by stating and spelling your name so we can get that correct into the record. We are going to use the light system today. We're going to limit testimony to five minutes. The green light will be on for four minutes, it will then turn to an amber color for a minute, and then it will turn to red. When it turns to red, if you have not concluded your testimony we would appreciate if you could wrap that up for us so as to give others behind you ample time to provide their testimony. If your remarks were reflected in a previous testimony or if you would like your position to be known but do not wish to testify before us we offer that you sign the white form that's at the back of the room, as it will be included into the official record. Staff with us today, Revenue Committee staff with us today, to my immediate right is legal counsel Mary Jane Egr Edson, to my immediate left is research analyst Kay Bergquist, and then to my left at the far end of the table is committee clerk Krissa Delka. And I'm going to invite the committee members to introduce themselves. I believe Senator Burke Harr will be joining us a bit later.

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

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

FRIESEN: Curt Friesen, District 34: Hamilton, Merrick, Nance, and part of Hall County.

LINDSTROM: Brett Lindstrom, District 18: northwest Omaha.

SMITH: And Senators Groene and Senator Larson will be joining us a bit later. Please remember that senators may come and go during the hearing, they do have commitments in other committees. It's-- we do value your testimony that's before us today so please have patience with us as we come and go during this hearing. And with that, we invite Senator Crawford to open on the first bill of the day LB926. Welcome Senator Crawford.

CRAWFORD: Thank you. Good afternoon, Chairman Smith and members of the Revenue Committee. My name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. And I am honored to be here today to introduce LB926 for your consideration. In current statute, active duty members of the armed forces who are stationed in Nebraska, but who are a resident of another state, are exempt from the motor vehicle tax imposed on motor vehicles registered for operation in Nebraska. LB926 provides that active duty members of the armed forces who are Nebraska residents, as well as their spouses, would also qualify for this exemption. This issue was brought to me by one of my constituents who is a retired chief master sergeant of the Air Force. It would not apply to him because he's not active duty currently, it's just current active duty member residents. He pointed out that while nonresidents who are stationed in Nebraska already receive this exemption, our Nebraska residents who happen to be stationed at Offutt or those who were stationed in other parts of the country or world, but choose to leave their vehicle in Nebraska and cannot take it with them, do not have access to this same benefit. Although my constituent could not be here today, he did send a letter that you should have in your folders, in your committee materials. The exemption outlined in LB926, which according to the fiscal note will have little or no economic impact, has a simple way to reduce some of the burden on our active duty military members. These benefits also help Nebraska improve our military-friendly reputation, which makes us more competitive during future BRAC discussions. With that, colleagues, I'll keep it short and remind you this is a cost-effective way to show a little appreciation for our Nebraska residents serving in our-- in our military. And to

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thank you for your time and attention. And I'm happy to try to answer any questions that you have.

SMITH: Thank you, Senator Crawford, for your opening on LB926. Questions from the committee? Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. Thank you, Senator Crawford, for bringing this to us. Now if they have a place from their home state to allow them to keep those plates?

CRAWFORD: I believe so. That's my understanding. I'll check that to make sure.

SCHUMACHER: And then we don't--

CRAWFORD: But there is also a way to-- go ahead.

SCHUMACHER: I mean, I'm just trying to see the picture here.

CRAWFORD: Right.

SCHUMACHER: If you're a person in the military from another state and you come here and you want Nebraska plates on your car, do you have to pay the tax?

CRAWFORD: I do not believe so.

SCHUMACHER: But it--

CRAWFORD: I'll confirm that for closing. That's my understanding.

SCHUMACHER: But if you leave, do you have the option of leaving your home-state plates on the vehicle?

CRAWFORD: You also have that option.

SCHUMACHER: And if you leave the home--

CRAWFORD: Then you would be paying back your home-state. So I think it's really the case that you're going to have Nebraska plates but not be paying that tax.

SCHUMACHER: And do we have reciprocity with another state?

CRAWFORD: Several other states do the same thing. They, they allow active duty. So our Nebraskans who are active duty in many other

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states would have the same privilege of not-- I don't, I don't have with me how many states. But it's common, and some other states to do the same kind of privilege for active duty members. They're only in your state for a short time.

SCHUMACHER: But we don't know for sure whether or not we require, if we give you the benefit of their home state gives us--

CRAWFORD: We don't have one-for-one checks for every state. We do it, many other states do it. It's not like a compact where you join or something. It's just it's a-- it's a like I say a privilege that many states offer for active duty members. And we are one of those states that do it, again, because they're just in your state for a short time and it's part of what you do.

SCHUMACHER: Have you looked into how this interacts with things like the privileges and immunities clause and maybe even the dormant commerce clause, how we can discriminate for purposes of taxation based simply on residency? You're saying to me we either got to do it for all or do it for none, we can't do it for half.

CRAWFORD: Well, so if that's the case then this bill would be better because we currently discriminate against residents. We currently say you get this benefit only if you're not a resident. And our bill says you get the same benefit if you have the status whether you're a resident or not. So if equal treatment is a concern, I believe this bill actually goes in the correct, a better direction on that front.

SCHUMACHER: Well, maybe constitutionally you can't treat a-- give a resident a non-benefit or a benefit that you don't give a resident. Because--

CRAWFORD: We have that I think with other, yeah other-- I do not believe, well, military status is not one of our protected class categories that, you know, that we have to be concerned about in terms of running into constitutional issues with having some government benefits that go to people who are active duty military and not. We have several policies that do that. We have many categories that our bills create, like age and some other categories where it's not a protected class and so it's fine for a state to discriminate on those categories. And an active duty military is one that I have not seen be constitutionally challenged.

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SCHUMACHER: Just like if you're running the interstate and if you had a device to read it our gas tax would be half if you're a Nebraska resident, provided you can run a Nebraska driver's license through the reader, or some other proof of residence.

CRAWFORD: Okay, sure.

SCHUMACHER: We probably couldn't do that.

CRAWFORD: I don't know.

SCHUMACHER: Okay, thank You.

CRAWFORD: That's a good question.

SCHUMACHER: Thank you.

SMITH: Additional questions from the committee? I see none. Thank you, Senator Crawford--

CRAWFORD: Thank you.

SMITH: --for your opening on LB926. Will you remain for closing?

CRAWFORD: I am intending to. I do have another hearing but I hope I'll still be here.

SMITH: Very good, thank you. We now go to proponents of LB926, those wishing to testify in support of LB926. Seeing none, we do have letters for the record that were submitted in support of LB926 from Dean Kenkel of Omaha, Nebraska and from Gary Ratzlaff representing Webster County Veterans Service Office. Anyone wishing to testify in opposition to LB926? Opponents? Seeing none, anyone wishing to testify in a neutral capacity be-- neutral capacity on LB926? Seeing none, that was faster than I expected, Senator Crawford.

CRAWFORD: I'm all about efficiency.

SMITH: There you go. Thank you.

CRAWFORD: And this bill is a very efficient way to show some respect for active duty military members. There is no general fiscal-- there's no General Fund fiscal impact. And so I believe it's a bill that just allows us to recognize those residents who happen to be stationed at Offutt during part of their service to our country by giving them the same exemption we give non-residents. And again, I was surprised,

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pleasantly surprised, that it doesn't appear to have a strong fiscal impact. Just to come back to what Senator Schumacher asked about the plates, according to the policy you may either keep your existing plates or you can get Nebraska plates, and you don't have to pay that tax to get the Nebraska plates if you're active duty military coming from another state. And what our bill will do is say that same-- you can get that same privilege if you're a resident of Nebraska.

SMITH: I see no additional questions.

CRAWFORD: Thank you.

SMITH: Thank you, Senator Crawford. And that's the close on LB926, and we invite Senator Crawford to open on LB1117.

CRAWFORD: Thank you. It's so nice to be back again.

SMITH: Seems like we just saw you.

CRAWFORD: This one might take a little longer.

SMITH: I kind of picked that up a little bit.

CRAWFORD: Good afternoon, Chairman Smith. And good afternoon again, members of the Revenue Committee. My name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. And I'm honored to be here today now to introduce LB1117 for your consideration. LB1117 is a straightforward proposal to increase the tax on cigarettes from 64 cents to \$2.14 per pack of 20, increase the tax on snuff from 44 cents to \$1 per ounce, and increase the tax on all other tobacco products from 20 percent of the original purchase price to 45 percent. Any additional revenue generated from the provisions of LB1117 would be deposited in the General Fund except that the Nebraska Healthcare Cash Fund will receive \$2.5 million annually up to the one point two-- up from the \$1.25 million it currently receives each fiscal year. Nebraska's current cigarette tax rate, which is 64 cents per pack, has not been touched for 16 years. Surveys of registered voters across the state have found strong support for \$1.50 cigarette tax raise and similar increases in other tobacco taxes. This support is not limited to one party or geographic region. In a 2017 survey, 72 percent of self-identified Republican supporter voters supported an increase, while 81 percent of Democratic voters were in favor. Even among smokers, 48 percent supported raising the cigarette tax. So one thing

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I've distributed is one set of survey results that you have in front of you. OpenSky also contracted for a survey on different tax public opinion tax policy on public opinion, and they similarly found around in the 70 percent range of support for cigarette tax across Nebraska. And as I said, even among smokers 48 percent supported raising the cigarette tax. My personal communications with constituents and other Nebraskans track with these survey findings, as the vast majority of those I have spoken to support increasing the cigarette tax. The benefits of increasing the cigarette tax, LB1117, are twofold. First, raising the cigarette tax will improve the health of Nebraskans and help keep kids from picking up the habit. The surgeon general reports that nationwide 3 million middle and high school students smoke. In Nebraska, more than 13,000 high school students consider themselves smokers as of 2016 and some 900 people under the age of 18 begin smoking each year. Among adults, approximately 243 people or 17 percent of Nebraskans consider themselves smokers. An additional five percent of Nebraskans use smokeless tobacco. Young people are the most price-sensitive population when it comes to purchasing cigarettes and other tobacco products, and studies have repeatedly shown that higher tax rates do deter youths from starting to smoke. Most adult smokers say they began smoking before they turned 20, and those who reach adulthood without picking up the habit are far less likely to ever do so. Tobacco users are far more likely to experience a range of serious health issues, including cancer, heart disease, stroke, lung diseases, diabetes, chronic obstructive pulmonary disease, tuberculosis, and problems of the immune system, including rheumatoid arthritis. Secondhand smoke has its own set of negative impacts for those who inhale it. The CDC estimates that \$795 million is spent annually just in Nebraska on healthcare costs directly caused by smoking. Anyone who fails to pick up the habit who ultimately quits is a boon to public health and also a reduction in those high healthcare costs tied to smoking. The second benefit of LB1117 is monetary. Particularly as we enter the second consecutive year of fiscal shortfalls, it is critical that we consider adding additional sources of revenue. Raising our tobacco tax rates would provide an important influx to the state's General Fund. As you can see in the fiscal note, LB1117 would infuse \$93.6 million in the 2018-2019 fiscal year and \$97.5 million in 2019-2020. Obviously, funds from LB1117 if passed wouldn't be available to plug into the General Fund right away for our short current shortfall, but the additional infusion into the General Fund-- future infusion into the General Fund would offset shortfalls and could be a designated source to replenish the cash reserve fund if we have to draw down this session. Spending cuts are important to discuss

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in times of fiscal restraint, but they should never-- but they should not be the only option on the table when we're at a place like we are right now. Cuts can only go so far before we risk hurting Nebraskans and the state's growth. LB1117 is an important avenue to discuss alternative fiscal options. And with that, I appreciate your attention to this important issue. And I'm happy to answer any questions that you have.

SMITH: Thank you, Senator Crawford, for your opening on LB1117, LB1117. Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. Thank you, Senator Crawford, again. The chart that shows 74 percent of Nebraskans would favor an increase in the tobacco tax, I was just-- couldn't find specific example-- information that quickly on Nebraska. But it looks like that somewhere around 20 percent of the people, give or take, nationally smoke. So what that chart basically I would think would be saying is tax the guy behind the tree. Don't tax you, don't tax me. Tax the guy behind the tree. And in this case--

CRAWFORD: Well that-- yeah, go ahead.

SCHUMACHER: So, so basically, I mean, this doesn't tell us very much other than tax somebody else and the somebody else is the guy who smokes.

CRAWFORD: So I encourage you to look at page 7 because I understand that sense, oh, let's just tax someone else. That they are a minority population, are we taxing them because-- and they would be very opposed to it, but they are just too small of a population. If you turn to page 7, it is, it says it's about 17 percent the population. 17 percent, yeah, you'll see that the smokers are pretty split on this. So even the guy behind the tree, a lot of the guys behind the tree, are supportive of this tax: 48 percent of smokers.

SCHUMACHER: How's was that question phrased? Do we know what the question [INAUDIBLE] was?

CRAWFORD: "Now as you know the state of Nebraska is facing a budget shortfall. As a result, legislators are considering certain proposals to make sure important state priorities have adequate funding. I'm going to read you a list of proposals that have been suggested to make sure the state balances the budget while still finding these proposals. After each one please tell me if you favor or oppose that

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proposal." And cigarette taxes was one of those in that list of things. "Do you favor or oppose raising the cigarette tax?"

SCHUMACHER: So if you're a smoker--

CRAWFORD: So there are other op-- so there are other options, like tax internet sales, reduce funding for the University of Nebraska, improve sales and use taxes, that is one of a list of things after that introduction.

SCHUMACHER: And that was then broke down by who are smokers who is not smokers to get this chart?

CRAWFORD: Afterwards, yes. Yes.

SCHUMACHER: And so they were given a choice of evils and they--

CRAWFORD: But for each one, they weren't asked to rank them or which of these do you prefer, this was just each, in each case: favor, oppose, favor, oppose, favor, oppose. Those pretty striking, 48 percent. Yeah. Thank you.

SMITH: Senator Friesen, then Senator Brasch.

FRIESEN: Thank you, Chairman Smith. When you did your surveys I guess what do you feel the average income is of a smoker?

CRAWFORD: Just to be clear, I am not the one that did this survey. It was Public Opinion Strategies did the survey, and it was done-- for a group of folks who were interested in the cigarette tax. So but I just have seen-- I saw the results that came out around the time that Senator Howard's bill was introduced. And I thought they were striking and brought them for you to see again. So I do not know the average income of smokers. I would guess that it is probably below average.

FRIESEN: I mean, in the past I've seen a few bills like this and we've talked about it before.

CRAWFORD: Right.

FRIESEN: And we talked about the impact of taxes on the poor. And I know this gets a few people to quit, maybe, or not start like you're talking.

CRAWFORD: Right.

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FRIESEN: The impact on the poor of putting this kind of tax on there and they're unwilling to quit. Aren't we kind of picking on a small minority of people to try and solve a problem?

CRAWFORD: Well, it is also-- it is a regressive tax in that sense. It is imposing a tax though also on a small minority of the population that has a large proportion of our healthcare costs in the state. So while there are income justice questions in terms of the cigarette tax there are also justice questions in terms of who in the state is costing us revenue. And so it's kind of like they cost us more money so they pay a little more.

FRIESEN: Should we start raising our tax policy on what a person costs us to maintain in the state?

CRAWFORD: That's the kind of question that you get to decide here in Revenue.

FRIESEN: Yes, I do. Thank you very much.

CRAWFORD: Thank You.

SMITH: Senator Brasch.

BRASCH: Thank you, Chairman Smith. And thank you, Senator Crawford, for your introduction today. And I was listening very closely. Because this has come before us many times.

CRAWFORD: Sure.

BRASCH: And I've had many discussions with, you know, individuals who are smokers. And you used a word there.

CRAWFORD: Yes?

BRASCH: The word habit.

CRAWFORD: OK.

BRASCH: And I'm looking at what the definition is and it says a settled irregular tendency or practice, especially one that is hard to give up.

CRAWFORD: Yes.

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BRASCH: And so when I talk to individuals, they've attempted to quit or they've quit and they've started and they've stopped. I mean, there are some that are totally, you know, it's their decision, etcetera. But what about the ones that have tried. I mean, we have all kinds of campaigns, you know, and you read about the addictions or you hear about it, the TV commercials. Are there other habits or addictions you'd like to tax or raise taxes on? I mean, is that truly the intent that we-- we tax it because we consider it bad for their health or, you know, I don't know. You know, it really troubles me because we--

CRAWFORD: We tax alcohol, we tax cigarettes. And the case-- and it is the case that we do know that it's particularly helpful in reducing teenage smoking. I'm sure there are other people behind me who will talk more eloquently than I can about some of the statistics on that front. You raise an important point which is, is it-- it is addictive behavior and so it's not so easy for someone who is facing the price pressure from the cigarette tax to just say, oh, I'm going to quit tomorrow. And you are correct, we need to make sure-- we need to make sure that people know and have access to what they need to quit. So part of what the cigarette tax does is direct money into the healthcare cash fund and some of that money could be used for those kinds of programs to help people quit. And it's tough.

BRASCH: Are we doing that for other programs? And the chemicals used, you know, on the infomercials or the literature is they are highly addictive. And I just think we're looking at one segment of a population that we continue to tax and tax more and--

CRAWFORD: Well, we have not touched this tax for many, many years. And it's 65 cents now. So I, you know, I don't think we're taxing, taxing, taxing more on cigarettes. It's been 64 cents for a very long time, and we're 41st in terms of where we are ranked in other states. So at least in Nebraska there shouldn't be a sense that--

BRASCH: And so if we haven't taxed--

CRAWFORD: --that we have been loading and loading and loading on cigarette tax. You may have heard this bill over and over and over again.

BRASCH: Which I have.

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CRAWFORD: But we haven't-- we haven't made the choice to increase it over and over again.

BRASCH: But I like hearing the bills that reduce taxes. And not increase taxes.

CRAWFORD: I'm sure, and we all do. Sure, sure.

BRASCH: I have no other questions. Thank you.

CRAWFORD: Yes, thank you. Thank you, Senator Brasch.

SMITH: Senator Groene.

GROENE: You didn't have anything to do with the survey.

CRAWFORD: No.

GROENE: But if I wanted to lead somebody and I'm getting them all riled up about something. The first question I would ask--

CRAWFORD: You wouldn't do that, would you, Senator Groene?

GROENE: The first question I was asked is the one I want the-- the biggest reply to do it.

CRAWFORD: Yeah.

GROENE: Because if I asked you, you got this emergency and well, you want to increase state tobacco tax. Yes.

CRAWFORD: OK.

GROENE: Next question, hey, I already solved it with the tobacco, guys. I'm not so sure about these others. I bet you if you rotated those questions the one, the first one, would always have the biggest lean towards to fix the problem.

CRAWFORD: That's a very good question Senator Groene. And that's a great methodological question, and I agree with you--

GROENE: I'm assuming--

CRAWFORD: --in terms of political science methodology. And so I will--

GROENE: See if they can rotate their questions.

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CRAWFORD: I will see if I can find out if they rotated the questions or not. That's a good question, good question.

GROENE: Thank you.

CRAWFORD: It's still, yeah, that's a good question.

SMITH: Senator Crawford.

CRAWFORD: Yes?

SMITH: I know in past years we've had these bills before us. Can you tell me in a nutshell how this compares to past bills. I believe maybe Senator Howard last year, I know Senator Gloor was perhaps the year before.

CRAWFORD: So I-- the difference between my bill and Senator Howard's bill is Senator Howard's bill had quite a few different places that the money was going. And mine's just a very simple, straightforward, some of it goes to the healthcare cash fund and the rest goes to General Fund. So that's the difference between mine and Senator Howard's, both were \$1.50. Mine just is a very straightforward cash fund, a little bit to the healthcare cash, I mean, General Fund, healthcare cash fund, and hers had some complex places where it would go.

SMITH: How can-- go ahead, I'm sorry to interrupt.

CRAWFORD: That's fine.

SMITH: How do those taxes compare to the neighboring states?

CRAWFORD: I have that in front of me. So, as I said, nationally overall we're 41st, and then compared to other states we are lower than any other state around us except Wyoming right now. So that's where we are right now.

SMITH: OK. So let's say a Kansas or Iowa--

CRAWFORD: Kansas, so Kansas is \$1.29, Iowa is at \$1.36. Though, excuse me, the state near us that's lower is Missouri. South Dakota is at \$1.53 and Wyoming is 60 cents. So Missouri and Wyoming are the two states near us that are lower than we are.

SMITH: Okay, thank you. Other questions? Senator Groene.

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GROENE: Do you know what the American Indian reservations like Winnebago in northeast Nebraska, they don't have to collect these taxes do they? Or do they have to collect state? There's some of them, they don't collect on fuel.

CRAWFORD: That's a good question. I don't know that off the top of my head. I don't know for sure.

GROENE: I'm pretty sure that is people go there now [INAUDIBLE].

CRAWFORD: We had that-- we had Senator Larson's bill about that. I don't remember how. I don't remember.

GROENE: I know it's less. One of the taxes, federal or either state they don't have to because they're their own nation or whatever. It would be a boon for them, wouldn't it?

CRAWFORD: Well, a \$1.50 boon, yeah.

GROENE: Thank you.

SMITH: I see no further questions. Thank you, Senator Crawford, for your opening. And you will remain for closing, perhaps?

CRAWFORD: Perhaps.

SMITH: Okay. We now move to proponents of LB1117, those wishing to testify in support of LB1117. Proponents. Welcome.

FERNANDO WILSON: Thank you very much. Thank you. I am Fernando Wilson, F-e-r-n-a-n-d-o W-i-l-s-o-n, a faculty member and a UNMC College of Public Health and acting director of the UNMC Center for Health policy. I am testifying in support of LB1117, which would increase the tax on a pack of cigarettes to \$2.14. I am here speaking for myself and not as a representative of the University of Nebraska. In this testimony I wish to highlight the opportunity cost to the state in Nebraska that are incurred each year that the cigarette tax remains at 64 cents a pack. By opportunity costs I do not just mean tax revenues to the state that are foregone by not raising the tax. Opportunity costs also include the foregone opportunity to substantially improve the population health of the state. Data from the Centers for Disease Control and Prevention showed that smoking-related illnesses result in 2,500 preventable deaths every year among Nebraskans, and that our healthcare system incurs \$800 million in costs from treating these illnesses annually. For many smokers are already suffering from lung

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cancer, respiratory disease, and other chronic morbidities, increasing the cigarette tax may have little impact. However, youth smokers have been found in prior research to be much more sensitive to changes in cigarette prices than adults. In an analysis of data on smoking among high school students in Nebraska, the Center for Health Policy found that the percentage of students who currently smoke rises substantially with age increasing from 3.6 percent for 14-year-olds to 21 percent for 18-year-olds. The center further estimated that the new tax of \$2.14 per pack may result in nearly 20 percent or about 2,000 fewer high school students who are now currently smoking. Many of these youths would have continued to smoke into adulthood. And if the tax remains at 64 cents the opportunity to forestall the progression from uptake of smoking to chronic disease will be foregone for many of these youth. Thank you for providing me this opportunity to testify.

SMITH: Thank you, Dr. Wilson for your testimony. Questions? I see no questions from the committee. Thank you for being with us today. Next proponent of LB1117. Those wishing to testify, you may want to take advantage of some of these chairs up closer to. Welcome.

ROGER WIESE: Thank you. This is a lot of chair. Good afternoon, Chairman Smith and members of the Revenue Committee. My name is Roger Wiese, R-o-g-e-r W-i-e-s-e, and I am the health director with the North Central District Health Department out of O'Neill, Nebraska. I'm here testifying today on behalf of local health directors in support of LB1117. Almost everyone's lives have been touched by the negative effects of smoking. On a daily basis we see these consequences in public health as evidenced in our districts by lung cancer rates, pulmonary and cardiovascular disease. Tobacco-related illnesses are estimated to cost seven-- as Senator Crawford mentioned, \$795 million annually in Nebraska, as well as a \$58.8 million that the tobacco industry spends in Nebraska alone. Tobacco price increase simply saves lives. I'd like you to underline those last two because I'll touch on those at the very end. If the current tobacco use pattern persists, an estimated 38,000 current children under the age of 18 in Nebraska will ultimately die prematurely from smoking-related illnesses. By passing this bill you can prevent this and prevent 1,000 children in Nebraska from becoming daily smokers, preventing 2,500 Nebraska adults from dying prematurely, preventing-- excuse me, preventing \$162.3 million in Medicaid costs in the state in Nebraska, and prevent business losses of \$605.5 million in Nebraska solely due to the chronic conditions of tobacco use. The Surgeon General has cited by raising

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prices on cigarettes is one of the most effective tobacco control interventions because increasing the price is proven, is proven, to reduce smoking, especially among the youth and those of low incomes. I think it was mentioned before, but 90 percent of all current smokers, 90 percent, start as youth, 21 and under, majority of those 18 and under. While there is clear evidence on the effectiveness of tax increase, some have concerns about a tax having a disproportionate impact on the lower income because smoking rates are highest among those of limited incomes. It's tobacco use that is harming the low-income, their health and their finances. Those with limited income stand to benefit the most from the measures that reduced smoking includes, including higher prices through an increased tobacco price. In public health we work to improve the health of the communities, we use strategies that come from our community guide and the Centers for Disease Control. Raising cigarette taxes is proven to reduce the number of youth who smoke. For every 10 percent increase in the tax, the number of youth using tobacco tends to decrease by 3.7 percent, at \$1.50 it's 11 percent and greater in all states that have raised it at that level. Preventing tobacco use in teens is critical to ending the tobacco use in Nebraska. Again, I say it's critical because I go back to the 90 percent of all tobacco users according to Tobacco-Free Kids the Centers for Disease Control start as youth. At a local level our health departments are involved in many ways in tobacco-free activities to reduce the smoking rates. We work with work sites, we work with our schools, we work with other prevention activities to promote cessation. We use local resources for youth and adults alike. Increased funding for tobacco cessation and prevention activities will assist us in the work we are doing in our communities statewide, and to make a greater impact. LB1117 is a giant step in the right direction to save lives and healthcare costs. Again, I ask you just to kind of make a note and underline, and I think it's something that gets passed on quite a bit, and the numbers seem to fly. But I mentioned last year in testimony, and I'll mention it again this year, I find it staggering that Nebraska spends \$795 million due to illness of chronic disease, of chronic disease due to tobacco-related illnesses. And yet, the tobacco industry, ask them, they'll journal with themselves. They'll tell you they spend \$58.8 million to encourage smoking in our state, and that's Nebraska alone. With that, I thank you. And I'm open for any questions that you may have.

SMITH: Thank you, Mr. Wiese, for your testimony. Questions from the committee? I see none, thank you.

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ROGER WIESE: Have a good day.

SMITH: Thank you. Have a good day yourself. Next proponent of LB1117.
Welcome, Mr. Hale.

ANDY HALE: Thank you, Senator. Good afternoon, Chairman Smith, members of the Revenue Committee. My name is Andy Hale, A-n-d-y H-a-l-e, and I'm the vice president of advocacy for the Nebraska Hospital Association. Increasing the tax on cigarettes and tobacco products in Nebraska would reduce smoking and improve the overall health of Nebraskans. The idea of increasing Nebraska's tax is supported by the Nebraska Hospital Association in alliance with a coalition of numerous other healthcare organizations. Over 443,000 Americans die from tobacco-related illnesses, such as cancer, heart disease each year, and an estimated 49,000 of these deaths are results from secondhand smoke. For every person who dies from tobacco use another 20 suffer from at least one serious tobacco-related illness. Tobacco is the single most preventable cause of disease, disability, and death in the United States, yet, more deaths are caused each year by tobacco use than by all deaths from HIV, illegal drug use, alcohol use, motor vehicle injuries, suicides, and murders combined. Tobacco use poses a heavy burden on the U.S. economy and the medical care system. Each year cigarette smoking costs more than \$193 billion in medical care costs, while secondhand smoke costs an additional \$10 billion. Smoking-related illnesses, as the last testifier just mentioned, cost our state \$795 million per year, including more than \$162 million in Medicaid expenditures. Twenty-five hundred Nebraskans will die this year from smoking. A healthier, more productive work force helps strengthen the business and industries that we rely on every day as a state. I would like to thank Senator Crawford and her staff for bringing this bill, and I ask the committee to advance LB1117.

SMITH: Thank you. Questions for Mr. Hale? Senator Groene.

GROENE: What's the average person who dies of smoking-related illness?

ANDY HALE: The average age? I'm sure it's higher, probably, if I had to guess, probably in the 60s, maybe even higher.

GROENE: So it's close to the average age of an American?

ANDY HALE: Correct.

GROENE: 73 or 74.

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ANDY HALE: From the illness that they die, it's related to the cancer or the tobacco use.

GROENE: Thank you.

SMITH: Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. And thank you for your testimony. If they didn't die from smoking, what would they die from?

ANDY HALE: Hopefully old age and a wonderful happy life.

SCHUMACHER: And while they were tame-- I mean, I think several people brought up the, well, it's good economics in order to postpone their death by eliminating smoking, assuming that attacks on cigarettes would stop them from smoking--

ANDY HALE: Correct.

SCHUMACHER: But at the same time if, to the extent they live any longer, if we're just talking economics, I mean, the human side apart, just the dollars, we're not paying Social Security, we're not paying nursing home. We're not paying a lot of things that come with the problems we have with the increased aid. So has anyone done an analysis, if we're talking money, as to whether or not it costs us money or as a whole entire system, federal and state?

ANDY HALE: I have not seen that analysis.

SCHUMACHER: Thank you.

SMITH: I see no additional questions. Thank you, Mr. Hale.

ANDY HALE: Thank you, Senator.

SMITH: We continue with proponents of LB1117. Welcome.

BROOKLYN LARIMORE: Good afternoon members of the Revenue Committee. My name is Brooklyn Larimore, that's B-r-o-o-k-l-y-n L-a-r-i-m-o-r-e. So Nebraska has one of the higher youth smoking rates at 13.3 percent, it is ranked 41st at having one of the lowest cigarette taxes at 64 cents. And this correlation is no coincidence. One of the three proven ways to reduce youth tobacco use is an increase in the retail prices of products. It is known that a 10 percent increase in retail price of cigarettes reflects a 6 to 7 percent decline in youth smoking, as

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youth are three times more sensitive to product prices than adults are. In Nebraska a single pack of Marlboros, the number one brand used among youth, cost about \$5.89. This is nearly the same price of a large pumpkin spice latte from Starbucks. Now, I'm willing to spend that pretty penny on a specialty coffee drink on occasion. But if it were to increase in price by \$1.50, there's no way I'd be able to afford that all the time, considering as an 18-year-old I do not have a solid source of income myself. I know an increase in tax would be effective because if youth such as myself cannot afford something we're not going to get our hands on it. We're not-- we're not getting any. And this is especially true when that something is a product that we shouldn't be using in the first place. And cigarettes certainly are not something I'm going to ask my parents to buy for me, unlike the occasional Starbucks drink if I'm good. Considering that 9 out of 10 daily adult smokers started as teens, it is paramount that the state of Nebraska does all that it can to help prevent the 10,000 youth that will become smokers from dying prematurely from a death that was preventable. Prevention is key in harboring a healthier future, and an increase in cigarette taxes is the first significant step in doing so in the state of Nebraska. And we haven't increased the tax in past 16 years. Now in addition, I would like to make a comment on Senator Brasch's statement about addiction. So the majority of smokers do want to quit. And it is true, and I don't know the exact numbers, but it's been shown that an increase in tax has been a way to encourage smokers to quit because it finally gives them the option, like, do I spend more or do I finally quit? And now again, I do not know those exact numbers. But my main concern is that people of low income and youth are specifically targeted by the tobacco industries, and the tobacco industries know that cigarettes are an addictive and deadly product, yet they continue to market them towards people because they gain a lot of revenue from them. So if this product increases in price, these populations would not be able to afford cigarettes anymore. And like youth, I have a lot of peers of mine who have smoked, they can't afford it all the time because we don't have income ourselves. So for me, it's really just about protecting public health and preventing youth from starting a habit, because if youth don't smoke, the tobacco industry will not have a future business and we will have to worry about all of the deaths that it is causing. So thank you.

SMITH: Thank you, Miss Larimore. Senator Friesen then Senator Groene.

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FRIESEN: Thank you. Thank you for coming to testify. I'm assuming that you don't drink.

BROOKLYN LARIMORE: No.

FRIESEN: I'm assuming that none of your friends drink.

BROOKLYN LARIMORE: No.

FRIESEN: Because they would be minors, wouldn't they?

BROOKLYN LARIMORE: Yes.

FRIESEN: And so do any of you know of any other people that drink that are underage that drink?

BROOKLYN LARIMORE: Drink? Well, personally my-- I don't know any friends, but yes, people my age do drink under age just like people will continue to use tobacco products under age. And I know a reason from people, from what I've heard of people who do drink, it's from an older sibling or an older friend who is of age bringing them these products.

FRIESEN: But when you turn of age, do you plan on drinking?

BROOKLYN LARIMORE: I personally have made the decision not to, just because that's my own decision. But I know like as an 18-year-old I've had kids at my school ask me, hey, you're 18, you can buy me cigarettes now and stuff. And it's like it's just another reason like they look for people older to give them these products but--

FRIESEN: Should we should we pick any bad habits and start taxing them so you don't start? Can I decide which bad habits they are?

BROOKLYN LARIMORE: Well, my main concern with tobacco is that we all know it's addictive and deadly. So people who smoke do want to quit smoking, and if youth don't start we won't have this problem in the first place is how I look at it.

FRIESEN: I appreciate you coming in. Stay active.

BROOKLYN LARIMORE: Thank you.

SMITH: Senator Groene.

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GROENE: Thank you, Chairman. You mentioned some statistics when you started, the 13.3 percent.

BROOKLYN LARIMORE: Yeah.

GROENE: Was that youth or was that total?

BROOKLYN LARIMORE: That is just youth in Nebraska, which that has actually increased from 2012 by 1 point-something percent.

GROENE: Do you think more kids-- what school do you go to?

BROOKLYN LARIMORE: I go to Bellevue East High School.

GROENE: Do you think more kids there are using marijuana or cigarettes?

BROOKLYN LARIMORE: I could not tell you. No, I have no idea.

GROENE: Why the statistics show, I think, there's more using marijuana.

BROOKLYN LARIMORE: OK.

GROENE: So should we tax it?

BROOKLYN LARIMORE: That is completely out of my expertise. That's a whole other issue.

GROENE: If we tax it more than we tax do you think they'd quit?

BROOKLYN LARIMORE: I'm not sure. I don't know how much that cost or anything.

GROENE: You've lived a very sheltered life. Your parents are very good. Thank you.

SMITH: Other questions? Well, Miss Larimore, are you involved in debate class or have you been?

BROOKLYN LARIMORE: I wish my school had a debate class. But I have not, no.

SMITH: Well, you do a very good job of holding your own against Senator Groene.

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BROOKLYN LARIMORE: Thank you, sir.

SMITH: I see no further questions, thank you for testifying today.

BROOKLYN LARIMORE: Thank you.

SMITH: Next Proponent of LB1117. Welcome.

EMMA SCHULTZ: Thank you. Good afternoon, Chairman Smith and members of the Revenue Committee. My name is Emma Schultz, E-m-m-a S-c-h-u-l-t-z. I am a public health student at the University of Nebraska Medical Center and a member of our advocacy organization student delegates. I'm here to support passage of LB1117, regarding increase-- increasing the tax on cigarettes and other tobacco products. As many other testifiers have said, we rank pretty low in taxes of cigarettes and other tobacco products. There are only nine states that have tobacco products more financially accessible than us. The current cigarette tax of 64 cents is well below the national average and the current-- and average also describes our current smoking rates, our lung cancer incidence rates, our lung cancer mortality rates, many of which can be attributed to smoking. And as others have said before me, the Campaign for Tobacco-Free Kids estimates that there are 38,000 children under the age of 18 in Nebraska who will ultimately die prematurely from smoking. It is these children who need a tax like this. I'm not proud of average. I'm not proud of our average smoking rates or average lung cancer rates, and I want our state to be healthy. According to the American Cancer Society, increasing tobacco product taxes is proven to be an effective way to prevent children and adults from smoking. The passage of LB1117 will help accomplish this and more. It will reduce the harmful effects of smoking in Nebraska, it will increase state revenue, save millions in healthcare costs, and help fund further public health efforts to prevent smoking. A study from the American Cancer Society found that among Nebraska, Nebraska voters, the majority support an increase in tobacco tax. Nebraskans are ready for this tax and I think they're ready to see its benefits. Thank you for your time.

SMITH: Thank you, Ms. Schultz. Questions from the committee? I see none. I just want to give a quick shout out to Ms. Schultz. She is the daughter of Sally Schultz, who is a long-time employee in the Legislature and a member of my staff. So nice job.

EMMA SCHULTZ: Thank you very much.

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SMITH: Next proponent of 1117, LB1117. We do have a number of letters for the record that were submitted in support of LB1117 from Nick Faustman, representing American Cancer Society Cancer Action Network; Dr. Robert Rhodes, representing Nebraska Medical Association; Larry Dix, representing NACO; Dr. Richard Azizkhan, representing Children's Hospital and Medical Center; Brian Krannawitter, representing American Heart Association and the American Stroke Association; Liz Lyons, representing Nebraska Child Health and Education Alliance; Erin Smith, representing American Lung Association; Sarah Ann Kotchian, representing Holland Children's Movement; and Jodi Radke, representing Campaign for Tobacco-Free Kids. We now move to opponents of LB1117, those wishing to testify in opposition to LB1117. Welcome.

SCOTT LAUTENBAUGH: Thank you. Good afternoon, Chairman Smith and members of the committee. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h, excuse me, and I'm here representing the Nebraska-- Nebraska Premium Tobacco Association. We obviously are in opposition to this bill. And the discussion, and the main reason that I will give you today might go off in a different direction than you might expect. I think Senator Schumacher made a good observation. Certainly most people don't smoke, and so it's easy to favor that tax. Most people don't ride motorcycles, so it's easy to say they should wear helmets. I mean, we do that sometimes, we single out people that choose to do things we don't necessarily understand or value and tax them, impair their freedom in some way. The main point I want to make for you, and there's a couple gentlemen that will follow me that are actually in the business of selling cigars, cigars are different. The rationale you heard today was about keeping kids from starting smoking. And I'm not overly familiar with the product, I have to be honest. I can only imagine what it would be like to sit outside on a nice spring day by a statue of Abraham Lincoln or something and smoke a cigar. Maybe someday. But that said, they are different. Premium cigars are not a gateway for youth smoking. They are already priced out of the market for kids. What we're doing when we raise the tax on them is we are treating them the same as all other tobacco products, and it is very difficult to find studies that show that cigars have the same negative health aspects as other forms of tobacco do. Very difficult. Believe me, we've had this discussion before when I was here, and we were carrying various bills about cigar bars and whatnot. Anecdotal evidence, I guess, I'll give you. I actually was deposing a doctor one time in my other career, and I was paying for the deposition and it was going poorly. So I thought I might as well get something out of this. He mentioned that the plaintiff was a smoker.

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And so I just said, well, wouldn't it be better if he smoked cigars? And everybody looked at me, and what are you asking that for? I said, well, no, honestly, if he smoked a cigar or two a week, doctor said that will never cause you a health problem. That level of consumption. Most people don't inhale cigars, I think it's very rare to find anyone who will say, yes, I inhale that. So incidents of lung cancer associated with cigar smoking, very difficult to substantiate, if they exist at all, because you don't inhale it. I suppose there's an argument to be made that they could lead to some forms of oral cancer if you're one of those that just chews on a cigar all day long. But again, what we're talking about here and the rationale for this increase in taxes does not imply or apply to premium cigar products. It just doesn't. So in general I believe there's a bias against raising taxes, and I think that's a good bias to have. And Senator Brasch indicated that she would like-- favors bills that lower taxes, so just stay there, we'll be there in a minute. But for those reasons we oppose this bill and this tax increase. I'd be happy to answer any questions you might have.

SMITH: Thank you. Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. And thank you, Mr. Lautenbaugh. Senator Lautenbaugh. Do you have a twin?

SCOTT LAUTENBAUGH: Well, some people mistake Tim Keigher for me sometimes.

SCHUMACHER: I could swear I saw somebody out by the Lincoln statue that looked like you with a cigar.

SCOTT LAUTENBAUGH: It must have been Tim Keigher.

SCHUMACHER: Okay. Must have been. Thank you.

SMITH: Senator Groene.

GROENE: You don't represent the cigarette companies?

SCOTT LAUTENBAUGH: I do not.

GROENE: All right. I'm just curious, I keep hearing that if you raise taxes we'll have less people smoking. And have you seen a study where we compare a percentage of citizens smoking versus somebody with a two

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dollar pack or what across the nation? What is the percentage of each state? Have you ever seen that?

SCOTT LAUTENBAUGH: I have not. I'm not familiar with that.

GROENE: By that theory ours should be a lot higher than Iowa or whatever, with \$1.50 or \$2.

SCOTT LAUTENBAUGH: I understand that argument as it pertains to cigarettes being a gateway to other smoking but I don't think cigars have the addictive quality of cigarettes. I can go for a long time without having one it's just it's not the same animal.

GROENE: You made a comment about moderation. The good book says moderation in all things, I have known a lot of people smoke half a pack a day live to 90, I know some people who pack-- three packs a day and died at 65. So cigarettes aren't massively wrong.

SCOTT LAUTENBAUGH: No, certainly not.

GROENE: It's called moderation. That's true. Same with cigars.

SCOTT LAUTENBAUGH: Certainly not. More so, I would say.

SMITH: Other questions from the committee? And I see none. Thank you, Mr. Lautenbaugh, for your testimony today. Continue with opponents to LB1117. Welcome.

PHIL VANDERPOOL: Thank you. My name is Phil Vanderpool, P-h-i-l V-a-n-d-e-r-p-o-o-l. My wife and I started a cigar shop in October of '99. We started it with the hopes that in our retirement it would supplement our income and we would have a group of friends, women and men, that come into the shop. Our son ran it for many, many years. We've retired and now we run the cigar shop, it's our supplement. Last year, my cigar shop, and it's just a single cigar shop, I paid over \$40,000 in tobacco tax. Under this increase you're talking about \$85,000. That destroys a family business that's supposed to support us in retirement. And Senator Crawford was partially correct on the tobacco tax. There are states around us that have been dropping the tobacco tax to 50 cents per cigar because they realized what they're losing to catalog sales of cigars and pipe tobacco to other states and the Internet and on-line. So I oppose this and I believe Nebraska should implement a 50-cent cap for cigars. It's proven that your sales go up, you sell more cigars, you'll pay the tax as much as what you

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pay now, if not more. But it's not that huge amount and we can compete with the Internet, mail order, and different states. Thank you.

SMITH: Very good. Thank you, Mr. Pool [SIC]. Questions for Mr. Pool? I see none. Thanks for taking that risk and being a small business owner.

PHIL VANDERPOOL: Thank you.

SMITH: Next opponent of LB1117. Welcome.

JEFF DOLL: Thank you. Good afternoon. My name is Jeff Doll, D-o-l-l, Jeff, J-e-f-f. I own Safari Cigars in Omaha, Nebraska, I am also the president of Nebraska Premier Cigars. I'm just going to touch on a few things that hasn't been touched on. Right now, 80 percent of our customers buy their cigars on-line because they can buy them anywhere from 30 to 50 percent cheaper than what we can deal with them. Because if you look at even with the tobacco tax at 20 percent and then you look at state tax and occupancy tax, you have another 10 to 11 percent. So you're already at 30 percent before you even get started. So when we look at any further taxing is just going to drive these people further into the Internet. And you won't get any more tax, you'll probably get less tax from the cigar side of it. I'm going to talk about this later I guess when we come back, but you do have a bill out there that put a cap on cigars at 50 cents. But I'll talk about that on the way back. But two things I want to bring up. One, the average cigar smoker only smokes four cigars a month. The FDA did a study last year that came out, and I should have got that up, and I'll probably just send it to you anyway. But they did a study on cigar smokers and looked at long-term effects on them. And the conclusion was anybody that smoked less than four cigars a week they saw no deterioration in their health, and that's about the, that's about the best study that you can find on that subject out there. Because when you look on the internet you just can't find anything, because there hasn't been much. Other than at one time more in the '50s and '60s a lot of people were having lip cancer issues from cigars. But if you followed cigars, you knew anything about cigars, at one time you used to see a lot people stand around all day with a cigar in their mouth. They don't do that anymore, people are too busy. I never see it at my shop. So I have nothing else. So if you have any questions I would be delighted to answer them.

SMITH: Thank you, Mr. Doll. Questions from the committee? I see none.

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JEFF DOLL: Thank you for your time.

SMITH: Thank you. Next opponent to LB1117. Welcome.

SARAH CURRY: Thank you, Chairman Smith, members of the Revenue Committee. My name is Sarah Curry, S-a-r-a-h C-u-r-r-y, and I'm the policy director at the Platte Institute. I'm here to testify and opposition to LB1117. While finding new funding sources for the state's General Fund during a time of budget cuts is commendable, using an unreliable revenue source like a cigarette and tobacco tax is not a wise fiscal decision for the state of Nebraska. Revenue forecasts will be even harder to accurately forecast if we fund recurring operations with a revenue source which has declined on an average of 2.1 percent per year over the last decade. A higher tax brings an expectation of even lower sales, meaning the state can expect to see more decline if this additional tax was levied. In recent years, 91 percent of the cigarette excise tax increases across 32 states have missed their revenue projections, some by as much as 180 percent. Many national organizations also agree with this, even the National Conference of State Legislators specifically states "cigarette taxes are not a stable source of revenue." Excuse me. From a policy standpoint, this regressive tax would also affect lower-income adults the most. According to the Centers for Disease Control and Prevention, 31.6 percent of adults in Nebraska who earn less than \$15,000 a year are smokers. Raising this tax will unfairly burden these low-income earners. Research has also found that higher tobacco taxes reduce usage by an insignificant amount and are more likely to increase smuggling and creating an illegal tobacco market without necessarily improving health outcomes. Under current law, Nebraska is ranked 40th in the nation, with Missouri and Wyoming the only neighboring states with lower rates. If the bill is enacted, the 234 percent increase will give Nebraska the 12th highest rate in the country and the highest among its neighbors. LB1117 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 50 states. According to these economists, Nebraska's 2015 smuggling rate was a puny 1.14 percent of total cigarette consumption in the state. But if the proposed bill, LB1117, is adopted that rate will rocket to 30 percent of the total market. Putting Nebraska sixth overall behind Missouri. In addition to smuggling concerns, the increased tax rate would also mean that Nebraska would see a decline in the sale of legally-taxed tobacco products but not on

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the assumption that fewer people are smoking. The Journal of Health Economics found that 85 percent of the change in legal sales after a tax increase is due to tax avoidance and evasion not by quitting smoking. This was proven after the 2002 cigarette tax increase when Nebraska lost \$121 million in cigarette excise tax revenue to neighboring states and the state budget revenue fell 20 percent short of projections. Ultimately, variations in state cigarette taxes often result in smuggling, legal border crossings to low-tax jurisdictions, and Internet purchasing. After review of the evidence and sound tax policy, an increase in the cigarette tax would do more harm than good. And to answer Senator Groene question that you mentioned earlier, I found that courts have generally ruled that cigarettes sold on tribal lands to Native Americans are exempt from state excise taxes unless it's authorized by federal law. There was a 1985 U.S. Supreme Court case that held that states could require tribes to collect cigarette taxes on non-Indians but exempt it for Indians. There was also a case in Michigan where cigarettes were exempt from being taxed on military bases. But I don't know the specific situation for Offutt. And on that, I'm happy to take any questions.

SMITH: Questions from our committee? Senator Groene.

GROENE: So could the Winnebago tribe, somebody sent me an article that they got in trouble here other day over cigarettes, but could they sell them Internet?

SARAH CURRY: According to my knowledge from what I was reading about this they can--

GROENE: They can ship them?

SARAH CURRY: They can buy them. You know, the tribe can buy them and then ship them and not have to pay sales tax. They can be required to levy the sales tax on a non-Indian, but if they're doing it on Internet sales I think they could easily circumvent.

GROENE: But is this considered a sales tax?

SARAH CURRY: Or excise tax, sales tax. Again, the Supreme Court case it was talking about situation that occurred in California, and so I don't know if how it would relate to here because I'm not an attorney. But just letting you know.

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GROENE: So it depends on the relationship the tribes have with the state laws in each state.

SARAH CURRY: Right. I know Michigan, before the Supreme Court case occurred in the early '80s, they were communication with their tribe trying to work out an agreement so they didn't have to comply. But the court case in 1985 was directly targeted at California. In 1980 there was another Supreme Court case and it was in Washington State. And that's because the tribe had instituted their own excise tax on cigarettes and then the state tried to levy their excise tax on top of the tribe's. And they found that that would take away the Indian tribe's sovereign ability to tax if they did that. So there's different situations there.

GROENE: All right, thank you.

SMITH: Other questions from the committee? I see none.

SARAH CURRY: Thank you.

SMITH: Thank you, Ms. Curry, for your testimony. Continuing with opposition to LB1117. Welcome.

KATHY SIEFKEN: Thank you. Chairman Smith 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 registered lobbyist for both the Nebraska Grocery Industry Association and the Nebraska Retail Federation here today in opposition to LB11-- to LB1117. We're opposed to the 334 percent increase in cigarette taxes; the 225 percent increase in OTP, the other tobacco product taxes; and the 227 increase in taxes on snuff. The most recent statistics I could find show that in 2014 the number of smokers in Nebraska dropped to 17 percent of the population. That number is probably lower today because every year people quit smoking and the number of new spoke-- smokers is declining. That's been a 15-year trend. So these huge tax increases would be placed on less than 17 percent of Nebraskans. This bill would turn Nebraska into a high-tax state as compared to our neighbors: Colorado, Wyoming, and Missouri. This is a very important point because smokers don't always quit smoking when taxes increase but they do find a cheaper way to purchase their products. And I'd be willing to bet that residents of South Dakota, Iowa, and Kansas are buying their tobacco here and we are collecting Nebraska excise taxes and bringing in more revenue than just from Nebraska smokers. When a state becomes a high-tax state customers find other ways to purchase these products. In 2007, when Iowa raised cigarette taxes by \$10 per carton,

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the volume went down 50 percent in the Iowa border stores and sales tax in Iowa's non-border, or their interior stores, also were impacted at the rate of 34 percent decrease. After about five weeks, Nebraska's 539 border stores showed a 40 percent gain in cigarette sales. Secondly, this is also an unstable source that drops every year because people quit smoking and the number of new smokers is also declining. Hence, an overall drop in collected taxes unless we sell to people from border states. We have over 2,800 retailers in the state of Nebraska that are licensed to sell tobacco products, 36 percent of their annual gross in-store sales comes from tobacco and tobacco products. So an increase of this size would impact every one of those retailers. Several states in the past, as was mentioned prior, have increased tobacco taxes hoping to bring in more revenue. And in 91 percent of those cases the revenue was, was below what was projected. And I guess I'd like to wrap up by saying that it really doesn't make any difference if the tax increase is on food, fuel, or tobacco. Consumers look for cheaper ways to find those products. If you have any questions, I'd be happy to try to answer

SMITH: Thank you, Ms. Siefken. Senator Groene.

GROENE: I think next time you give a presentation, please say we already are a high-tax state. We will become a higher-tax state. I don't know if we never overcome Illinois, but we're number two now. Thank you.

KATHY SIEFKEN: Yes.

SMITH: Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. And thank you for your testimony. One argument you raised that I don't know that I'd heard before is that finally we're on the right side of border bleed.

KATHY SIEFKEN: That's true, we are.

SCHUMACHER: Are we pretty sure of those numbers, that we are finally getting people to bring money into Nebraska's tax system?

KATHY SIEFKEN: You know, it's a funny way to look at bringing money into the state. But when Kansas raised their taxes recently, I'm pretty sure that there was an increase in the sale of tobacco in our southern stores. I do have the statistics and the maps that show when Iowa increased their rates, and it-- the change was significant in the

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sales that-- and it goes back and forth. So when Nebraska raised their taxes and Iowa was lower, all of those sales went to Iowa. They move back and forth across those state lines based on where the lowest-priced tobacco can be purchased.

SCHUMACHER: What is the tobacco market is highly mobile if you're near a state line?

KATHY SIEFKEN: Yes it is. Absolutely.

SCHUMACHER: Are we guessing buy more than a pack when they have to drive a little way.

KATHY SIEFKEN: Or sometimes they buy truckloads. Trunkloads, and they'll sell them out of the back of their vehicles. So it's a-- it's something that encourages black market.

SCHUMACHER: Thank you.

SMITH: I see no additional questions. Thank you, Ms. Siefken, for your testimony.

KATHY SIEFKEN: Thank you.

SMITH: Continuing With opponents of LB1117. Mr. Lautenbaugh, you only have one opportunity to speak.

TIM KEIGHER: You know, one of us is offended by that. I'm not sure which. Good afternoon, Chairman Smith and members of the committee. For the record, my name is Tim, T-i-m, K-e-i-g-h-e-r, and I appear before you today in opposition to LB1117 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association, and I have also asked to oppose LB1117 on behalf of the Nebraska State Chamber. I guess I was here last week on Senator Briese's bill, LB1084. And Senator Schumacher, you must have been out of the room, because I talked about the border bleed. And when Iowa and Nebraska went back and forth like Ms. Siefken said on the tax, one brand of cigarettes went down 25 percent in the Omaha market when Iowa had the advantage and went up 26 percent in the Council Bluffs market. So the same distributor selling both markets saw that change. And then when Iowa raised their tax we got it back. So, you know, it was talked about opportunity cost, I think we had the opportunity cost in our favor right now. People are coming here to buy the cigarettes. Missouri's tax is 17 cents a pack, significantly lower than ours. So there is a lot of activity of people going down there and buying trunkloads, if

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not truckloads, of cigarettes. I have talked to my counterparts on the east coast. You can buy cigarettes in Georgia, a low-tax state, because they grow tobacco. And they're taking semi-loads of cigarettes to New York, selling them for-- I think in New York a carton of cigarettes is like \$75 right now, might be more than that. And they're selling those for \$50 a carton. And they are netting, not grossing, \$1 million. Now it's obviously the black market, you know, organized crime and that type of thing so. I'm not going to repeat anything that I said last week or anything that's been said before me, so I will conclude my comments with that and ask if you have any questions.

SMITH: Thank you. Questions from Mr. Keigher. Senator Harr.

HARR: Thank you. A couple of years ago we had someone come in here to talk to us about the border bleed and the black market. And they told us this was funding Al-Qaeda. Do you think that's still true?

TIM KEIGHER: That's-- that's what I've heard about the activity that goes on between Georgia and New York, yes.

HARR: But not here in the United States.

TIM KEIGHER: Not here in Nebraska, you mean?

HARR: Well, or yeah.

TIM KEIGHER: The last time I checked, Georgia and New York were in the United States. Oh, funding Al-Qaeda in the United States? I don't know what they're doing with the money. I've heard that-- yeah. Mr. Lautenbaugh answered that question.

SMITH: Other questions for Mr. Keigher? Senator Groene.

GROENE: Maybe you can answer the question, what is the difference of the tax on the reservation versus somebody outside of it?

TIM KEIGHER: You know, I don't know off the top of my head what the difference in tax is. I know it's significantly lower. I believe the Winnebago tribe manufactures their own cigarettes as well. And I don't know what the difference in tax is. But I just know at retail the price of cigarettes is significantly less than ours, probably half.

GROENE: And the reason I ask, I used to live in that area and I used to smoke. And I would go fill up with gas and I would go buy my

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cigarettes. And when I die, somebody will claim I died from smoking because I quit--

TIM KEIGHER: Good, I'm glad it's not from the gasoline.

GROENE: If don't make it to 80.

TIM KEIGHER: Correct. I wouldn't disagree with you on that either.

GROENE: Thank you. But I just wondered. Back then there was a big difference.

TIM KEIGHER: It still is a significant difference, I believe. Yes.

GROENE: Thank you.

SMITH: I see no other questions. Thank you, Mr. Keigher, for your testimony.

TIM KEIGHER: Thank you.

SMITH: Continuing with opponents to LB1117. Remaining opposition to the 1117. We do have one letter for the record that was sent in opposition to LB1117 from David Spross, representing Reynolds American Inc. We now go to those in a neutral capacity that would like to testify neutral. Seeing none, we invite Senator Crawford back to close on LB1117.

CRAWFORD: Thank you, members. I appreciate your attention and good questions. I apologize, I had to leave to testify on a bill in another committee and I didn't get a chance to hear all of the supporters. So I appreciate them coming today and providing their testimony. I look forward to hearing more about some of their comments. And I'm particularly glad to see one of our Bellevue East students here to testify today. So I'm very excited about that. So I'm just going to comment on a few points that were made. Clearly, yes, Senator Brasch, and Senator Lautenbaugh, I would much rather be bringing you a tax cut bill. I have brought many before. This is the first time in my six years I have brought a bill to you that is about a tax increase. But we are-- have an over \$200 million shortfall. So it's now is a time when we have to think about revenue as well as spending. I made the comment at a town hall, excuse me, at a Sarpy Chamber coffee last weekend-- last week, when you have a budget shortfall-- fall in your household, the first place you look is to cut spending. But at some point you may decide somebody needs to get another job or you need to

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get a side hustle. At some point you may-- you have to bring in additional revenue. And colleagues, I think that we very well are, we are at that point now in the state of Nebraska. So what that looks like is obviously up to your committee. I'm putting the cigarette tax on the table, as have several other people put it on the table in different forms, as one of the options for increasing revenue in the state. The cigarette tax has the added bonus of having a public health benefit that many of the proponents spoke about. So if it is the case that the cigarette tax, increase in cigarette tax, reduces the number of people who are smoking, yes, that would decrease the income coming in but that would also decrease the amount of money that's spent on healthcare. Again, \$795 million is spent on healthcare related to smoking in the state. So that's also a big piece of this cost and budget picture. So if fewer people smoke we get less revenue from cigarette tax, but we have less health expenses. That's obviously still fine and good. I hadn't understood some of the interesting aspects of a cigar picture before, and so I really appreciate those folks coming to testify today, and I appreciate hearing about the impact on their business and how they see cigars as different. That's an issue I hadn't-- this is the first time I've worked on a tobacco tax bill. And so I appreciate them bringing that perspective and I look forward to learning more about that. I believe you also heard today and another reason why taxing Internet sales is so critical and solving that problem is so critical. So if a couple of the opponents were concerned about the impact of Internet sales, if we have increase in sales tax in our state. And that is critical. And the competition between our brick and mortar providers and Internet providers is one that we need to do everything we can do to make it a more level playing field. So there is research, particularly on youth smoking, and I do think the impact on reducing smoking the research is most convincing in terms of youth not starting. That's where you get the biggest bang for your buck, so to speak. And in that it talks about, a lot of the research talks about, the impact of \$1.50 change being that critical mass where you start seeing that impact on behavior. And so that's in part why this is \$1.50 based on some of that research showing that's the-- that's the point at which you start to see a big enough cost difference to make an impact. So that's a response to a few of those questions. The border bleed question is an interesting question as well. And I look forward to seeing some of those studies and looking at that impact and thinking about what impact that may have. In any event, I do believe that an increase in the cigarette tax will increase revenues and reduce smoking. And those are both things

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that are very positive to happen in our state. And with that, I would be happy to try to answer any additional questions.

SMITH: Thank you, Senator Crawford. Questions from the committee? Senator Lindstrom.

LINDSTROM: Thank you, Chairman. The one thing that I guess wasn't brought up, and usually doesn't get brought in these talks, is the Master Settlement Agreement that was, I believe it was 1999 when that was taking place. The big four tobacco companies--

CRAWFORD: Sure.

LINDSTROM: -- pay in perpetuity.

CRAWFORD: Right.

LINDSTROM: To a fund. And Nebraska I believe spends between \$35 to \$50 million, the Winnebago tribe has a different escrow account that they pay into to offset that. I think it was Ms. Siefken that mentioned that we've seen a 15-year trend of tobacco use go down. Do you think that in that campaign, if you will, the Master Settlement Agreement was used for the Truth campaign, things that we see on TV all the time.

CRAWFORD: Sure.

LINDSTROM: Do you think that-- it sounds like that that's doing enough over the last 15 years that we've seen the decline in tobacco use. Do you think we need to increase more to further or speed up the process, or do you think this the Truth campaign and the Master Settlement Agreement, the purpose of that, is doing enough at this point in time? Do you think that this is necessary to do if the other aspect of the campaign is working with the Truth campaign?

CRAWFORD: So what we-- we currently have about 13 percent of high school students who smoke and 22 percent who use e-cigarettes. So I guess the question is do you think that's a small enough number? I mean, 13 percent begin smoking, and those who begin smoking young are the ones who continue smoking. So even with those declines it has been making an impact. I think the cigarette tax will make an impact on top of that to push it down even more. So I would say my philosophy is that it would be helpful too to have additional downward pressure on those numbers.

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SMITH: Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. Just one follow up. If our concern basically is young people getting started smoking and it's a health concern because supposedly it goes on and on and turns when they're 80 years old, why don't we just make the age of smoking the same as the age of booze? Can't smoke if you're under 21.

CRAWFORD: That's-- that is a-- I don't remember if somebody introduced that bill this year or not. That would be I think another approach. This, the impact on public health is a part of the positive impact of the cigarette tax. I think that is another-- I don't-- I'm not familiar with the statistics that compare the change in age impact on smoking versus the change in cigarette tax. So I can't tell you which one is shown to be more effective. I think there are a lot of underage people who smoke just like there are underage people who drink. I don't know which is shown to be more effective in reducing teenage smoking. That's a good question.

SCHUMACHER: With the cigarette, I mean, we seem to have conflicting goals here. One, we want you to smoke so we can tax you so we can fund this financial problem we have. And two, we want you to stop smoking, so you don't pay the taxes because you're a health issue. And you know--

CRAWFORD: I think it's a win-win either way because in the immediate impact you're reducing smoking and re-- and reducing some immediate health costs in the long-run. As fewer people smoke, you get less revenue, but you also have less costs. So and if the cigarette tax were to become ineffective because no one was smoking anymore, you wouldn't have any of those healthcare costs either. I mean, it's-- so.

SCHUMACHER: But then people will be living longer, and we have to have their Social Security, their Medicare.

CRAWFORD: Right.

SCHUMACHER: All those additional expenses because they're living longer.

CRAWFORD: That's true. But hopefully they can also work longer and be healthy and contributing members of our economy longer as well. And husbands and wives and grandpas and grandmas that get to see their

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grandchildren and enjoy life and live a long, full life in our beautiful state. We were just talking about money.

CRAWFORD: Right. You were just talking about money.

SCHUMACHER: Thank you.

SMITH: Senator Groene, then Senator Brasch.

GROENE: Senator. Thank you, Chairman. Senator Schumacher brings up a good point. If the goal is to stop behavior from youths, why don't we increase the penalty for we catch a youth smoking. Why don't we start building reform schools again and put them bad kids that hang around pool halls and smoke cigarettes in them like we used to do, instead of penalizing the honest working man that happens to smoke a cigarette or two a day? If the real goal is to punish people who break the laws.

CRAWFORD: I wouldn't say the quote real goal end quote is teenage smoking. I would say it's one of the outcomes that we have found with increasing the cigarette tax, and it is a positive outcome. If you think it's-- I believe it is a positive health outcome of the cigarette tax, but the cigarette tax is also it's also important because it does raise revenue.

GROENE: Thank you.

SMITH: Senator Brasch.

BRASCH: Thank you, Chairman Smith. And thank you again, Senator Crawford. You know, I, I keep coming back to habit and your testimony of habit. And I'm-- and then pleas here have been, you know, on health and wellness. And so instead we want to tax the sick or dying, I guess, you know, because it will kill you or it will make you sick. So we'll tax you more. There's other things that will kill us or make us sick, you know, and I brought it up at another testimony. You know, not everyone has the ideal, is it BMI? Where your--

CRAWFORD: Body mass index, yes.

BRASCH: Yeah. And so are individuals to be, because it's unhealthy, now to be eating high-cholesterol foods. Yeah, it just goes on. It's diet, exercise.

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CRAWFORD: Right.

BRASCH: You know, there's a lot for wellness, not just smoking. And it seems like we have singled out one group here and-- and again, there are many who may wish to quit or tried to quit. We're trying to financially offset or financially punish them, and I don't think taxes were meant for punishment. Otherwise, maybe we should tax incarcerated.

CRAWFORD: Well, I do think taxes are one of our tools to encourage or discourage certain kinds of behavior. So going back again to the question of, well, if you care about youth smoke, you know, youth smoking, why not just raise the age or crank up the-- crank up the punishments? Taxing is one way to influence a behavior by making it more or less costly. And so it's a way to say, well, if this is something you're going to continue to do, we're not going to put you in jail. We're-- but we are going to say, you know what, it's something that's going to cost more. Now deciding what things to tax and what things not to tax is that, that's part of our policy questions that we have here. I believe in Briese's bill you had taxes on sugary foods and some other things that might impact, and soda that might impact BMI. And those bills have come here before and that they haven't, I don't think any of them have come out of this committee before. I mean, so that is the question, is which kinds of taxes are acceptable and unacceptable? What things do we tax? And some of it is in part what we've taxed in the past. So, you know, it's you probably see more cigarette tax bills here than you see soda tax bills here because like we've already done this one, we haven't done that one. But just like, you know, there I think it's, it's important that we in the big picture think about fairness in terms of everybody paying their fair share and think about new alternatives as well. This is an old alternative and it's returning to it and saying we haven't come back to look at its rate in over 15 years I think. And so is that an appropriate rate? And if we were to change the rate we do so for revenue reasons. But it is also the case that in addition to that it also has important documented public health purposes as well.

BRASCH: Thank you, Senator Crawford.

CRAWFORD: Thank you. Thank you, Senator Brasch.

SMITH: Any questions for Senator Crawford? I see none. Thank you, Senator Crawford.

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CRAWFORD: Thank you.

SMITH: And that is the closing on LB1117. We now move to our next bill of the day, is LB1087, being introduced by Senator Justin Wayne. Welcome, Senator Wayne.

WAYNE: Thank you, Chairman Smith and Revenue Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent the Legislative District number 13, which is north Omaha and northeast Douglas County. LB1087 is a very simple bill, it does not change the underlying statute regarding-- I mean, the state statute regarding tobacco tax. It simply adds a cap to the amount of tax that would be charged per cigar. As it stands today, cigars are cheaper to purchase on-line. Significantly cheaper, I might add. The tax imposed when buying in-state has gotten a little out of control. It should be capped per unit to encourage person purchasing cigars here in Nebraska rather than on-line. Our neighboring states and around the region, like Iowa and Minnesota, have recently enacted similar legislation and found cigar sales to go up in-state for in-state realtors [SIC], rather than continue to decrease as other states continue to do because on-line purchases are cheaper. This should be considered even though there's a fiscal note, it does not account for-- even though the fiscal note does not account for the increased revenue that has been shown in other states, it should be at least considered by this committee. This isn't going to lead to more smoking or kids getting caught with cigars because most kids don't smoke cigars. In fact, it's not like a cigarette at all what you guys just heard a lot about cigarettes. In fact, this bill is fair. And with the stymied flood of on-line purchases being happening in this state, this will benefit the sellers of the state and would warrant changes to our legislation. Chairman Smith and members of the committee, there will be a couple people testifying from the cigar industry to help clarify and answer any questions. I hope this bill makes it to the floor. It's a great discussion we should have on the floor. And with that, I'll be answer-- here to answer any questions.

SMITH: Thank you, Senator Wayne, for your opening on LB1087. Questions from the committee? So Senator Wayne, relative-- so where, where are we right now with that tax, and you're going to-- and then you take that to the point of capping it at 50 cents, right?

WAYNE: Yeah. Yes, sir.

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SMITH: So what is the tax now?

WAYNE: I cannot remember. I just left the DHHS.

GROENE: I think it's 20 cents.

WAYNE: Twenty cents, I believe-- 20 percent, I'm sorry. We're doing the percent because cigarettes are capped on a per unit and cigars are taxed on a percentage basis. So we are at 20 percent.

SMITH: OK. So does this always result in a reduction or is it an increase in some cases, or it's just a cap so it doesn't mean you have to go up to that amount?

WAYNE: Correct, it doesn't mean you have to go up to that amount. Now, in Iowa and Minnesota were the two recently to adopt a similar statute. They actually found an increase in overall sales and an increase in tax revenues because they're local and within-state purchases rose.

SMITH: Thank you. Other questions? Senator Groene.

GROENE: Maybe I should ask somebody else, but what's the average price of a cigar in one of these shops?

WAYNE: Depends on the cigar you want to buy. That's the best answer I can-- anywhere from \$3, \$2, all the way up to, if you're ambitious, you can get a \$19 cigar.

GROENE: So you passed a major bill today first round, you going to buy a \$19 one tonight?

WAYNE: I might have a cigar. I don't know. I have to go speak after this to a retired group in Omaha, Sisters of Notre Dame, so I will not be smoking there.

GROENE: Thank you. I just didn't know what the price of a cigar was.

SMITH: I see no other questions. Thank you, Senator Wayne. Will you remain for closing?

WAYNE: Yes, sir.

SMITH: All right, thank you. We now move to proponents of LB1087. Notice I didn't say welcome Mr. Keigher.

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SCOTT LAUTENBAUGH: I appreciate that.

SMITH: All right, welcome back.

SCOTT LAUTENBAUGH: Chairman Smith, members of the committee, I'll be brief because the gentlemen behind me are obviously from the industry, in the business. This is important. I made a point earlier of talking about how cigars are different. They aren't a gateway for kids to use because they can go up. You can pay as much as you want for a cigar, I guess. \$2 is probably the low end of the shop, but I know they have ones that are greater than \$19. I don't, I don't smoke those, but they exist. This would increase revenue, as it has in other states where it's been tried. As Chairman Smith observed, you don't increase the tax to 50 cents a stick. And obviously if it's a 20 percent tax, as it is now, and the cigar goes for \$2 that you would not reach the cap. It would still be 20 percent of \$2. If it's a \$19 cigar, it'll be a 15-cent or 50-cent cap. That is important again for the Internet competition that these gentlemen in the industry face. And one of them will explain in greater depth. It's also important to understand that they pay these taxes when the cigar comes in the door, not when they sell it. And you have to have an inventory of cigars to have a business so you have to pay the tax on the front end before you've sold the item. So doubling a tax doesn't mean they have to just collect more when they sell it. It means they have to pay more on the front end to pay the tax. So this would be a significant measure of relief for them. I do believe that the experience in other states does show that revenue actually increases on in-state cigar sales when you cap the tax on the higher-end cigars that are usually purchased by the box. I'd be happy to answer any questions you might have.

SMITH: Senator Groene.

GROENE: So then is there double taxation? Do you get a sales tax on a cigar?

SCOTT LAUTENBAUGH: There are a couple of different taxes but it's not double. Because, I mean, when the item is sold the purchaser pays the tax. But when it comes in as inventory the owner pays the tax at that point and then charges it to the person when they buy it.

GROENE: So you got a \$15.5 cigar comes when you add the tax it's a \$19 cigar. Do you charge the 7 percent of the \$19? So that's double taxation.

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SCOTT LAUTENBAUGH: Okay.

GROENE: Just wondered, thank you.

SMITH: I see no other questions.

SCOTT LAUTENBAUGH: Thank you.

SMITH: Thank you, Mr. Lautenbaugh. Continuing with proponents LB1087.

PHIL VANDERPOOL: Phil Vanderpool, P-h-i-l V-a-n-d-e-r-p-o-o-l. I am a proponent of the 50-cent cap, it would help our business, it would help us grow. In answer to the cigar, they run from \$2.50 in my shop and to go up to \$55 a single stick. My current inventory of cigars is \$325,000 in my shop. So I get the tobacco tax paid on all of that. If I didn't have to pay that up front, I had a 50-cent cap, I could compete with the Internet companies and catalog companies in Iowa and Minnesota. The problem with all these taxes and raising them, bringing them down is the state of Nebraska is not very good at collecting taxes. The tobacco tax we have right now, it is the responsibility of the first entity that brings it into the state to pay the 20 percent tax. Nebraska is losing probably \$1 to \$2 million at least in tobacco tax money that's not being collected from private citizens working through the catalogs or the mail order business. If we reduced the tax to a 50-cent cap it's going to increase the price of our cheaper cigars up and it's going to reduce the price of our expensive cigars. And hopefully we can get some of our customers that have gone to the Internet and mail order houses back into our shops. Thank you.

SMITH: Thank you, Mr. Vanderpool. Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. Just a-- and thank you for your testimony today. Just out of curiosity, are the Cuban cigars now legal in this country?

PHIL VANDERPOOL: They are legal for a private citizen to buy them anywhere in the world and bring them back to the United States. Us as retailers are still banned, we cannot sell Cuban cigars in the United States.

SCHUMACHER: So if you can find a place to buy them in the United States then they're legal here?

PHIL VANDERPOOL: You can mail order them, mail order them from Canada, Gibraltar, Spain, send them to your house. And once again, they're not

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paying tobacco tax, the private citizen that has ordered them. You take a box of Cohiba Behike, they run about \$500 dollars a box for 25 cigars. If this individual orders a box every month there's, you know, \$100 dollars a box that the state of Nebraska is not collecting because they don't enforce it on private citizens. About 7 or 8 years ago they sent tax bills to people that smoke cigarettes and bought them over the Internet. And there were people that had \$2,000, \$3,000, \$4,000 dollar tax bills. They never did it again. So in my statement the state of Nebraska is not very good at collecting taxes. They're not. This should be enforced on every individual in the state. Not only businesses but private individuals buying off the Internet and the mail order houses. If we decrease the cap or cap the cigars at 50 cents, I believe we can grow our business. The stay-- the tobacco tax should stay about the same or increase. But nobody's looked at sales tax because our sales tax is going to go up also. That's another revenue. Thank you.

SMITH: Other questions for Mr. Vanderpool? Seeing none, thank you. Welcome.

JEFF DOLL: Thank you. Jeff Doll, J-e-f-f D-o-l-l, I am owner of Safari Cigars. One of the reasons Minnesota went to this 50 percent cap or 50-cent cap is they did a study and realized that they lost almost \$3 million a year in revenue from the Internet sales. And, you know, when we look at, as cigar shop owners, if this be possible, we would make more money on it. We would probably be about the same because with this kind of advantage we could drop our prices enough to make a living and also can stop this Internet from hurting us even more than it does now. So and to ask-- answer one your question, Mr. Schumacher, Senator Schumacher, if you-- if you were in possession of Cuban cigars you can't sell them, it's illegal to sell them. But you can bring them in from out of the country, you can have them-- I believe it's illegal to even have them-- you can bring them in with you but if you have them shipped in from Sweden or Canada or someplace else, that's illegal. But if you have them in the country, I know that sounds complicated, but if you have them in the country, they're yours, you can smoke them. But you can't sell them. Now it's illegal for us to handle them at all. We don't handle them at all. And another question that came up, we are now at-- cigar shops are at 21 right now. We have been since the new cigar bar bill came through. And when that came through they asked us what we thought about it because it was 18, and because of the climate and being responsible business people we thought, well, let's go to 21. Yes, we'll lose a little bit of

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business, but the only business we saw from 18 to 21 was usually at graduations. Kids would come in, want to buy a couple of cigars. We, in our business, we card all the time. And because the FDA new rulings we have to card from 27 below to 21. And we never see any kids come in. You know, it's just too expensive of a product to buy. You know, so that's all I have for today. If anybody has any questions.

SMITH: I see no questions. Thank you, Mr. Doll.

JEFF DOLL: Thank you. Appreciate it.

SMITH: Next proponent of LB1087. We now move to opponents, those wishing to testify in opposition to LB1087. Welcome.

MATT PROKOP: Thank you, Senator Smith and members of the Revenue Committee for the opportunity to testify today. My name is Matt Prokop, that's M-a-t-t P-r-o-k-o-p. I am the Nebraska grassroots manager for the American Cancer Society Cancer Action Network. I'm here today to read into the record a statement of opposition on LB1087, which would add a cap on the cigar tax rate. ACS CAN is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society. We support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. There's-- there's a common misconception that cigars are a safe alternative to cigarettes. However, cigars contain many of the same cancer-causing substances as cigarettes and other tobacco products. In fact, they are the major cause of throat, oral, and esophagus cancers. This is a health issue where the science should dictate health policy, and that is why ACS CAN has taken a formal position in opposition to this bill. Decades of peer-reviewed research has been done on the health and economic benefits of tobacco excise taxes indicating that as the price of these products goes up significantly the actual usage rate decreases. Because of the strong evidence that price affects the rate of consumption of tobacco products, ACS CAN recommends raising, not reducing or capping, the tax on both cigarettes and all other tobacco products, including cigars. Cigar use among youth in Nebraska remains an issue. Eight percent of Nebraska high school students currently smoke cigars. Many cigars appeal specifically to kids with candy and fruit flavoring, such as strawberry and grape. Capping or eliminating the cigar tax would ensure that these products they afford-- stay affordable for youth and further incentivize dangerous and addictive tobacco use by young Nebraskans. This year, the Legislature finds itself at yet another budget shortfall of nearly \$200 million. There's an argument to make that the budget need-- that the budget is in need

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of additional new revenues, and significantly increasing tobacco taxes is strongly supported by Nebraskans according to recent polling data done by the American Heart Association. LB1087 would decrease revenue and contribute to additional preventive tobacco caused healthcare costs, and therefore it takes our state in the wrong direction. Thank you for the opportunity to testify on this important topic today, and I'll take questions if you have any.

SMITH: Questions? I see no questions from the committee. Thank you for your testimony.

MATT PROKOP: Thank you.

SMITH: Next opponent to LB1087. We do have letters for the record that were sent in opposition to LB1087 from Erin Smith, representing the American Lung Association; Jodi Radke, representing Campaign for Tobacco-Free Kids; and Brian Krannawitter, representing American Heart Association and American Stroke Association. Anyone wishing to testify in a neutral capacity? Saying none, we invite Senator Wayne to close on LB1087.

WAYNE: Thank you again, Chairman Smith. I believe this is the way for us to increase revenue by allowing our local retailers to complete-- compete with Internet sales, an issue that this body is familiar with with our extensive debate last year on Internet sales tax in general. We know businesses, brick and mortar businesses, are struggling. This is one way for us to compete and actually grow our state in a positive way. And with that, I'll answer any questions.

SMITH: Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. Thank you, Senator Wayne. On the border bleed issue, if we did this do we have any idea what that would do? Would we drag business into the state? Are we running business out of the state now? There's still a third of a million dollar principal on this but I'm wondering if that takes into account the border bleed issue that we were told about before. But are we favorable compared to Iowa and Kansas on our cigar taxes?

WAYNE: We are favorable-- on Iowa, no. We're a little less overall in the overall tax, but it's the cigar issue that is different. As they said, as Iowa has separated out cigars from the rest of the tobacco tax. And the short answer is, is I know many people, Mr. Doll is from Omaha, and I know many people who now buy their cigars either on-line

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or over in Iowa. And actually in his shop now there's an extra fee or a dollar amount if you start bringing your own cigars in to try to compensate and keep the business healthy and sustainable. I know other cigar shops in Omaha are going to similar, or have gone to similar issues because of the border bleed, if that's what, if we're talking about the same thing of them buying it from Council Bluffs or buying it from the Internet. So it's a real thing. And if we want to keep businesses open we have to figure out creative ways to let them compete.

SCHUMACHER: So is it a whole-- is it a whole lot cheaper to go over, you live in Omaha to go over to Council Bluffs and buy your cigars?

WAYNE: Depending on the cigar, yes.

SCHUMACHER: I mean, but depending on the cigar, is that because we're at 20 percent tax?

WAYNE: Correct. So a 20 percent on a \$2 cigar is one thing, but when you start talking \$20 cigars that you want to buy for. You have children or somebody you know has a child and you want to go buy cigars, you don't have time to order them on the Internet, you can go to a place in Omaha or you can drive 15 minutes over to Council Bluffs and you can save, you know, \$5 to \$6 depending how much you want to do, maybe \$10 depending on if you know their favorite kind of cigar. So yes, this is significant.

SMITH: Other questions for Senator Wayne. I see none. Thank you, Senator Wayne. And that is our closing on LB1087. We're going to change lanes here a bit. Pardon the pun. We're going to move from tobacco taxes to motor vehicle taxes, and let the room transition a little bit. Welcome, Senator Friesen, to open on LB1030.

FRIESEN: Thank you, Chairman Smith, members of the Revenue Committee. My name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n, and I represent District 34. And I appear today to present LB1030. In 2016, the legislature passed LB783. This bill required public power districts to license their vehicles at its central location, which was the location of their headquarters. The intent of the bill was to simplify the process for large utilities that serve in multiple counties with vehicles housed in multiple locations. And the bill was not intended to move dollars from one county to the next or omit revenues to municipalities where the vehicles may be housed. LB783 did not address the sales taxes on such vehicles, and since there was no guidance the

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counties collect the sales tax based on the location of the headquarters of public power district and not where the vehicle was housed. LB1030 corrects that and adds language that states "except that the sale of any motor vehicle or trailer operated by a public power district and registered under section 60-3,228 is consummated at the place where the motor vehicle or trailer has situs as defined in Section 60-349." LB1030 has an operational date of January 1, 2021. And this was done so that the new motor vehicle registration system currently under development at the DMV will be on-line and capable of making the appropriate sales tax transfers. DMV anticipates that it will be on-line in 2019 but this dates adds an acceptable cushion so that there would not be an additional cost to implement the changes proposed in LB1030. With that, I thank you for your time, and I would be happy to answer any questions.

SMITH: Thank you, Senator Friesen. So for example, say, like the Omaha Public Power District that's headquartered in Douglas County and they have offices where vehicles are housed in Sarpy County or Cass County or other counties. That-- how would that be handled?

FRIESEN: So now, currently, the motor vehicle tax all ends up in the one county where their headquarters. And with this bill passing, the sales tax would end up going to those counties where the vehicle is actually sited.

SMITH: Very good. Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. Thank you, Senator Friesen, for bringing this. I think I've been seeing the number-- the letter plates from Omaha and Lincoln, they have the letter plates instead of the dash plates, in NPPD's parking lot. So where would they be? I mean, NPPD's headquartered in Columbus, but if they get a plate from Lancaster County or Omaha, where are they taxed?

FRIESEN: Yeah, NPPD now can centrally locate their registrations. But their taxes would be wherever they determine that vehicle is sited. So they have vehicles probably all over the state. I know they have an operation in York. Again, the smaller power district-- Southern Power District has vehicles sited all over multiple counties. And what this would do is allow them to still license their vehicles in one central location, sales tax would end up going to wherever they determine the site of that truck is going to be. If they say it's sited in Columbus, it may be visiting in Omaha. I don't know that, but they, they are

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going to determine where that vehicle is sited and the tax would be distributed according to when they license it.

SCHUMACHER: And where would they-- but right now that the tax would be paid in Columbus even though it has a Douglas County plate on it?

FRIESEN: I don't know for sure how they title them right now but I know they can centrally-- I think they license them in the county where their headquarters is, so I'm assuming that if they get the new plates, if that they would have still centrally assessed plates. I don't think they put plates on that are-- they would be not a county type license plate, they would be the generic with the numbers and letters. And so they would-- you wouldn't be able to determine where they were from.

SCHUMACHER: But there'd be no advantage to finding a cheap county and say that's because [INAUDIBLE] .

FRIESEN: They could have an advantage there if you had a county that had no sales tax and there's no city sales tax. It can save 1.5 Percent or 2 percent. I guess a municipality could have as high as a 2 percent sales tax.

SCHUMACHER: But now, now they can't do that.

FRIESEN: Right.

SCHUMACHER: But with this bill they could do it.

FRIESEN: With this bill they could do that.

SCHUMACHER: So--

FRIESEN: And what they unintentionally did is they were licensing these vehicles in all those municipalities or counties. And now what they've done is when we centrally let them license them, they took the sales tax revenue away from those towns. Now they're trying to get it back so they don't hurt the community where they were based in.

SCHUMACHER: But it would hurt the central [INAUDIBLE].

FRIESEN: Yes, they got a bonus out of this.

SCHUMACHER: Thank you.

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SMITH: And situs is stored and kept for the greater portion of the calendar year. So there may be a cost for utilities to have a temporary transfer of a vehicle with an employee to one location or another. That does not necessarily mean that they are housed or stored at that other location. It could be a temporary transfer.

FRIESEN: Right. Correct.

SMITH: And that greater portion of the calendar year I would assume to be more than 50 percent.

FRIESEN: I think they use the same thing as if I'm have a business located outside of a municipality and I house it in the municipality the majority of the time I'm going to license it under the municipality.

SMITH: Right. Senator Lindstrom.

LINDSTROM: Thank you, Chairman. Couple years ago with the permit license plates that we did the fleets, so they wouldn't necessarily have to go to that local area in those counties to relicense they have the ability to just send or remit the sales tax with their location, we say for example NPPD in Columbus, they could license their fleet vehicles but then just pay wherever it's sited in those areas they would remit the sales tax.

FRIESEN: That's correct.

LINDSTROM: Douglas County, Sarpy County, wherever they are sited.

FRIESEN: Wherever they determine that that vehicle is sited.

LINDSTROM: So the individual doesn't necessarily have to go to a local spot. It would just be NPPD or OPPD that would remit the sales.

FRIESEN: They will just distribute the sales taxes accordingly.

LINDSTROM: Return the sales to--

SMITH: Other questions. I see none. Thank you, Senator Friesen, for your opening on LB1030. We now go to proponents of LB1030. Proponents. Welcome.

BRUCE VITOSH: Good afternoon, Senator Smith. My name is Bruce Vitosh, B-r-u-c-e V-i-t-o-s-h, and I'm the general manager and CEO of Norris

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Public Power District. I'm here to testify in support of LB1030 on behalf of Norris Public Power District, the Nebraska Rural Electric Association, and also the Nebraska Power Association. So with the passage of LB783 during the 2016 legislation, so two years ago, public power districts with annual revenues of at least \$40 million are now required to centrally license vehicles in the county where the headquarters is located. So as envisioned, LB783 has resulted in efficiencies and ease related to the registration, the annual registration, of public power district vehicles. However, two unintended consequences have emerged from that legislation from two years ago. The purpose of LB1030 is to correct the unintended consequences related to the purchase of public power district vehicles to ensure that city sales taxes are properly assessed based on where the vehicle will be housed, not where they would-- where they would be licensed, and also that the city sales tax collected are properly distributed back to the appropriate municipality. So Norris is headquartered in the city of Beatrice, which is located in Gage County. The district has operation centers in five different counties, with four the operation centers being within city limits. So one of the operation centers is actually in the rural area here in Lancaster County. It's not subject to any city sales taxes. So prior to the legislation two years ago, Norris licensed vehicles in the counties where they were housed and paid the local city sales tax rate for those operation centers that are located in the cities, and did not pay city sales taxes for their rural operation center. So with that passage of the 2016 legislation, Norris currently licenses its vehicles purchases in Gage County and is required to pay the city of Beatrice sales tax at the rate at 1.5 percent, regardless of where that vehicle will be housed. The city sales tax rate for the four counties in which Norris has operation centers and houses vehicles ranges from 1 to 2 percent. So we're in the city of Hebron, which has a city sales tax rate of 1 percent. In Fairbury it's 2 percent and then in Beatrice and Seward it's 1.5 percent. So for planning and budgeting purposes, Norris maintains a 12-year truck replacement schedule. So based on that 12-year truck replacement schedule, and without the passage of this bill, LB1030, Norris ratepayers will pay an additional \$75,000 in city sales taxes over the next 12 years. And over the same time period the city of Beatrice will receive a windfall of \$180,000 in city sales taxes, and that's because we license those vehicles in the city of Beatrice. While the cities of Hebron, Fairbury, and Seward will forfeit city sales taxes. So for the city of Hebron, they will forfeit \$30,000 in city sales taxes, Fairbury will be \$20,000, and then the city of Seward will forfeit \$55,000. Again,

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it has to do with where we have to license our vehicles. So as proposed, LB1030 will allow Norris to continually to centrally license the purchase of vehicles in Gage County, and we do reap the efficiencies with this requirement. LB1030 will also require the county treasurer where Norris is headquartered to charge the applicable city sales tax based on where the vehicle will be housed and to distribute the city sales tax collections back to the appropriate municipality. So for the reasons I have provided here today with this testimony, Norris Public Power District, the Nebraska Rural Electric Association, and Nebraska Power Association is in support of LB1030. And to answer the question that came up earlier about the license plates and what they look like, there actually is a special public power district license plate that is distributed to the six entities that fall under this requirement. So that we no longer have license plates that are numbered for all the different counties that we're in, it's a public power district license plate. I would entertain any questions at this time.

SMITH: Thank you, Mr. Vitosh. Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. Thank you for your testimony. But if you were in the town in which the public power district was located then you would suffer a revenue loss, significant one, by this measure?

BRUCE VITOSH: Well from the passage of the bill two years ago that would be the case, yes. So the cities where operation centers are at on our outposts, they would lose city sales tax revenue because the passage of the bill two years ago. This bill here corrects that, that issue.

SCHUMACHER: But if you were on the receiving end you'd be losing by passing this bill?

BRUCE VITOSH: Yes. No, we would not. We would actually be benefiting from this bill because we have an operation center that's in a rural area and we do not pay city sales tax in that rural area. So actually by the passage of this bill we are going to save \$75,000 in city sales tax that we would have paid based on the bill that was passed two years ago.

SCHUMACHER: But Beatrice can't be thrilled about this.

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BRUCE VITOSH: They will continue to receive the city sales tax based on what they would have received before the passage of the bill two years ago. So they'll remain whole with the passage of this bill based on what the structure was two years ago.

SCHUMACHER: Two years ago, but not what it is now.

BRUCE VITOSH: That's correct.

SCHUMACHER: They would see a drop.

BRUCE VITOSH: They would see a drop based on this bill.

SCHUMACHER: Thank you.

SMITH: Senator Harr.

HARR: Thank you. How do you track where your vehicles are?

BRUCE VITOSH: We assign vehicles to our different area operation centers. So basically we kind of even get down to the point we assign them to employees of our district. So all of our trucks are assigned to specific areas and we track all of their costs internally with our costs and assign those costs to those specific areas.

HARR: Okay. So how do you track where the vehicles are?

BRUCE VITOSH: How do we track them?

HARR: So how do I know that this vehicle is in Gage County 180 days a year, as opposed to Fairbury or where another county or another city. How do I know? How do you know? Because I don't know if you were here earlier, there was a cigarette guy, cigar guy who said we do a terrible job collecting taxes. And he's probably right. So if we're going to give you more ability to say where your vehicles are, how are you going to track that and how are we going to know?

BRUCE VITOSH: We assign each of our trucks to our different operations centers. So we have different area numbers that we assign our trucks to. And so we track them in a spreadsheet within our system. And the reason we do that is just so that we properly allocate costs to the different areas that we serve. So we do track all that and I can tell you on the 81 trucks that we have, we have 48 trailers, which also it would be applicable to this bill here. But for every one of those

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vehicles and trucks I can tell you where we keep that vehicle or truck throughout the whole year.

HARR: And every night?

BRUCE VITOSH: They are housed in the garages where they're assigned to. We rarely keep them overnight somewhere else. The only time we would do that is if we're on a big construction project and we're sharing trucks and people from different areas, they may park it on a job site overnight or during the week. But as far as housing them and garaging them, they're all back in their home area centers.

HARR: Have you read the 60-349?

BRUCE VITOSH: 60-349, I don't, I'm not familiar with that.

HARR: OK. Well, that's what has to deal with this bill on situs.

BRUCE VITOSH: OK.

HARR: And it says, 60-349 provides that situs is the place where the motor vehicle or trailer is stored and kept for the greater portion of the calendar year. So we have to, we the state, have to have some way of finding out where that vehicle is stored. So you're saying a spreadsheet is what we should rely on?

BRUCE VITOSH: We can definitely-- we could tell you where we keep those vehicles.

HARR: Okay, thank you.

SMITH: Thank you, Mr. Vitosh. But let me ask you just a real quick question here. I think if there is any need for verification, all the vehicles have GPS on them I believe. Is that correct?

BRUCE VITOSH: We would be able to track them, yes. We do have that.

SMITH: You track location of all your vehicles, speed and things like that?

BRUCE VITOSH: Yes, we do.

SMITH: OK, very good.

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BRUCE VITOSH: So that's a good point. We definitely could show where they've been.

SMITH: Very good. Thank you, Mr. Vitosh.

BRUCE VITOSH: Thank you for your time.

SMITH: Continuing with proponents of LB1030. Welcome.

NEAL NIEDFELDT: Good afternoon, Senators. My name is Neal Niedfeldt, N-e-a-l N-i-e-d-f-e-l-d-t, and I'm the president and CEO of Southern Public Power District. We're located in Grand Island, corporate headquarters. We serve customers in seven counties: Merrick, Hamilton, Hall, Adams, Kearney, Franklin, and Phelps. I won't be redundant and repeat most of the things that Mr. Vitosh went through because our situation is virtually the same. Our district court headquarters being in Grand Island, we are now subject to the city sales tax of Grand Island for all the trucks and vehicles that we purchase. So with a new-- with the licensing requirement that's in place we are spending approximately \$10,000 to \$15,000 a year in city sales tax for trucks and equipment that are not in that area. We have five service centers, we've got one in Grand Island, but we also have a procurement center in rural Hall County. We've got a service center with men and trucks south of Central City, in the rural area outside of city limits. Same west of Hastings. And then we have service centers in Franklin and Holdrege, and in Franklin they do have a 1 percent city state sales tax and Holdrege has a 1.5. So by paying the 1.5 in Grand Island, we're paying city sales tax on trucks and trailers that are in those three rural centers, and actually paying a little bit more than what we would be paying in the city of Franklin, whose only has a city sales tax of 1 percent. So we would support the bill because, you know, these are unan-- it was it wasn't intended to have these the sales tax revenues be apportioned this way. It's a bit of a windfall for the city of Grand Island, and so we would like to see the corrections made. And the district supports the bill. So thank you.

SMITH: Senator Harr.

HARR: Thank you. So LB783 was originally brought by Senator Lindstrom two years ago, and I see on here, looking at the committee statement, you didn't testify against the bill at that time. Had you had a chance to review the bill?

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NEAL NIEDFELDT: We did. And quite frankly, this is something that we missed. That by putting it in the language regarding headquarters, it didn't dawn on us that was going to-- we were going to be affected by city sales tax.

HARR: OK, thank you.

SMITH: In the event, do you have any vehicles that are taken home by employees?

NEAL NIEDFELDT: We have some that are taken home for those that are on-call, take them home at night.

SMITH: And how is that handled?

NEAL NIEDFELDT: So we have linemen that are-- that rotate their on-call basis. So they might be on-call for a week and they will take that particular truck home for that particular week. Following week, another lineman takes the on-call duties and then takes that truck home.

SMITH: All right, so there would not be-- the greater portion of the calendar year would not be spent at their home?

NEAL NIEDFELDT: They would not. So we also, kind of like Mr. Vitosh described, all of our service centers we've got trucks assigned to those centers, both on operational reports and also in budget reports. If there's-- if there's some concern on where they are housed we'd be certainly open to providing some kind of certificate or sign a report that indicates where those are being housed.

SMITH: And like an executive vehicle, a manager's vehicle.

NEAL NIEDFELDT: Right.

SMITH: Would that be, would we interpret stored and kept as that manager's home or would it be the service center?

NEAL NIEDFELDT: We would consider that's housed at the, either the service center site or the corporate headquarters of or Grand Island.

SMITH: All right, very good. Thank you. I see no other questions. Thank you for your testimony.

NEAL NIEDFELDT: Thank you very much.

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SMITH: Next proponent of LB1030. Seeing none, we do have one letter for the record in support of LB1030 from Rocky Weber, representing Nebraska Cooperative Council. We now move to opponents, those wishing to testify in opposition to LB1030. Seeing none, those wishing to testify in a neutral capacity on LB1030? Seeing none, Senator Friesen is welcome back to close on LB1030.

FRIESEN: Just to clarify earlier when the question was asked, they do get a specially-designed plane that is just for public power. And so one of the main reasons for passing the bill in the original was all of the trailers they have, and to go out and replace all those license plates. These plates now stay permanently on that vehicle. Even when we put new plates on our vehicles these do not get changed out. So it's a one-time deal when they put plates on their vehicles and they do stay there. Other than that, I'd be glad to answer any questions.

SMITH: Remaining questions for Senator Friesen? I see none. And that concludes the hearing on LB1030, and we move to LB1066 [SIC], again to be introduced by Senator Friesen.

FRIESEN: Thank you, Chairman Smith and members of the Revenue Committee. I'm Curt Friesen, C-u-r-t F-r-i-e-s-e-n, from District 34. I'm introducing LB966. This is a bill that clarifies that sales tax will not be imposed the gross receipts from the sale or lease of dark fiber between telecommunications companies. You will note the fiscal note shows that this bill has a negligible fiscal impact, and I've been consistent in my position that business inputs should not be taxed. And I believe that dark fiber is a component part of providing a telecommunications service. It is the next step of providing that service that will be taxed and that is after the dark fiber is lit. There will be testifiers here who will follow me who can provide more detail about how the process works between telecommunications companies. However, I believe this bill clarifies the current law regarding transactions involving dark fiber between telecommunications companies. It will give those companies some comfort in how those transactions will be treated for sales tax purposes, and ask for your support in passing this to General File.

SMITH: Thank you, Senator Friesen, for your opening on LB966. Questions from the committee? Senator Groene.

GROENE: This is like Great Plains lays the fiber? And it's their input cost, when they lay it they get charged sales tax?

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FRIESEN: No, this would be if a telecommunications company wants to, instead of putting on their own stretch of fiber between two points, if they want to lease some dark fiber from another company so they don't have to double up on fiber. And so when they lease that dark fiber they would not have to pay sales tax on that lease because they're using it as a component of completing a transaction between, and so it would be taxed at the end service. If you, if you tax it, you'd be taxing it twice, because somebody is going to be using that service as an end product. So this is just a lease between two companies, it would be an input cost of you providing a service to an end user.

GROENE: Somebody like Level 3 that put in a whole bunch of fiber early on.

FRIESEN: You could lease some space on there.

GROENE: On theirs. They don't-- I don't believe they give services, they just have cable where they lease it and selling the use of it.

FRIESEN: Right. You can ask some details further when they come.

SMITH: I see no other questions. Thank you, Senator Friesen. We move to proponents of LB966. Welcome.

GARY WARREN: Thank you. Good afternoon, Chairman Smith and members of the Revenue Committee. My name is Gary Warren, G-a-r-y W-a-r-r-e-n. I'm a senior manager at Hamilton Telecommunications, a telecommunications and technology provider based in Aurora. I also serve as chairman of the board for NebraskaLink, a statewide fiber facilities-based telecommunications carrier. And I'm also testifying today on behalf of the State Chamber as well as NebraskaLink and Hamilton Telecommunications. We thank Senator Friesen for introducing this bill, and the committee for its consideration of it. We brought this legislative request to Senator Friesen because the current statutes present potential gray area with respect to sales taxes on the lease for sale of dark fiber between telecommunications companies. The industry is seeking a legislative change to clarify the matter in statute. The Revenue Department has sought to tax the fiber as a lease or sale of trade facture and not as a sale of telecommunications services. And telecommunications services are exempted already when sold or leased between telecommunications carriers. When it was checked with similarly situated carriers, they've agreed this is a potentially gray area that needed to be clarified. Especially with the

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use of dark fiber, a newer technology in the industry. Carriers are seeking these arrangements in an effort to deploy broadband, avoid burying duplicate ropes of fiber transport. Encouraging dark fiber transactions between telecommunications company by exempting those transactions from sales tax produces greater efficiencies in the deployment of broadband. As Senator Friesen explained, this is consistent with tax policy not to tax inputs. With the advent of fiber transport over the past several years, telecommunications carriers are providing the ability to transport data in a variety of ways. Dark fiber is just one component of what is needed to provide the data transport or voice services in the same manner as Ethernet circuits or TDM circuits traditionally have been. The difference is the dark fiber still needs to be lit in order to provide the services.

Telecommunications carriers are routinely dividing up cables on a wholesale basis with several different carriers having fibers in the same cable, which is typically maintained by one company. Carriers are also divided up bandwidth within one fiber, amongst more than one carrier on a wholesale basis. The fact that one transaction divides up strands and the other divides up bandwidth should not change the fact it doesn't input and the sales tax should be assessed only at the retail level. What we need from the Legislature is clarity on this issue so that dark fiber is included in the same statute that excludes these other sales and services between telecommunications companies who are cooperating to deliver broadband. Respectfully request the committee to advance LB966. Excluding dark fiber sales and leases from sales tax between telecommunications companies creates harmony with existing telecommunications tax policy, and helps to promote broadband deployment in Nebraska. Be glad to answer any questions.

SMITH: Thank you, Mr. Warren. Questions? Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. And thank you, Mr. Warren, for appearing today. Just to aid in understanding a little bit. You lay a fiber optic cable has 128 to 156 little hairs of fiber in it.

GARY WARREN: Right.

SCHUMACHER: Okay. And at one end of the cable is some type of device, a router of some description that then takes the signal and pulses it to communicate. Who, when we're talking about dark fiber we're talking about one or more of the strands in that cable.

GARY WARREN: Correct.

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SCHUMACHER: And who owns the piece of equipment that it plugs into in the end, the lessee or the owner of the fiber?

GARY WARREN: That in the-- in the instance we're talking about here between telecommunications carriers, let me try to give an example. Hamilton Telecommunications lays your 128 fibers and NebraskaLink or Great Plains or anyone else comes along says, hey, I've got some customers that want to go this same route, and they want to use one, two, three, four strands of our fiber. We could lease them to them, they would then turn around and divide up that fiber however they saw fit to sell to one, two, or three, or four customers and collect the sales tax from those customers. That's how-- did I, did that help?

SCHUMACHER: Not quite. Who owns the-- there is the person, the lessee, are they going to come into your CO?

GARY WARREN: Yes.

SCHUMACHER: Okay, and they're going to put their own box there.

GARY WARREN: Yes, that is correct.

SCHUMACHER: Grab a couple pieces of fiber off there and plug it into their box rather than run it through your box as bandwidth.

GARY WARREN: That's correct. And part of the reason carriers want to do this is that, well, they want to have a little more control over their own network and the customer they're serving. And so they can think and say I know it's my electronics on that piece of fiber, I know it's working or it's not working, and so forth.

SCHUMACHER: And so you would view it that way as an unbundled element, the dark fiber?

GARY WARREN: Dark fiber is an unbundled element. Now you're challenging even me on my FCC definitions. Well, I guess I equate it to the same thing as do I sell a 10 gigabit wave. You know, it's-- the customers are coming to the carriers these days, you know, looking for different options for communicating, which they weren't doing 30 years ago because we didn't really have this option. I'm not a-- I don't know the answer to your question, technically, whether it's in unbundled element.

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SCHUMACHER: An unbundled element is usually a physical thing like the dark fiber would be, your 10-gig wave would be the service side of it, wouldn't be an unbundled element.

GARY WARREN: I'll accept your answer to that.

SCHUMACHER: I would think so. So basically you're right now you're saying between two trucking companies, the truck rented out to somebody should not have sales tax on the truck rental fee. Analogous close?

GARY WARREN: Two trucking companies, and so one leases it.

SCHUMACHER: One leases the truck from the other.

GARY WARREN: I don't-- no, I don't think that's analogous. 77-2504, whatever it is that we're trying to amend here, specifically it was put into place to so the telecommunications carriers could use whatever elements or components they wanted to to put something together without having a series of sales tax of transaction-- sales tax transactions until they got to the retail level. And I think really what we're saying here is we're modernizing that and saying, hey, the new world is dark fiber and we need to throw that in the same category as access charges and, you know, 20 miles of an Ethernet circuit or whatever else it might be.

SCHUMACHER: And the telecommunications carrier, the people that could lease this sales tax free, would they be licensed as ILECs or CLECs to the Public Service Commission?

GARY WARREN: Interexchange carriers, CLECs, any of that. Yeah, I think once-- if I as a carrier decide to sell it to you as an individual, I think we're back to a retail transaction.

SCHUMACHER: But if you sell it to me as a carrier--

GARY WARREN: Right.

SCHUMACHER: -- then it's tax-free, business to business.

GARY WARREN: Well, yeah, and that's right. It's business to business. The idea, the idea is that it will get taxed at the retail level when that carrier turns around and uses the dark fiber for that purpose.

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SCHUMACHER: Thank you.

SMITH: Senator Brasch.

BRASCH: Thank you, Chairman Smith. And thank you for your testimony. I'm trying to visualize here. You are looking at that dark fiber is unused inventory, basically. It's there, it's not connected to anyone or any company.

GARY WARREN: That is correct.

BRASCH: But you ran the fiber optics and it has so much capacity. And what I'm wondering about, like the gentleman who testified about the cigars on his shelves, he has paid all this tax on cigars on his shelves but it's not sold yet. It's there, he's paying taxes. So you're paying tax right now on unused fibers, is that-- and you're asking for the taxes to be paid once it's-- no?

GARY WARREN: No. The fiber I have in the ground today I am not paying, well, I may pay a tax for the installation of it. OK? But I don't, I don't pay a tax--

BRASCH: It says unused to provide a sales tax exemption for dark fiber between telecommunications companies.

GARY WARREN: That's correct, yeah. The issue is if I turn around and sell it at retail I got to charge whoever it is the sales tax. But if I turn around and lease it to a carrier, telecommunications carrier, who in turn is going to be use the capacity to--

BRASCH: So while it's not generating revenues for a service provider--

GARY WARREN: Right.

BRASCH: -- and sitting idle, you want a tax exemption on that?

GARY WARREN: No.

BRASCH: Who wants the sales tax exemption here on dark fiber?

GARY WARREN: I don't-- I'm obviously not doing very well here. But so Hamilton has the fiber in the ground and Great Plains comes along and says hey, we need fiber from Grand Island to Aurora because we've got some customers that we can sell that service to over that fiber. Well, what we're suggesting and what we're recommending is, hey, that's--

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before dark fiber we might have a what they call it DS3 that can handle multiple data circuits. And we would sell them that DS3 lit service to Great Plains, they would divide it up and sell a T1 to somebody, a T1 to another party, charge the sales tax on it go on down the road. There was no sales tax on the DS3 to Great Plains. We're saying do the same thing with the dark fiber.

BRASCH: Okay. But once it's revenue-generating is the dark fiber just sitting?

GARY WARREN: Yeah, when it's sitting there nothing's going on.

BRASCH: It's dark, it means it's not plugged in.

GARY WARREN: No, no that's right. Yeah.

BRASCH: It's a dead line.

GARY WARREN: It's not getting anybody any revenue including the state until--

BRASCH: Until it becomes activated?

GARY WARREN: -- we either sell it at wholesale or sell it at retail.

BRASCH: OK. Thank you, I have no other questions.

SMITH: Senator Groene.

GROENE: Thank you, Chairman. Forgive my ignorance but what's the difference between broadband and dark fiber. It's the same thing?

GARY WARREN: Broadband is, well, typically I think people would say broadband is the carrying of data over telecommunications carrier facilities, which could be over dark fiber, it could be over an Ethernet transport circuit, could be over a T1, a DS3, a variety of different services.

GROENE: So when Great Plains goes by my place out in the country and lays cable, what are they laying?

GARY WARREN: Presumably these days most likely fiber, they could be copper, but most likely fiber.

GROENE: But it ain't black? It isn't the black-- the dark?

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GARY WARREN: Oh. It's dark until somebody put some electronics on the end of it.

GROENE: Oh, it's the same thing.

GARY WARREN: Right.

GROENE: All right. I thought there was this fiber that was dark fiber, then you have the broadband fiber, and you know.

GARY WARREN: No, no, no, you're right on.

GROENE: Right. So the way I understand it, Great Plains owns this fiber, they've laid it in the ground as an investment.

GARY WARREN: Right.

GROENE: A cell phone company comes along said we want to put a tower up and we want to hook into your fiber, right?

GARY WARREN: Right.

GROENE: They pay a lease, a lease to Great Plains.

GARY WARREN: Correct.

GROENE: Verizon does. They're paying sales tax on that lease?

GARY WARREN: The position that we've seen the Department of Revenue take at least in one instance is yes, they would. And we're saying--

GROENE: It's double taxation.

GARY WARREN: Yeah. Your cell phone tax that you get charged as a customer--

GROENE: The highest in the country.

GARY WARREN: Yeah, this is for both, this is not just a wire line company issue. This is a wireless company issue as well.

GROENE: Because every cell phone company has to tie into somebody's fiber.

GARY WARREN: They're going through the fiber somewhere.

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GROENE: So that cell phone company sale on sales tax on that.

GARY WARREN: Yeah, whether Great Plains uses our fiber to go to a wire line company or a wireless company or whatever, what we're saying is the telephone company end user customer, whether it's data, voice, wireless, whatever is paying the tax at that level. It shouldn't happen again at this component part.

GROENE: Your double taxation is what you're saying.

GARY WARREN: Exactly what we're saying.

GROENE: Charging 7 percent goes in the cost and I'm paying 7 percent on that 7 percent.

GARY WARREN: Right.

GROENE: Thank you. I understand it now, I think. Don't confuse me with any other complicated answers.

GARY WARREN: I'll probably do that if I have another question.

SMITH: Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. A couple more questions. That-- the owner of the dark fiber, the strands, is that fiber available on an equal basis to all other carriers? Or is it--

GARY WARREN: Yes.

GROENE: It is?

GARY WARREN: Yeah, I mean, I'm not supposed to price discriminately if I'm a common carrier in the state.

SCHUMACHER: Thank you.

SMITH: Senator Harr.

HARR: Thank you. Thanks for coming, Mr. Warren. If you were here on a regular day what you would hear is our property taxes are too high. And you would hear our problem is we give away our base, we give exemptions to sales tax, we give exemptions to income tax, we give exemptions to businesses, and we've got to get those under control. We've got to lower the rate and broaden the base. I look at this bill

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and I see another exemption. And I say, what is a problem we're trying to solve here? And I have no idea.

GARY WARREN: Well, my answer to that would be if we'd have-- we'd have passed 77-2504 today we'd have dark fiber in it because it's a new wave of technology, it's a new way to have telecommunications carriers transport data between each other and serve the customers. And when we put access charges, Ethernet transport or whatever is, is in that other access charges, the settlement things and everything else in that statute, that's what-- that's how those things worked 20 years ago. And I think that's the difference. This is a modernization thing in my view.

HARR: So what I'm hearing is contrary. I hear oh, we're going to 4G, 5G and it's going to be completely different. We're not going to need fiber, that's fine. So then that leads me to the next question. This, if we pass this bill this will save the industry money, correct? Because they won't be paying taxes.

GARY WARREN: Yes, and therefore the consumer. But yeah.

HARR: Fair enough. So explain to me how much money this will save the consumer or the businesses. How much taxes are we paying that we're trying to create an exemption for.

GARY WARREN: Well, the fiscal note was minimal at this point. And but I think what's going to happen here is what's happening today is telecommunications carriers with the gray area in the law are trying to say, well, Great Plains I'd like to lease you this dark fiber, let you put the electronics on the end and control it yourself, but if I do that you're going to pay sales tax on it. Well, can I, can I make a bandwidth wave out of it? Can I do something different? And it's not exactly what the carrier wants, nor is it what the end customers want from us. And it works. I don't want to say this, but we're going to start to find language in our leases and everything to make them look like bandwidth stuff and change the arrangements. And we're saying what's best for Nebraska. We shouldn't be making those kind of decisions. If the next telecommunications carrier says dark fiber works the best as opposed to a 10-gig bandwidth, that's what they ought to be able to buy. And it shouldn't make a difference on the tax side.

HARR: Well, if it works the best isn't that what the consumer probably wants is what works the best? I mean, I guess I don't see the reason

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for this law if it's a zero impact. It doesn't make sense to me. And if it's-- if it's you're saying the law isn't clear, maybe that I can understand. But then explain to me what the current law is and why we need this change. And not some of the other things I'm hearing that are going 10 miles over my head.

GARY WARREN: At the risk of Senator Groene asking me questions that I won't know how to answer, I would say that the issue here is we're going to force the carriers to just stick with lit services to some degree or they're going to say--

HARR: And why is that?

GARY WARREN: Because they're going to say I don't want to use Hamilton. Great Plains does not want to use Hamilton electronics to control their network, they want to use the dark fiber. And the cell carriers--

HARR: Because of a tax?

GARY WARREN: What?

HARR: Because of the tax.

GARY WARREN: Not solely because of the tax, partly because technically that's the way they prefer to do it. That is their-- they can control their network better technically, they don't have to depend on a Hamilton technician going out there for the electronics end of it. And the point is why, why would in this modern age why would we say no, we're going to have a different tax structure for that, which discourages that dark fiber use which doesn't-- it's a component, just like the 10-gigabit bandwidth. And why, why are we forcing the choice?

HARR: So if this law is discouraging certain actions, how much is that cost?

GARY WARREN: The cost?

HARR: Yeah, of this discouragement in tax dollars? That's all we care about.

GARY WARREN: Well, if I revert back to selling 10-gigabit waves, no difference. The customer is not going to get what they want. I mean, that's what it amounts to.

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HARR: OK. I'll be honest with you, I-- I'll probably talk to someone later on and try to figure out--

GARY WARREN: Yeah, I'm sorry. I'm obviously not getting your question.

HARR: I mean, I hear we're doing this for tax-avoidance purposes. But then I see a fiscal note that says there is no tax or a minimal tax implication. And I've seen fiscal notes for as little as a \$1,000. And I got to believe there's got to be a difference more than \$1,000. So and someone's going to have to explain.

GARY WARREN: Well, let me be upfront with you, Senator Harr. Ten years from now, if you decide to tax dark fiber after this bill is passed for 10 years, and you do a fiscal note on it, you will see something different in dollars because people are going to gravitate toward that technical solution.

HARR: And I think I understand, but I guess part of my question is it seems like this is a preemptive strike. And the one thing I know about technology is--

GARY WARREN: You're right.

HARR: -- we don't know where technology is going to go. As I try to rent movies on my page. So I guess I don't see where this-- but I appreciate it.

GARY WARREN: OK, thanks. And I'll be glad to talk to you off-line too.

SMITH: And I'm going to say something here, then we're going to go to Senator Groene and then Senator Schumacher. And maybe if you-- if you can't clarify this, maybe someone else following you will, but my understanding this is more about simplification of the wording and maybe updating our statutes to reflect some of these new technologies because today services that are, well, cells of telecommunication services between telecommunications companies today are exempt.

GARY WARREN: Correct.

SMITH: But somehow this unused fiber that's in the ground, whenever it is leased out, creating cells of those services between two is taxed.

GARY WARREN: Right.

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SMITH: And for the express purposes of leasing it out to provide those same services then it's taxed. And so we're just trying to provide uniformity in the statutes, whether it's owned, you know, whether that fiber is owned by or, you know, is constantly used and provides services between the two or it's unused and then it is leased out to provide those services. Want to treat it the same way tax law, and that's what my understanding is.

GARY WARREN: You'd be a good witness. Yes.

SMITH: Thank you. I'm just trying--

GARY WARREN: I'm sorry, but you're right. I think you explained it very well. It's--

SMITH: OK.

GARY WARREN: I mean, 30 years ago, dark fiber, I mean, nobody was talking about we need to do it this way.

SMITH: OK. And when we're talking about dark fiber we're talking about unused fiber.

GARY WARREN: Yes, that is correct.

SMITH: And then when it-- then when you put light through it is not dark anymore.

GARY WARREN: That's right.

SMITH: OK. Senator Groene, then Senator Schumacher.

GROENE: So your company has fiber in ground?

GARY WARREN: Correct.

GROENE: You pay property tax or in lieu of price.

GARY WARREN: Yes, yes.

GROENE: So you do pay your property taxes?

GARY WARREN: Oh yes.

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GROENE: But you never-- you can't TIF it, can you? I'm just-- that's a side joke.

GARY WARREN: No, no.

GROENE: So you do pay in lieu of tax like the gas company does?

GARY WARREN: Oh yeah.

GROENE: And the power companies do? All right, thank you.

SMITH: Senator Schumacher.

SCHUMACHER: Thank you, Chairman Smith. And again, just doing some follow up on Senator Harr's questions there. So basically what we're talking about, let's say I have a cell tower out someplace, and you happen to have a piece of cable full of fibers that run pass there.

GARY WARREN: Right.

SCHUMACHER: And I-- the other end in the same vicinity as where your cable ends, I have a big Internet pipe bought from AT&T or Verizon or Level3 or somebody. And I need to get signal from my big Internet pipe to my cell tower. And we got two ways of doing it. Unless I want to set up a microwave link between the two points or plow in my own fiber. I come to you and I can say, Gary, I need to get a signal from that tower to my big Internet line.

GARY WARREN: Right.

SCHUMACHER: And you say, well, there's two ways we can do it. You can connect into my box on my fiber line and I'll send the signal down and then it will end up in my box on the other end and the box being the router or some device that translates the light signal to something I can use. And then I'll hand it off to you and you can connect it to your big Internet line.

GARY WARREN: Right.

SCHUMACHER: At which time you're providing the flashing signal on that line, and it's all through your equipment. And if I have a problem with that signal, I've got to pick up the phone and call you and say hey, something is not working right. And you're at a Christmas party and you're hard to get to. And so my customer is-- people on my cell tower are suffering because I can't get to you or your people are busy

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doing something else, and it's really not your problem to begin with, at least my customers aren't. So the other route is for you to say hey, here's what I'll do. I will let you clip on to a couple, one or two of those fibers, at your cell tower location with a piece of your equipment.

GARY WARREN: Right.

SCHUMACHER: And you can clip on the other end with a piece of your equipment and use that to match into your big Internet line.

GARY WARREN: Right.

SCHUMACHER: And then if there's a problem unless it's some farmer with a backpack, and that the signals got going through, it's your problem to figure out. Or it might be my problem to figure out why the boxes aren't working right and why my cell tower isn't talking to my Internet line, big Internet line. And that's a lot simpler way of getting a signal from a cell tower to my line than it is going through you as a middleman.

GARY WARREN: That is what some telecommunication carriers think and what to do. That's exactly right.

SCHUMACHER: And that's-- in the end. We're getting signal--

GARY WARREN: Yeah, the same thing.

SCHUMACHER: -- from the cell tower to the lessees' big Internet line.

GARY WARREN: Right.

GROENE: But you're paying tax on the last one [INAUDIBLE] excuse me.

SMITH: And that was Senator Groene.

GROENE: I'm sorry.

GARY WARREN: If we don't pass this legislation when he does dark fiber thing, you're correct.

GROENE: On the second example.

GARY WARREN: Yeah, he would add.

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SMITH: Senator Harr.

HARR: Thank you. And I don't know whether to ask you, Chairman Smith, or Senator Schumacher.

GARY WARREN: OK.

HARR: But I'll try asking you first. I'll call the first situation the Christmas party scenario and the second one the triple net scenario. Under the Christmas party scenario are there taxes currently being paid?

GARY WARREN: No.

HARR: OK. Under the triple net theory are taxes currently being paid, not being paid, or are they gray and that's what we're trying to clarify?

GARY WARREN: Gray. And that's what we're trying to clarify. And we want to make sure they don't-- they don't have to be paid. And that Senator Schumacher in that situation has the choice of those two ways to buy the service.

HARR: OK.

SMITH: I think we've got it. I think we've got it. Mr. Warren, this is complex stuff. This is why Senator Friesen gets paid twice what we get paid here to run the Telecommunications Committee.

GARY WARREN: Well, I'll go home and practice a little more before I come back.

SMITH: Very good.

HARR: None of us will be here next time.

SMITH: All right, thank you, Mr. Warren.

GARY WARREN: Thank you.

SMITH: Next proponent of LB966. Should be smooth sailing from here on.

CURT BROMM: I'm not sure I want to be here. These questions are daunting. Thank you, Chairman Smith, members of the Transportation and Telecommunications Committee. My name is Curt Bromm, C-u-r-t B-r-o-m-m, and I'm here representing Verizon Communications. I'm a

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native of Burt County, Senator Brasch, so we have that in common at least. I'm here to provide support for this bill. We believe that all of us, whether it be senators or businesses, wireless folks, wire line people, broadband, we all share a common goal of providing advanced telecommunications services throughout the state effectively and efficiently as possible. Telecommunications is a major factor in the statewide effort to attract, retain, and grow our businesses, as well as as retain our new graduates and convince them to stay here in Nebraska and work and raise their family. And good, reliable, and fast telecommunications cannot be underrated or understated as essential in meeting these objectives, whether it's in most any kind of business: healthcare, farming, or anything else. Verizon does not own any dark fiber. Zero. However, we recognize that the importance of providing this telecommunications service may involve utilizing dark fiber by others or eventually by us where it's appropriate and helpful to do so. And we think there's no reason to duplicate the installation of fiber or dig up the right of way if dark fiber exists but is not being used and can be placed in service. Nebraska is one of the highest, and I heard Senator Groene say the highest. The last I knew we were either one or two in terms of taxes and fees on telecommunication services, occupation tax, universal service fund tax, other fees, and charges. It would not seem advisable to impose a tax on this particular service because the end user will eventually pay tax anyway. It would be a positive step toward expanding broadband we think, and advancing telecom services to clarify this area of taxation, and confirm that as a component of telecommunications services use of dark fiber between telecom companies should not be subject to sales tax. And I'd be happy to try to answer questions if they're pretty simple, Senator Smith.

SMITH: Thank you, Mr. Bromm. Questions from the committee? I see none.

CURT BROMM: Thank you.

SMITH: Thank you. The next proponent of LB966. Welcome.

SARAH CURRY: Thank you. I'll keep this short and sweet. My name is Sarah Curry, S-a-r-a-h C-u-r-r-y, and I'm the policy director for the Platte Institute. I'm here to testify in support of LB966. A well-structured sales tax extends to all final consumer transactions, whether goods or services, but excludes business to business transactions, which is what LB966 is clarifying. Current law states that sales, leases, or rentals of telecommunication service components between telecommunications companies are exempt from sales tax. The law does not explicitly state the sale of dark fiber between these

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communications, telecommunication companies is considered a business to business transaction, which is the reason for this bill. There have been-- there's been some confusion over this issue between some telecommunications companies in Nebraska and the Department of Revenue. The companies do not believe they should have to pay sales tax on business inputs, and the Department of Revenue has decided they should be charging sales tax on the lease or sale of dark fiber. LB966 will help to clarify this confusion. When sales tax is not limited to the final consumer transaction it will include business inputs such as dark fiber. This can lead to tax pyramiding, where the tax is embedded in the final price of goods and services many times over. The purpose of this bill is to make it clear to the telecommunications companies, both wireless and wire line, that they can proceed with the sale or lease of dark fiber as necessary service components without the risk of imposition of two levels of sales tax. The policy promotes broadband deployment and encourages companies to use each other's facilities, rather than build duplicate facilities. Thank you for the committee's time, and I'm happy to take any questions.

SMITH: Thank you, Ms. Curry. Senator Schumacher.

SCHUMACHER: Thank you, Senator Smith. And thank you for your testimony.

SARAH CURRY: Excuse me.

SCHUMACHER: Let's say you have a 128 fiber strands in a cable and a telecommunications company comes along and leases five of them, okay, from the owner of the fiber. Who pays the property tax, or maybe buy would make it easier, buys five of those strands from the owner. Who pays the property tax, or do you know how it's appropriated between the owner of 5 and the owner of 123?

SARAH CURRY: I don't. I know that the issue has been you've got telecommunication, excuse me, telecommunications company A and B, and they're selling or leasing fiber to each other. And then we have final consumers, C. And so there were sales tax being levied between A and B, and then also from B to C and so we just believe business input should not have sales tax levied on them. I don't know how the property tax is levied on that because if there is a lease I'm sure it's a different situation than if it's to the final consumer, and I can't answer that. I'm sorry.

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SCHUMACHER: Oh, we're barely trying to incent the use of the dark fiber rather than policing the signal, so there will be more of this either leased or sold in the bundle. And so I guess I just raise the issue of how the property tax is going to fall in.

SARAH CURRY: Yeah, I don't know. The way the issue was explained to us is that the final, the telecommunications companies are not necessarily the end consumer of the dark fiber. A lot of times they are using the same dark fiber as a network and so they just want the sales tax on that final consumer, whoever that ends up being. And I'm not terribly techie so I can't explain any more than that.

SCHUMACHER: Thank you very much.

SARAH CURRY: Thanks.

SMITH: I see no other questions. Thank you, Ms. Curry.

SARAH CURRY: Thank you.

SMITH: Continuing with proponents of LB966.

ERIC CARSTENSON: Senator Smith and members of the Revenue Committee, my name is Eric Carstenson, that's E-r-i-c C-a-r-s-t-e-n-s-o-n. I'm the president of the Nebraska Telecommunications Association and I register as a lobbyist to represent the NTA. The NTA is a trade association that represents the majority of the incumbent local exchange companies throughout Nebraska that provide voice, landline, and broadband telecommunications services to Nebraskans across the state. I'm here today to support LB966, briefly. We agree with the concept that when something is ultimately taxed at the final consumer level each component should not be separately taxed during the assembly. Technology in the telecommunications industry is changing very rapidly and Senator Friesen's proposal simply updates Nebraska law to recognize those changes. And that concludes my testimony.

SMITH: Thank you, Mr. Carstenson. Questions? Senator Schumacher.

SCHUMACHER: Thank you, Senator or Chairman Smith. Thank you for your testimony. Do you know the answer to the question that I asked regarding the if you got a bundle of 128 fibers and you sell off 5, how is that property tax paid? Who notifies the assessor of the difference to not charge? Do you know the answer to that one?

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ERIC CARSTENSON: I've got a good guess. These are complicated contracts. And in one instance if the lease-- if there's a lease arrangement that doesn't transfer the property. If on the case that they buy the dark fiber, that actually transfers the property. So it would be my guess that whoever retains ownership of that property pays the property taxes. Regardless, as an eligible telecommunications carrier, we pay property taxes on a centrally assessed basis.

SCHUMACHER: Okay. Then a follow-up question, dark fiber is also owned by our public power companies and we have provisions in the law that allow for the sale or lease of dark fiber from a public power company to a telecommunications carrier. In that case, will the language, the way this is situated, if you lease or buy from a public power company some of their dark fiber will that have sales tax on it? Or do we need to expand this to cover that situation?

ERIC CARSTENSON: I think where the sales tax would be applied is where the ultimate retail transaction occurs. Seems to me the sale from the power district to an eligible telecommunications company, which is what it would have to be, would result ultimately somewhere along the line in a retail transaction and that retail transaction is where the tax would ultimately be collected.

SCHUMACHER: Okay, because in this language this talks about telecommunications service between telephone communications companies, and a power company would not be a telecommunications company. So if we were going to sales tax exempt that rental or sale we would need to change the language in here.

ERIC CARSTENSON: You ask hard questions, and I got to think about that a little bit. But I think as a public power district I don't believe there would be-- I don't believe they would incur sales tax in their operation of it up until then because they pay it in lieu. So when it's delivered to the eligible telecommunications company, we would have-- they would have responsibility for tracking when that retail sales event occurs. But I guess I'm going to need to think it through to be absolutely certain.

SCHUMACHER: Because I would think that this language referring to between telecommunications company does not cover the incident of a telecommunications company renting or purchasing dark fiber of a power company as to them having to collect sales tax. If there's an issue between telecommunications carriers then I think the similar issue exists between telecommunication carrier and the power company over

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their dark fiber. And if we're going to clean this up, we need to clean it up at once.

ERIC CARSTENSON: Which merits probably giving it some thought and giving you a little bit more substantial and researched answer to that question, because I see which thread you're on. I'm just not clear where we're-- where we've got the taxable event.

SCHUMACHER: Thank you.

SMITH: Other questions? I see none. Thank you, Mr. Carstenson. Continuing with proponents of LB966. Seeing none, opponents? Those wishing to testify in opposition to LB966? Seeing none, those wishing to testify in a neutral capacity to LB966. Seeing none, we invite Senator Friesen back to close.

FRIESEN: First, I guess, I'll clarify like when a company like Hamilton first buys a roll of fiber to put in the ground, they pay sales tax on it when they purchase it, and then they pay property tax on it after that. And in asking Mr. Warren back there if he assumed that if they would sell some strands of fiber they would also transfer ownership and responsibility for that property tax on those fibers that they'd sell. So that kind of answers that question I think. And the way I read this here I would guess too that public power districts that own dark fiber are not included in this the way it's written.

SMITH: Senator Schumacher.

SCHUMACHER: Thank you, Senator Smith. Thank you, Senator Friesen. Should they be, if we want to make that fiber available to the-- so it's not just laying there dark?

FRIESEN: It's, I don't know how, that's more of a technical question. I guess the reason I support this bill is that I've always been of the opinion you don't want to tax a business' inputs. And as long as I look at that, if we need special language and put that in there, lawyers are going to have to look at that. I can't answer that. But right now the way I read it it talks about between telecommunications companies, and we do not let NPPD or any public power provide any of those services, so they would not be considered a telecommunications company.

SCHUMACHER: But we do allow NPPD to lease or reference.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Revenue Committee February 15, 2018

FRIESEN: Yes, it's a very strict arrangement that's out there. There is very little of it has been leased, but it has been done, you're correct.

SCHUMACHER: And so it would seem to be-- as if you were the renting or the purchasing telecommunications company it would be a business input in that instant, just as it would be if you were doing it from a telecommunications company.

FRIESEN: Yes, and I don't know if there have ever been charged sales tax or if anybody's looked at it. There have been so few transactions that I would-- we would have to look into that.

SCHUMACHER: Thank you.

SMITH: Other questions? I see-- oh, Senator Groene.

GROENE: So what you're saying is if we take the sales tax off we can open up a whole new market, create more economic activity because they're doing it the other way where they--

SCHUMACHER: I don't think it'll create any more. It makes it simpler and we don't double tax. They're going to find a way. I mean, and you've heard the description between lit fiber and dark fiber. I'm not going to-- we're considering them the same. It's just going to clarify business decisions and make them based strictly on what is best for the companies. And in the end, we don't want to tax an input. And at the end of that service there should be something that is got a sales tax on it because it's an end product.

SMITH: And I think Senator Harr may have put it best when he said we're just trying to clear up gray language.

FRIESEN: Yes.

SMITH: All right, I see no further questions. Thank you, Senator Friesen, for your closing on LB966. And that concludes our hearings for the day. Thank you all.